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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 36

Alaska National Wildlife Refuges;  
Interim Management Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides interim management regulations for the sixteen Alaska National Wildlife Refuges. The rule: (1) Relieves those restrictions imposed by the general National Wildlife Refuge System regulations that are generally inappropriate in Alaska, (2) implements and clarifies a number of provisions of the Alaska Lands Act that are of immediate importance to Alaskans and the general public, and (3) clarifies what public activities are authorized in Alaska National Wildlife Refuges. These regulations are the minimum necessary for interim administration of the Alaska refuges.

**EFFECTIVE DATE:** June 17, 1981.

**FOR FURTHER INFORMATION CONTACT:** Keith Schreiner, Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99507 (907-276-3800).

**SUPPLEMENTARY INFORMATION:**

## Background

The Alaska National Interest Lands Conservation Act, 94 Stat. 237, Pub. L. 96-487 (December 2, 1980) established, redesignated, or expanded sixteen National Wildlife Refuges in Alaska: Alaska Maritime, Alaska Peninsula, Arctic, Becharof, Innoko, Izembek, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna Selawik, Tetlin, Togiak, Yukon Delta and Yukon Flats. Each of these areas is to be managed pursuant to applicable Alaska National Wildlife Refuge statutory law, most notably the National Wildlife Refuge System Administration Act, 16 U.S.C. 688dd *et seq.* and the provisions of the Alaska Lands Act.

On January 19, 1981, the Fish and Wildlife Service proposed rules to provide interim management guidelines for the Alaska National Wildlife Refuges (46 FR 5668 *et seq.*). The proposed rules addressed a limited number of items, many of which had undergone extensive public comment in other rulemakings or proceedings. (See, for example, 43 FR 60255 (December 26, 1978); 44 FR 11247 (February 28, 1979); 44 FR 15500 (March 14, 1979); 44 FR 37754 (June 28, 1979); 45 FR 2616 (January 11, 1980); 45 FR 14192

(March 4, 1980).) The Fish and Wildlife Service has carefully considered comments made during the course of these proceedings, and promulgates today final rules which generally are in accord with the public comments received. The public comment has proved invaluable in helping the Fish and Wildlife Service develop regulations that are workable yet flexible enough to deal with the exigencies of terrain, climate, resources and lifestyles encountered within the Alaska National Wildlife Refuges.

## Need for Expedient Rulemaking

Under the Administrative Procedure Act an agency is authorized to make a final regulation immediately effective when it relieves restrictions, is an interpretive rule, or when good cause exists for expeditious rulemaking. See 5 U.S.C. 553(d). The rules published today are immediately effective for the following reasons:

First, many of the provisions of these regulations relieve restrictions imposed by the general National Wildlife Refuge System regulations that are generally inappropriate in the unique Alaska setting. For example, standard restrictions on access, firearms and abandoned property are relieved by these regulations.

Second, certain portions of these regulations constitute interpretive rules giving the Department's view on existing legal duties. These interpretive rules are found in § 36.23(c).

Third, the Department has found that good cause exists for immediately effective rules. This good cause finding is based on many factors, including: (1) The need to provide definitive public guidance on permissible activities during the peak use season, (2) the need to alleviate confusion arising from directives in the Alaska Lands Act which are (or appear) inconsistent with existing regulations, (3) the need to have in place administrative procedures for obtaining statutory benefits created under the Alaska Lands Act (e.g. access to inholdings, temporary access, cabins) and (4) the substantial public comment received on past rules addressing the same issues, as well as public participation in legislation culminating in enactment of the Alaska Lands Act.

## Summary of Comments

The January 19, 1981 proposed rules solicited comments for 45 days on the issues addressed therein (46 FR 5668). The comment period was subsequently extended until March 16, 1981 (46 FR 14021). During this period the Fish and Wildlife Service received 145 written comments on the proposed rule. Written

comments were received from 97 individuals, from 33 states, 2 corporations and businesses, 24 organizations, 17 local government entities, the State of Alaska, the Alaska Congressional Delegation, the Environmental Protection Agency, the Air Force, and the Heritage Conservation and Recreation Service.

## Analysis of Comments

## Subpart A—Introduction and General Provisions

## Applicability and Scope

Several commenters argued that the management regime created by the Alaska Lands Act and these regulations should have no effect on refuges, such as the Kenai Range, established prior to December 2, 1980. Specifically, they argued that neither the Act nor these regulations should be interpreted as amending existing special regulations in effect for these areas. The provisions of the Alaska Lands Act apply to all Alaska refuges; a generic distinction between old and new refuges is not legally supportable. The Service, however, does retain the discretion to adopt special regulations for individual refuges consistent with the provisions of the Alaska Lands Act and other statutory law. Existing special regulations remain in force and effect except as amended by the Alaska Lands Act and/or these regulations.

Several commenters suggested that the rules should apply only to "public lands" rather than "federally owned lands or interests." The Service has not accepted these comments. Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of Fish and Wildlife Service regulations to federally owned lands and interests within the boundaries of Alaska National Wildlife Refuges. Consistent with the Act and the explanatory legislative history (126 Cong. Rec. H11115 (daily ed. Nov. 21, 1980) and 126 Cong. Rec. S15150-51 (daily ed Dec. 1, 1980)), § 36.1(b) restricts the applicability of these regulations to "federally owned" lands, which is defined to include all interest held by the Federal government. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no un conveyed State selections remain within the Alaskan refuges. Therefore, generally no State selected and conveyed lands within the boundaries of the Alaska National Wildlife Refuges will be subject to the provisions of these rules. Similarly, land interests interimly conveyed or patented to natives under the Alaska Native

Claims Settlement Act, where such interests are located within the boundaries of areas initially added to the National Wildlife Refuge System by the Alaska Lands Act, would not be affected by these regulations. Other private, patented inholdings within the Alaska National Wildlife Refuges would also generally not be subject to these rules.

#### Definitions

Many comments objected to the definition of "adequate and feasible access" which appeared in the proposed rule on the grounds that it would authorize the Fish and Wildlife Service to determine what is a "reasonable use or development" for an inholding. The definition has been revised to clarify that the inholder determines the desired land use or development of his property, and the Service provides reasonable access to meet the desired land use.

Section 1110(a) of the Alaska Lands Act authorizes the use of snowmachines for traditional activities and travel to and from villages and homesites during periods of adequate snow cover or frozen river conditions. In response to a number of comments, the Service has defined "adequate snow cover" as snow of sufficient depth to protect the underlying vegetation and soil.

Several comments suggested that the definition of "fish and wildlife" should specifically exclude domestic and exotic animals. Although the definition remains unchanged consistent with the specific language of the Alaska Lands Act (Section 102 (17)), the Service recognizes the clearly expressed congressional intent that the term does not include those animals the Service determines to be exotic or domestic (126 Cong. Rec. H10543 (daily ed. Nov. 12, 1980)). See also 46 FR 5669.

A few commenters suggested that the regulations should use and define the term "snowmachine", a term appearing in section 1110(a) of the Alaska Lands Act. The Service has adopted this suggestion by defining "snowmachine" in terms parallel to "snowmobile."

#### Subpart B—Subsistence Uses

##### General Comments

The Alaskan Congressional Delegation, the State of Alaska, and a number of sportsmen's groups opposed promulgation of any rules addressing subsistence, especially in the one year period provided by section 805(d) of the Alaska Lands Act for the State to establish an adequate subsistence program. Each commenter expressed concern that federal regulations could

foreclose the State in development of its program.

The Fish and Wildlife Service is sensitive to these concerns and therefore, has retained the narrow approach articulated in the proposed rules, one that addresses only issues of immediate importance or those definitively treated by the Alaska Lands Act. While the National Park Service is compelled by the Alaska Lands Act to distinguish subsistence users who are permitted to hunt within parks from others who are not, the Fish and Wildlife Service is under no such legal obligation. Accordingly, these regulations do not define "local rural resident" or establish an administrative procedure to distinguish such persons from other members of the public. Similarly, the regulations do not create an administrative framework to implement the subsistence priority required by section 804 of the Act. The regulations treat those subsistence issues of immediate importance in a manner calculated not to foreclose the State of Alaska's discretion in implementing its subsistence program. This restrained approach is consistent with the Fish and Wildlife Service's view that the subsistence issue is one best treated by the State. The Service looks forward to Secretarial approval of a State subsistence program implementing the requirements of the Alaska Lands Act.

Several native organizations urged the Fish and Wildlife Service to adopt regulations implementing Alaska Lands Act section 806 on "Federal Monitoring," section 807 on "Judicial Enforcement," and section 812 on "Research." Although the Service appreciates the importance of these statutory provisions, it determined during preparation of the proposed rules that these provisions do not lend themselves to expeditious implementation since they have not previously been the subject of notice and comment. The Alaska Congressional Delegation commented that proposed § 36.37 implementing section 810 of the Alaska Lands Act should be deleted for the same reason; they also pointed out that the proposed regulation did nothing more than repeat section 810 of the Act verbatim. For these reasons, today's final regulations do not contain provisions implementing sections 806, 807, 810 and 812 of the Act. It should be emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect.

##### Purpose and Policy

The Fish and Wildlife Service received various recommendations for

acknowledgement in the regulations of the State of Alaska's role in regulation of fish and wildlife for subsistence uses within Alaska refuges. In response, the Service is promulgating § 30.11(d) which recognizes State regulation of the taking of fish and wildlife in Alaska refuges consistent with applicable Federal law, including the Alaska Lands Act. For example, the Service expects the State to continue to regulate seasons and bag limits in refuge areas. Furthermore, as mentioned above, the Fish and Wildlife Service anticipates that a State subsistence program implementing the Alaska Lands Act's various substantive mandates will be approved.

One commenter requested that the Fish and Wildlife Service define the term "healthy populations" used in several instances in this section. The Service has not accepted this suggestion in the context of these interim rules. Guidance as to the meaning of this term is found in the Alaska Lands Act legislative history, which is quoted in relevant portion in the section-by-section analysis.

#### Definitions

Most comments on the definition of "subsistence uses" concerned the Fish and Wildlife Service's proposed definition of "customary trade." In general, the comments indicated strong support for the Service's inclusion of fur trading within the term. Three commenters objected, however, that the definition was too limited. For example, one commenter wrote that

[c]ustomary trade in Alaska is involved in more than the exchange of furs for cash. Quite often there is trade for specific items or merchandise including food and fuel.

The definition of "subsistence uses" adequately covers these concerns in its provision for "barter". The "barter" definition, taken verbatim from Section 803 of the Alaska Lands Act, allows local rural residents to trade furs for fish, game, food, or nonedible items other than money for personal or family consumption. The Fish and Wildlife Service's definition of "customary trade" serves to expand the permissible exchange to include, in addition, furs for cash. One rural group, however, pointed out that the customary trade practice that the proposed definition of "subsistence uses" did not cover: The customary and traditional making and selling of certain handicraft articles out of plant materials. In response to the comment, the Service specifically defines "customary trade" to include the exchange of furs for cash and authorizes Refuge Managers to specify in special

regulations other activities, if any, that fall within the scope of that term.

#### Use of Snowmobiles, Motorboats and Other Means of Surface Transportation Traditionally Employed by Local Rural Residents Engaged in Subsistence Uses

Several commenters argued that subsistence access modes should not be limited to those "traditionally employed" by local rural residents. The Service has retained this term, since it parallels the language of the subsistence access section (811(b)) of the Alaska Lands Act.

A number of commenters suggested that the regulations should specify that the use of dogsleds is authorized within Alaska refuges for subsistence uses. This suggestion comports with relevant legislative history and has been adopted.

The allowed use of motorized surface transportation in accordance with the provisions of § 36.12 evoked two objections. One organization commented that "the use of snowmobiles, motorboats and off-road vehicle is \* \* \* abhorrent to the notion of subsistence hunting \* \* \*." Section 811(b) of the Alaska Lands Act, however, mandates the Secretary to allow "appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation." Section 36.12 implements this statutory mandate, highlights its limitations and provides for appropriate restrictions, closures, and regulation. Another organization recommended that the Fish and Wildlife Service prohibit motorized surface transportation other than snowmachines and motorboats (e.g., ATV's) except by permit upon a demonstration of "traditional use" by the local rural resident. The Service has decided against this recommendation for this rulemaking exercise since (1) the Service wants to avoid another permit requirement, if possible, (2) the restrictions, closure, and other regulatory provisions of § 36.12 should adequately protect refuge values, at least for this interim period, and (3) the Service would not adopt such a new proposal without additional notice and comment.

#### Subsistence use of Timber and Plant Material

Many comments suggested that the cutting of live standing timber for subsistence uses should require a prior issuance of a permit by the Refuge Manager in the manner proposed by the National Park Service. The Service

agrees that a permit requirement is necessary in some cases to protect refuge resources. However, the cutting of small timber for casual uses does not present a resource problem, and imposition of such a requirement would be onerous to users. Accordingly, the regulations require a permit only for the cutting of live standing timber of diameter greater than three inches at ground height.

#### Closure

In response to comments asking for increased notice, local consultation, and hearings the Fish and Wildlife Service has made minor changes in § 36.16 that underscore the Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."

One group objected to the "public safety" standard for closure on the grounds that "normally occurring accidents" should not be the reason for closure. The Service has not deleted this standard. The Alaska Lands Act establishes it as one of three closure standards for subsistence uses of fish and wildlife. In its experience, moreover, the Fish and Wildlife Service has found "public safety" to be a very important reason for closure. For example, in the case of subsistence hunting, allowing hunting in the immediate vicinity of a well-used hiking trail or camping site at certain times of the year might unnecessarily endanger lives. Or, in the case of snowmobiles, allowing snowmobiling in an area endangered by earthquake or avalanche would similarly risk lives. The closure provisions have many procedural and substantive provisions intended to insure that the closure is sufficiently justified and well discussed.

#### Subpart C—Use of Motorized Vehicles and Access

##### Snowmachines

Many commenters objected to the use of snowmachines within Alaskan refuges, or suggested that snowmachine use be restricted to that specifically mandated by the Alaska Lands Act. The Service is without legal authority to adopt the restrictive approach suggested by the former comments, since section 1110(a) of the Alaska Lands Act authorizes snowmachine use in all Alaska refuges for "traditional activities" and "travel to and from villages and homesites". The Service has adopted the latter suggestion—that of tracking the section language quoted above. For those activities not within the scope of section 1110(a), the Service must comply with other applicable law,

notably Executive Order 11644. The Service has determined that the findings required by the Executive Order for the general opening of areas to snowmachines use (as proposed in the January 19, 1981 regulations) cannot factually be made at this time. Consequently, as a legal matter snowmachine use may be authorized only during periods of adequate snowcover or frozen river conditions for traditional activities which are still permitted in refuge areas (snowmachine use to locate new mining claims would not be authorized, since that land use is prohibited by section 304 of the Alaska Lands Act) and travel to and from villages and homesites.

##### Motorboats

A few commenters recommended that the Service require a permit for the use of motorboats on Alaska National Wildlife Refuges. The Service has not adopted that suggestion at this time. If motorboat use problems arise in the future, they may be dealt with on a case-by-case basis through the issuance of a refuge special regulation.

##### Nonmotorized Surface Transportation

A number of commenters suggested that § 36.21 be expanded to specifically authorize the use of nonmotorized surface transportation on Alaska refuges. This suggestion, which parallels the requirements of section 1110(a) of the Alaska Lands Act, was adopted.

##### Aircraft

The Fish and Wildlife Service received a large number of comments recommending that helicopter use be authorized only after issuance of a permit by the Refuge Manager. This recommendation has been adopted for helicopter use other than at designated areas because of the direct and indirect effects of that activity on wildlife. The Service will solicit only that information from helicopter users that is necessary to insure the conservation of refuge resources.

One commenter suggested that the downed aircraft subsection should be modified to require only that such aircraft "may be required to be removed." The Service is not adopting this recommendation since it would eviscerate the waiver requirement of the subsection—the Refuge Manager may waive the requirements of the section upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life, result in extensive resource damage, or is otherwise impractical or impossible.

### Off-Road Vehicles

Several organizations recommended that the regulations authorize ORV use on existing trails. The Service is without legal authority to authorize such uses across the board because of a number of statutory and executive requirements, such as Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) and the Wilderness Act. However, the Service has adopted an ORV permit procedure which offers the maximum ORV use allowable under current law. Under this procedure, individuals can obtain permits for ORV use on existing trails in nonwilderness refuge areas after the Refuge Manager's finding of compatibility with refuge purposes. The Service also notes that persons desiring the opening of specific ORV trails may petition the Department to initiate this process under 43 CFR 14.6. Until such trail and/or area openings occur, off-road use is prohibited except by permit or pursuant to § 36.27.

Many commenters recommended that this section be modified to authorize the Service to designate only "routes" for ORV use, and not "areas." Several expressed concern that the inclusion of the latter term would leave the Refuge Manager vulnerable to suggestions that vast portions of Alaska refuges be open to ORV use. The Service has not adopted this suggestion; the designation of "areas" tracks the language of Executive Order 11644.

### Access to Inholdings

Several comments indicated confusion over the scope of this section. The section has been revised to make clear that an access permit is required only when the inholder desires an access method that is not authorized by other provisions of these regulations. Consequently, the modes of access authorized by §§ 36.21 and 36.22 should greatly reduce the number of access permits that are required.

One commenter suggested the deletion of the reference in section 36.23(a) to alienating Federal property. This suggestion has been adopted solely for editorial reasons since it is unnecessary.

Many commenters argued that the proposed access permit information requirements were unduly onerous. The Service, in response to these comments, has significantly pared down the amount of information to be solicited from applicants. The application requirements published today are geared to obtaining information on whether the applicant has a valid property or occupancy interest as required by Alaska Lands Act section

1110(b), the location of that interest, the applicant's desired route and method of access and, when deemed necessary by the Refuge Manager, information on access alternatives and environmental impacts.

Several commenters objected to the requirement that the access permit be renewed in cases where no change in circumstances had occurred. This suggestion has been effectively accepted. Permit holders are required, however, to notify the Refuge Manager of any significant change in the method or level of access from that occurring at the time of issuance. The Service may modify the terms and conditions of the access permit in these cases, subject to the requirement that the modified permit must also assure "adequate feasible access."

A number of comments objected to the special information requirements for mineral assessment or development that appeared in the proposed rules.

This comment has been accepted. The information requirements of § 36.23(b) are sufficiently flexible to permit the Service to solicit that information relevant to authorize adequate and feasible access.

Many commenters argued that the distinction made in the proposed rules between ordinary access to inholdings and permanent access is not supported by applicable law. The revised § 36.23(c) responds to these comments, addresses access requiring permanent improvements on refuge lands (e.g. road or bridge construction) and is an interpretive rule on the relationship between Alaska Lands Act section 1110(b) access to inholdings and section 1101-1107 "transportation or utility system". The proposed rules had intimated that permanent improvements could not be a part of the Alaska Lands Act section 1110(b) access guarantee and had inappropriately referenced 50 CFR Chapter I, Subchapter C, Part 29 as the controlling rules for applying for permanent rights-of-way. The revised section also requires that an application for a "transportation or utility system" (a term defined in section 1102 of the Alaska Lands Act, the legislative history, and this subsection) be submitted on a consolidated application form, as required by section 1104 of the Alaska Lands Act. If a permanent improvement is required for adequate and feasible access to an inholding (e.g. a landing strip or road construction) within the meaning of Alaska Lands Act section 1110(b), then the recovery rights for the permanent improvement will be granted following *procedural* compliance with Alaska Lands Act section 1101—a relatively simple form

must be completed and submitted. Conversely, if this permanent improvement is not necessary for section 1110(b) access to inholdings (e.g. requests for powerlines and pipelines, or a request for a 4 lane highway to a recreational cabin), then both the procedural and substantive elements of Alaska Lands Act section 1104-1107 will be applicable in determining whether to authorize the permanent improvement.

### Temporary Access

Many commenters favored reducing the application information requirements for temporary access. As in the case of § 36.23, this suggestion has been accepted, and no special information is requested from mineral exploration and development applicants.

Several commenters questioned the definition of "temporary access" in the proposed rules. The final rules respond to these comments by defining temporary access as limited, short term (up to one year) access, which does not require permanent facilities for access to undeveloped non-federal lands. Unlike access to inholdings under § 36.23, temporary access can be denied or conditioned where there would be permanent harm to refuge resources.

### Subpart D—Other Refuge Uses

#### Recreational Activities

Several commenters suggested that this section should be modified to specifically authorize gold panning. The final rules adopt the substance of this suggestion by authorizing recreational gold panning that does not involve surface disturbance. Accordingly, the use of hand held gold pans is authorized; the use of sluice boxes, shovels, pick axes and dredges is prohibited.

#### Cabins and Other Structures

A few commenters objected to the prohibition on the construction of new cabins on federally owned land within Alaska refuges except as authorized pursuant to a non-transferable, five year special use permit. This requirement has not been changed since it is mandated by section 1303 of the Alaska Lands Act.

Several commenters objected to the § 36.33(b)(1) requirement of listing immediate family members residing in the cabin. This requirement has been retained since the Service believes this information is essential for accurate permit renewals to family members, and is necessary to protect the occupying interest of the immediate family. As individuals are added to the immediate family, they will be added to this listing.

### Unattended Property

Comments on this issue addressed the length of time one should generally be authorized to leave unattended property within Alaska refuges, suggestions ranging from 7 days to 24 months. The Service has retained the 1 year standard of the proposed rules. The Service notes that it has authority to close areas to this use in appropriate circumstances.

### Subsistence and Land Use Decision

Several comments suggested that this provision be deleted since it merely restates the requirements of section 810 of the Alaska Lands Act; other comments suggested that the provision be moved to subpart A to clarify its legislatively intended scope. The Service decided to delete this section for reasons addressed in the subsistence section above, but recognizes its relation to Service activities.

### Subpart E—Permits and Public Participation and Closure Procedures

#### Permits

A number of comments requested that permit decisions be made as expeditiously as possible. In response to the sentiment expressed by these comments, the final rules require the Refuge Manager to approve or deny the permit, or request additional information within 45 days unless good cause exists for not meeting this target date.

Several commenters suggested that the Refuge Manager's decision should be supported by a written document setting forth the basis of his decision in order to facilitate later review. This comment has been accepted. The Service has also established a requirement that if a permit application is denied, the Refuge Manager is to notify the applicant in writing of the reasons for this denial.

A few comments recommended that the rules authorize appeals from the Refuge Manager's decision within 180 days of permit denial rather than the 60 day period established in the proposed regulations. This recommendation has been accepted since the shorter appeal time benefits neither the applicant or the government.

Several commenters argued that applicants should be afforded an informal meeting with the Regional Directors as a matter of right. The proposed rules authorized such a meeting only if certain standards were met. The Service has accepted the recommendation in an effort to allow the applicant another forum to present whatever information is available that is relevant to the decision.

### Public Participation and Closure Procedures

Several commenters suggested that the Service be more specific in delineating closure criteria. The Service cannot forecast the complete range of criteria that would be applicable to protect Alaska refuges. Accordingly, while the Service expects the vast majority of closure decisions to be based on delineated factors like public safety and resource protection, the Service does not believe it prudent to specify a binding limited list of criteria.

The Fish and Wildlife Service received many comments arguing that the proposed rule limiting the public hearings requirements to the affected vicinity precluded, in some cases, public participation by urban uses who would also be affected. In response to this comment, the Service has adopted regulatory language that mandates such hearings in other locations, if appropriate.

Several commenters suggested that the Service adopt a temporary closure procedure similar to that proposed by the Park Service. This recommendation has been adopted. The temporary closure procedure allows the Service improved flexibility in responding to management problems. Although temporary closures may extend up to 12 months in appropriate cases, they need not if the problem requiring temporary closure is alleviated in less time.

Many commenters suggested that permanent closures be accompanied with a Federal Register notice. This suggestion has been adopted to more fully inform the general public of Service actions.

Many commenters suggested that areas be opened to uses previously prohibited only after prior notice in the Federal Register. This suggestion has also been accepted, again to more fully inform the general public of Service actions.

### Section-by-Section Analysis

#### Subpart A—Introduction and General Provisions

##### Applicability and Scope—Section 36.1

The regulations published today establish interim management rules for the Alaska National Wildlife Refuges. The Alaska refuges are also subject to the general National Wildlife Refuge System regulations (*see* 50 CFR Chapter I, Subchapter C), as supplemented and modified by these rules. Existing special regulations now in force and effect will also apply to applicable Alaska National Wildlife Refuge lands, except where inconsistent with these rules or

the provisions of the Alaska Lands Act. These regulations generally apply only to "federally owned" land within the Alaska National Wildlife Refuges. *See* the discussion of federally-owned land in the Analysis of Comments section above.

##### Definitions—Section 36.2

This section sets out the definitions of keys terms used in these regulations. The definitions specified in these rules generally follow the language of the Alaska Lands Act where available or adopt generally accepted definitions used in prior regulations promulgated by the Fish and Wildlife Service for fish and wildlife conservation areas. The term "fish and wildlife," for instance, tracks the language of the statute although as noted above the Fish and Wildlife Service recognizes the clearly expressed Congressional intent that this term does not include those animals the Service determines to be exotic or domestic. Other definitions, such as those for "adequate and feasible access" and "subsistence uses", are discussed in connection with the substantive access and subsistence provisions and are not repeated here.

##### Subpart B—Subsistence Uses

Subpart B of these regulations implements the policies and procedures governing subsistence uses contained in Title III and VIII of the Alaska Lands Act.

The regulations for subsistence are necessary for several reasons. First, they relieve restrictions in the otherwise applicable general National Wildlife Refuge System regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions; in other cases, the Act allows the uses, but the general refuge regulations appear to prohibit them under threat of criminal penalty. Second, the regulations implement certain critical provisions of the Alaska Lands Act concerning subsistence (*e.g.*, the closure standards and procedures for subsistence uses of fish and wildlife), and extend the approach of certain of these provisions to subjects not specifically mentioned by the Act (*e.g.*, closure standards and procedures for subsistence use of plants).

The subsistence regulations are not comprehensive. They do not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Service's judgment, do not lend themselves to expeditious promulgation since they have not previously been the subject of notice and comment. Notable

among these statutory provisions are the State regulation opportunity of section 805(d), the Federal monitoring requirement of section 806, the judicial enforcement mechanism of section 807, the subsistence and land use procedure of section 810, and the subsistence research provision of section 812. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect.

#### Purpose and Policy—Section 36.11

Section 36.11(a) provides that, consistent with proper management of fish and wildlife and the purposes for which the Alaska National Wildlife Refuges were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

Alaska Lands Act, sections 101(c) and 802(l). The Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment.

Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of refuge areas.

The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light of the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B implements the Congressional directive to continue the opportunity for subsistence uses within Alaska National Wildlife Refuges by local rural residents.

Section 36.11(b)–(c) sets forth basic policies which the Alaska Lands Act adopted to guide the activities of the administering agencies. Alaska Lands Act, sections 802 (1), (2) and 804. First, consistent with sound resource management principles and the conservation of healthy population of fish and wildlife, the utilization of refuge areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This

statutory policy is implemented throughout the regulations, particularly in the subsistence priority recognized by § 36.11(c), and the limitations on closure, §§ 36.12, 36.15, and 36.16.

Section 36.11(c), establishes the nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive use over any other consumptive uses permitted within refuge areas. The Fish and Wildlife Service anticipates State regulations implementing the subsistence priority.

Section 36.11(d) authorizes the State of Alaska to regulate the taking of fish and wildlife for subsistence uses within Alaska National Wildlife Refuges to the extent such regulation is consistent with applicable Federal law, including but not limited to the Alaska Lands Act.

In addition to establishing the purpose and policies of the Subpart B regulations, § 36.11(e) also establishes the limitations of the purpose and policies. According to § 36.11(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each refuge area was established, designated, or expanded by the Alaska Lands Act. According to § 36.11(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirements that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. Section 36.11(c) establishes the basic limitations of all the provisions of the Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within Alaska National Wildlife Refuges. Congress provided the following guidelines on the implementation of this concept:

The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future.

The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to

respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem. S. Rep. No. 96-413, 96th Cong. 1st Sess., 233 (April 16, 1979).

#### Subsistence Definitions

**Local Rural Resident.** Throughout the regulations the Fish and Wildlife Service categorizes those people who may engage in subsistence uses as "local rural residents." This term derives from the term "local residents" in Title III of the Alaska Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title III authorizes the opportunity for continued subsistence uses by local residents. Alaska Lands Act, sections 302 and 303. The definition of "subsistence uses" refers to "rural Alaska residents" Alaska Lands Act, Section 803. The relationship between this language in Title III and Title VIII was described as follows in the Congressional Record:

Since the definition of "subsistence uses" in section 803 limit such uses to "rural Alaska residents," a reading of Title VIII and Title III . . . together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the . . . National Wildlife Refuge System. 126 Cong. Rec. S15129 (daily ed. Dec. 1, 1980).

**Subsistence Uses.** The definition of "subsistence uses" found in § 36.2 tracks the language of section 803 of the Alaska Lands Act with one modification: Today's definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and

selling of handicraft articles from the nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. The definition uses several terms which require further explanation. To begin with, the definition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses "have played a long established and important role in the economy and culture of the community and \* \* \* (that) such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." S. Rep. No. 96-413, *supra*, 269; H. Rep. No. 96-97, 96th Congress, 1st Sess. 280 (1979).

Next, the definition limits subsistence uses to those "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." See S. Rep. No. 96-413, *supra*, 233. Residents of "rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain rural)—may engage in "subsistence uses." It is important to emphasize, however, that in refuge areas only local "rural residents" are accorded the subsistence priority. Thus, while the statutory definition of "subsistence uses" focuses more broadly on "rural Alaska residents" wherever they may live, the legislative history to Titles III and VIII clearly shows that it is only for the category of rural residents who are also local to the vicinity of a particular wildlife refuge that the subsistence priority is intended to apply. See 126 Cong. Rec. S15129 (daily ed., Dec. 1, 1960).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have

been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may not be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" recognizes that a subsistence lifestyle may also include limited involvement in the cash economy. Trapping of furbearers, for instance, is an integral and longstanding part of the subsistence lifestyle in many regions in Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to trappings is intended to provide continuity to the traditional and customary harvest of furbearers by those who engage in subsistence uses within refuge areas. Because the Service may find that other forms of customary trade for subsistence purpose may have occurred, the rules also provide the Refuge Manager the authority to designate these activities in refuge special rules.

It should be recognized, however that the definition of "customary trade" was intended to be narrow:

"The Committee does not intend "customary trade" to be construed to permit the establishment of significant commercial enterprise under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title." S. Rep. No. 96-413, *supra*, 234.

#### Access for Subsistence Purposes— Section 36.12

In furtherance of Section 811 of the Alaska Lands Act, this section provides local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. This section liberalizes the provisions of subpart C on snowmobiles, motorboats, and certain off-road vehicles in the case of local rural

residents who are engaged in subsistence hunting, fishing, and gathering activities within the refuge areas. All routes and areas are open to use of these vehicles for subsistence purposes except as specifically restricted or closed. The Refuge Manager will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreation use. Basically, in order to impose a restriction, the Refuge Manager must determine that the use in question is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species or the purposes and values for which the refuge area was established. The Refuge Manager will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decision making. It should be noted that the types of access vehicles covered by § 36.12 include "other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses." The regulations define this term to include use of dog teams. The limitations of the quoted phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under the regulations any person operating motorboats, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the refuge area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmobiles, motorboats, and other means of surface transportation in accordance with the appropriate Subpart C regulations.

For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, and other means of surface transportation would comply with the provisions of §§ 36.21 and 36.22 and local rural residents seeking otherwise closed access to inholdings or temporary access would comply with the provisions of §§ 36.23 and 36.24 respectively.

**Subsistence Fishing—Section 36.13**

This section authorizes local rural residents to engage in fishing in Alaska National Wildlife Refuges in compliance with applicable State and Federal law. Section 36.16, explained below, governs closures to fishing for subsistence purposes.

**Subsistence Hunting and Trapping—Section 36.14**

This section authorizes local rural residents to hunt or trap wildlife for subsistence uses in compliance with applicable State and Federal law. Closure of areas to subsistence hunting and trapping is treated in § 36.16.

**Subsistence use of Timber and Plant Material—Section 36.15**

This section addresses subsistence uses of timber and plant material. Section 36.15(a) authorizes subject to the terms of a permit the noncommercial cutting of live standing timber of diameter greater than 3 inches by local rural residents for appropriate subsistence uses. The cutting of smaller timber, as well as the noncommercial gathering of fruits, berries, mushrooms and other plant material by local rural residents for subsistence uses, is allowed unless otherwise restricted by the Refuge Manager.

Section 36.15(b) sets forth the standards and procedures for closing a refuge area to the subsistence uses of a particular plant population. Although not expressly required by the Alaska Lands Act, today's regulations apply similar closure provisions for subsistence uses of plants as the Act requires for subsistence uses of fish and wildlife. As discussed below in the latter context, the closure standards are narrow, and the closure procedures involve significant public participation in order to protect the affected local rural residents who depend on the resources.

**Closure to Subsistence Use of Fish and Wildlife—Section 36.18**

Pursuant to Section 816 of the Alaska Lands Act and this section, the Refuge Manager has the authority to close or restrict any part or all of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, section 36.18 provides protection standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: Public safety, administration, and for assurance of the continued viability of a fish and wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Refuge Manager to act in situations which threaten public health and welfare. For example, the Refuge Manager may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway or hiking trail. The "fish or wildlife viability" standard allows the Refuge Manager to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. No. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289.

Moreover, as stated in Section 815 of the Alaska Lands Act and § 36.11(d) of these regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within Alaska National Wildlife Refuges determined to be inconsistent with the conservation of healthy populations of fish and wildlife. The "administration" standard is potentially the broadest of the three closure standards, though "recognition of the importance of subsistence activities to most (local) rural residents requires that this authority be utilized narrowly and with consistent restraint." S. Rep. No. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289. Guided by this intent, the Refuge Manager can invoke the administration standard to protect the purposes and values of the refuge areas and to otherwise manage the refuge prudently. The limitation of Section 815 of the Act and § 36.11(d) of the regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closures. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure "should remain in effect only so long as reasonably necessary provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose." S. Rep. No. 96-413, *supra*, 277-78; H. Rep.

No. 96-97, *supra*, 289. Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure would be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure. In an emergency situation, the Refuge Manager would immediately close the area for a period not to exceed sixty days. The Refuge Manager may extend an emergency closure only if he establishes, after notice and informal public hearings in the vicinity, that the extension is justified under the applicable closure standards.

Finally, § 36.18(c) is designed to inform as many local rural residents as possible about any closures which may affect them.

**Subpart C—Use of Motorized Vehicles and Access**

Sections 36.21-36.24 of these regulations implement sections 1110 and 1111 of the Alaska Lands Act concerning access by the public across Alaska National Wildlife Refuges for nonsubsistence purposes. These proposed regulations generally relax restrictions on access that are applicable to National Wildlife Refuge units outside of Alaska, consistent with the requirements of the Alaska Lands Act. These sections are designed to and are presented in an order which will funnel the vast majority of access needs away from a system of individual access permits. Section 36.21 opens all refuges to access by snowmobile, aircraft, motorboat, and nonmotorized surface transportation for most purposes. (Additional access for subsistence uses is set forth in § 36.12). Section 36.22 provides a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 36.11 and 36.22 do not accommodate a refuge "inholder's" need for access, § 36.23 provides for individual permits that insure adequate and feasible access while minimizing damage to refuge resources. Finally, where §§ 36.21-36.23 do not otherwise provide temporary access, § 36.24 creates another means for obtaining desired access.

**Snowmachines, Motorboats, Aircraft, and Nonmotorized Surface Transportation—Section 36.21**

This section treats the use of snowmachines, motorboats, aircraft and nonmotorized surface transportation for other than subsistence purposes.

Motorboat, fixed wing aircraft and nonmotorized surface transportation use for all purposes are authorized on

**Alaska Refuges. Snowmachine use on Alaska refuges is open to the maximum extent possible consistent with existing law. See the analysis of comments discussion above. Helicopter use is also authorized subject to the terms and conditions of a special use permit issued by the Refuge Manager.**

This section also sets out procedures for removal of aircraft downed after December 2, 1980 on Alaska National Wildlife Refuges. The regulations require that downed aircraft must be removed pursuant to the terms of a special use permit unless the Refuge Manager determines, on a case-by-case basis, that the removal of the aircraft would constitute an unacceptable risk to human life, would result in extensive resource damage, or would otherwise be impracticable or impossible. In evaluating this final criterion, the Service would not require removal of a downed aircraft in any situations when the removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive.

#### Off-Road Vehicles—Section 36.22

This section authorizes the use of off-road vehicles on roads and routes and areas designated by the Refuge Manager, and establishes a procedure for further designation of such routes and areas. Today's rules open refuges to ORV use in a manner designed to authorize such access to the extent possible consistent with refuge values.

#### Access to Inholdings—Section 36.23

This section provides further procedures to insure "adequate and feasible access" to inholdings. As noted above in the Analysis of Comments, this term is defined to make clear that the inholder determines the desired land use or development, and the Service provides reasonable access to meet the desired land use. In addition, instead of defining the term circularly in terms of access, the § 36.2 definition provides that only "personal and vehicular travel" (e.g., routes, trails, and landing strips, but not transmission lines and pipelines) fits within the statutory access guarantee, in accordance with the legislative history of section 1110(b) appearing in *S. Rep. No. 96-413*, 96th Cong. 1st Sess., 246 (Nov. 14, 1979) and in *H. Rep. No. 96-97*, Part I, 96th Cong., 1st Sess., 239-240 (April 18, 1979). Finally, the definition makes it clear that the access permitted must be economically practicable, but not necessarily the least costly access alternative.

Consistent with the statutory obligation (section 1110(b) of the Alaska

Lands Act) to provide adequate and feasible access, § 36.23(b) of the regulations strives to give the applicant his preferred access, unless there would be significant resource conflicts and alternative adequate and feasible access exists. This regulatory provision also attempts to fulfill the congressional directive in a manner calculated to ease public reporting burdens while insuring the conservation of refuge values.

Section 36.23(c) is an interpretive rule designed to clarify the relationship of sections 1101-1107 and 1110 of the Alaska Lands Act. See the discussion in the Analysis of Comments.

#### Temporary Access—Section 36.24

This section implements section 1111 of the Alaska Lands Act by establishing a permit mechanism for obtaining temporary access across an Alaska National Wildlife Refuge for purposes of survey, geophysical, exploratory, or other temporary uses of non-Federal lands located outside refuge boundaries. Section 36.24 requires an access permit only where §§ 36.21 and 36.22 do not provide the desired access, and where § 36.23 is not applicable (e.g., if a refuge "inholder" or a person effectively surrounded by Federal lands requires temporary access across a refuge, section 1110(b) of the Alaska Lands Act and § 36.23 of these regulations grant greater access privileges).

#### Subpart D—Other Refuge Uses

##### Recreational Activities—Section 36.31

This section authorizes public recreational activities such as boating, camping, hiking, and picnicking within an Alaska National Wildlife Refuge as long as these activities are conducted in a manner compatible with the purpose of the particular refuge. In reaching this regulatory decision, the Service has reviewed the extensive data accumulated through studies, environmental analyses and hearings preceding enactment of the Alaska Lands Act, as well as other information arising from the Federal Land Policy and Management Act, sections 204(c) and 204(e) withdrawals studies. On the basis of this extensive record, the historic use of these areas, and its professional expertise, the Service presently believes that all such activities are compatible with the purpose for which the refuges were established. The Refuge Manager retains authority to close or restrict these uses of refuge lands when he determines they are incompatible with refuge purposes.

##### Taking of Fish and Wildlife—Section 36.32

This section authorizes the taking of fish and wildlife on Alaska National Wildlife Refuges in accordance with applicable State and Federal law. (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 36.13 and 36.14). A permit for these activities need not be obtained from the Refuge Manager, except that the presently existing requirement to obtain a permit before trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Island's unit of Alaska Maritime Refuge is retained. The taking of fish and wildlife may be prohibited or restricted only in conjunction with notice and hearing pursuant to the requirements of § 36.42.

This section also treats commercial fishing in a manner that tracks the language of section 304 of the Alaska Lands Act. As expressly recognized by section 304, the Secretary retains the discretion to regulate commercial fishing activities in appropriate cases.

##### Cabins and other Structures—Section 36.33

This section provides procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within Alaska National Wildlife Refuges. The regulations implement section 1303 of the Alaska Lands Act by addressing construction of new cabins, use of existing cabins by occupants who may not have a legal interest in them, and use of existing cabins by those with valid existing rights in cabins as of December 2, 1980.

Under the Alaska Lands Act new cabins are authorized in Alaska National Wildlife Refuges only pursuant to a non-transferable, five-year special use permit issued by the Refuge Manager. Section 36.33, tracking the language of the statute, authorizes issuance of such a permit only upon a determination that (1) the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and (2) that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside the refuge. As prescribed by the Act, no special use permit may be issued to authorize the

construction of a cabin for private recreational use.

Subsection (b)(1) addresses the use of existing cabins by occupants who may not have a legal right to the cabin. The traditional and customary use of these existing cabins within an Alaska National Wildlife Refuge is authorized in accordance with a five-year, special use permit issued upon a determination by the Refuge Manager that the traditional and customary uses are compatible with the purposes of the refuge. As with new cabins, special use permits may not be issued to authorize the use of an existing cabin for private recreational uses.

Subsection (b)(2) addresses use of existing cabins by occupants who have a valid permit or lease in effect on December 2, 1980 for those structures. Such an occupant is entitled, as a matter of right, to continuation of such permit or lease unless the Refuge Manager determines, following notice and an opportunity for response, that such a continuation would directly threaten or significantly impair the purposes for which the refuge was established.

All permits authorized under this section must be renewed every five years until the death of the last immediate member of the claimant residing in the cabin. Permits need not be renewed, however, if the Refuge Manager determines, after a formal adjudicatory hearing, that the use of the cabin under the permit is causing or may cause significant detriment to the principal purposes for which the refuge was established.

#### Firearms—Section 36.34

This section authorizes, in accordance with State and Federal law, the possession, use and transporting of firearms on Alaska National Wildlife Refuges for purposes of hunting or personal protection. Such uses may be prohibited or restricted only in accordance with the public participation provision of § 36.42.

#### Unattended Property—Section 36.35

The general National Wildlife Refuge System regulations authorize the leaving of unattended personal property on a refuge for only short periods of time. Recognizing unique Alaska circumstances, such as the need to allow for trapping caches, this section generally extends the period to 12 months. In order to assure protection of refuge resources, the Refuge Manager may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount and type of personal property that may be left unattended, (3)

prescribe the manner in which personal property may be left unattended, and (4) establish limits on the length of time personal property may be left unattended.

#### Sled Dogs and House Pets—Section 36.36

This section relaxes the general trespass provisions of the general National Wildlife Refuge system regulations (50 CFR 28.11) for household pets and sled or pack dogs under the direct control of their owners or handlers.

#### Subpart E—Permits and Public Participation and Closure Procedures

##### Permits—Section 36.41

This section provides consolidated procedures regarding the issuance and denial of permits required by the general National Wildlife Refuge System regulations and these regulations. The procedures specify to whom an application for a permit must be submitted, and direct the Refuge Manager to approve or deny an application, or request additional information, within 45 days of receipt of the request unless good cause is shown. This section also adopts an appeal procedure for applicants aggrieved by a decision of the Refuge Manager. Aggrieved parties must appeal within 180 days of the Refuge Manager's decision. Appellants are also guaranteed the opportunity for an informal meeting with the Regional Director to present their cases.

##### Public Participation and Closure Procedures—Section 36.42

Section 36.42 authorizes the Refuge Manager to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses. No closures are provided for by this regulation. The section provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and informal hearing prior to all closure for snowmobile, aircraft or motorboat use, consistent with section 1110(b) of the Act. This rule establishes time limits for emergency closures (30 days) and temporary closures (12 months) which cannot be extended. This section also provides that areas may be opened to a public activity or use otherwise prohibited only after notice in the Federal Register and providing an opportunity for an informal public hearing.

#### Compliance with Other Laws

The Service has prepared an Environmental Assessment on this rulemaking and has made a Finding of No Significant Impact pursuant to regulations implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies of the Environmental Assessment and the finding of No Significant Impact are available for public review in the Service's Alaska Regional Office.

The Service has also determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, Feb. 19, 1981) and that the rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14 (45 FR 85376, Dec. 24, 1980). Finally, the Service has received approval from the Office of Management and Budget for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (Pub. L. 96-511).

#### Drafting Information

The primary authors of these regulations are Lou Swenson and Owen Vivion, Fish and Wildlife Service Alaska Regional Office and Ronald Fowler, Division of Refuge Management, Washington, D.C.

Dated: May 27, 1981.

G. Ray Arnett,

Assistant Secretary, Fish and Wildlife and Parks.

In consideration of the foregoing, Title 50 of the Code of Federal Regulations is amended by establishment of a new Part 36 in Chapter I, Subchapter C, as follows:

### PART 36—ALASKA NATIONAL WILDLIFE REFUGES

#### Subpart A—Introduction and General Provisions

Sec.

- 36.1 Applicability and scope.
- 36.2 Definitions.
- 36.3 Information collection.

#### Subpart B—Subsistence Uses

- 36.11 Purpose and policy.
- 36.12 Use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.
- 36.13 Subsistence fishing.
- 36.14 Subsistence hunting and trapping.
- 36.15 Subsistence uses of timber and plant material.
- 36.16 Closure to subsistence uses.

**Subpart C—Use of Motorized Vehicles and Access****Sec.**

- 36.21 Use of snowmachines, motorboats, aircraft, and nonmotorized surface transportation.  
 36.22 Use of off-road vehicles.  
 36.23 Access to inholdings.  
 36.24 Temporary access.

**Subpart D—Other Refuge Uses**

- 36.31 Recreational activities.  
 36.32 Taking of fish and wildlife.  
 36.33 Cabins and other structures.  
 36.34 Firearms.  
 36.35 Unattended property.  
 36.36 Sled dogs and household pets.

**Subpart E—Permits and Public Participation and Closure Procedures**

- 36.41 Permits.  
 36.42 Public participation and closure procedures.

**Table I—Summary Listing the National Wildlife Refuges in Alaska as Established by the Alaska Lands Act**

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd *et seq.*; Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq.*; Refuge Recreation Act, 16 U.S.C. 460k *et seq.*; Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. 96-511.

**Subpart A—Introduction and General Provisions****§ 36.1 Applicability and scope.**

(a) The regulations contained in this part are prescribed for the proper use and management of all Alaska National Wildlife Refuges and supplement the general National Wildlife Refuge System regulations found in Title 50, Code of Federal Regulations, Chapter I, Subchapter C. The general National Wildlife Refuge System regulations are automatically applicable in their entirety to the Alaska National Wildlife Refuges except as supplemented or modified by these regulations or amended by ANILCA.

(b) The regulations contained in this part are applicable only on federally owned lands within the boundaries of any Alaska National Wildlife Refuge. For purposes of this part "federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) Tentatively approved, legislatively conveyed, or patented to the State of Alaska, or (2) interim conveyed or patented to a Native Corporation or person.

**§ 36.2 Definitions.**

The following definitions shall apply to the regulations contained in this part.

(a) "Adequate and feasible access" means a reasonable method and route of

pedestrian or vehicular transportation which is economically practicable for achieving the use or development desired by the applicant on his/her non-federal land or occupancy interest, but does not necessarily mean the least costly alternative.

(b) "Adequate snow cover" means snow of sufficient depth to protect the underlying vegetation and soil.

(c) "ANILCA" means the Alaska National Interest Lands Conservation Act, 94 Stat 237, Pub. L. 96-487 (December 2, 1980).

(d) "Aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including but not limited to, airplanes, helicopters and gliders.

(e) "Alaska National Wildlife Refuges" means all lands, waters and interests therein administered by the United States Fish and Wildlife Service within the following National Wildlife Refuges in Alaska: Alaska Maritime, Arctic, Alaska Peninsula, Becharof, Innoko, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna, Selawik, Tetlin, Izembek, Togiak, Yukon Delta and Yukon Flats.

(f) "Downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(g) "Fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or dead body or part thereof.

(h) "Off-road vehicle" means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmobiles as defined in this section.

(i) "Person" means any individual, firm, corporation, society, association, partnership, or other private or public body.

(j) "Public lands" means lands situated in Alaska which are federally owned lands, except:

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a

Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(k) "Refuge Manager" means any Fish and Wildlife Service official in charge of an Alaska National Wildlife Refuge, the Alaska Regional Director of the Fish and Wildlife Service, or an authorized representative of either.

(l) "Snowmachine" or "snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(m) "Subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and, for customary trade. For purpose of this paragraph, the term—

(1) "Family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" means the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game of their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash, and such other activities, if any, as may be designated in special rules for Alaska National Wildlife Refuges.

(n) "Take" or "taking", as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm or attempt to engage in any such conduct.

(o) "Temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

**§ 36.3 Information collection.**

The information collection requirements contained in §§ 36.15, 36.21, 36.22, 36.23, 36.24, 36.33 and 36.41 of these regulations have been approved by the Office of Management and

Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0035. The information is being collected to solicit information necessary for the Refuge Manager to issue permits and other benefits. The information will be used to grant statutory or administrative benefits. In all sections except § 36.21(f), the obligation to respond is required to obtain a benefit. In § 36.21(f), the obligation to respond is mandatory.

#### Subpart B—Subsistence uses

##### § 36.11 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each Alaska National Wildlife refuge was established, designated, or expanded by ANILCA, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of Alaska National Wildlife Refuges is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within Alaska National Wildlife Refuge areas.

(d) The State of Alaska is authorized to regulate the taking of fish and wildlife for subsistence uses within Alaska National Wildlife Refuges to the extent such regulation is consistent with applicable Federal Law, including but not limited to ANILCA.

(e) Nothing in this subpart shall be construed as permitting the level of subsistence uses of fish and wildlife within Alaska National Wildlife Refuges to be inconsistent with the conservation of healthy populations of fish and wildlife.

##### § 36.12 Use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of Subchapter C of Title 50, Code of Federal Regulations, the use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within

Alaska National Wildlife Refuges except at those times and in those areas restricted or closed by the Refuge Manager.

(b) The Refuge Manager may restrict or close a route or area to the use of snowmobiles, motorboats, dog teams or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Refuge Manager determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or other purposes and values for which the refuge was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity and other locations as appropriate. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the refuge, and (3) in such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams and other means of surface

transportation in accordance with Subpart C of this part.

##### § 36.13 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

##### § 36.14 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in Alaska National Wildlife Refuges in compliance with applicable State and Federal laws. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

##### § 36.15 Subsistence uses of timber and plant material.

(a) Notwithstanding any other provision of this part, the noncommercial cutting of live standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in Alaska National Wildlife Refuges as follows:

(1) For live standing timber of diameter greater than three inches at ground height, the Refuge Manager may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the refuge was established;

(2) For live standing timber of diameter less than three inches at ground height, cutting is permitted unless restricted by the Refuge Manager.

(b) The noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood, shall be allowed without a permit.

(c)(1) Notwithstanding any other provision of this part, the Refuge Manager, after notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such

population. For purposes of this section, the term "temporary" shall mean only as long as reasonably necessary to achieve the purpose of the closure.

(2) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Refuge Manager may immediately close all or any portion of an Alaska National Wildlife Refuge to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and reasons therefor also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge, or by the posting of signs in the vicinity of the restrictions, or both.

#### § 36.16 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Refuge Manager, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purpose of the closure.

(b) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, he may immediately close all or any portion of a refuge to the

subsistence uses of such population. Such emergency closure shall be effective when made, shall not exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section and the reasons justifying such actions shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and justifying reasons shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge area and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the closures, or both.

#### Subpart C—Use of Motorized Vehicles and Access

##### § 36.21 Use of snowmachines, motorboats, aircraft, and non-motorized surface transportation.

(a) The use of snowmachines (during periods of adequate snow cover or frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites, is authorized within Alaska National Wildlife Refuges, except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42. Nothing in this section affects the use of snowmobiles by local rural residents engaged in subsistence uses as authorized by § 36.12.

(b) The use of motorboats, fixed-wing aircraft, and non-motorized surface transportation methods such as domestic dogs, horses and other pack or saddle animals is authorized in Alaska National Wildlife Refuges except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42. Nothing in this section affects the use by local rural residents engaged in subsistence uses of those modes of transportation authorized by § 36.12.

(c) The use of helicopters in Alaska National Wildlife Refuges, other than at landing areas designated in special regulations or pursuant to the terms and

conditions of a permit issued by the Refuge Manager, is prohibited.

(d) In imposing any prohibitions or restrictions on fixed-wing aircraft use the Refuge Manager shall: (1) Comply with the procedures set forth in § 36.42; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States Government Flight Information Service "Supplement Alaska".

(e) The operation of aircraft, at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited.

(f) Except as provided in paragraph (g) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Refuge Manager. In establishing a removal procedure, the Refuge Manager is authorized to: (1) Establish a reasonable date by which aircraft removal operations must be complete; and (2) determine times and means of access to and from the downed aircraft.

(g) The Refuge Manager may waive the requirements of § 36.21(f) when it is determined that: (1) The removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or impossible.

(h) Salvaging, removing, possessing or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under paragraph (f) of this section; *Provided, however,* That the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

##### § 36.22 Use of off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Refuge Manager or pursuant to a valid permit as prescribed in paragraph (b) or in §§ 36.23 and 36.24. Such designations shall be made in accordance with the procedures of this section. Nothing in this section affects the use of off-road vehicles by local rural residents engaged in subsistence uses as authorized by § 36.12.

(1) The Refuge Manager's determination of whether to designate a

route or area for off-road vehicle use shall be governed by Executive Order 11644, as amended.

(2) Route or area designations shall be published in the Federal Register.

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 36.42(d).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 36.42.

(b) The Refuge Manager is authorized to issue permits for the use of off-road vehicles in existing off-road vehicle trails located in refuge areas (other than areas designated as part of the National Wilderness Preservation System) upon a finding that such off-road vehicles use would be compatible with refuge purposes and values. The Refuge Manager shall include in any permit such stipulations and conditions as are necessary for the protection of refuge resources and values.

#### § 36.23 Access to inholdings.

(a) *Purpose.* A permit for access to inholdings pursuant to this section is required only where adequate and feasible access is not affirmatively provided without a permit under §§ 36.21 and 36.22 of these regulations. Thus, it is the purpose of this section to ensure adequate and feasible access across refuge areas for any person who has a valid property or occupancy interest in lands within or effectively surrounded by a refuge area or other lands listed in section 1110(b) of ANILCA.

(b) *Application and administration.*  
(1) Applications for a permit designating methods and routes of access across any Alaska National Wildlife Refuge not affirmatively provided for in this part shall be submitted to the Refuge Manager having jurisdiction over the affected refuge area as specified under § 36.41.

(2) Except as provided in paragraph (c) of this section, the access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant (including for 1872 Mining Law claimants a copy of the location notice and recordations required under the 1872 Mining Law and 43 U.S.C. 1744), a map or physical description of the relevant property or occupancy interest sufficiently clear to locate the interest on the ground, a map or physical description of the desired route of access, a description of the desired method of access, and any other information necessary to determine the adequacy and feasibility of the route or

method of access and its impact on the natural and other values of the refuge area.

(3) The Refuge Manager shall specify in a nontransferable permit adequate and feasible routes and methods of access across refuge lands for any person who meets the criteria of paragraph (a) of this section. The Refuge Manager shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the refuge, and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety, and adequate and feasible access otherwise exists.

(4) If the Refuge Manager makes one of the findings described in paragraph (b)(3) of this section, he shall specify such other alternate methods and routes of access as will provide the applicant adequate and feasible access, while minimizing damage to natural and other values of the refuge.

(5) Any person holding an access permit shall notify the refuge manager of any significant change in the method or level of access from that occurring at the time of issuance. In such cases, the Refuge Manager may modify the terms and conditions of the permit, provided that the modified permit also assures adequate and feasible access under the standards of paragraph (b)(3) of this section.

(6) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittee.

(c) *Access requiring permanent improvements.* (1) Application form and procedure. Any application for access under this section which proposes the construction or modification of an improved road (e.g. construction or modification of a permanent, year-round nature and which involves substantial alteration of the terrain or vegetation, such as grading, gravelling of surfaces, concrete bridges, or other such construction or modification), or any other permanent improvement on refuge lands qualifying as a "transportation or utility system" under section 1102 of ANILCA, shall be submitted on the consolidated application form specified in section 1194(b) of ANILCA and processed in accordance with the procedures of Title XI of ANILCA.

(2) Decisionmaking standard:  
(i) If a permanent improvement is required for adequate and feasible access under this section (e.g. improved right of way or landing strip), the permit

granting standards of paragraph (b) of this section shall apply.

(ii) If the permanent improvement is not required as part of the applicant's right to adequate and feasible access to an inholding (e.g. pipeline, transmission line the permit granting standards of sections 1104-1107 of ANILCA shall apply.

#### § 36.24 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across an Alaska National Wildlife Refuge for the purposes of survey, geophysical, exploratory and other temporary uses of nonfederal lands, and where such temporary access is not affirmatively provided for an §§ 36.21-36.23. State and private landowners meeting the criteria of § 36.23(a) are directed to utilize the procedures of § 36.23 to obtain temporary access.

(b) *Application.* A landowner requiring temporary access across a refuge area for mineral survey, geophysical, exploratory or similar temporary activities shall apply to the Refuge Manager for an access permit and shall provide the relevant information described in § 36.23(b)(2) concerning the proposed access.

(c) *Permit Standards, Stipulations and Conditions.* The Refuge Manager shall grant the desired temporary access whenever he determines that such access will not result in permanent harm to refuge area resources. The Refuge Manager shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purpose for which the refuge was established and to ensure that no permanent harm will result in refuge resources.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, (i.e. up to one year from issuance of the permit) access, which does not require permanent facilities for access to undeveloped State or private lands.

#### Subpart D—Other Refuge Uses

##### § 36.31 Recreational activities.

(a) Public recreational activities within the Alaska National Wildlife Refuges are authorized as long as such activities are conducted in a manner compatible with the purposes for which the areas were established. Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, sport

hunting, sport fishing, boating, camping, hiking, picnicking and other related activities. Any existing special regulations now in force and effect shall continue to apply to the applicable refuge lands in Alaska National Wildlife Refuges.

(b) Surface collection, by hand (including handheld gold pans) and for personal recreational use only, of rocks and minerals is authorized: *Provided however*, That (1) collection of silver, platinum, gemstones and fossils is prohibited, and (2) collection methods which may result in disturbance of ground surface, such as the use of shovels, pickaxes, sluice boxes and dredges, are prohibited. The recreation activities specified in paragraphs (a) and (b) of this section may be prohibited or otherwise restricted in accordance with the provisions of § 36.42.

#### § 36.32 Taking of fish and wildlife.

(a) The taking of fish and wildlife for sport hunting, trapping and sport fishing is authorized in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations; *Provided however*, That the Refuge Manager, pursuant to § 36.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted.

(b) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins, motorized vehicles and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *Provided however*, That the Refuge Manager may restrict or prohibit the exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if he determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(c) The following provisions shall apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

##### (1) Trapping and Sport Hunting

(i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law;

(iii) In addition to the requirements of paragraphs (a) and (b) of this section,

each person shall continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Refuge.

(2) Sport and Commercial Fishing  
(i) Each person shall secure and possess all required licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law.

(d) Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(e) Nothing in these rules shall be interpreted as waiving the requirements of other fish and wildlife conservation statutes such as the Airborne Hunting Act or those provisions of Subchapter C of Title 50, Code of Federal Regulations, regarding the taking of depredating wildlife. Animal control programs shall only be conducted in accordance with a special use permit issued by the Refuge Manager.

#### § 36.33 Cabins and other structures.

(a) *New Cabins.* (1) The construction of new cabins on federally owned lands within an Alaska National Wildlife Refuge is prohibited except as may be authorized pursuant to a nontransferable, five-year special use permit issued by the Refuge Manager.

(2) Such special use permit shall only be issued upon a determination that the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside of the Refuge. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Refuge Manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purpose for which the refuge was established. No special use permit shall be issued to authorize the construction of a cabin for private recreational use.

(b) *Existing Cabins.* (1) Traditional and customary uses of existing cabins and related structures on federally owned lands within a refuge may be allowed to continue in accordance with a nontransferable, renewable five-year special use permit issued by the Refuge Manager. Such special use permit shall be issued only upon a determination that the traditional and customary uses are compatible with the purposes for which the refuge was established. No special use permits shall be issued to authorize the use of an existing cabin for private recreational use.

(2) Where a valid permit or lease was in effect on December 2, 1980, for cabins, homesites or similar structures on federally owned lands within a refuge, the Refuge Manager shall provide for the continuation of the permit or lease, unless a finding is made, following notice and an opportunity for the leaseholder or permittee to respond, that the continuation of the lease or permit will directly threaten or significantly impair the purposes for which the refuge was established.

(c) No special use permit shall be issued under paragraphs (a) or (b)(1) of this section unless the permit applicant:

(i) In the case of existing cabins or structures, reasonably demonstrates by affidavit, bill of sale or other documentation, proof of possessory interests or right of occupancy in the cabin or structure;

(2) Submits an accurate sketch or photograph of the existing or proposed cabin or structure and a map showing its geographic location;

(3) Agrees to vacate the cabin or structure and remove all personal property from it upon nonrenewal or revocation of the permit;

(4) Acknowledges in the permit application that the applicant has no interest in the real property on which the cabin or structure is located or will be constructed; and

(5) Submits a list of the names of all immediate family members residing in the cabin or structure.

(d) Permits authorized under the provisions of this section shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Refuge Manager determines after notice and hearing, on the basis of substantial evidence in the administrative record as a whole, that the use under the permit has caused or may cause significant detriment to the principal purposes for which the refuge area was established. The Refuge Manager's decision may be appealed

pursuant to the provisions of 43 CFR 4.700.

**§ 36.34 Firearms.**

The possession, use and transporting of firearms is authorized for hunting and personal protection in accordance with State and Federal laws unless prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42.

**§ 36.35 Unattended Property.**

(a) Leaving any snowmachine, vessel, off-road vehicle or other personal property unattended for longer than 12 months without the prior permission of the Refuge Manager is prohibited, and any property so left may be impounded by the Refuge Manager.

(b) The Refuge Manager may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount and type of personal property that may be left unattended, (3) prescribe the manner in which personal property may be left unattended or (4) establish limits on the length of time personal property may be left unattended.

(c) Such designations and restrictions arising under paragraph (b) of this section shall be (1) published in at least one newspaper of general circulation within the State, posted at community post offices within the affected vicinity, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community, and designated in a map which shall be available for public inspection at the office of the Refuge Manager, or (2) designated by the posting of appropriate signs or (3) both.

(d) In the event unattended property interferes with the safe and orderly management of a refuge area or causes damage to refuge resources, it may be impounded by the Refuge Manager at any time.

**§ 36.36 Sled dogs and Household pets**

The general trespass provisions of 50 CFR 26.21 shall not apply to household pets and sled, work or pack dogs under the direct control of their owners or handlers, but such activities may be prohibited or otherwise restrict pursuant to the provisions of § 36.42. Refuge Manager has the right to have the application reconsidered by the

Regional Director by contacting him within 180 days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(a) Any statement of documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made;

(b) The basis for the permit applicant's disagreement with the prior findings and conclusions; and

(c) Whether or not the permit applicant requests an informal hearing before the Regional Director.

(d) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse or modify the denial of the Refuge Manager and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

**§ 36.42 Public participation and closure procedures.**

(a) *Authority.* The Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria.* In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established.

**(c) Emergency closures or restrictions.**

(1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing; (3) other emergency

closures or restrictions shall become effective upon notice as prescribed in § 36.42(f); and (4) no emergency closure or restriction shall be for a period exceeding 30 days.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats or nonmotorized surface transportation, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate; (2) Other temporary closures shall be effective upon notice as prescribed in § 36.42(f); (3) temporary closures or restrictions shall extend only for so long as necessary to achieve their purposes, and in no case may exceed 12 months or be extended beyond that time.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.

(f) *Notice.* Emergency, temporary or permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager shall provide notice in the Federal Register and shall, upon request, hold a hearing in the affected vicinity and other location, as appropriate prior to making a final determination.

(h) Except as otherwise specifically permitted under the provision of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

**Table I—Summary Listing of the National Wildlife Refuges in Alaska as established by the Alaska Lands Act, Pub. L. 96-487, December 2, 1980**

1. Alaska Maritime, including:
  - Aleutian Island\*
  - Bering Sea\*
  - Bogoslof\*
  - Chumisso\*
  - Forrester Island\*
  - Hazy Islands\*
  - Pribilof\*
  - Saint Lazaria\*
  - Semidi\*
  - Simeonof\*
  - Tuxedni\*
2. Alaska Peninsula
3. Arctic, including: William O. Douglas\*
4. Becharof\*\*
5. Innoko
6. Izembek\*
7. Kanuti
8. Kenai\*
9. Kodiak\*
10. Koyukuk
11. Nowitna
12. Selawik
13. Tellin
14. Togiak, including: Cape Newenham\*
15. Yokon Delta, including:
  - Clarence Rhode\*
  - Hazen Bay\*
  - Nunivak\*
16. Yokon Flats\*\*

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BILLING CODE 4310-55-M

\*These indicated units were previously existing refuges before the Alaska Lands Act of December 2, 1980, and are now part of the 16 National Wildlife Refuges established by the Alaska Lands Act.



**GENE KENNEDY**  
DIRECTOR

STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

ALASKA LEGISLATIVE  
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WASHINGTON, D.C. 20001  
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# Federal Register

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Wednesday  
June 17, 1981

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Part III

## Department of the Interior

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Fish and Wildlife Service

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National Park System Units in  
Alaska; Public Uses

## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 13

## National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Final rule.

**SUMMARY:** These final rules provide interim guidance on public uses of National Park System units in Alaska, including units established by the Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96-487 (December 2, 1980)). This rulemaking has a three-fold purpose. First, it relieves otherwise applicable regulatory provisions of 36 CFR Parts 1-9 which are generally inappropriate in the unique Alaska setting (e.g., restrictions on firearms, camping, picnicking, access, use of natural features). Second, it establishes administrative procedures necessary to implement or clarify various provisions of ANILCA (e.g., access, use of cabins). Third, with the new management direction provided by ANILCA, this rulemaking seeks to remove public confusion on what public use activities are now authorized for National Park System units in Alaska. This final interim rulemaking adopts many suggestions offered in the public comment period on the January 19, 1981, proposed rules (see 46 FR 5642). These regulations are being made immediately effective to provide public guidance in time for peak park use seasons. These regulations are the minimum necessary for interim administration of Alaska park areas.

EFFECTIVE DATE: June 17, 1981.

**FOR FURTHER INFORMATION CONTACT:** John Cook, Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501, Telephone: (907) 271-4196.

**SUPPLEMENTARY INFORMATION:****Background**

The Alaska National Interest Lands Conservation Act (ANILCA) is a broad-ranging act which established new National Park System units in Alaska and provided special management direction for Federal park areas in Alaska. The areas administered by the National Park Service in Alaska consist of the following 16 units: Alagaak National Wild River, Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Denali National Park and Preserve, Gates of the Arctic National Park and Preserve, Glacier Bay National Park and

Preserve, Katmai National Park and Preserve, Kenai Fjords National Park, Klondike Gold Rush National Historical Park, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Sitka National Historical Park, Wrangell-St. Elias National Park and Preserve, and Yukon-Charley Rivers National Preserve.

On January 19, 1981, the National Park Service proposed rules (46 FR 5642) to provide interim guidance on public uses of these park areas. The proposed rules addressed limited items which had been covered for the most part by prior public notice and comment and which were necessary to provide public guidance. The items addressed in this rulemaking include access, use of cabins, camping and picnicking, carrying of firearms, preservation of natural features, subsistence and application procedures. Further rulemaking efforts will involve more expansive public guidance on the implementation and interpretation of ANILCA.

**Need for Expeditious Rulemaking and Immediately Effective Date**

Under 5 U.S.C. 553(c), an agency is authorized to make final regulations immediately effective when the regulation relieves restrictions, is an interpretive rule, or when good cause exists for expeditious rulemaking. The National Park Service (NPS) desires to utilize the immediately effective date for the following reasons.

First, many of the provisions relieve the otherwise applicable restrictions of 36 CFR Parts 1-9, which are inappropriate in the unique Alaska setting. For example, standard restrictions on access, firearms, preservation of natural features, abandoned property and camping and picnicking are relieved by these regulations.

Second, certain portions of these regulations constitute interpretive rules giving the Department's views on existing legal duties. These interpretive rules are found in § 13.15 (c) and (d).

Third, and most importantly, the Department has found that good cause exists for immediately effective regulations. This good cause finding is based on many factors, including: (1) The need to provide definitive public guidance on allowed activities for the peak park use seasons, (2) the need to alleviate public fears and confusion arising from directives in ANILCA which are inconsistent with existing NPS regulations (e.g., aircraft and snowmobile access), and (3) the need to have in place administrative procedures for obtaining statutory benefits under

ANILCA (e.g., access to inholdings, temporary access, cabins, subsistence). Additionally, the substantial public comments received on past proposed rules (see 44 FR 11242, February 28, 1979, and 44 FR 37732, June 28, 1979) covering the same topics, as well as public participation in the Alaska Lands legislative effort, support the good cause finding for expeditious rulemaking.

**Summary of Comments**

These rules were published in proposed form for public comment on January 19, 1981 (see 46 FR 5642), with the comment period extended to March 16, 1981. See 46 FR 14021 (February 25, 1981). The National Park Service received 391 timely written comments regarding the proposed interim regulations. Comments were received from 340 individuals, 13 corporations and businesses, 27 organizations, four community governments, the State of Alaska, the Environmental Protection Agency, and the Alaska Congressional Delegation. In addition, four petitions with a total of 622 signatures were received.

**Analysis of Comments****Subpart A—Public Use and Recreation.**

**Definitions—**The definition of "adequate and feasible access" in § 13.1(e) has been revised in response to public comments and to clarify what forms of access are entitled to the statutory benefits of § 1110(b) of the Alaska Lands Act. Several commenters objected to the intimation that the National Park Service would determine what is a "reasonable use or development" of an inholding. The § 13.1(a) definition has been revised to clarify that the inholder determines the desired land use or development, and the Service provides reasonable access to meet the desired land use.

Two commenters suggested that the definition of "fish and wildlife" should specifically exclude domestic and exotic animals. The term "fish and wildlife" tracks the language of the statute.

A few individuals expressed confusion over the use of the term "park areas." The term park areas is defined as lands and waters administered by the National Park Service within the State of Alaska and includes parks, preserves, monuments, historical parks and wild and scenic rivers.

Several commenters suggested the use and a definition for the Alaska Lands Act section 1110(a) term "snowmachine." Section 13.1(q) adopts this suggestion by defining a

"snowmachine" in parallel terms to a "snowmobile."

#### Applicability and Scope

A substantial number of comments (203) objected to making these regulations applicable to all park areas in Alaska (see §§ 13.1(m), 13.2), including pre-ANILCA areas like the former Mt. McKinley National Park and Katmai and Glacier Bay National Monuments. The proposed regulations were viewed by these commenters as an unwarranted lessening of protective measure for these "old" park areas.

On some issues such as access, the ANILCA definition of "conservation system units" compels equal treatment for old and new park areas (see sections 102(4), 1102(4), 1110, 1111 of ANILCA), and these regulations carry out that statutory mandate. However, for other topics, where NPS possesses policy discretion (e.g., firearms, use of natural features), the Service has taken into account public desires to continue the preexisting management scheme for old park areas. The applicability of these regulations to specific park areas is discussed below.

**Snowmachines**—A few commenters registered opposition to the use of snowmachines within park areas, or suggested their use be restricted only to subsistence purposes or to new park areas. The National Park Service is mandated to comply with the provisions of section 1110(a) of ANILCA which authorizes snowmachine use in park areas for "traditional activities" and "travel to and from villages and homesites." These final regulations track that statutory language, as suggested by many individuals.

A definition of adequate snow cover as snow of sufficient depth to protect underlying vegetation and soil from damage was added in response to public comments.

**Motorboats**—One commenter objected to § 13.11's retention of the 36 CFR § 7.23(c) cruise ship provisions for Glacier Bay on the basis that section 1307 of ANILCA precluded such regulation. The purpose of § 13.11 is to implement section 1110(a) of ANILCA concerning small motorboats. The retention of 36 CFR 7.23(c) merely preserves the status quo until the Department completes its regulatory review of this provision and does not violate the provisions of section 1307 of ANILCA. For these reasons, the Service did not adopt the suggestion to delete 36 CFR 7.23(c).

#### Nonmotorized Surface

**Transportation**—In response to public comment, § 13.12 was added to authorize the general use of

nonmotorized surface transportation (e.g., dog sleds, horses) in park areas. This addition also reflects the mandate in section 1110(a) of ANILCA.

**Aircraft**—Many comments (103) were received on the issue of fixed-wing aircraft vis-a-vis helicopters. In response to comments, the National Park Service, in these final regulations, has differentiated between fixed-wing aircraft and helicopters. Helicopter use, other than at designated landing areas, shall be in accordance with the reasonable terms and conditions of a permit issued by the Superintendent.

One commenter suggested that in the subsection on removal of downed aircraft the phrase "shall remove" should be changed to "may be required to remove." The Service is not adopting this recommendation because this subsection further provides that this requirement may be waived by the Superintendent upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life; result in extensive resource damage; or is otherwise impracticable or impossible.

The public comment on § 13.13(d) focused primarily on the economic test for salvage operations. The Service intends to be reasonable in applying the significant economic hardship test for waiving removal requirements.

**Off-Road Vehicles**—Several commenters suggested that NPS allow ORV use along established trails and routes that have been subject to significant ORV use in the past. The National Park Service has partly responded to this recommendation in this final rulemaking. The Park Service was not able to respond completely, however, because the designation of ORV trails in wilderness areas is prohibited by Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) and the Wilderness Act. The Service has opted to provide the Superintendent with general authority to issue ORV use permits for existing trails in non-wilderness park areas where such use would not be detrimental to park resources. It should be noted that there is no statutory directive to provide for general ORV use in park areas. This rewritten rule will enable ORV use by permit as appropriate.

Many individuals suggested that NPS designate only "routes" for ORV use, and not "areas." The Service has not deleted the word "areas" from this regulation because the phrase "routes or areas" tracks the language of E.O. 11644 and 36 CFR 4.19 (general NPS regulations on ORVs).

**Access to Inholdings**—Section 13.15 of these regulations, which implements the

ANILCA section 1110(b) guarantee of adequate and feasible access to inholdings, has been revised to make clear that an access permit is required only when the inholder desires an access method that is not authorized by other provisions of these regulations. Also, in response to public comment, the revised § 13.15(a) deletes as unnecessary a reference to alienating Federal property that was contained in proposed regulations.

Section 13.15(b) has been revised to state uniform, minimally burdensome information requirements for obtaining access permits. Several commenters had objected to the special information requirements for mineral access in the proposed regulations. These have been deleted in the final regulations.

Several commenters suggested an access notification system instead of a permit system. These suggestions were not adopted because a permit system was contemplated by Congress in section 1110(b) of ANILCA and because a permit system appears to be required to minimize park resource damage in accordance with 16 U.S.C. 1, 1a-1.

Many comments were received stating that the implied distinction between ordinary access to inholdings and permanent access is not supported by statute. The revised section 13.15(c) responds to these comments on access requiring permanent improvements on park area lands (e.g., road or bridge construction). Section 13.15(c) is an interpretive rule on the relationship between ANILCA section 1110(b) access to inholdings and sections 1101-1107 "transportation or utility systems."

**Temporary Access**—Many commenters favored reducing the application information burdens for temporary access. This change has been made here, as it has in the above provision on access to inholdings. Mineral and non-mineral temporary access have been combined into one provision, in response to public comment. The final regulation also responds to comments by defining temporary access as limited, short term (up to one year) access, which does not require permanent facilities for access, to undeveloped non-federal lands.

**Cabins and Other Structures**—The regulation on use of cabins is largely unchanged from the proposed regulations. While some commenters objected to the § 13.17(b)(2)(v) requirement of listing immediate family members residing in the cabin, the Service believes this information is essential for accurate permit renewals to family members, and is necessary to protect the occupancy interest of the

immediate family. ANILCA, section 1303(c). This is a dynamic, and not a one-time process. As individuals are added to the immediate family, they can be added to this listing.

A few commenters expressed concern that the ultimate intention of the NPS was to phase out cabin use within park areas in Alaska. It is neither the Service's intent, nor is it allowed by ANILCA, that such use be eliminated.

**Camping and Picnicking**—The public comments on § 13.18 primarily favored the general opening of Alaska park areas to camping and picnicking. Though some public concerns were expressed over consequences for subsistence uses or sensitive areas, the Service feels it can adequately protect these interests through the closure authority of § 13.30.

**Weapons, Traps and Nets**—The public comment on this section was varied, with some commenters supporting the carrying of firearms for self-protection and some commenters raising concerns over wildlife protection. The revised § 13.19 distinguishes between the pre-ANILCA park areas (where the carrying of weapons is still generally banned by 36 CFR 2.11) and the park areas established by ANILCA (where § 13.19 is controlling). Although the potential for harm from wildlife exists throughout Alaska, the Service feels that it can make this distinction. The "old park" areas have the staffs and materials necessary to provide individuals with information on personal safety. That capacity does not exist in the recently established areas.

**Preservation of Natural Features**—Section 13.20, on protection of natural resources, has been revised in two ways in response to public comment. First, in response to commenters suggesting a higher standard of protection for pre-ANILCA park areas, § 13.20(a) retains the 36 CFR 2.20 standards (e.g., no cutting of dead standing trees, restrictions on collecting rocks and minerals) for non-subsistence uses in Klondike Gold Rush National Historical Park, and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument areas. Second, for all other Alaska park areas, § 13.20(c) adopts commenter suggestions to authorize recreational gold panning not involving surface disturbance (e.g., the use of hand-held gold pans is authorized, but the use of sluice boxes, shovels, pickaxes, or dredges is prohibited).

A few individuals objected to allowing any collection of natural features or suggested that such collection only be allowed by permit. At

this time, the Service does not believe that the liberalized collection of natural features will result in adverse environmental consequences, due to protection against surface disturbance, low visitation rates and, ultimately, closure authority.

**Taking of Fish and Wildlife**—Many public comments suggested either allowing sport hunting in all park areas, or conversely, not allowing sport hunting in preserves. These comments were not adopted due to the legislative direction of sections 1313 and 1314 of ANILCA.

In response to public comment, § 13.21 deletes a reference to trapping as an "agent" of another person, in order to authorize family or other trapping arrangements not involving payment within national preserves.

**Unattended and Abandoned Property**—The public comment generally was in favor of liberalizing the general NPS regulations' time periods for leaving unattended property as a means of implementing a good neighbor policy in Alaska. Suggested times ranged from 7 days to 3 years, and the Service opted to retain the proposed 1 year period. This period of time is not inflexible—it can be less, and with the permission of the Superintendent, it could be more.

Some commenters objected to the impoundment authority of § 13.22(d). However, the Service believes that this problem can be avoided by checking with the Superintendent prior to leaving unattended property.

Other individuals and organizations suggested that unattended property be sheltered from public view or that the Service was allowing the inappropriate use of park areas for private profit. The Service has not adopted the suggested restrictions. Shielding unattended property from public view is difficult to do in tundra areas and may have more visual impact than the property itself. Finally, the Superintendent does have impoundment authority.

**Closures**—Some commenters suggested that the Service be more specific in delineating the range of the § 13.30(b) closure criteria, such as by eliminating "other management considerations." However, the NPS cannot forecast in advance the complete range of criteria that would be applied to closure decisions to meet the park protection standard of 16 U.S.C. 1, 1a-1. Thus, while the Service expects that the vast majority of closure decisions will be based on delineated factors like public safety and resource protection, the Service does not feel it appropriate to specify a definitive list of criteria.

A few individuals also objected to "public health and safety" as a criteria for closure since many "bush" activities are inherently unsafe. The Service recognizes that many activities conducted within park areas are inherently dangerous. In this instance, however, the NPS is focusing on significant public health and safety (i.e. polluted water supply, a large fire where speed and direction of burning is unpredictable).

In response to a public comment the Service has added the generic term "cultural values" for "historic values" for determining criteria for closures. This term "cultural" is used by the NPS and includes "historic" values.

Several commenters recommended that hearings be held in the area affected by a permanent closure. The Service has adopted this recommendation. In response to comments the NPS has also limited emergency closures to a maximum of 30 days.

The NPS has not adopted two suggestions. The first is that temporary closures be restricted to a maximum of 6-9 months. The Service believes that it needs the flexibility to temporarily close for periods up to 12 months (i.e., fire hazard). This does not mean that all temporary closures will be for this length of time: They could be shorter. The other suggestion was a recommendation that the public comment period be 90 days for permanent closure. This is already included in the regulation as written. The public comment period on permanent closures must be a *minimum* of 60 days; it could be longer.

**Permits**—Section 13.31 consolidates procedures regarding the issuance and denial of permits. The Superintendent is directed to acknowledge the application promptly, and to approve the permit, deny the permit, or request additional information within 45 days unless he/she notifies the applicant of a good cause extension. The normal 45-day response time and a statement of reasons for any permit denial were added in response to public comments. Additionally, in response to comments, the Service has incorporated into this section a provision which allows an applicant to submit his or her application orally.

Any person whose permit application has been denied by the Superintendent has a right to appeal that denial to the Regional Director within 180 days of permit denial. The longer appeal time (from 60 days in proposed regulations) reflects public comments that a shorter appeal time could be detrimental to the

applicant, whereas a longer appeal time will not hurt the government. Section 13.31(b)(2) has been revised to grant the applicant the opportunity for a hearing upon request, as suggested in public comments.

#### Subpart B—Subsistence

**General Comments.** The issue of subsistence continues to be the most difficult of all the issues affecting the new National Park Service areas in Alaska.

The State of Alaska, the State Congressional Delegation, and certain sportsmen's groups opposed any federal regulation of subsistence, especially in the one year period provided by section 805(d) of ANILCA for the State to establish an adequate subsistence program. The National Park Service is sensitive to the State's concerns and looks forward to a State subsistence program implementing ANILCA's requirements. In the meantime, the Service has pared its program to the minimum required by ANILCA. For example, the Service has deleted the system of resident zones and subsistence permits for park preserves. Nevertheless, the one-year "grace" period for the State does not relieve the Park Service of certain basic responsibilities under Titles II and VIII of ANILCA. Unlike the other conservation system units in Alaska, parks and monuments are closed to hunting except for subsistence hunting by "local rural residents" where specifically authorized by ANILCA. ANILCA, sections 201-203, 816(a), 1313, 1314. Consequently, the Park Service must immediately implement a system for identifying "local rural residents" in order to allow them, but not others, to engage in subsistence hunting in national parks and monuments. In addition, section 808(c) of ANILCA specifically requires the Secretary to permit subsistence uses by local rural residents pending implementation of park and park monument subsistence resource commissions. The Park Service has tried to adopt the type of identification system that Congress intended. See S. Rep. No. 96-413, 96th Cong., 1st Sess. 168-171 (1979); 126 Cong. Rec. II 10540-41 (daily ed. Nov. 12, 1980). It bears repeating, however, that the Park Service is anxious to incorporate a State program which implements the various subsistence mandates. By December 2, 1981, the Secretary of the Interior must review the State program to determine whether it meets ANILCA's requirements for the subsistence definition, priority, and participation (sections 803, 804, 805). The Secretary has not yet undertaken this review. In

the meantime, and until such time as a State program is determined to supersede the various aspects of the federal program, the Park Service regulations seek to carry out the subsistence duties which ANILCA imposes on the Secretary.

Commenters from rural Alaska stressed the need for consultation with local rural residents as part of any decisionmaking that could affect subsistence uses. The National Park Service believes such consultation is prudent and essential. Several provisions of the regulations institutionalize public hearings in the local vicinity affected by an action. See sections 13.43(b), 13.45(b)(ii) and (iii), 13.46(c), 13.49(c), 13.50(a) and (b). Pending creation and operation of the local advisory committees and regional advisory councils of section 805 of ANILCA and the park and park monument commissions of section 808, the Park Service will try to involve local rural residents in decisionmaking that may affect them to the fullest extent possible.

Several native organizations urged the National Park Service to adopt regulations implementing section 806 of ANILCA on "Federal Monitoring," section 807 on "Judicial Enforcement," and section 812 on "Research." Although the Park Service appreciates the importance of these statutory provisions, it determined when it published the proposed regulations that these provisions do not lend themselves to expeditious implementation since they have not previously been the subject of notice and comment. The Alaska State Congressional Delegation commented that proposed regulation § 13.22 implementing section 810 of ANILCA should be deleted according to the same logic; furthermore, they pointed out, the proposed regulation did nothing more than repeat section 810 of the Act verbatim. For these reasons, today's final regulations do not contain provisions implementing sections 806, 807, 810, and 812. It should be emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect.

**Purpose and Policy.** Some commenters requested the Park Service to expand by regulation the purposes for which the park areas were established to include "subsistence uses by local residents" or "the protection and enhancement of subsistence hunting and fishing by local rural residents." Congress clearly authorized subsistence uses by local rural residents in all park preserves and in specifically designated

parks and monuments. ANILCA, sections 201-203. Congress did not, however, make subsistence a "purpose" of these units. Consequently, the National Park Service believes it would be inappropriate, especially in the context of this interim rulemaking exercise, to expand the Congressionally designated purposes of the park areas to include subsistence uses. Moreover, the Park Service does not have the authority to expand the authorization for subsistence hunting beyond the specific Congressional authorization. See, e.g., section 816(a) of ANILCA. Nevertheless, consistent with its policy throughout the legislative process and during the national monument period, the National Park Service fully supports the continuation of the opportunity for subsistence uses by local rural residents where authorized. The Park Service believes that subsistence uses are an important value of these new park areas, and the Service intends to protect these uses through regulations and policies.

One group requested that the Park Service amplify the "least adverse impact" policy statement to require consideration of "potential and actual deleterious impacts of visitation upon local rural residents". The Park Service has decided not to amplify this policy statement or modify its statutory language to cover one of many possible conflict situations in legitimate park uses, especially in the context of this interim rulemaking. For the present, the Park Service will consider such conflict situations on a case-by-case basis.

Some commenters requested the Park Service to include "national monuments and preserves" in addition to "park areas" in the subsistence priority provisions of § 13.40 (c) and (d) and other regulations. These commenters have misunderstood the phrase "park areas". By definition in § 13.1(m), the term "park areas" means "lands and waters administered by the National Park Service within the State of Alaska"; accordingly, the term "park areas" includes parks, monuments, and preserves. A regulation will specify "national parks and monuments" or "preserves" whenever its applicability is more specific than "park areas". The subsistence priority set forth in § 13.40 (c) and (d) clearly applies to all park areas.

The Alaska Federation of Natives (AFN), NANA Regional Corporation (NANA), and Alaska Legal Services (ALS) on behalf of the residents on Anaktuvuk Pass, suggested a technical rewrite of § 13.40(d) which the Park Service has in large part adopted in the

final regulations. The rewrite clarifies that the three criteria of the subsistence priority system apply only to persons already engaged in subsistence uses. Consequently, if consumptive uses of a fish or wildlife population must be restricted, § 13.40(c) assures that consumptive uses would first be limited to local rural residents engaged in subsistence uses. Then, if further restrictions become necessary, § 13.40(d) establishes the criteria for allocation among the local rural residents.

The Park Service received various recommendations for acknowledgement in the regulations of the State of Alaska's role in regulation of fish and wildlife for subsistence uses within park areas. See ANILCA, section 1314. In response, the Park Service is promulgating § 13.40(e) which recognizes State regulation of the taking of fish and wildlife in park areas consistent with applicable Federal law, including ANILCA. For example, the Park Service expects the State to continue to regulate seasons and bag limits in the park areas. Furthermore, as mentioned previously, the Park Service anticipates that a State subsistence program, implementing ANILCA's various subsistence mandates, will eventually supersede most Federal regulation of subsistence.

ALS requested that the Park Service define the terms "healthy" and "healthy and natural" now in § 13.40(f) of the regulations. The Service has not defined these new terms in the context of this interim rulemaking. However, the Service has quoted at length from Congress' explanation of these concepts in the Section-by-Section Analysis of this preamble in order to guide park officials in their implementation of them.

**Applicability.** Two organizations recommended that the National Park Service authorize subsistence fishing—i.e., fishing with a net, seine, trap or spear for subsistence uses—in all national parks and monuments. The Park Service has decided against this recommendation for the following reasons. As mentioned above, ANILCA is specific as to where subsistence uses, including fishing, are authorized in national parks or monuments. See ANILCA, sections 203, 1314(c). Expansion of this specific authorization, particularly in the context of this interim rulemaking, would be inappropriate. Furthermore, expansion without consideration of impacts could jeopardize park values. Section 2.13 of the Park Service's general regulations constitutes the Service's determination that fishing methods should be restricted

in most cases to protect park values. This general regulation prohibits the use of any fishing method other than hook or line with the rod or line being held in the hand. 36 CFR 2.13(j)(2).

With respect to ANILCA's mandate incorporated in § 13.41(c), Matmeluk Association commented that historic harvest levels, patterns, and methods should be examined to determine where subsistence uses are "traditional" in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition. ALS, on behalf of the residents of Anaktuvuk Pass, cited studies to support its belief that subsistence uses are traditional in the entire area of Gates of the Arctic Park. Since local input like the above is essential to developing the "subsistence hunting zones" for the five park areas, the Park Service has not designated these zones in this rulemaking exercise. The local committees, regional councils, and park and monument commissions should facilitate such local input into these designations.

**Definitions.** Certain Native organizations recommended that additional evidence be required to determine an individual's qualification as a "local rural resident". Their recommendations included a one-year residency requirement, recognition by the local government, and affidavits.

The [Anaktuvuk Pass] village people are worried about possible abuses of outside people quickly establishing addresses for mail and other matters within the village, when their primary goal is to obtain the benefits of being included within the "resident zone" for hunting within the area.

To some extent, proper implementation of the definition of "local rural resident" in § 13.42(a) should prevent most such abuses. An individual's address is only one of many evidentiary factors which should be used to determine an individual's "primary, permanent home". Nevertheless, the rural people's concern and their recommendations for further evidence of local rural residency deserve thoughtful consideration. Their recommendations have intuitive appeal, but also present legal and equitable problems. The Park Service believes that the local committees, regional councils, and park and monument commissions are more appropriate forums than this interim rulemaking for deciding whether and how to implement such recommendations.

The State of Alaska strongly opposed the creation of "resident zones" for park preserves. In response, for purposes of

this interim rulemaking, the National Park Service has decided to eliminate the system of resident zones and subsistence permits for identifying "local rural residents" in park preserves. The Park Service agrees that the need to identify "local rural residents" in preserves is not as pressing as in parks and monuments since sport hunting is allowed in preserves. The Park Service believes that the remaining reasons for identifying "local rural residents" in preserves—namely, to control subsistence fishing and log cutting—can be handled through other regulatory mechanisms, such as enforcement of State subsistence law with regard to fishing and retention of the permit requirement for cutting of live standing timber.

Most comments on the definition of "subsistence uses" concerned the Park Service's definition of "customary trade". In general, the comments indicated strong support for the Service's inclusion of fur trading within the term. Three commenters objected, however, that the definition was too limited. For example, one commenter wrote that

[C]ustomary trade in Alaska is involved in more than the exchange of furs for cash. Quite often there is trade for specific items or merchandise including food and fuel.

The definition of "subsistence uses" adequately covers these concerns in its provision for "barter". The "barter" definition, taken verbatim from section 803 of ANILCA, allows local rural residents to trade furs for fish, game, food, or nonedible items other than money for personal or family consumption. The Park Service's definition of "customary trade" serves to expand the permissible exchange to include, in addition, furs for cash. One rural group, however, pointed out a customary trade practice that the proposed definition of "subsistence uses" did not cover: the customary and traditional making and selling of certain handicraft articles out of plant materials. The Park Service has included special provisions in the final regulations to allow for these activities (e.g., the making and selling of birch bark baskets) in the two park areas where they are known to occur, Kobuk Valley National Park and the southwestern preserve area of Gates of the Arctic National Park and Preserve.

**Determination of Resident Zones.** The National Park Service received diverse comments on resident zones. As already discussed, the State and State Congressional Delegation opposed federal designation at this time of any

resident zones, and particularly resident zones for park preserves. In response, the Park Service has deleted from these final interim regulations resident zones for preserves, but the Service has interpreted ANILCA and other authorities as requiring resident zones for parks and monuments. The Alaska Center for the Environment suggested eventual replacement of resident zones with subsistence permits. According to ANILCA's legislative history, however, Congress intended the Park Service (1) to devise a system of resident zones as the primary mechanism for identifying local rural residents in park areas, and (2) to avoid a subsistence permit system to the extent possible. See S. Rep. No. 96-413, *supra*, 170-71; 126 Cong. Rec. at H 10541. Congress recognized that subsistence permits may be necessary in certain situations as an adjunct to the system of resident zones. *Id.* The Park Service agrees, however, with the Center for the Environment's underlying thought that implementation of the subsistence program will benefit from experience and, in all likelihood, undergo changes in the future.

In response to most comments on the subject, the Park Service has already made a significant change in the final regulations from the proposed regulations by adopting a more liberal designation of communities for inclusion in resident zones. See Subpart C regulations. This liberal designation is consistent with the intent of Congress described above. It should be noted, however, that the Park Service has retained other regulatory mechanisms to prevent abuse of the subsistence program, such as the general prohibition of aircraft use for subsistence purposes and the possibility of removing a community from a resident zone if the character of the community changes.

The policy of more liberally designating resident zones is reflected in certain technical changes in the language of § 13.43. As the State, AFN, and others suggested, the Park Service has deleted the phrase "available information and research" from the regulation in order to clarify that the Service will consider all relevant evidence concerning a community's qualification, including expert opinion from reliable local and State sources. The Park Service has also substituted the word "significant" for the word "preponderant" in the phrase "communities and areas \* \* \* which contain significant concentrations of rural residents who, without using aircraft \* \* \* have customarily and traditionally engaged in subsistence uses within a national park and

monument". The word "preponderant" implied more numerical precision than is possible without an extensive standardized study of rural villages in Alaska, certainly an impossible task in the context of this interim rulemaking. The Park Service adopted the word "significant" to clarify that the subsistence experts must exercise some discretion in examining the nature and needs of each community. Of course, the availability of subsistence permits assures that subsistence users whose communities are not included in a resident zone for whatever reason may nevertheless have the opportunity to engage in subsistence uses in a national park or monument.

Finally, in response to a suggestion from AFN, the Park Service has modified § 13.43 to assure that children of local rural residents living in the family household on a permanent basis will be considered in determining whether a community has the necessary "significant concentrations".

**Subsistence Permits.** The Alaska State Congressional Delegation objected to "any actions regarding federal permits under these regulations," pointing out that "[t]here is no authorization for a federal hunting permit". The National Park Service has no intention of instituting a federal hunting permit. The subsistence permit described in § 13.44 of the regulations is not a federal hunting permit; rather, it is part of the system contemplated by ANILCA for identifying the "local rural residents" who are authorized to engage in subsistence uses in national parks and monuments. The subsistence permit system is necessary to ensure the fairness of a regulatory system which seeks primarily—by means of resident zones—to avoid the necessity of permits in allowing subsistence uses by local rural residents. Thus, the subsistence permit system is an integral part of the resident zone system. As a corollary, the Park Service's decision to retain the resident zone system but limit it to national parks and monuments necessitated a similar change in the scope of the subsistence permit system: the system of resident zones and subsistence permits no longer applies to park preserves. As another corollary, the Service's decision to expand resident zone designations, thereby encompassing more subsistence users within the zones, should reduce the number of subsistence users who must apply for a permit.

Some commenters expressed concern over the Park Service's ability to institute a permit system on an expedited basis. The Park Service has

changed the effective date for the permit requirement from July 15, 1981 to August 1, 1981. The Service believes this date is reasonable because (1) the permit application process is relatively simple and straightforward and (2) the number of permit applicants should be fewer as a result of the liberalization of resident zones. Of course, persons who will need a subsistence permit should begin the application process immediately.

One group commented that the regulations should define the terms "customarily and traditionally". The Service has decided not to define these terms for purposes of this interim rulemaking, since their definition requires extensive prior comment and research as well as the advice of the local committees, regional councils, and park and monument commissions. Nevertheless, the Section-by-Section Analysis provides explanation of the legislative and regulatory intent behind the terms and the provisions in which they are used.

The final regulation on subsistence permits contains two technical changes. At the suggestion of AFN, NANA, and the State, the Park Service has deleted the phrase "available information and research" in § 13.44(a)(2) to allow the applicant greater flexibility in the type of evidence that may be presented. In addition, at AFN's and NANA's suggestion, the Park Service changed the tone of § 13.44(a) from negative to positive, i.e., "the Superintendent *shall* grant the permit *if* \* \* \*" (emphasis added); this change of tone, however, does not reduce the applicant's burden of proof to make the demonstration required by § 13.44(a).

**Prohibition of Aircraft Use.** The aircraft prohibition of § 13.45(a) is a key provision for protecting park values, including subsistence. Two groups had very strong, but diametrically opposed, views on the subsistence aircraft regulation. Residents of Glennallen, Slana, and Tok submitted several comments that argued for allowance of aircraft as "the most feasible and ecologically sound access means in many cases". Friends of Animals, on the other hand, opposed *any* allowance of aircraft for subsistence uses as a "total perversion of the concept of subsistence hunting, trapping, and fishing \* \* \*". The National Park Service has retained the subsistence aircraft regulation as proposed without change. It implements the intent of Congress that aircraft use for subsistence purposes is the rare exception, not the rule. S. Rep. No. 96-413, *supra*, 169; 126 Cong. Rec. H. 10541. It nevertheless provides for exceptions to the aircraft prohibition in individual

hardship situations. A local rural resident who believes he/she meets the exception criteria of § 13.45(b)(2) should pursue the simple application procedures of § 13.51.

The subsistence aircraft regulation also provides for exceptions for entire communities in special cases. Anaktuvuk Pass and Yukutat are the only "exempted communities" listed in this interim rulemaking. The comments received on these provisions supported them. North Slope Borough, for example, supported the inclusion of Anaktuvuk Pass, pointing out that

[T]his exemption would not have to flow to all members of the North Slope community . . . Others accessing the Gates of the Arctic area from North Slope villages tend to rely upon modes of transportation such as snowmobiles or gain access by foot.

North Slope Borough asked for clarification of whether every resident of an exempted community like Anaktuvuk Pass must apply for an individual permit pursuant to the procedures of § 13.51 before using aircraft. The answer is no. Each individual must obtain a permit from the Superintendent, however, which shows his/her signature and any special terms or conditions applicable to the individual. The Park Service will attempt to streamline this permit process by developing a relatively standard permit for the entire community, subject only to special individual terms, conditions, and signature. Finally, two rural groups sought assurance that local consultation would precede additions or deletions of exempted communities. Sec. 13.45(b)(ii) and (iii) requires such consultation.

*Use of Snowmobiles, Etc.* Several commenters suggested that § 13.46 specifically reference dog teams as a mode of transportation traditionally employed by local rural residents engaged in subsistence uses. The Park Service has included this reference in the final regulations. Tanana Chiefs Conference further pointed out the traditional use of pack and work dogs. The phrase "other modes of surface transportation" in § 13.46 allows for traditional use of pack and work animals (e.g., dogs and horses) by local rural residents engaged in subsistence uses. Tanana Chiefs Conference and an individual added that dogs should be kept under the immediate control of users. The Park Service's general regulations require that dogs be kept "under physical restrictive control at all times". 36 CFR § 2.8(a).

The allowed use of motorized surface transportation in accordance with the provisions of § 13.46 evoked two objections. One environmental

organization commented that "the use of snowmobiles, motorboats and off-road vehicles is . . . abhorrent to the notion of subsistence hunting . . ." Section 811(b) of ANILCA, however, mandates the Secretary to allow "appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation". Section 13.46 implements this statutory mandate (§ 13.46(a)), highlights its limitations (§ 13.46(e)), and provides for appropriate restrictions, closures, and regulation (§ 13.46(b)-(d)). Another environmental organization recommended that the Park Service prohibit motorized surface transportation other than snowmachines and motorboats (e.g., ATV's) except by permit upon a demonstration of "traditional use" by the local rural resident. The Park Service has decided against this recommendation in this rulemaking exercise since (1) the Service wants to avoid another permit requirement, if possible, (2) the restriction, closure, and other regulatory provisions of § 13.46 should adequately protect park values, at least for this interim period, (3) the Service would not adopt such a new proposal without additional notice and comment.

Comments on the closure criteria of § 13.46(b) suggested both tightening and expansion of the criteria. The Park Service has retained the proposed closure criteria with only minor, technical changes. In the Service's judgment, the closure and restriction provisions represent the proper balance between protection of park values and allowance of subsistence activities. The Park Service has incorporated minor changes in § 13.46 that underscore the Park Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."

*Subsistence Fishing, Hunting, and Trapping.* The Park Service received very few comments on §§ 13.47 and 13.48. AFN and NANA recommended a modification in both sections to clarify that only State laws and regulations consistent with applicable Federal law are incorporated by reference. The Park Service considered this modification unnecessary since the Supremacy Clause of the Constitution (Art. VI) requires consistency with Federal law, and §§ 13.47 and 13.48 require consistency with the provisions of the National Park Service regulations, including Part 13 on National Park System Units in Alaska.

One Alaskan family commented that no new fish camps should be allowed in park areas. This family was concerned, in particular, with the destruction of "a beautiful little bay . . . being destroyed by a type of drift fishing that uses stationary nets . . . (which are set) . . . in front of spawning creeks." The Park Service needs to know more about these situations in order to protect park resources. If subsistence fishing is involved, for example, the Park Service can invoke the closure provisions of § 13.50 in appropriate situations. If recreational fishing is involved, the provisions of §§ 13.21 and 13.30 are applicable.

One Eagle, Alaska resident requested the National Park Service to develop a management system for traplines to freeze "ownership" according to pre-1978 or present patterns. He said that the old trapline system—"where a person live[d] on and look[ed] after his own little pocket of fur"—worked well, but he fears that the Park Service regulations will encourage people beyond park boundaries to enter, take, and leave. For the interim period, the Park Service is hopeful that such factors as the local rural residency test, the prohibition on aircraft use, the applicability of state law, and the pressure of local socio-economic realities will adequately prevent or discourage the rush of opportunistic trappers which this resident fears. For the longer term, if the problem materializes, the local committees, regional councils, park and monument commissions, and State will be able to consider solutions.

*Subsistence Use of Timber and Plant Material.* One environmental organization commented that the National Park Service should prohibit all cutting of live standing timber in park areas. The Park Service, however, recognizes the cutting of live standing timber for appropriate subsistence uses as part of the subsistence lifestyle which ANILCA protects. See, e.g., ANILCA, section 803. In addition, the Park Service considers subsistence uses by local rural residents an important value of the new park areas. Finally, § 13.49 of the regulations, which provides for the cutting of live standing timber for appropriate subsistence uses, also contains provisions which assure the protection of park purposes.

One such provision is the permit requirement of § 13.49(a)(1). The final regulation makes clear that this permit requirement applies only to cutting of live standing timber of diameter greater than three inches at ground height. For smaller diameter timber, no permit is

required. § 13.49(a)(2). The Park Service made this distinction to allow for customary use of alder and willow, for example, in construction and repair of baskets and fish traps without the necessity of a permit. Several organizations objected to the inclusion of the compatibility test in the permit provision of § 13.49(a)(1). The Park Service has decided to retain the compatibility test, however, in order to protect park area purposes, particularly in areas of intense use, fragile timber resources, or other special circumstances, where the impact can be significant. ANILCA does not prohibit the application of the compatibility test to the cutting of live standing timber. Indeed, the listing of park area purposes in sections 201 and 202 of ANILCA substantiates that the park areas were established for several reasons, and subsistence uses are but one of the values of certain of them. Nevertheless, the Park Service is sensitive to the needs of local rural residents for house logs and firewood. For example, although ANILCA does not specifically limit the closure standards which may be applied to subsistence harvest of plants, the Park Service has decided to apply the same limited closure standards to plant harvest as ANILCA requires for subsistence taking of fish and wildlife (i.e., public safety, administration, continued viability of the resource). See ANILCA, section 816(b).

In answer to a question raised by Tanana Chiefs Conference, the word "noncommercial" in § 13.49(b) should not prohibit elderly or ill residents from paying another local rural resident to gather the listed subsistence items for use by such incapacitated persons. Such gathering would be for permissible personal or family use, not for sale or "commercial" use prohibited by § 13.49(b).

One group objected to the definition of "temporarily" contained in § 13.49(c)(1). This definition, which also appears in § 13.50(a), is derived directly from the legislative history on closure to subsistence uses of fish and wildlife. See, S. Rep. No. 96-413, *supra*, 277-78; H. Rep. No. 96-97, *supra*, 269. The purpose of the definition is to restrict the length of closures by prohibiting closures of arbitrary duration.

**Closure.** In response to comments asking for increased notice, local consultation, and hearings elsewhere, the National Park Service has made minor changes in § 13.50 that underscore the Park Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."

One rural group objected to the "public safety" standard for closure in this section as well as in §§ 13.46 and 13.49 on the grounds that "normally occurring accidents" should not be the reason for closure. The Park Service has not deleted this standard. ANILCA establishes as one of three closure standards subsistence uses of fish and wildlife. In its experience, moreover, the Park Service has found "public safety" to be a very important reason for closure. For example, in the case of subsistence hunting, allowing hunting in the immediate vicinity of a well-used hiking trail or camping site at certain times of the year might unnecessarily endanger lives. Or, in the case of snowmobiles, allowing snowmobiling in an area endangered by earthquake or avalanche would similarly risk lives. The closure provisions of §§ 13.46, 13.49, and 13.50 have many procedural and substantive protections intended to insure that the closure is sufficiently justified and well discussed. Local input into these decisions will be further facilitated with the creation and operation of the local committees, regional councils, and park and monument commissions.

**Application Procedures.** The changes which the National Park Service has made in § 13.51 are similar to the changes made in § 13.31. The Superintendent shall act on an application in most cases within 45 days rather than 60 days as proposed. In response to comments from native organizations, the Park Service extended the time for appealing a denial from 60 to 180 days. Finally, the Park Service has decided to grant a hearing at the Regional Director's level if the applicant requests one.

#### Section-by-Section Analysis

##### *Subpart A—Public Use and Recreation*

##### Applicability and Scope

The regulations set forth herein apply to all persons using, entering or visiting within the boundaries of park areas in Alaska. These regulations supplement the regulations of Parts 1 through 9 of Title 36 of the Code of Federal Regulations. These Part 1-9 regulations remain applicable except as they are modified herein.

These regulations are divided into three parts as described in § 13.2. Subpart A, Public Use and Recreation, contains regulations that govern activities such as use of aircraft, snowmobiles, and motorboats, carrying of weapons camping, cabin occupancy and other activities related to access or general public use and recreation. These regulations apply to all of the park areas

in Alaska, except as indicated in the regulations. They amend the provisions of the general regulations found in 30 CFR, Parts 1 through 9, and are necessary to implement or clarify various provisions of ANILCA.

Subpart B contains regulations that govern subsistence activities within the park areas in Alaska. These regulations apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park (the former Mt. McKinley National Park area). The regulations in Subpart B amend the regulations contained in Parts 2 through 9 of 36 CFR and Subpart A of Part 13.

Subpart C contains regulations for individual park areas. These regulations apply to a specific area and may amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, or Subpart A or B of this Part.

Sections 103(c) and 906(o) of ANILCA generally restrict the applicability of National Park Service regulations to federally owned lands within park area boundaries. Consistent with the statute and the explanatory legislative history, 126 Cong. Rec. H11115 (November 21, 1980) and S15130-15131 (December 1, 1980), § 13.2(e) restricts the applicability of these regulations to "federally owned" lands (defined to mean all land interests held by the Federal government including unconveyed Native selections) within park area boundaries. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no unconveyed State selections remain within park areas. These regulations would not apply to activities occurring on State lands. Similarly, these regulations would not apply to activities occurring on Native or any other non-federally owned land interests located inside park area boundaries.

A new § 13.4 has been added stating the approval of information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 96-511; 94 Stat. 2812).

#### Access Related Provisions

**Definitions—**The definition of "adequate and feasible access" in § 13.1(a) has been revised to clarify that the inholder determines the desired land use or development (removing the suggestion that the Service determines "reasonable" land uses), and the Service approves reasonable access to meet the desired land use. In addition, instead of defining "adequate and feasible access"

circularly in terms of "access," the § 13.1(a) definition provides that only "personal and vehicular travel" (e.g., roads, trails and landing strips, but not transmission lines and pipelines) fits within the statutory access guarantee, in accordance with the legislative history of § 1110(b). S. Rep. No. 98-413, *supra* 248 (1979); H.R. Rep. No. 98-97, Part I, 96th Cong., 1st Sess. 239-240 (1979). Finally, the § 13.1(a) definition makes it clear that the access provided must be economically practicable, but not necessarily the least costly access alternative.

The term "snowmachine" used in section 1110(a) of ANILCA and § 13.10 of these regulations has been defined in parallel terms to a "snowmobile." No separate definition for the § 13.11 term "motorboat" is included here, since the 36 CFR 3.1 definition is already applicable and comports with legislative intent.

**Snowmachines**—Section 13.10 of these regulations tracks the ANILCA section 1110(a) language authorizing snowmachine use in park areas for "traditional activities" and "travel to and from villages and homesites," as suggested by several commenters. Upon review, it was determined that the findings required under Executive Order 11644 for the general opening to snowmachine use proposed in draft regulations could not be made at this stage. Consequently, snowmachine use is authorized during periods of adequate snow cover or frozen river conditions only for traditional activities which are still permitted in park areas (e.g., snowmachine use to locate new mining claims or for sport hunting in national parks would not be authorized, because the land use is not permitted), travel to and from villages and homesites, pursuant to an access permit, and as authorized by § 13.46. A definition of adequate snow cover as snow of sufficient depth to protect underlying vegetation and soil from damage has been added.

The Service may broaden snowmachine use privileges in a future rulemaking in compliance with E.O. 11644. Prospective snowmachine users should note that the legislative history of section 1110(a) defines a traditional activity in terms of a use generally occurring in a park area prior to its designation. See S. Rep. No. 98-413, *supra* at 248; H. Rep. No. 98-97, Part 1, *supra* at 239. The Service may attempt to define area-specific traditional activities in subsequent rulemakings.

**Motorboats**—No changes have been made in § 13.11, which authorizes general motorboat use in park areas. This motorboat section, as well as

§ 13.12 and § 13.13, expand on the access provided by section 1110(a) of ANILCA.

**Nonmotorized surface transportation**—In response to public comment, § 13.12 was added to authorize the general use of nonmotorized surface transportation (e.g., dog sleds, horses) in park areas.

**Aircraft**—Section 13.13 authorizes general fixed wing aircraft use in park areas. Public comments urging that helicopter use be by permit only were adopted.

**Off-road vehicles**—Section 13.14 establishes the procedures for designating routes and areas for off-road vehicle (ORV) use. While several commenters had urged NPS to open existing ORV trails to ORV use, the Service does not have the resource impact information needed for the ORV determinations under Executive Order 11644. In recognition of public desires for the use of ORVs on existing trails, § 13.14(c) adds a permit procedure for such use in non-wilderness park areas. ORVs by permit are exempted from E.O. 11644 and, thus, this procedure offers the maximum ORV use allowable under current law. Cf., E.O. 11644, (16 U.S.C. § 1131 *et seq.*), 16 U.S.C. 1, 1a-1. Under this procedure, individuals could apply for and receive permits for ORV use on existing trails in non-wilderness park areas after the Superintendent's finding of compatibility with park purposes. Persons desiring the opening of specific ORV trails may petition the Department to initiate rulemaking under 43 CFR 14.6. Until such trail and area openings occur, off-road vehicle use is prohibited except by permit or pursuant to § 13.46.

**Access to inholdings**—Section 13.15 of these regulations, which implements the ANILCA section 1110(b) guarantee of adequate and feasible access to inholdings, has been revised to make clear that an access permit is required only when the inholder desires an access method that is not authorized by other provisions of these regulations (e.g., an access permit is not required for airplane, motorboat or snowmachine access unless an area has been closed to such uses). The access openings of §§ 13.10-13.13 of these regulations should greatly reduce the number of people requiring access permits.

Section 13.15(b) has been revised to state uniform, minimally burdensome requirements geared to obtaining information on whether the applicant has a valid property or occupancy interest, the location of that interest, the applicant's desired route and method of access, and, as deemed necessary by the Superintendent, information on access alternatives and environmental impacts.

Section 13.15(b) continues to guarantee adequate and feasible access, and strives to give the applicant his desired access, unless there would be significant resource conflicts and alternative adequate and feasible access exists. Section 13.15(b) has also been revised to minimize the need for permit renewals in response to public comments.

Section 13.15(c) responds to comments on access requiring permanent improvements on park area lands (e.g., road or bridge construction). It is an interpretive rule on the relationship between ANILCA section 1110(b) access to inholdings and sections 1101-1107 "transportation or utility systems." The revised § 13.15(c) requires that any application for a "transportation or utility system," a term defined in § 1102 of ANILCA, be submitted on a consolidated application form, as required by section 1104 of ANILCA. If the permanent improvement is required for adequate and feasible access to an inholding (e.g., a landing strip or road construction) within the meaning of ANILCA section 1110(b), then the necessary rights for the permanent improvement will be granted following procedural compliance with ANILCA section 1104. This procedure requires completion and submission of a relatively simple form.

Following submission, the permanent improvement shall be approved. Conversely, if the permanent improvement is not necessary for section 1110(b) access to inholdings (e.g., requests for powerlines and pipelines, or a request for a four lane highway to a recreational cabin), then both the procedural and substantive provisions of ANILCA sections 1104-1107 will be applicable in determining whether to authorize the permanent improvement.

Section 13.15(d) of these regulations is another interpretive rule to inform the public of the Department's views on the applicability of existing regulations concerning mineral development in park areas. Section 13.15(d)(1) concerns the applicability of 36 CFR Part 9A regulations on 1872 Mining Law Claims, which regulations were promulgated under the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*). The guarantee of adequate and feasible access to valid mining claims under section 1110(b) of ANILCA notwithstanding any other law appears to preempt the 36 CFR 9.3 prerequisite of an approved plan of mining operations prior to receiving access. Consequently, the Department is of the view that 36 CFR 9.3 is no longer applicable in Alaska park areas. However, where the holder of a valid

patented or unpatented mining claim under the 1872 Mining Law within a park area proposes to undertake mining operations, the independent requirements of 36 CFR 9.9, 9.10 still require that a plan of operations be approved before undertaking any operations on the claim, as in all other National Park System units (except for patented mining claims where there is no access across federally owned parklands). Thus, prior to undertaking any mining operations within the meaning of 36 CFR 9.2, 1872 Mining Law claimants must obtain an approved plan of operations.

Section 13.15(d)(2) is an interpretive rule stating the Department's view that the regulations of 36 CFR Part 9B are no longer applicable in Alaska park areas. These regulations concerning the development of non-federal oil and gas rights in parks were premised on the land manager's discretion to restrict access. Section 1110(b) of ANILCA effectively removes this discretion from the land manager. Therefore, 36 CFR Part 9B does not apply to Alaska park areas.

**Temporary access**—Section 13.16 implements section 1111 of ANILCA on temporary access. The revised § 13.16 adopts commenter suggestions to reduce application information burdens: the final § 13.16 requires the same minimal information required by § 13.15(b). In addition, the revised § 13.16 adopts commenter suggestions to collapse mineral and non-mineral temporary access into one provision. Temporary access is defined as limited, short-term (up to one year) access, which does not require permanent facilities for access, to undeveloped non-federal lands for the purposes of survey, geophysical, exploratory and other temporary uses. Unlike access to inholdings under § 13.15, temporary access can be denied where there would be permanent harm to park area resources.

**Cabins and Other Structures**—Section 13.17 provides procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas in Alaska. Section 1303 of ANILCA provides the National Park Service with the authority to permit the continued use of cabins in Alaska even though the occupants may not hold legal title to these cabins and the lands on which they are located. The degree of privilege afforded an occupant is determined by the date of cabin occupancy.

The first category is comprised of those persons who built or occupied cabins or other structures on unpatented Federal lands prior to December 18, 1973. The occupants may apply for a five

(5) year renewable permit pursuant to § 13.17(e)(1). These permits shall be renewed every five (5) years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superintendent determines, after notice and hearing and on the basis of substantial evidence, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed to the Director of the National Park Service, and ultimately to the Director, Office of Hearings and Appeals in the Department of the Interior.

The second category consists of those persons who built or occupied cabins or other structures between December 18, 1973, and December 1, 1978. These occupants may apply for a nontransferable, nonrenewable permit. The permit would be issued for a maximum term of one year. Permits issued under this provision may be extended by the Superintendent for periods up to 1 year when required for equitable and just reason, *i.e.*, where extraordinary circumstances prevent vacating the cabin or structure and removal of all personal property within the original term of the permit.

Section 13.17(d) authorizes the Superintendent to issue a permit for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when it is determined that the use is necessary to reasonably accommodate subsistence uses, or is otherwise authorized by law. This determination will be based on factors such as other public uses, public health and safety, and environmental and resource protection. The provision would implement sections 1315(d) (public use cabins in wilderness areas) and 1316 (e.g., temporary shelters for sport hunting in preserves) of ANILCA as well as providing for the reconstruction of cabins permitted under section 1303 of the Act.

The final provision of this regulation provides for the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. These permits or leases shall be renewed unless a direct threat or a significant impairment to park values will occur. Any such findings must be issued by the Superintendent, following notice and an opportunity for the leaseholder or permittee to respond.

**Camping and Picnicking**—Section 13.18 allows camping and picnicking within park areas except at those times

or locations temporarily or permanently closed or otherwise restricted by the Superintendent. The National Park Service would close an area to camping or picnicking when the Superintendent determines that use of the area has resulted in resource damage or that other management considerations require closure as set forth in Section 13.30.

**Weapons, Traps and Nets**—Section 13.19 permits the carrying of firearms within park areas in Alaska (except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument, where 36 CFR 2.11 is controlling), except as restricted by the Superintendent pursuant to Section 13.30. The Superintendent would retain the authority to prohibit or restrict the carrying of firearms in those areas and at those times when the potential for injury or loss of life inflicted by dangerous animals is negligible or where necessary to insure public safety. For example, the Superintendent may prohibit the carrying of loaded firearms in areas of concentrated public use.

The regulations distinguish between the carrying of firearms for purposes of personal protection and the carrying of other weapons. Only firearms may be carried by recreational users in park areas. The carrying of nets, traps and other weapons such as spear guns, slingshots and other implements designed to discharge missiles would be prohibited. However, local rural residents authorized to engage in subsistence uses would be permitted to use, possess and carry weapons, traps and nets in accordance with applicable State and Federal law.

In order to provide transient relief for persons crossing park areas, the possession of weapons, traps and nets within or upon a device or animal used for transportation is permitted provided such implements are unloaded and cased or otherwise packed in such a way as to prevent their ready use while in park areas.

**Preservation of Natural Features**—As revised for the new Alaska park areas, § 13.20 authorizes the use of dead and downed wood for fires within identified park areas, and the personal recreational collection of rocks and minerals (including gold; but not including silver, platinum, gemstones and fossils) by hand methods which do not involve surface disturbance.

**Taking of Fish and Wildlife**—ANILCA provides for the continuation of sport fishing on all lands

administered by the National Park Service and for the continuation of sport hunting within the national preserves. Consistent with the Act, § 13.21 permits the taking of fish and wildlife in accordance with applicable State and Federal laws, including 36 CFR 2.13, 7.23, 7.44(c) and 7.46(a). (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 13.47 and 13.48.) By assimilating State law the National Park Service applies the same approach towards enforcement of fish and game laws that it uses everywhere else in the National Park System where sport hunting is allowed.

Congress was specific in its concern that "[t]he intent is to allow individual Alaskans to continue to operate their own traplines within the preserves [I]t is clearly not the intent of this Act that preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the trapping operation." 126 Cong. Rec. H10542 (November 12, 1980). Section 13.21 satisfies that intent by prohibiting trapping operations in which trappers are employees of a commercial trapping enterprise, while allowing individual Alaskans to continue to operate their traplines within national preserves.

Section 13.21(b) also complies with Section 205 of ANILCA which allows the continuation of valid commercial fishing rights and privileges within Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve.

**Unattended and Abandoned Property**—Section 13.22 allows personal property to be left unattended up to 12 months before it would be deemed abandoned and subject to impoundment. In effect, this accords personal property within park areas a 12-month presumption that it is only temporarily unattended. Personal property may be left for periods of time in excess of twelve months with the prior permission of the Superintendent.

The section provides that the Superintendent may establish limits on the amount and type of personal property that may be left unattended. In addition, the Superintendent is authorized to designate locations where personal property may be left unattended for periods of time to be designated by the posting of appropriate signs or by designating on a map which shall be available for public inspection at the office of the Superintendent.

Additionally, § 13.13 provides that aircraft downed after December 2, 1980, must be removed pursuant to the conditions of a permit issued by the Superintendent unless he/she specifically waives this requirement. This regulation is necessary to provide relief from 36 CFR 2.1, which prohibits leaving any vehicle or other property unattended for longer than 24 hours, and to preserve the values and experience of the park areas.

The National Park Service intends that each instance of a downed aircraft be treated on a case-by-case basis. Where the removal operation would present a significant risk to human life, result in extensive resource damage, or is otherwise impractical or impossible (including any situation in which removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive), waiver of removal requirements is appropriate. Factors such as the condition and size of the downed aircraft as well as the relief, elevation and vegetation of the surrounding terrain will be controlling in this analysis. In determining the times and means of removal to be specified in a permit when removal is required, these factors will be equally controlling.

Finally, this section would prohibit an attempt to salvage, remove, or possess a downed aircraft without a permit from the Superintendent. The intent here is to protect the aircraft and, most importantly its valuable and easily removed component parts, from being appropriated without authorization by the owner.

**Closure Procedures**—Section 13.30 authorizes the Superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses.

No closures are provided for by this regulation. It provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and hearing prior to all closures for snowmobile, aircraft or motorboat use, consistent with section 1110(a) of the Act.

This rulemaking establishes time limits for emergency closures (30 days) and temporary closures (12 months) which cannot be extended.

A final provision of this regulation requires the Superintendent to provide public notice prior to determining whether to open an area to a public use or activity. Upon request, a hearing in the affected vicinity will also be held.

Section 13.30(e) adopts commenter suggestions for a hearing in the area affected by a permanent closure. This may include hearings in urban areas in situations in which closures (such as closures to sport hunting) may affect urban residents.

**Permits**—Section 13.31 consolidates procedures regarding the issuance and denial of permits. The procedures specify to whom an application for a permit must be submitted. The Superintendent is directed to acknowledge the application promptly, and to approve the permit, deny the permit, or request additional information within 45 days unless the Superintendent notifies the applicant of a good cause extension.

The regulations further establish and set forth an administrative appeals system to the NPS Alaska Regional Director. The appeals system was established with a view toward minimizing the requirements imposed upon the applicant during the appeal process, yet establishing a procedure that would fairly meet the concerns of the applicant. Any person whose permit application has been denied by the Superintendent has a right to appeal that denial to the Regional Director within 180 days of permit denial. Section 13.31(b)(2) has been revised to guarantee an applicant the opportunity for a hearing, as suggested in public comments.

#### Section-by-Section Analysis: Subpart B—Subsistence

Subpart B of the final interim regulations implements the authorization for subsistence uses in specified park areas contained in Title II of ANILCA and the policies and procedures governing subsistence uses contained in Title VIII of the Act.

These final interim regulations for subsistence are necessary for several reasons. First, they relieve restrictions in the otherwise applicable general park regulations for uses and activities integral to the subsistence lifestyle. In certain cases, ANILCA does not specifically relieve these restrictions (e.g., use of nets, seines, traps, and spears in subsistence fishing; cutting of live standing timber for firewood and house logs; carrying of firearms); in other cases, ANILCA allows the uses, but the Park Service's general regulations appear to prohibit them on pain of criminal penalty. Second, the final interim regulations implement certain critical provisions of ANILCA concerning subsistence (e.g., the closure standards and procedures for subsistence uses of fish and wildlife),

and extend the principle of certain of these provisions to subjects not specifically mentioned by ANILCA (e.g., closure standards and procedures for subsistence use of plants). In several cases, these final interim regulations set up the administrative mechanisms for implementing the statutory provisions (e.g., notice provision for closures). Third, the final interim regulations are necessary in order to establish methods for identifying subsistence users (known as "local rural residents" in the regulations) who are authorized to hunt and trap in specified national parks and monuments, and for separating them from sport users who are prohibited from hunting and trapping in all parks and monuments. Section 816 of ANILCA prohibits the taking of wildlife in parks and monuments except as specifically authorized. In ANILCA, the authorization is limited to local residents engaged in subsistence uses in certain park areas. The Act does not, by its terms, prescribe the methods that the Park Service is to use to distinguish subsistence from sport users, though the legislative history for Title II of the Act indicates Congress' intent that methods like those in these final interim regulations be established. S. Rep. No. 96-413, *supra*, 168-171; 126 Cong. Rec. H10540-41 (daily ed. Nov. 12, 1980). As described in detail below, the National Park Service has adopted the following two methods suggested by Congress to ensure that only "local rural residents" engage in subsistence uses in parks and monuments: (1) A system of "resident zones" and "subsistence permits" to identify local rural residents, and (2) a general prohibition on aircraft use for subsistence hunting, trapping, and fishing to separate the sport user from the subsistence user.

The final interim regulations on subsistence are not comprehensive. They do not provide for implementing certain provisions of Title VIII of ANILCA that, in the Park Service's judgment, do not lend themselves to expeditious promulgation. In most cases, these provisions have not previously been the subject of notice and comment. Notable among these statutory provisions are the State regulation opportunity of section 805(d), the Federal monitoring requirement of section 806, the judicial enforcement mechanism of section 807, the subsistence and land use procedures of section 810, and the subsistence research provision of § 812. The National Park Service will consider specific regulations and policies as appropriate for implementing these provisions in the future. It should be

emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect.

#### Purpose and Policy

*Purpose:* Section 13.40(a) establishes that, consistent with proper management of fish and wildlife and the purposes for which the park areas were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law. ANILCA, sections 101(c); 802(1). The Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment. Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of park areas. The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light for the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B implements the Congressional directive to continue the opportunity for subsistence uses within all national preserves and certain national parks and monuments by local rural residents who have (or are a member of a family which has) an established or historical pattern of subsistence uses within such units. As noted in both the Senate and House of Representatives, "[L]ocal rural residents who maintain their primary, permanent residence within such units should have the opportunity to decide for themselves the course, pace, and extent, if any, of their own lifestyle and community evolution." S. Rep. No. 96-413, 96th Cong., 1st Sess. 169 (1979); 126 Cong. Rec. H 10,541 (daily ed. November 12, 1980).

Section 13.40 (b)-(d) sets forth basic policies which ANILCA adopted to guide the activities of the administering agencies. ANILCA, sections 802 (1), (2); 804. First, consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents

who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This statutory policy is implemented throughout the regulations, particularly in the subsistence priority established by § 13.40 (c)-(d) and the limitations on closure of §§ 13.46, 13.49, and 13.50.

*Subsistence Priority.* The second policy, articulated in § 13.40 (c) and (d), establishes the subsistence priority. Section 13.40(c) makes clear that nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents are the priority consumptive uses over any other consumptive uses permitted within park areas. ANILCA, section 802(2). If consumptive uses of a fish and wildlife population must be restricted, § 13.40(c) assures that consumptive uses must first be limited to local rural residents engaged in subsistence uses. Section 13.40(d) establishes the three criteria for implementing the subsistence priority among persons already engaged in subsistence uses. *Id.* Section 804. Thus, if restrictions of consumptive uses among local rural residents becomes necessary, § 13.40(d) sets forth the allocation criteria: Customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources.

Accordingly, the subsistence priority system dictates the following scenario in situations in which a park area's fish and wildlife resources are not sufficiently plentiful for taking by all consumptive users. If consumptive uses must be restricted to assure the continued viability of the resource populations (including the conservation of healthy populations in preserves, and healthy and natural populations in parks and monuments), for example, or to assure local rural residents the continued opportunity to engage in subsistence uses, consumptive uses must first be restricted to local rural residents engaged in subsistence uses. Then, if further restrictions become necessary, the resources must be allocated among the local rural residents. Ultimately, subsistence uses must be limited to local rural residents who have the most customary and direct dependence on the resources as the mainstay of their livelihoods and who have the least access to alternative resources.

For several reasons, today's final interim regulations merely repeat the three criteria of the subsistence priority set forth in § 804 of ANILCA. The National Park Service anticipates State

regulation implementing the subsistence priority criteria and looks forward to local input on the criteria from the local advisory committees and regional advisory councils of section 805 of ANILCA and the park and park monument commissions of Section 808.

**State Regulation.** Section 13.40(e) of the regulations recognizes the State of Alaska's authority to regulate the taking of fish and wildlife in park areas as long as such regulation is consistent with applicable Federal law, including the provisions of ANILCA. For example, the Park Service expects the State to continue to regulate seasons and bag limits in the park area. Furthermore, the Park Service anticipates that a State subsistence program, implementing ANILCA's various subsistence mandates, will eventually supersede most Federal regulation of subsistence.

**Limitations.** In addition to establishing the purpose and policies of the Subpart B regulations, § 13.40 also establishes the limitations of the purpose and policies. According to § 13.40(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each park area was established, designated, or expanded by ANILCA. According to § 13.40(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirement that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. And § 13.40(c) establishes the basic limitation of all the provisions of the Subpart B regulations: Subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within national preserves, and conservation of natural and healthy populations within national parks and monuments. Congress provided the following guidelines on the implementation of this concept:

The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimize the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensure maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the

ability and capacity a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

\* \* \* \* \*

The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units. S. Rep. No. 96-413, *supra*, 233, 235.

\* \* \* \* \*

In authorizing subsistence uses within National Parks, Monuments, Preserves, and National Recreational Areas, it is the intent of the Committee that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained. The National Park Service recognizes, and the Committee agrees, that subsistence uses by local rural residents have been, and are now, a natural part of the ecosystem serving as a primary consumer in the natural food chain. The Committee expects the National Park Service to take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park Service units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within National Park System units. *Id.* at 171.

#### Applicability

ANILCA mandates that subsistence uses by local rural residents be allowed in all national preserves in Alaska and, where permitted by ANILCA, in national

parks and monuments in Alaska. ANILCA, § 203. Accordingly, § 13.41, the applicability section, states that local rural residents may engage in subsistence uses pursuant to the regulations in Subpart B (1) in national preserves (ANILCA, section 203); (2) throughout Cape Krusenstern National Monument and Kobuk Valley National Park (*id.*, section 201(3) and (6)), and (3) where such uses are traditional (as may be further designated for each park or monument in Subpart C) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the December 2, 1980, addition to the newly named Denali National Park (*id.*, sections 201 (1), (4), (7), (9); 202(3)).

With respect to the last category of park areas—Aniakchak, Gates of the Arctic, Lake Clark, Wrangell-St. Elias, and the Denali addition—the statute offers no further specifics as to the geographical areas where subsistence uses are traditional. The legislative history offers some guidance. For Gates of the Arctic, for example, the Senate report states as follows:

\* \* \* [S]ubsistence uses of some areas of the park may be essential periodically or continuously for the continued survival of the local people. The Committee \* \* \* feels \* \* \* that the subsistence patterns of the park are well known and can be identified. The Committee noted that the following drainages within the park have apparently been used for subsistence hunting: Etivluk River, Outwash Creek, Kurupa River, Oolamagavik River, Killik River (and all its tributaries), Okpikruat River, Alapah Creek, Kayak Creek, Erratic Creek, Naushuk River, Kuhsuman Creek, Anaktuvuk River, Ernie Creek and the Itkillik River. It is not the intent of the committee that these drainages be considered the only places where subsistence can occur. But it is the Committee's intent to restrict subsistence hunting in the park to traditional use areas \* \* \* S. Rep. No. 96-413, *supra*, 147; see also, 128 Cong. Rec. H10535 (daily ed. Nov. 12, 1980).

For the other specified areas, the legislative history indicates, at most, that subsistence uses may occur "where such uses have been traditional," "to the extent they (*sic*) now take place," "where they now occur," "at their present level." 126 Cong. Rec. H 10533, 10538, 10540. Since the legislative guidance on where subsistence uses are traditional in the five specified areas is incomplete, the National Park Service had decided not to designate traditional "subsistence hunting zones" for these five areas in this interim rulemaking. Rather, the Park Service looks forward to developing additional information and to receiving public comment on this

issue through research, further rulemaking endeavors, and, most importantly, advice from the local committees and regional councils of section 805 of ANILCA and from the park and monument commissions of section 808. In the meantime, the National Park Service believes that local rural residents should comply with the Congressional intent of § 13.41(c) of the proposed regulations by not hunting in any areas of Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, or the Denali Park addition where subsistence hunting has not, in recent history, occurred.

#### Definitions

**Local rural resident and resident zones.** Throughout the regulations, the National Park Service identifies those people who may engage in subsistence uses where authorized in park areas as "local rural residents." This term derives from the term "local residents" in Title II of ANILCA and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title II authorizes the opportunity for continued "subsistence uses by local residents" \* \* \* in national preserves and, where specifically permitted by this Act, in national monuments and parks." ANILCA, section 203 (emphasis added); see also, section 201 (1), (3), (4), (5), (7), (9); 202(3). The relationship between this language in Title II and Title VIII was described as follows in the Congressional Record:

Since the definition of "subsistence uses" in § 803 limits such uses to "rural Alaska residents," a reading of Title VIII and Title II \* \* \* together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the National Park System \* \* \* 126 Cong. Rec. S15129 (daily ed. December 1, 1980).

Section 13.42(a) defines "local rural residents" with respect to national parks and monuments as persons who either live in designated "resident zones" (see § 13.43 and its explanation, below) or hold a "subsistence permit" (see § 13.44 and its explanation, below). In brief, "resident zones" are designated, and "subsistence permits" will be issued, on the basis of customary and traditional utilization of park or monument lands for subsistence uses without use of aircraft as a means of access. In the case of "resident zones," the National Park Service applies this criterion to "significant concentrations" of people; in the case of "subsistence permits" for people who live outside resident zones,

the Superintendent will apply this criterion to individual applicants.

The definition of "local rural resident" makes clear that, for a person to qualify by virtue of residence in a resident zone, that person must have his or her primary, permanent home within the resident zone, and whenever absent from this home, have the intention of returning to it. The National Park Service will examine factors such as tax returns, hunting, fishing, and driver's licenses, voter registration, and any other evidence appropriate to establish the location of a person's primary, permanent home. In practice, this residence concept should not exclude a person from qualifying as a local rural resident merely because of a temporary absence for military duty or limited-term employment, for example. This concept does not impose a durational residency requirement.

**Subsistence uses.** The definition of "subsistence uses" tracks the language of section 803 of ANILCA with one modification: as explained below, the regulatory definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles from the nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. This definition uses several terms which require further explanation.

To begin with, the definition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses have played a long established and important role in the economy and culture of the community and \* \* \* (that) such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. S. Rep. No. 96-413, *supra*, 269; H. Rep. No. 96-97, 96th Cong., 1st Sess. 280 (1979).

Next, the definition limits subsistence uses to uses "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." See S. Rep. No. 96-413, *supra*, 233. On the other hand, if they are included within a "resident zone" or obtain a "subsistence permit," residents of

"rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain "rural")—may engage in "subsistence uses." *Id.* It is important to emphasize that, in national park or monument areas, only "local rural residents" who permanently reside in a resident zone or have a subsistence permit may engage in subsistence uses. See 126 Cong. Rec. S15129 (daily ed. December 1, 1980).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska. This definition of "family" is to be distinguished from the more limited definition used in § 13.43 on determination of resident zones and in § 13.44 on subsistence permits.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" adopted today recognizes that the subsistence lifestyle may also include limited involvement in the cash economy through the exchange of furs and, in specified circumstances, other items not covered by the statutory language of the subsistence uses definition. With respect to the exchange of furs for cash, trapping furbearers is an integral and longstanding part of the subsistence lifestyle in many regions of Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence

lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to fur trading is intended to provide continuity to the traditional and customary harvest of furbearers by those who are authorized to engage in subsistence uses within parks and monuments.

As with fur trading, so, too, the making and selling of handicraft articles out of plant material is a customary and traditional part of the subsistence lifestyle in certain places. Comments on the proposed interim regulations pointed out that the statutory definition of "subsistence uses" as well as the proposed regulatory definition failed to authorize this trade. Consequently, today's final interim regulations include special provisions in Subpart C to allow for these activities where they are known to occur. At this time, the definition of "customary trade" includes, in addition to the exchange of furs for cash, the selling of handicraft articles made from plant materials (e.g., birch bark baskets) taken by local rural residents in Kobuk Valley National Park and in the southwestern preserve unit of Gates of the Arctic National Park and Preserve. See §§ 13.64(a)(3), 13.69(a)(2).

It should be recognized, that the definition of "customary trade" was intended by Congress to be narrow:

The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title. S. Rep. No. 96-413, *supra*, 234.

Accordingly, this provision is not intended to allow trapping or any other customary trade practice within parks and monuments to be or become a solely or predominantly commercial enterprise beyond its traditional role as part of the subsistence regimen.

**Determination of Resident Zones:** By definition, the "resident zone" for each national park or monument encompasses the area and communities within the park or monument boundaries as well as certain areas and communities just outside the boundaries where, in the judgment of the National Park Service, significant concentrations of subsistence users of the park or monument reside. Section 13.43(a). This definition reflects a change from the proposed definition insofar as it eliminates resident zones for park

preserves. The Park Service believes that the need to identify local rural residents in preserves is not as pressing as in parks and monuments since sport hunting is allowed in preserves. For the interim regulations period, moreover, the Service believes that its other tools for regulating subsistence fishing and use of timber in preserves—such as enforcement of State subsistence fishing law and retention of the permit requirement for cutting timber—will be adequate to protect park resources and values.

The areas and communities outside the boundaries for the new national parks and monuments listed in Subpart C of the regulations are as follows:

(a) Aniakchak National Monument: Chignik, Chignik Lagoon, Chignik Lake, Meshik, Port Heiden (§ 13.60(a)(1));

(b) Cape Krusenstern National Monument: Kivalina, Kotzebue, Noatak (§ 13.62(a)(1));

(c) Denali National Park: Cantwell, Minchumina, Nikolai, Telida (§ 13.63(a)(1));

(d) Gates of the Arctic National Park: Alatna, Allakleet, Ambler, Anaktuvuk Pass, Bettles/Evansville, Hughes, Kobuk, Nuiqsut, Shungnak, Wiseman (§ 13.64(a)(1));

(e) Kobuk Valley National Park: Ambler, Kiana, Kobuk, Kotzebue, Noorvik, Selawik, Shungnak (§ 13.69(a)(1));

(f) Lake Clark National Park: Iliamna, Lime Village, Nondalton, Pedro Bay, Port Alsworth, Newhalen (§ 13.70(a)(1));

(g) Wrangell-St. Elias National Park: Chisana, Chistochina, Chitina, Copper Center, Gakona, Gakona Junction, Glennallen, Gulkana, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Slana, Tazlina, Tok, Tonsina, Yakutat (§ 13.73(a)(1)).

Under the final interim regulations, anyone who permanently resides within the national park or monument boundaries or in one of the communities listed above may engage in subsistence uses in the appropriate national park or monument. In other words, persons who live in the resident zone for Kobuk Valley National Park, for example, may engage in subsistence uses in that national park, but in no other national park or monument without a permit (unless such person's community is also listed in the resident zone for another national park or monument—e.g., Shungnak is listed for both Kobuk Valley National Park and Gates of the Arctic National Park).

As the above list of communities reveals, the National Park Service has adopted a more liberal designation of resident zones in these final interim regulations than in the proposed regulations. This liberal designation complies with Congress' intent that the Park Service (1) devise a system of resident zones as the primary mechanism for identifying local rural

residents, and (2) avoid a subsistence permit system to the extent possible. See S. Rep. No. 96-413, *supra*, 170-71; 126 Cong. Rec. at H10541. The Park Service has retained other regulatory mechanisms, such as the prohibition on aircraft use for subsistence purposes, to prevent abuse of the subsistence program.

In determining the list of communities outside the boundaries for each national park or monument, the National Park Service reviewed several documents, including the studies of subsistence communities prepared for the Park Service, the 1974 Environmental Impact Statement on the Alaska National Interest Lands, and the 1978 Environmental Supplement on Alternative Administrative Actions. The National Park Service also reviewed information from several of its employees who have studied the subsistence lifestyle throughout the State and, in some cases, have lived "in the bush" for years. In addition, the Park Service reviewed comments submitted by State and local people knowledgeable about the subsistence lifestyle. The communities listed in Subpart C derive from the subsistence field research conducted by independent, qualified investigators on contract to the Park Service, from observations by NPS planning and field personnel, and from the comments and suggestions of State authorities and knowledgeable local sources. The resultant list is meant to include communities where "significant concentrations" of the inhabitants qualify as local rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, have customarily and traditionally engaged in subsistence within the park area. The concentrations may be "significant" in relative quantity (e.g., predominant numbers) or quality (e.g., cultural vitality, community leadership and influence).

It should be noted that a community or area may be added to a resident zone, or deleted from a resident zone, as circumstances change or information is developed that indicates that such community does or does not have the concentrations of local rural residents necessary for inclusion in the resident zone: Section 13.43(b). The Park Service recognizes that additional information for more precise designation of resident zones will probably be developed in the future by NPS, the State Department of Fish and Game Subsistence Division, local committees, regional councils, and

park and monument commissions (ANILCA, sections 805 and 808).

The National Park Service recognizes that certain communities outside the resident zones contain persons who can qualify as local rural residents. For any communities or areas not included in a resident zone, the National Park Service encourages the residents who have customarily and traditionally used national park area resources without using an aircraft for access to apply for a "subsistence permit."

*Subsistence Permits and Application Procedures for Subsistence Permits:* Under the final interim regulations, any person who permanently resides outside a resident zone must obtain a "subsistence permit" in order to engage in subsistence uses of national park or monument resources. The availability of subsistence permits assures that subsistence users whose communities are not included in a resident zone for whatever reason may nevertheless have the opportunity to engage in subsistence uses in national park or monument areas. Section 13.44.

The availability of subsistence permits is part of the system contemplated by ANILCA for identifying "local rural residents" who are authorized to engage in subsistence uses in national parks and monuments. The subsistence permit is system necessary to ensure the fairness of a regulatory system which seeks primarily—by means of resident zones—to avoid the necessity of permits in allowing subsistence uses by local rural residents. Thus, the subsistence permit system is an integral part of the resident zone system. As a corollary, it should be noted that the Park Service's decision to limit the applicability of the resident zone system to national parks and monuments (*i.e.*, not preserves) necessitated a similar limitation of the applicability of the subsistence permit system. As another corollary, the Service's decision to expand the resident zone designations, thereby encompassing more subsistence users within the zones, should reduce the number of subsistence users who must apply for a permit.

The National Park Service has made efforts to eliminate all unnecessary burdens from the application process while still providing procedural protections to assure fair and reasonable decisionmaking on the permit applications. Section 13.51. Under the regulations, the application process at the Superintendent's level is simple. The applicant must demonstrate to the Superintendent, preferably on a written form but otherwise by oral presentation, either of the following:

(1) He or she has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a national park or monument without using aircraft as a means of access for purposes of taking fish or wildlife (§ 13.44(a)(1)); or (2) he or she qualifies as a "local rural resident" who may engage in subsistence uses in another national park or monument, and his or her subsistence lifestyle involves a pattern of subsistence uses between the other national park or monument and the park or monument for which the applicant now seeks a permit (§ 13.44(a)(2)).

Section 13.44(c) makes clear that, for purposes of § 13.44(a)(1), the term "family" is limited to persons living within a rural resident's household on a permanent basis. *See, also*, § 13.43(c). Unlike the definition of "family" in § 13.42(c) ("subsistence uses" definition), family members who live in cities or far from the park area would not qualify for the benefits of § 13.44. The intent of this definition is to allow children of subsistence users, who may not have a personal history of engaging in subsistence uses, to qualify for a permit.

The National Park Service believes that the Superintendent will be able to issue subsistence permits quickly and routinely in cases of genuine subsistence users. Section 13.51(a) requires the Superintendent to grant or deny the application in a timely manner not to exceed forty-five days from receipt of the completed application unless, in extraordinarily cases, the Superintendent can show good cause for failing to meet the time deadline. The Superintendent shall explain any denial in writing and promptly forward a copy to the applicant.

Should the Superintendent deny the permit, the applicant who wishes to have his or her application reconsidered must so inform the Alaska Regional Director by letter, telephone, or any other means of communication within 180 days (except for good cause shown) of the Superintendent's issuing the denial. The permit applicant shall present the Alaska Regional Director with (1) any additional information demonstrating that the applicant qualifies for a permit, (2) the basis for the applicant's disagreement with the Superintendent's decision, and (3) a statement as to whether or not the applicant requests an informal hearing before the Regional Director. The Alaska Regional Director shall grant a hearing if the applicant requests it.

To accommodate the permit applicants who would be inconvenienced by travelling to Anchorage for a hearing, the Alaska Regional Director will periodically "ride

circuit," scheduling hearings throughout the State.

The Alaska Regional Director shall decide to affirm, reverse or modify the Superintendent's denial within a reasonable period of time, shall explain his decision in writing, and shall promptly forward a copy to the applicant. This decision shall constitute final action by the Department of the Interior. In accordance with applicable law, the permit applicant may, of course, seek judicial review of a denial on reconsideration.

The regulations published today recognize that subsistence users who do not live in resident zones but nevertheless depend on national park or monument resources must be able to engage in subsistence uses in national park or monument areas immediately. Consequently, § 13.44(b) allows such persons who would otherwise qualify for a subsistence permit (*see* § 13.44(a)) to engage in subsistence uses in a national park or monument without a permit until August 1, 1981. However, it should be emphasized that such persons should begin the application process for a subsistence permit as soon as possible since a subsistence permit will be required as of August 1, 1981. The Park Service encourages those who are able to submit their application in writing.

*Prohibition of Aircraft Use:* Section 13.45 of the Subpart B regulations generally prohibits the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument.

The Subpart B regulations do not prohibit use of aircraft for subsistence uses in national preserves.

It is the National Park Service's determination, supported by numerous comments, by available research on the subsistence lifestyle, and by the legislative history of Title II of ANILCA, that local rural residents who have customarily and traditionally engaged in subsistence uses of park and monument resources do not, in most cases, use aircraft for access for subsistence hunting, trapping, and fishing. What cash these local rural residents acquire is used to purchase necessities not otherwise supplied by subsistence uses. Certainly, as a general rule, the expense of aircraft use greatly exceeds the ability of the local rural resident to pay for it. On the other hand, aircraft is commonly used by sport hunters who are now prohibited from hunting in park and monument areas. In this respect, the prohibition of aircraft use for subsistence activities reinforces the ban-

on sport hunting in park and monument areas and assists the National Park Service in distinguishing sport from subsistence hunters.

The Subpart C regulations for individual park areas, however, afford the Park Service flexibility to make exceptions to the general prohibition. For any park or monument, the Park Service may designate "exempted communities" whose local rural residents may obtain individual permits to use aircraft for subsistence hunting, trapping, and fishing (§ 13.45(b)). The Superintendent will attempt to develop a relatively standard permit for the entire community, subject to special individual terms, conditions, and signature for each community resident who wishes to use aircraft. At this time, the National Park Service is designating two communities as "exempted communities," Anaktuvuk Pass in Gates of the Arctic National Park and Yakutat in Wrangell-St. Elias National Park (for access to Malaspina Forelands Area only), whose local rural residents presently rely on aircraft for access to their customary and traditional areas of harvest in the park. The people of Anaktuvuk Pass, isolated, remote, surrounded by difficult terrain, are far removed from the wildlife populations whose harvest sustains them; moreover, they do not have adequate and available alternative resources for sustenance. Similarly, residents of Yakutat have customarily used aircraft for access to the Malaspina Forelands in the Wrangell-St. Elias area for subsistence purposes, since traveling by boat, the only other possible means of transportation, can be extremely dangerous due to the violent storms that frequent the Gulf of Alaska. S. Rep. 96-413, *supra*, 169; 126 Cong. Rec. H10541 (daily ed. Nov. 12, 1980). As Congress noted,

Although there may be similar situations in other areas of Alaska in which aircraft use for subsistence hunting may be appropriate and should be permitted to continue, the Committee believes that these types of situations are the exception rather than the rule and that only rarely should aircraft use for subsistence hunting purposes be permitted within national parks and monuments. It is not the intent of the Committee to invite additional aircraft use. S. Rep. No. 96-413, *supra*, 169; *see, also*, 126 Cong. Rec. H10541 ("It is not the intent to invite additional aircraft use, or new or expanded uses in parks and monuments where such uses have not traditionally and regularly occurred.")

The National Park Service has also included in today's regulations the opportunity for any local rural resident aggrieved by the aircraft prohibition to seek an individual exception to the

prohibition on aircraft pursuant to the procedures of § 13.51. Section 13.45(b)(2). It bears noting that this opportunity is available only to local rural residents, *i.e.*, persons who live in a resident zone or have a subsistence permit. The Superintendent may grant the exception if he or she determines that the applicant has demonstrated an extraordinary situation where no reasonable alternative to aircraft use exists because of the location of the subsistence resources depended upon and the difficulty of surface transportation to these resources, or other emergency situation (*e.g.*, unusual and unforeseeable acts of nature).

The permits issued pursuant to § 13.45(b) (1) and (2) may contain terms and conditions which limit the aircraft use as to area, time of operation, type of aircraft, duration of the permit, and any other factor necessary to restrict the permit to the limited and exceptional purposes it is meant to fulfill.

Section 13.45(c) makes clear that the prohibition on aircraft use is limited. It does not extend to any legal activity other than access for purposes of subsistence hunting, trapping, and fishing. Thus, a local rural resident may, for example, use aircraft in parks and monuments to carry supplies to a cabin, to visit another village, or even to gather berries. Although the National Park Service believes that such use of aircraft in the subsistence culture is rare for the reasons stated above, the Park Service does not have the same enforcement concerns for these activities as it does for the taking of fish and wildlife.

*Use of Snowmobiles, Motorboats, Dog Teams, and Other Means of Surface Transportation:* In furtherance of section 811 of ANILCA, § 13.46 provides local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. With respect to local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the park areas, this regulation liberalizes the provisions of Subpart A on snowmobiles, motorboats, dog teams and other nonmotorized surface transportation (*e.g.*, saddle horses), and certain off-road vehicles. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Superintendent will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreational use. Basically, in order to impose a restriction, the Superintendent must determine that the use in question is

causing or is likely to cause an adverse impact on public health or safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established. The Superintendent will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decisionmaking.

It should be noted that the types of access vehicles covered by § 13.46 include "means of surface transportation traditionally employed by local rural residents engaged in subsistence uses." The limitations of this phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under § 13.46, any person operating motorboats, dog teams, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the park area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, and other means of surface transportation in accordance with the appropriate Subpart A regulations. For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, dog teams, and other means of surface transportation must comply with the provisions of §§ 13.10, 13.11, 13.12, and 13.14, respectively, and local rural residents seeking otherwise-closed access to inholdings or temporary access must comply with the provisions of §§ 13.15 and 13.16, respectively.

*Subsistence Fishing:* Local rural residents may, of course, engage in fishing in park areas in compliance with applicable State and Federal law. In addition, in § 13.47 of the regulations, the National Park Service has relaxed its general public regulations to allow, in park areas where subsistence uses are authorized, the customary and traditional use of nets, seines, traps, or spears by local rural residents to the extent permitted by State law. *See* § 13.41 (Applicability). Section 13.50, explained below, governs closures to fishing for subsistence purposes.

*Subsistence Hunting and Trapping:* Although all national parks and monuments in Alaska are closed to sport hunting and to trapping, many are

open, in whole or part, to hunting and trapping by local rural residents engaged in subsistence uses. ANILCA, sections 816; 201 (1), (3), (4), (6), (7), (9); 202(3); *see also*, § 13.41 (Applicability). Therefore, only local rural residents may engage in hunting and trapping where authorized in national parks and monuments. Of course, national preserves are open to both sport and subsistence hunting as well as trapping, unless the Superintendent has closed a preserve area to sport taking pursuant to § 13.30 of Subpart A or to subsistence taking pursuant to § 13.50 of Subpart B. As with sport users, local rural residents engaged in subsistence hunting or trapping must comply with applicable State law governing hunting and trapping, *e.g.*, bag limits, safety requirements, seasons and hours (§ 13.48). With respect to trapline cabins, § 13.17(c) provides for their construction, reconstruction, temporary use, occupancy, and maintenance pursuant to a permit. In addition, § 13.17 (b) and (d) provides for existing cabin use and occupancy by persons with a possessory interest or right of occupancy in the cabin.

**Subsistence Use of Timber and Plant Materials:** Section 13.49(a) relaxes the general public use regulations by allowing local rural residents in park areas where subsistence uses are allowed to obtain a permit to cut standing live timber of greater than three inches diameter at ground height for subsistence needs such as shelter or fuel. *See* § 13.41 (Applicability). Before issuing a permit, the Superintendent must determine that the proposed cutting is compatible with the purposes for which the park area was established. Furthermore, the Superintendent will include in the permit any stipulations deemed necessary to protect the resources of the park area. No permit is required for cutting live standing timber smaller than three inches diameter for subsistence uses. Thus, for example, local rural residents need not obtain a permit to cut small alder or willow branches to make baskets or fish traps.

Section 13.49(b) makes clear that local rural residents do not need a permit to gather plant materials for subsistence uses, or to gather dead or downed timber for firewood for personal, not commercial, use.

Section 13.49(c) sets forth the standards and procedures for closing a park area to the subsistence uses of a particular plant population. Although not required by ANILCA, the National Park Service has decided to apply similar closure provisions for subsistence uses of plants as the Act

requires for subsistence uses of fish and wildlife.

As discussed below in the latter context, the closure standards are limited, and the closure procedures involve significant public participation, in order to protect the affected local rural residents who depend on the resources.

**Closure to Subsistence Uses of Fish and Wildlife:** According to section 816 of ANILCA and § 13.50 of the Subpart B regulations, the Superintendent of each park area has the power to close or restrict any part or all of a park area to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, § 13.50 provides protective standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: Public safety, administration, and for assurance of the continued viability of a fish and wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Superintendent to act in situations which threaten public health and welfare. For example, the Superintendent may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway, or hiking trail. The fish or wildlife viability standard allows the Superintendent to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent \* \* \* that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289. Moreover, as stated in section 815 of ANILCA and § 13.40(e) of the regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within national preserves to be inconsistent with the conservation of healthy populations, and within national parks and monuments to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. The administration standard is potentially the broadest of the three closure standards, though "recognition of the

importance of subsistence activities to most (local) rural residents requires that this authority be utilized narrowly and with consistent restraint." *Id.* Guided by this intent, the Superintendent can invoke the administration standard to protect the purposes and values of the park areas and otherwise to manage the park areas prudently. The limitation of section 815 of the Act and § 13.40(e) of the regulations are also relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closure. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure

should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose. S. Rep. No. 96-413, *supra*, 277-78; H. Rep. No. 96-97, *supra*, 289.

Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure must be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure and other locations as appropriate. In an emergency situation, the Superintendent may immediately close the area for a period not to exceed sixty days. The Superintendent may extend an emergency closure only if he or she establishes, after notice and informal public hearing in the vicinity and other locations as appropriate, that the extension is justified under the applicable closure standards.

Finally, § 13.50(c) provides thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.

#### Summary of 36 CFR Parts 1-9 Provisions Superseded by or Still Applicable After This Rulemaking

Several commenters had requested that the Service provide an unofficial listing of the 36 CFR Parts 1-9 regulations (ordinarily applicable to all National Park System Units) which have either been superseded by or are still effective after this Alaska park rulemaking. In general, the superseded regulations for Alaska park areas include 36 CFR 2.1 (superseded by § 13.22 except for Klondike Gold Rush National Historical Park and Sitka National Historical Park); 2.2(a) (superseded by § 13.13); 2.5(a), (b), (j) (superseded by §§ 13.18, 13.20, 13.63(b),

13.68(a), 13.72(a); 2.11 (superseded by § 13.19 except for park areas enumerated in § 13.19(a)), 2.18 (superseded by § 13.18); 2.20(a)(2) and (b) superseded by § 13.20 except for park areas enumerated in § 13.20(a); 2.23(a)-(d) (superseded by §§ 13.12 and 13.16); 2.34(a)-(c) (superseded by § 13.10); 2.36 (superseded by § 13.13); 3.2 (superseded by § 13.11); 4.19(a)-(b) superseded by § 13.14); 7.23(a) (superseded by § 13.13); 7.44(f) and (h) (superseded by §§ 13.11, 13.13); 7.46(b)-(c) (superseded by §§ 13.11, 13.13); 7.87 (superseded by numerous provisions); 9.3 (superseded by § 13.15); 9.7 (superseded by § 13.15); and Part 9B.

The remaining provisions of 36 CFR Parts 1-9 generally remain applicable in Alaska park areas, though minor modifications may have resulted from this rulemaking. Persons desiring more detailed and official information on the applicability of the National Park System general regulations in Alaska may contact the Alaska Regional Director's Office.

#### Compliance with Other Laws

The Service has prepared an Environmental Assessment on this rulemaking and has made a Finding of No Significant Impact pursuant to regulations implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies of the Environmental Assessment and Finding of No Significant Impact are available for public review in the Service's Alaska Regional Office.

The Service has also determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981) and that this rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14 (45 FR 85376, December 24, 1980). Finally, the Service has received approval from the Office of Management and Budget for the information collection requirements of these regulations (e.g., applications for permits under §§ 13.13, 13.15, 13.16, 13.17, 13.31, 13.44, 13.45 and 13.51) pursuant to the Paperwork Reduction Act (Pub. L. 96-511).

#### Drafting Information

The primary authors of these regulations are: Maureen Finnerty, Division of Ranger Activities and Protection, National Park Service, Washington, D.C.; William F. Paleck, Alaska Regional Office, National Park Service, Anchorage, Alaska; and Molly N. Ross and Thomas R. Lundquist,

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#### Authority

Section 3 of the Act of August 15, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); 16 U.S.C. 1, 1a-1, 1c, 462, 1281; the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2371, Pub. L. 96-487 (December 2, 1980); and the Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. 96-511.

G. Ray Arnett,

*Assistant Secretary, Fish and Wildlife and Parks.*

Title 36 Code of Federal Regulations is amended by adding new Part 13 to read as follows:

### PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

#### Subpart A—Public Use and Recreation

Sec.

- 13.1 Definitions.
- 13.2 Applicability and scope.
- 13.3 Penalties.
- 13.4 Information collection.
- 13.10 Snowmachines.
- 13.11 Motorboats.
- 13.12 Nonmotorized surface transportation.
- 13.13 Aircraft.
- 13.14 Off-road vehicles.
- 13.15 Access to inholdings.
- 13.16 Temporary access.
- 13.17 Cabins and other structures.
- 13.18 Camping and picnicking.
- 13.19 Weapons, traps and nets.
- 13.20 Preservation of natural features.
- 13.21 Taking of fish and wildlife.
- 13.22 Unattended or abandoned property.
- 13.30 Closure procedures.
- 13.31 Permits.

#### Subpart B—Subsistence

- 13.40 Purpose and policy.
- 13.41 Applicability.
- 13.42 Definitions.
- 13.43 Determination of resident zones.
- 13.44 Subsistence permits for persons who permanently reside outside a resident zone.
- 13.45 Prohibition on aircraft use.
- 13.46 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.
- 13.47 Subsistence fishing.
- 13.48 Subsistence hunting and trapping.
- 13.49 Subsistence use of timber and plant material.
- 13.50 Closure to subsistence uses.
- 13.51 Application procedures for subsistence permits and aircraft exceptions.

#### Subpart C—Special Regulations—Specific Park Areas in Alaska

- 13.60 Aniakchak National Monument and Preserve.
- 13.61 Bering Land Bridge National Preserve.
- 13.62 Cape Krusenstern National Monument.

Sec.

- 13.63 Denali National Park and Preserve.
- 13.64 Gates of the Arctic National Park and Preserve.
- 13.65 Glacier Bay National Park and Preserve.
- 13.66 Katmai National Park and Preserve.
- 13.67 Kenai Fjords National Park.
- 13.68 Klondike Gold Rush National Historical Park.
- 13.69 Kobuk Valley National Park.
- 13.70 Lake Clark National Park and Preserve.
- 13.71 Noatak National Preserve.
- 13.72 Sitka National Historical Park.
- 13.73 Wrangell-St. Elias National Park and Preserve.
- 13.74 Yukon-Charley Rivers National Preserve.

Authority: Sec. 3 of the Act of August 15, 1916 (39 Stat. 535, as amended (16 U.S.C. 3); 16 U.S.C. 1, 1a-1, 1c, 462); Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2371 and 1281; Pub. L. No. 96-487 (December 2, 1980); and the Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. No. 96-511.

#### Subpart A—Public Use and Recreation

##### § 13.1 Definitions.

The following definitions shall apply to all regulations contained in this part:

(a) The term "adequate and feasible access" means a reasonable method and route of pedestrian or vehicular transportation which is economically practicable for achieving the use or development desired by the applicant on his/her non-federal land or occupancy interest, but does not necessarily mean the least costly alternative.

(b) The term "aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including, but not limited to airplanes, helicopters and gliders.

(c) The term "ANILCA" means the Alaska National Interest Lands Conservation Act (94 Stat. 2371; Pub. L. 96-487 (December 2, 1980)).

(d) The term "carry" means to wear, bear or carry on or about the person and additionally, in the case of firearms, within or upon a device or animal used for transportation.

(e) The term "downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(f) The term "firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designated to or may readily be converted to expel a projectile by the action of expanded gases, except that it does not include a pistol or rifle powered by compressed gas. The term "firearm" also includes irritant gas devices.

(g) The term "fish and wildlife" means any member of the animal kingdom,

including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, produce, egg, or offspring thereof, or the dead body or part thereof.

(h) The term "fossil" means any remains, impression, or trace of any animal or plant of past geological ages that has been preserved, by natural processes, in the earth's crust.

(i) The term "gemstone" means a silica or igneous mineral including, but not limited to (1) geodes, (2) petrified wood, and (3) jade, agate, opal, garnet, or other mineral that when cut and polished is customarily used as jewelry or other ornament.

(j) The term "National Preserve" shall include the following areas of the National Park System:

Alagnak National Wild and Scenic River, Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon-Charley National Preserve.

(k) The term "net" means a seine, weir, net wire, fish trap, or other implement designed to entrap fish, except a landing net.

(l) The term "off-road vehicle" means any motor vehicle designed for or capable of crosscountry travel on or immediately over land, water, sand, snow, ice, marsh, wetland or other natural terrain, except snowmachines or snowmobiles as defined in this chapter.

(m) The term "park areas" means lands and waters administered by the National Park Service within the State of Alaska.

(n) The term "person" means any individual, firm, corporation, society, association, partnership, or any private or public body.

(o) The term "possession" means exercising dominion or control, with or without ownership, over weapons, traps, nets or other property.

(p) The term "public lands" means lands situated in Alaska which are federally owned lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(q) The term "snowmachine" or "snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow and steered by a ski or skis on contact with the snow.

(r) The term "Superintendent" means any National Park Service official in charge of a park area, the Alaska Regional Director of the National Park Service, or an authorized representative of either.

(s) The term "take" or "taking" as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(t) The term "temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

(u) The term "trap" means a snare, trap, mesh, or other implement designed to entrap animals other than fish.

(v) The term "unloaded" means there is no unexpended shell or cartridge in the chamber or magazine of a firearm; bows, crossbows and spearguns are stored in such a manner as to prevent their ready use; muzzle-loading weapons do not contain a powder charge; and any other implement capable of discharging a missile into the air or under the water does not contain a missile or similar device within the loading or discharging mechanism.

(w) The term "weapon" means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, crossbow, blow gun, speargun, hand thrown spear, slingshot, explosive device, or any other implement designed to discharge missiles into the air or under the water.

#### § 13.2 Applicability and scope.

(a) The regulations contained in this Part 13 are prescribed for the proper use and management of park areas in Alaska and supplement the general regulations of this chapter. The general regulations contained in this chapter are applicable except as modified by this Part 13.

(b) Subpart A of this Part 13 contains regulations applicable to park areas. Such regulations amend in part the

general regulations contained in this chapter. The regulations in Subpart A govern use and management, including subsistence activities, within the park areas, except as modified by Subparts B or C.

(c) Subpart B of this Part 13 contains regulations applicable to subsistence activities. Such regulations apply to park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park. The regulations in Subpart B amend in part the general regulations contained in this chapter and the regulations contained in Subpart A of this Part 13.

(d) Subpart C of this Part 13 contains special regulations for specific park areas. Such regulations amend in part the general regulations contained in this chapter and the regulations contained in Subparts A and B of this Part 13.

(e) The regulations contained in this Part 13 are applicable only on federally owned lands within the boundaries of any park area. For purposes of this part, "federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) Tentatively approved, legislatively conveyed, or patented to the State of Alaska; or (2) interim conveyed or patented to a Native Corporation or person.

#### § 13.3 Penalties.

Any person convicted of violating any provision of the regulations contained in this Part 13, or as the same may be amended or supplemented, may be punished by a fine not exceeding \$500 or by imprisonment not exceeding 6 months, or both, and may be adjudged to pay all costs of the proceedings (16 U.S.C. 3).

#### § 13.4 Information collection.

The information collection requirements contained in §§ 13.13, 13.14, 13.15, 13.16, 13.17, 13.31, 13.44, 13.45, 13.49, and 13.51 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024-0015. The information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits. This information will be used to grant statutory or administrative benefits. In all sections except 13.13, the obligation to respond is required to obtain a benefit. In § 13.13, the obligation to respond is mandatory.

### § 13.10 Snowmachines.

(a) The use of snowmachines (during periods of adequate snow cover or frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites, is permitted within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30. Nothing in this section affects the use of snowmobiles by local rural residents engaged in subsistence uses as authorized by § 13.46.

(b) For the purposes of this section "adequate snow cover" shall mean snow of sufficient depth to protect the underlying vegetation and soil.

### § 13.11 Motorboats.

Motorboats may be operated on all park area waters, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or § 7.23(b)-(f) of this chapter. Nothing in this section affects the use of motorboats by local rural residents engaged in subsistence uses as authorized by § 13.46.

### § 13.12 Nonmotorized surface transportation.

The use of nonmotorized surface transportation such as domestic dogs, horses and other pack or saddle animals is permitted in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30. Nothing in this section affects the use of nonmotorized surface transportation by local rural residents engaged in subsistence uses as authorized by § 13.46.

### § 13.13 Aircraft.

(a) Fixed-wing aircraft may be landed and operated on lands and waters within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with this section. The use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited as set forth in § 13.45.

(b) In imposing any prohibitions or restrictions on fixed-wing aircraft use the Superintendent shall: (1) Comply with the procedures set forth in § 13.30; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States

Government Flight Information Service "Supplement Alaska."

(c) Except as provided in paragraph (d) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Superintendent. In establishing a removal procedure, the Superintendent is authorized to: (1) Establish a reasonable date by which aircraft removal operations must be complete; and (2) determine times and means of access to and from the downed aircraft.

(d) The Superintendent may waive the requirements of § 13.12(c) upon a determination that: (1) The removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or impossible.

(e) Salvaging, removing, possessing, or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under paragraph (c) of this section. *Provided, however,* That the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

(f) The use of a helicopter in any park area, other than at designated landing areas (see Subpart C regulations for each park area) pursuant to the terms and conditions of a permit issued by the Superintendent, is prohibited.

### § 13.14 Off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Superintendent or pursuant to a valid permit as prescribed in paragraph (c) of this section or in § 13.15 or § 13.16. Such designations shall be made in accordance with procedures in this section. Nothing in this section affects the use of off-road vehicles by local rural residents engaged in subsistence as authorized by § 13.46.

(b)(1) The Superintendent's determination of whether to designate a route or area for off-road vehicle use shall be governed by Executive Order 11644, as amended.

(2) Route or area designations shall be published in the "Federal Register."

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 13.30(f).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 13.30.

(c) The Superintendent is authorized to issue permits for the use of off-road vehicles on existing off-road vehicle trails located in park areas (other than areas designated as part of the National Wilderness Preservation System) upon a finding that such off-road vehicle use would be compatible with park purposes and values. The Superintendent shall include in any permit such stipulations and conditions as are necessary for the protection of park purposes and values.

### § 13.15 Access to inholdings.

(a) *Purpose.* A permit for access to inholdings pursuant to this section is required only where adequate and feasible access is not affirmatively provided without a permit under §§ 13.10-13.14 of these regulations. Thus, it is the purpose of this section to ensure adequate and feasible access across a park area for any person who has a valid property or occupancy interest in lands within or effectively surrounded by a park area or other lands listed in section 1110(b) of ANILCA.

(b) *Application and Administration.* (1) Applications for a permit designating methods and routes of access across park areas not affirmatively provided for in this part shall be submitted to the Superintendent having jurisdiction over the affected park area as specified under § 13.31.

(2) Except as provided in paragraph (c) of this section, the access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant (including for 1872 Mining Law claimants a copy of the location notice and recordations required under the 1872 Mining Law and 43 U.S.C. 1744), a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, and any other information necessary to determine the adequacy and feasibility of the route or method of access and its impact on the natural or other values of the park area.

(3) The Superintendent shall specify in a nontransferable permit, adequate and feasible routes and methods of access across park areas for any person who meets the criteria of paragraph (a) of this section. The Superintendent shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the park area, and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety, and adequate and feasible access otherwise exists.

(4) If the Superintendent makes one of the findings described in paragraph (b)(3) of this section, he/she shall specify such other alternate methods and routes of access as will provide the applicant adequate and feasible access, while minimizing damage to natural and other values of the park area.

(5) Any person holding an access permit shall notify the Superintendent of any significant change in the method or level of access from that occurring at the time of permit issuance. In such cases, the Superintendent may modify the terms and conditions of the permit, provided that the modified permit also assures adequate and feasible access under the standards of paragraph (b)(3) of this section.

(6) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittee.

(c) *Access requiring permanent improvements.* (1) Application form and procedure. Any application for access to an inholding which proposes the construction or modification of an improved road (e.g., construction or modification of a permanent, year-round nature, and which involves substantial alteration of the terrain or vegetation, such as grading, gravelling of surfaces, concrete bridges, or other such construction or modification), or any other permanent improvement on park area lands qualifying as a "transportation or utility system" under Section 1102 of ANILCA, shall be submitted on the consolidated application form specified in Section 1104(h) of ANILCA, and processed in accordance with the procedures of Title XI of ANILCA.

(2) Decision-making standard. (i) If the permanent improvement is required for adequate and feasible access to the inholding (e.g., improved right-of-way or landing strip), the permit granting standards of paragraph (b) of this section shall apply.

(ii) If the permanent improvement is not required as part of the applicant's right to adequate and feasible access to an inholding (e.g., pipeline, transmission line), the permit granting standards of Sections 1104-1107 of ANILCA shall apply.

(d) *Clarification of the Applicability of 36 CFR Part 9.* (1) 1872 Mining Law

Claims and 36 CFR Subpart 9A. Since section 1110(b) of ANILCA guarantees adequate and feasible access to valid mining claims within park areas notwithstanding any other law, and since the 36 CFR 9.3 requirement for an approved plan of operations prior to the issuance of an access permit may interfere with needed access, 36 CFR 9.3 is no longer applicable in Alaska park areas. However, holders of patented or unpatented mining claims under the 1872 Mining Law (30 U.S.C. 22 *et seq.*) should be aware that 36 CFR 9.9, 9.10 independently require an approved plan of operations prior to conducting mining operations within a park area (except that no plan of operations is required for patented claims where access is not across federally-owned parklands).

(2) Non-Federal Oil and Gas Rights and 36 CFR Subpart 9B. Since section 1110(b) of ANILCA guarantees adequate and feasible access to park area inholdings notwithstanding any other law, and since 36 CFR Subpart 9B was predicated on the park area Superintendent's discretion to restrict and condition such access, 36 CFR Subpart 9B is no longer applicable in Alaska park areas.

#### § 13.16 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across a park area for the purposes of survey, geophysical, exploratory and other temporary uses of such nonfederal lands, and where such temporary access is not affirmatively provided for in §§ 13.10-13.15. State and private landowners meeting the criteria of § 13.15(a) are directed to utilize the procedures of § 13.15 to obtain temporary access.

(b) *Application.* A landowner requiring temporary access across a park area for survey, geophysical, exploratory or similar temporary activities shall apply to the Superintendent for an access permit and shall provide the relevant information described in section 13.15(b)(2), concerning the proposed access.

(c) *Permit standards, stipulations and conditions.* The Superintendent shall grant the desired temporary access whenever he/she determines that such access will not result in permanent harm to park area resources. The Superintendent shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purposes for which the park area was reserved and to ensure that no

permanent harm will result to park area resources.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term (i.e., up to one year from issuance of the permit) access, which does not require permanent facilities for access, to undeveloped State or private lands.

#### § 13.17 Cabins and other structures.

(a) *Purpose.* It is the purpose of this section to provide procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas.

(b) *Existing cabins or other structures.* (1) This subsection applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(2) Cabins or other structures existing prior to December 18, 1973, may be occupied and used by the claimants to these structures pursuant to a nontransferable, renewable permit. This use and occupancy shall be for terms of five years. *Provided, however,* That the claimant to the structure, by application:

(i) Reasonably demonstrates by affidavit, bill of sale or other documentation proof of possessory interest or right of occupancy in the cabin or structure;

(ii) Submits an acceptable photograph or sketch which accurately depicts the cabin or structure and a map showing its geographic location;

(iii) Agrees to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(iv) Acknowledges in the permit that he/she has no interest in the real property on which the cabin or structure is located; and

(v) Submits a listing of the names of all immediate family members residing in the cabin or structure.

Permits issued under the provisions of this paragraph shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superintendent determines after notice and hearing, and on the basis of substantial evidence in the administrative record as a whole, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed pursuant to the provisions of 43 CFR 4.700.

(3) Cabins or other structures, the occupancy or use of which began between December 18, 1973, and December 1, 1978, may be used and occupied by the claimant to these structures pursuant to a nontransferable, nonrenewable permit. This use and occupancy shall be for a maximum term of 1 year: *Provided, however*, That the claimant, by application, complies with § 13.17(c)(1) (i) through (iv) above. Permits issued under the provisions of this paragraph may be extended by the Superintendent, subject to reasonable regulations, for a period not to exceed one year for such reasons as the Superintendent deems equitable and just.

(4) Cabins or other structures, construction of which began after December 1, 1978, shall not be available for use and occupancy, unless authorized under the provisions of paragraph (d) of this section.

(5) Cabins or other structures, not under permit, shall be used only for official government business: *Provided, however*, That during emergencies involving the safety of human life, or where designated for public use by the Superintendent through the posting of signs, these cabins may be used by the general public.

(c) *New Cabins or Other Structures Necessary for Subsistence Uses or Otherwise Authorized by Law.* The Superintendent may issue a permit under such conditions as he/she may prescribe for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when he/she determines that the use is necessary to accommodate reasonably subsistence uses or is otherwise authorized by law. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Superintendent shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purposes for which the park area was established.

(d) *Existing Cabin Leases or Permits.* Nothing in this section shall preclude the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. Unless the Superintendent issues specific findings, following notice and

an opportunity for the leaseholder or permittee to respond, that renewal or continuation of such valid permit or lease constitutes a direct threat or a significant impairment to the purposes for which the park area was established. he/she shall renew such valid leases or permits upon their expiration in accordance with the provisions of the original lease or permit subject to such reasonable regulations as he/she prescribe in keeping with the management objectives of the park area. Subject to the provisions of the original lease or permit, nothing in this paragraph shall necessarily preclude the Superintendent from transferring such a lease or permit to another person at the election or death of the original permittee or leasee.

#### § 13.18 Camping and picnicking.

(a) *Camping.* Camping is permitted in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as set forth for specific park areas in Subpart C of this part.

(b) *Picnicking.* Picnicking is permitted in park areas except where such activity is prohibited by the posting of appropriate signs.

#### § 13.19 Weapons, traps and nets.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(b) Firearms may be carried within park areas in accordance with applicable Federal and State laws, except where such carrying is prohibited or otherwise restricted pursuant to § 13.30.

(c) Traps, bows and other implements authorized by State and Federal law for the taking of fish and wildlife may be carried within National Preserves only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(d) In addition to the authorities provided in paragraphs (b) and (c) of this section, weapons (other than firearms) traps and nets may be possessed within park areas provided such weapons, traps or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

(e) Notwithstanding the provisions of this section, local rural residents who are authorized to engage in subsistence

uses, including the taking of wildlife pursuant to § 13.48, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

#### § 13.20 Preservation of natural features.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park, Glacier Bay National Monument, and Katmai National Monument.

(b) *Renewable Resources.* The gathering or collecting, by hand and for personal use only, of the following renewable resources is permitted:

(1) Natural plant food items, including fruits, berries and mushrooms, but not including threatened or endangered species;

(2) Driftwood and uninhabited seashells;

(3) Such plant materials and minerals as are essential to the conduct of traditional ceremonies by Native Americans; and

(4) Dead or downed wood for use in fires within park areas.

(c) *Rocks and Minerals.* Surface collection, by hand (including hand-held gold pans) and for personal recreational use only, of rocks and minerals is permitted: *Provided, however*, That (1) collection of silver, platinum, gemstones and fossils is prohibited, and (2) collection methods which may result in disturbance of the ground surface, such as the use of shovels, pickaxes, sluice boxes, and dredges, are prohibited.

(d) *Closure and Notice.* Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent shall prohibit the gathering or otherwise restrict the collecting of these items. Portions of a park area in which closures or restrictions apply shall be (1) published in at least one newspaper of general circulation in the State and designated on a map which shall be available for public inspection in the office of the Superintendent, or (2) designated by the posting of appropriate signs, or (3) both.

(e) *Subsistence.* Nothing in this section shall apply to local rural residents authorized to take renewable resources.

#### § 13.21 Taking of fish and wildlife.

(a) *Subsistence.* Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(b) *Fishing.* Fishing is permitted in all park areas in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with § 2.13 of this chapter. With respect to the Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of the Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law—including any use of park area lands for campsites, cabins, motorized vehicles, and aircraft landings on existing airstrips which is directly incident to the exercise of such rights or privileges—may continue: *Provided, however,* That the Superintendent may restrict the use of park area lands directly incident to the exercise of these rights or privileges if he/she determines, after conducting a public hearing in the affected locality, that such use of park area lands constitutes a significant expansion of the use of park area lands beyond the level of such use during 1979.

(c) *Hunting and Trapping.* Hunting and trapping are permitted in all National Preserves in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations: *Provided, however,* That engaging in trapping activities, as the employee of another person is prohibited.

(d) *Closures and Restrictions.* The Superintendent may prohibit or restrict the taking of fish or wildlife in accordance with the provisions of § 13.30. Except in emergency conditions, such restrictions shall take effect only after consultation with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

#### § 13.22 Unattended or abandoned property.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park, or as further restricted for specific park areas in Subpart C of this part.

(b) Leaving any snowmachine, vessel, off-road vehicle or other personal property unattended for longer than 12 months without prior permission of the Superintendent is prohibited, and any property so left may be impounded by the Superintendent.

(c) The Superintendent may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount, and type of personal property

that may be left unattended, (3) prescribe the manner in which personal property may be left unattended, or (4) establish limits on the length of time personal property may be left unattended. Such designations and restrictions shall be (i) published in at least one newspaper of general circulation within the State, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community, and designated on a map which shall be available for public inspection at the office of the Superintendent, or (ii) designated by the posting of appropriate signs or (iii) both.

(d) In the event unattended property interferes with the safe and orderly management of a park area or is causing damage to the resources of the area, it may be impounded by the Superintendent at any time.

#### § 13.30 Closure procedures.

(a) *Authority.* The Superintendent may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria.* In determining whether to close an area or restrict an activity on an emergency basis, the Superintendent shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the park area was established.

(c) *Emergency Closures.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice and hearing; (3) other emergency closures shall become effective upon notice as prescribed in § 13.30(f); and (4) no emergency closure or restriction shall extend for a period exceeding 30 days, nor may it be extended.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures or restrictions, and other locations as

appropriate; (2) other temporary closures shall be effective upon notice as prescribed in § 13.30(f); (3) temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be published as rulemaking in the Federal Register with a minimum public comment period of 60 days and shall be accompanied by public hearings in the area affected and other locations as appropriate.

(f) *Notice.* Emergency, temporary and permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Superintendent and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Superintendent shall provide notice in the Federal Register and shall, upon request, hold a hearing in the affected vicinity and other locations as appropriate prior to making a final determination.

(h) Except as otherwise specifically permitted under the provisions of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

#### § 13.31 Permits.

(a) *Application.* (1) Application for a permit required by any section of this part shall be submitted to the Superintendent having jurisdiction over the affected park area, or in the absence of the Superintendent, the Regional Director. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application.

(2) The Superintendent shall grant or deny the application in writing within 45 days. If this deadline cannot be met for good cause, the Superintendent shall so notify the applicant in writing. If the permit application is denied, the Superintendent shall specify in writing the reasons for the denial.

(b) *Denial and appeal procedures.* (1) An applicant whose application for a permit, required pursuant to this part, has been denied by the Superintendent has the right to have the application reconsidered by the Regional Director by contacting him/her within 180 days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made.

(ii) The basis for the permit applicant's disagreement with the Superintendent's findings and conclusions; and

(iii) Whether or not the permit applicant requests an informal hearing before the Regional Director.

(2) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

#### Subpart B—Subsistence

##### § 13.40 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each park area was established, designated, or expanded by ANILCA, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within park areas pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict the taking of a fish or wildlife

population within a park area for subsistence uses in order to assure the continued viability of such population or to continue subsistence uses of such population, the population shall be allocated among local rural residents engaged in subsistence uses in accordance with a subsistence priority system based on the following criteria:

(1) Customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) Local residency; and

(3) Availability of alternative resources.

(e) The State of Alaska is authorized to regulate the taking of fish and wildlife for subsistence uses within park areas to the extent such regulation is consistent with applicable Federal law, including but not limited to ANILCA.

(f) Nothing in this subpart shall be construed as permitting a level of subsistence use of fish and wildlife within park areas to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.

##### § 13.41 Applicability.

Subsistence uses by local rural residents are allowed pursuant to the regulations of this Subpart in the following park areas:

(a) In national preserves;

(b) In Cape Krusenstern National Monument and Kobuk Valley National Park;

(c) Where such uses are traditional (as may be further designated for each park or monument in Subpart C of this part) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition.

##### § 13.42 Definitions.

(a) *Local rural resident.* (1) As used in this part with respect to national parks and monuments, the term "local rural resident" shall mean either of the following:

(i) Any person who has his/her primary, permanent home within the resident zone as defined by this section, and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and tax returns, and the location of registration to vote.

(ii) Any person authorized to engage in subsistence uses in a national park or monument by a subsistence permit issued pursuant to § 13.44.

(b) *Resident zone.* As used in this part, the term "resident zone" shall mean the area within, and the communities and areas near, a national park or monument in which persons who have customarily and traditionally engaged in subsistence uses within the national park or monument permanently reside. The communities and areas near a national park or monument included as a part of its resident zone shall be determined pursuant to § 13.43 and listed for each national park or monument in Subpart C of this part.

(c) *Subsistence uses.* As used in this part, the term "subsistence uses" shall mean the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this paragraph, the term—

(1) "Family" shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" shall mean the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash (and such other activities as may be designated for a specific park area in Subpart C of this part).

##### § 13.43 Determination of resident zones.

(a) A resident zone shall include—

(1) the area within a national park or monument, and

(2) the communities and areas near a national park or monument which contain significant concentrations of rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses (except in extraordinary cases where no reasonable alternative existed), have customarily and traditionally engaged in subsistence uses within a national park or monument. For purposes of

determining "significant" concentrations, family members shall also be included.

(b) After notice and comment, including public hearing in the affected local vicinity, a community or area near a national park or monument may be—

(1) Added to a resident zone, or

(2) Deleted from a resident zone, when such community or area does or does not meet the criteria set forth in paragraph (a) of this section, as appropriate.

(c) For purposes of this section, the term "family" shall mean all persons living within a rural resident's household on a permanent basis.

§ 13.44 Subsistence permits for persons whose primary, permanent home is outside a resident zone.

(a) Any rural resident whose primary, permanent home is outside the boundaries of a resident zone of a national park or monument may apply to the appropriate Superintendent pursuant to the procedures set forth in § 13.51 for a subsistence permit authorizing the permit applicant to engage in subsistence uses within the national park or monument. The Superintendent shall grant the permit if the permit applicant demonstrates that,

(1) Without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a national park or monument; or

(2) The applicant is a local rural resident within a resident zone for another national park or monument, or meets the requirements of paragraph (1) of this section for another national park or monument, and there exists a pattern of subsistence uses (without use of an aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses) between the national park or monument previously utilized by the permit applicant and the national park or monument for which the permit applicant seeks a subsistence permit.

(b) In order to provide for subsistence uses pending application for and receipt of a subsistence permit, until August 1, 1981, any rural resident whose primary permanent home is outside the boundaries of a resident zone of a national park or monument and who meets the criteria for a subsistence permit set forth in paragraph (a) of this section may engage in subsistence uses in the national park or monument without a permit in accordance with applicable State and Federal law. Effective August 1, 1981, however, such

rural resident must have a subsistence permit as required by paragraph (a) of this section in order to engage in subsistence uses in the national park or monument.

(c) For purposes of this section, the term "family" shall mean all persons living within a rural resident's household on a permanent basis.

§ 13.45 Prohibition of aircraft use.

(a) Notwithstanding the provisions of § 13.12 the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument is prohibited except as provided in this section.

(b) *Exceptions.* (1) In extraordinary cases where no reasonable alternative exists, the Superintendent shall permit, pursuant to specified terms and conditions, a local rural resident of an "exempted community" to use aircraft for access to or from lands and water within a national park or monument for purposes of taking fish or wildlife for subsistence uses.

(i) A community shall qualify as an "exempted community" if, because of the location of the subsistence resources upon which it depends and the extraordinary difficulty of surface access to these subsistence resources, the local rural residents who permanently reside in the community have no reasonable alternative to aircraft use for access to these subsistence resources.

(ii) A community which is determined, after notice and comment (including public hearing in the affected local vicinity), to meet the description of an "exempted community" set forth in paragraph (b)(1) of this section shall be included in the appropriate special regulations for each park and monument set forth in Subpart C of this part.

(iii) A community included as an "exempted community" in Subpart C of this part may be deleted therefrom upon a determination, after notice and comment (including public hearing in the affected local vicinity), that it does not meet the description of an "exempted community" set forth in paragraph (b)(1) of this section.

(2) Any local rural resident aggrieved by the prohibition on aircraft use set forth in this section may apply for an exception to the prohibition pursuant to the procedures set forth in § 13.51. In extraordinary cases where no reasonable alternative exists, the Superintendent may grant the exception upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access

to these resources, or other emergency situation, requires such relief.

(c) Nothing in this section shall prohibit the use of aircraft for access to lands and waters within a national park or monument for purposes of engaging in any activity allowed by law other than the taking of fish and wildlife. Such activities include, but are not limited to, transporting supplies.

§ 13.46 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.

(b) The Superintendent may restrict or close a route or area to use of snowmobiles, motorboats, dog teams, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Superintendent determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity and other locations as appropriate. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the

Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Motorboats, snowmobiles, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the park areas, and (3) in such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams, and other means of surface transportation in accordance with §§ 13.10, 13.11, 13.12, and 13.14, respectively.

#### § 13.47 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable State and Federal law, including the provisions of §§ 2.13 and 13.21 of this chapter: *Provided, however,* That local rural residents in park areas where subsistence uses are allowed may fish with a net, seine, trap, or spear where permitted by State law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

#### § 13.48 Subsistence hunting and trapping

Local rural residents may hunt and trap wildlife for subsistence use in park areas where subsistence uses are allowed in compliance with applicable State and Federal law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

#### § 13.49 Subsistence use of timber and plant material.

(a) Notwithstanding any other provision of this part, the non-commercial cutting of live standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in park areas where subsistence uses are allowed as follows:

(1) For live standing timber of diameter greater than three inches at ground height, the Superintendent may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the park area was established;

(2) For live standing timber of diameter less than three inches at ground height, cutting is permitted unless restricted by the Superintendent.

(b) The noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood, shall be allowed without a permit in park areas where subsistence uses are allowed.

(c)(1) Notwithstanding any other provision of this part, the Superintendent, after notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of a park area to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(2) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and at least one local newspaper if available, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent or the affected park area and the post office or postal authority of every affected

community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

#### § 13.50 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Superintendent, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of a park area to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(b) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

#### § 13.51 Application procedures for subsistence permits and aircraft exceptions.

(a) Any person applying for the subsistence permit required by § 13.44(a), or the exception to the prohibition on aircraft use provided by

§ 13.45(b)(2), shall submit his/her application to the Superintendent of the appropriate national park or monument. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application. Each application must include (1) a statement which acknowledges that providing false information in support of the application is a violation of Section 1001 of Title 18 of the United States Code, and (2) additional statements or documentation which demonstrates that the applicant satisfies the criteria set forth in § 13.44(a) for a subsistence permit or § 13.45(b)(2) for the aircraft exception, as appropriate. Except in extraordinary cases for good cause shown, the Superintendent shall decide whether to grant or deny the application in a timely manner not to exceed forty-five (45) days following the receipt of the completed application. Should the Superintendent deny the application, he/she shall include in the decision a statement of the reasons for the denial and shall promptly forward a copy to the applicant.

(b) An applicant whose application has been denied by the Superintendent has the right to have his/her application reconsidered by the Alaska Regional Director by contacting the Regional Director within 180 days of the issuance of the denial. The Regional Director may extend the 180-day time limit to initiate a reconsideration for good cause shown by the applicant. For purposes of reconsideration, the applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in paragraph (a) of this section;

(2) The basis for the applicant's disagreement with the Superintendent's findings and conclusions; and

(3) Whether or not the applicant requests an informal hearing before the Regional Director.

(c) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

### Subpart C—Special Regulations— Specific Park Areas in Alaska

#### § 13.60 Aniakchak National Monument and Preserve.

(a) *Subsistence.—(1) Resident Zone.* The following communities and areas are included within the resident zone for Aniakchak National Monument:

Chignik  
Chignik Lagoon  
Chignik Lake  
Meshik  
Port Heiden

#### § 13.61 Bering Land Bridge National Preserve.

(a) *Off-Road Vehicles.* The use of off-road vehicles for purposes of reindeer grazing may be permitted in accordance with a permit issued by the Superintendent.

#### § 13.62 Cape Krusenstern National Monument.

(a) *Subsistence.—(1) Resident Zone.* The following communities and areas are included within the resident zone for Cape Krusenstern National Monument:

Kivalina  
Kotzebue  
Noatak

#### § 13.63 Denali National Park and Preserve.

(a) *Subsistence.—(1) Resident Zone.* The following communities and areas are included within the resident zone for Denali National Park addition:

Cantwell  
Minchumina  
Nikolai  
Telida

(b) *Camping.* Camping is prohibited along the road corridor and at Wonder Lake, except at designated areas. Camping is allowed in other areas in accordance with the backcountry management plan.

(c) *Unattended or Abandoned Property.* Leaving unattended and abandoned property along the road corridor, at Wonder Lake, and in the areas included in the backcountry management plan, is prohibited.

#### § 13.64 Gates of the Arctic National Park and Preserve.

(a) *Subsistence.—(1) Resident Zone.* The following communities and areas are included within the resident zone for Gates of the Arctic National Park:

Alatna  
Allakaket  
Ambler  
Anaktuvuk Pass  
Betilles/Evansville  
Hughes  
Kobuk

Nuiqsut  
Shungnak  
Wiseman

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists, local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Anaktuvuk Pass

(2) *Customary Trade.* In The Gates of the Arctic National Preserve unit which contains the Kobuk River and its tributaries, "customary trade" shall include—in addition to the exchange of furs for cash—the selling of handicraft articles made from plant material taken by local rural residents of the park area.

#### § 13.65 Glacier Bay National Park and Preserve [Reserved].

#### § 13.66 Katmai National Park and Preserve [Reserved].

#### § 13.67 Kenai Fjords National Park.

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of Subpart B of this part shall not apply to, Kenai Fjords National Park.

#### § 13.68 Klondike Gold Rush National Historical Park.

(a) *Camping.* Camping is permitted only in designated areas.

#### § 13.69 Kobuk Valley National Park.

(a) *Subsistence.—(1) Resident Zone.* The following communities and areas are included within the resident zone for Kobuk Valley National Park:

Ambler  
Kiana  
Kobuk  
Kotzebue  
Noorvik  
Selawik  
Shungnak

(2) *Customary Trade.* In addition to the exchange of furs for cash, "customary trade" in Kobuk Valley National Park shall include the selling of handicraft articles made from plant material taken by local rural residents of the park area.

#### § 13.70 Lake Clark National Park and Preserve.

(a) *Subsistence.—(1) Resident Zone.* The following communities and areas are included within the resident zone for Lake Clark National Park:

Iliamna  
Lime Village  
Newhalen  
Nondalton

Pedro Bay  
Port Alsworth

§ 13.71 Noatak National Preserve  
[Reserved].

§ 13.72 Sitka National Historical Park.

(a) *Camping.* Overnight camping is prohibited.

§ 13.73 Wrangell-St. Elias National Park and Preserve.

(a) *Subsistence.*—(1) *Resident Zone.*  
The following communities and areas are included within the resident zone for Wrangell-St. Elias National Park:

- Chisana
- Chistochina
- Chitina
- Copper Center
- Gakona
- Gakona Junction
- Glennallen
- Gulkana
- Kenny Lake
- Lower Tonsina
- McCarthy
- Mentasta Lake
- Nabesna
- Slana
- Tazlina
- Tok
- Tonsina
- Yakutat

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes, in accordance with a permit issued by the Superintendent:

Yakutat (for access to the Malaspina Forelands Area only)

§ 13.74 Yukon Charley Rivers National Preserve [Reserved].

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## Aspects Needing Consideration in Subsistence Legislation.

The continuing controversy surrounding the subsistence law attests to several basic flaws in the law. Those flaws have made implementation of the law by the Boards of Fisheries and Game extremely difficult, as numerous successful challenges to the Boards' regulations amply demonstrate.

The first part of this discussion will highlight the major flaws in the current law and then suggest corrective approaches for them. The three bills currently in the Legislature, HB 288 and SB 231 (the Governor's bills--hereafter treated together) and SB 320 will then be evaluated regarding these flaws.

The last part of this discussion will consider several other aspects of the subsistence issue that have generated considerable debate. The Governor's bills and SB 320 will be evaluated relevant to those aspects.

### A. BASIC FLAWS IN THE CURRENT SUBSISTENCE LAW.

#### 1. Lack Of Adequate Definition Of Subsistence Use.

Perhaps the most significant flaw hindering successful implementation is an inadequate definition of subsistence use. Defining subsistence use as the customary and traditional use of fish and game for food, clothing, etc., is not adequate. The quagmire that the Boards found themselves in is ample proof of that. For example, the Board of Game chose an individual family approach, using history of use and income level as a means of identifying who had subsistence uses, whereas the Board of Fisheries used community attributes and residency as the criteria. Both approaches were legally faulty. Customary and traditional are words that do not have legally precise meanings. If the Legislature believes it necessary to keep customary and traditional use as the definition of subsistence use, then customary and traditional need to be clearly and unambiguously defined so that all Alaskans have the same understanding of what is subsistence.

Governor's bills.--These two bills do not define customary and traditional use. Instead, the bills give the subsistence priority to rural Alaskan residents. In defining who qualifies, however, additional confusion regarding customary and traditional use arises. That confusion arises because the priority is given to residents of communities and areas in which personal and family consumption of fish and wildlife is a significant characteristic of the economy. So is personal and family consumption the definition of customary and traditional use? Is the economic aspect the critical aspect of

the definition (and where then should the economically important commercial fisheries fit in)? What constitutes a significant characteristic of the economy? Rather than reducing confusion by defining customary and traditional, the Governor's bills simply add an additional level of confusion.

SB 320,--This bill does not explicitly define customary and traditional. However, it defines who qualifies for that use. By so doing, the bill in effect defines subsistence use. The definition essentially involves a documented history of use and an inability to obtain alternative sustenance. The criteria that SB 320 contain can be implemented. They are also clear enough in their meaning so that litigation due to ambiguity should not be frequent. Furthermore, SB 320's approach to subsistence probably is the one most Alaskans have in mind when they think of subsistence; general accord as to what is subsistence should result.

2. Inability To Regulate And Manage Subsistence Harvests.

The current law does not allow adequate regulation of subsistence harvests. The recent Supreme Court decision in the Madison case, and the Court of Appeals ruling in the Eluska case clearly indicate that no restrictions at all can be placed on subsistence take if sport or commercial harvests are occurring (in fact, if any consumptive uses other than subsistence are occurring). Furthermore, subsistence use can only be restricted if sustained yield (of that subsistence use) is jeopardized. The consequences of not being able to regulate the harvest of cow moose during the calving season, the inability to stop shooting of ptarmigan during nesting, and the inability to restrict gill netting of spawning rainbow trout should be obvious to all. To properly manage fish and wildlife populations, the regulatory agencies need the ability to restrict those harvests that are most detrimental to fish and wildlife stocks. Such flexibility often allows larger total harvests to be taken safely. For example, 500 geese might be harvested on a sustainable basis if they are shot during nesting, but a sustainable harvest of more than 2,000 might be possible if they are taken in the fall. For common property such as fish and wildlife, one cannot allow sound management practices to be violated, regardless of the beneficial use being considered. The present law needs to be modified to allow adequate regulation of subsistence harvests.

Governor's bills.--The Governor's bills don't address this problem. In fact, an Assistant Attorney General apparently advised one legislator during the last week of the session that the Boards did have authority to restrict subsistence harvests -- even despite

the very explicit wording in the Court of Appeals ruling (see particularly footnotes 6 and 7 of that ruling). One can only conclude that the Assistant Attorney General's pronouncement was one of advocacy and not of legal scholarship. The point is, the Governor's bills would not correct the regulatory difficulty that currently does exist.

SB 320.--This bill does address the problem. It specifically states that only those subsistence uses allowed by regulation are legal. Obviously, regulations based on proven principles of fish and wildlife management can be implemented under this bill.

3. Legal Implications Of Granting Priority To A Use.

Does granting a use a priority status infer that regulations partially restricting such use (i.e. not allowing complete satisfaction of that use), so that other uses can be partially satisfied concurrently, are illegal? That is, does a priority use have exclusive right to the resources if the resources cannot satisfy all demands for the priority use? Or is a priority satisfied if only a reasonable opportunity is provided to subsistence users, even though such an opportunity is not expected to fully satisfy all demands for the priority use? To our knowledge, the legal implications of granting a use a priority status have not been addressed in the courts. Undoubtedly they will be, if the current priority designation is retained in the law. Rather than let the courts decide, the Legislature should carefully specify what is meant by priority if that designation is retained. If priority can be equated only with exclusive use in cases of inadequate resource supply, then the designation should be changed from priority to preference. Whatever the designation, it is not reasonable that other uses will be allowed only in those cases in which the status use can be satisfied completely.

Governor's bills.--These bills do not address the priority issue. The priority designation would be unchanged if the Governor's bills are adopted as is.

SB 320.--This bill does not specifically address the priority issue. The bill does indicate that historical levels of subsistence use could be designated, thereby putting a cap on the amount of subsistence use allowed. However, the question of exclusivity when the resources are in short supply is not addressed. We believe that must be addressed in the bill.

## B. OTHER ASPECTS OF THE SUBSISTENCE ISSUE.

### 1. Location Of Residence As A Basis For The Subsistence Priority.

The current law does not have residency as a criterion for subsistence use. It is used, however, in allocating resources among subsistence users. The legislative record established during passage of the current law clearly indicated legislative intent that all subsistence uses, regardless of where occurring in the state, would have a priority; the intent clearly was not to restrict the priority only to certain communities or only to rural Alaska. In spite of that record, the Boards did restrict the priority to rural Alaskans, with the Board of Fisheries implementing it solely on a community basis. The Attorney General's staff took an active advocacy role in developing the rural/community approach; an often voiced argument was that the State needed to be "in compliance" with the Federal rural designation, otherwise Federal preemption of State management on Federal lands would result. The State Supreme Court in the Madison ruling found the rural/community approach in violation of the State subsistence law; the Court did not rule on the constitutionality of that approach. However, a significant legal question remains regarding the constitutionality of the location of residency criterion, particularly when one considers the very extensive legislative record documenting that subsistence uses occur in both urban and rural Alaska.

The current State administration, through the Attorney General's staff and the Commissioner's office of ADF&G, is pushing a rural/community approach. Their principal argument is that in view of the Supreme Court's Madison ruling a rural/community approach is necessary to eliminate the management/regulatory chaos created by the Madison decision. If that decision did create such chaos, the rural/community approach, which would reduce the number of individuals qualifying for the subsistence priority, would not eliminate the chaos, although it might constrain it somewhat. Any chaos created by the decision would be due to two sources: an increased number of subsistence users and the legal recognition that subsistence use of a resource cannot be restricted so long as any other consumptive use of that resource is occurring. The latter aspect has at least as dire an implication for resource management as does the former. The salient point is this: using a rural/community criterion for determining the subsistence priority is not going to correct the management/regulatory hiatus (revealed by the Madison decision) that exists with the current subsistence law! That aspect is of fundamental importance when considering revisions to the subsistence law.

The rural/community criterion for determining who gets a subsistence priority has one significant drawback -- it is not fair! Not all individuals and families with equal dependence on the fish and wildlife resources are treated equally. All individuals in a community designated as a subsistence community would get the subsistence priority (regardless of their use of the resources), but those individuals in a community not so designated would not have the priority, regardless of how dependent on the resources an individual or a family might be! People equally situated should be treated equally. Until that is assured, the subsistence law will be a continuing source of controversy.

The argument has been raised that the subsistence priority must be on a community basis so that a village economy is not threatened or unduly impacted. If a village economy has a substantial dependence on subsistence use of fish and wildlife, one would expect most individuals and families in that community to qualify on an individual basis for the subsistence priority. Hence, that village's economy would be protected by granting the priority on an individual, not a community, basis.

Governor's bills.--As indicated above, the administration is pushing the rural/community approach; these bills contain the rural/community criterion.

SB 320.--This bill assigns the priority on an individual basis, including all dependant members of that individual's household.

2. Compliance With The Federal Law.

One very significant difference between the State and Federal subsistence provisions is the priority. In State law, subsistence use is the priority use; in Federal law subsistence use is only a priority among the consumptive uses. That difference has troublesome management implications for Alaska. Under State law, the Boards are required to provide for subsistence use, restricting such use only if two conditions hold: 1)all other competing consumptive uses are abolished, and 2)sustained yield of the subsistence use is jeopardized. Obviously, National Parks and Preserves, primarily dedicated to non-consumptive uses, were not established under ANILCA with that scenario in mind. Recent interactions between the Board of Game and the National Park Service regarding subsistence regulations in the Gates of the Arctic National Park demonstrate the divergent mandates. Obviously, State law is not in compliance with the Federal law on the critical point of priority. Should we modify our State law to gain compliance, thus placing subsistence use only in a priority status with respect to other consumptive uses? If compliance with the Federal law is very important, perhaps we should! But is compliance that

Important?

The argument advanced for compliance is that without it the Feds might preempt State management authority on Federal lands. They might, especially in those instances in which the variant in the State law disallows satisfaction of provisions mandated in the Federal law. The different specifications for priority might be one such variant, for Federal officials may need to restrict subsistence uses in order to protect non-consumptive values for which the land was set aside.

The question of compliance needs to be evaluated on a case by case basis. That is the only rational approach, for one provision of the law might be modified with only slight negative impacts on state and private lands, whereas modification of a different provision to conform to Federal law might produce very undesirable results for resource use on non-federal lands. That is, some provisions in the Federal subsistence law may be very undesirable ones from the State perspective (and perhaps even at variance with the State of Alaska constitution). The rural provision in the Federal law may be the prime example.

Non-compliance does not imply that Federal preemption is inevitable. Even if legal action is initiated, based on claims that the State statutes and regulations do not provide the subsistence privileges specified in ANILCA, the State's management authority probably will not be preempted unless it is clear that State laws and regulations are more restrictive than those the Federal officials would promulgate. Who is likely to be stronger advocates of consumptive uses of fish and wildlife -- the State of Alaska or the Federal officials, particularly those in the National Park Service? Anyone contemplating legal action to institute Federal management of subsistence should carefully evaluate the ultimate consequences of those actions.

Governor's bills.--These bills would bring State law into accord with the Federal law regarding rural priority. Other points of disagreement would remain.

SB 320.--This bill would not change the current situation that the priority is given to any subsistence user, rural or urban. Other points of disagreement would also exist.

### 3. Trade and Barter Provisions

The state and federal definitions of barter are identical. However, state and federal definitions of trade differ. In state statute "customary trade" is considered a "subsistence use" only if it is utilized for purposes of "personal or family consumption." Under Sec. 803 of ANILCA, only the "barter" and "sharing" of subsistence resources are tied to "personal or family consumption." "Customary trade" is not modified.

Existing state law provides for trade or barter of subsistence caught resources as follows:

a. Subsistence uses is defined to include the customary trade, barter, or sharing for personal or family consumption of wild renewable resources;

b. barter is defined as the exchange or trade of fish and game or their parts taken for subsistence uses i.) for other fish or game or their parts, ii.) for other food or for non-edible items other than money if the exchange is of a limited and non-commercial nature.

In federal law "subsistence uses" is defined to include use "for barter, or sharing for personal or family consumption; and for customary trade."

Present state and federal statute wording allows barter, for "non-edible items" such as gasoline, machinery, tools, clothing and other things as well as for edible items not normally consider food, such as alcohol or other drugs (to which other prohibitions may apply).

Present state regulation allows that "customary trade may include limited exchanges for cash, but does not include significant commercial enterprises."

These provisions put fish and game in virtually the same situation as any other commodity, in spite the "limited and non-commercial" constraint and the Commissioner's authority to shut down trade or barter.

Neither the Governor's bills nor SB 320 propose changes in wording relating to trade and barter.

The sharing and exchange of fish and wildlife is common and widespread among Alaskans and is not limited to subsistence use(r)s. State law should accomodate the practice of sharing and exchange of fish and wildlife.

To ensure that fish or game taken under subsistence use rules is not misused, the existing provisions in state statute allowing exchange of fish or game for "non-edible" items should be deleted. The regulation allowing for limited exchanges for cash should be nullified.

Because trapping is authorized under other definitions in statute, the sale of pelts would be unaffected by this change. (However, would their be a priority for "subsistence trapping"?)

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## **Subsistence Use of Fish and Game Resources in Alaska: Considerations in Formulating Effective Management Policies**

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Juneau*

# Subsistence Use of Fish and Game Resources in Alaska: Considerations in Formulating Effective Management Policies

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## Background

### *The Subsistence Priority in State and Federal Law*

In 1978, the Alaska Legislature enacted a statutory priority for subsistence uses of Alaska's fish and game resources.<sup>1</sup> Congress adopted legislative language in 1980 for the Alaska National Interest Lands Conservation Act (ANILCA), which is similar in most respects to the definition and priority established by state law.<sup>2</sup> In addition, ANILCA provides, in part:

It is hereby declared to be the policy of Congress that—(1) consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; . . . (2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska. . . .<sup>3</sup>

This strong statement is in keeping with the ANILCA provisions that require federal land use decisions to include evaluation of potential impacts on subsistence uses and resources.<sup>4</sup>

### *Research on Subsistence Uses and Their Importance*

Both state and federal laws recognize the need for research on subsistence uses of resources.<sup>5</sup> The Alaska Legislature directly addressed this need by creating a new section in the Department of Fish and Game. The task assigned to the Division of Subsistence was necessarily broad because so little scientific research data on subsistence were available. The legislative mandate stated in part:

The section of subsistence hunting and fishing shall . . . compile existing data and conduct studies to gather information, including data from subsistence users, on

<sup>1</sup>See Ch. 151, 1978 Alaska Session Laws.

<sup>2</sup>See U.S.C.A. §§3113, 3114 (1980 Laws Special Pamphlet).

<sup>3</sup>16 U.S.C.A. §3112 (1), (2) (1980 Laws Special Pamphlet).

<sup>4</sup>16 U.S.C.A. §3120 (1980 Laws Special Pamphlet).

<sup>5</sup>ANILCA, 16 U.S.C.A. §3122 (1980 Laws Special Pamphlet), provides:

"The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available. . . ."

all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state.<sup>6</sup>

In addition to conducting applied social science research, the Division of Subsistence performs diverse policy-related roles but does not have authority to make regulatory decisions, to manage resources, or to enforce regulations. The Division is the only agency engaged in comprehensive research on subsistence uses of resources, and the demand for these studies has increased exponentially. Previously unavailable data have enabled the Alaska boards of fisheries and game to apply the subsistence priority (Thomas 1981) in their regulatory decisions and also have been used extensively in evaluating major land and water management issues (Veitre and Veitre 1981).

### *Understanding the Nature and Significance of Current Subsistence Uses of Resources in Alaska*

The development of subsistence policy has been hampered by inaccurate assumptions about the nature of the resource uses involved. There are some well-known myths about fishing and hunting for subsistence. One is that subsistence activities are pursued using "primitive" technologies such as spears, bolas, and bows and arrows. Another myth is that subsistence refers to bare survival of persons in rural settings. A third myth is that the presence of cash transforms subsistence into something that does not require the harvest of fish and game. These erroneous notions make rational policy development more difficult by obscuring the true complexity and adaptability of subsistence systems. Research by the Division of Subsistence is directed toward providing a more accurate portrayal of current subsistence uses in Alaska.

Alaska's human history is entwined with the use of wild renewable resources. Among northern aboriginal peoples, adaptations directly related to patterns and cycles of resource availability are among the key elements of sociocultural differentiation. After contact with western society, the harvest, distribution, and use of locally available food and raw materials have continued to provide essential economic, nutritional, cultural, and social benefits to a large number of communities and households. For non-Native residents as well, the use of fish and game has satisfied similarly important needs.

Today both Natives and non-Natives participate in subsistence economic sys-

<sup>6</sup>AS 16.05.094 (1). Other duties described in the legislative mandate require that the Division of Subsistence:

- (2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;
- (3) make information gathered available to the public, appropriate agencies, and other organized bodies;
- (4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;
- (5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;
- (6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;
- (7) participate with other divisions in the preparation of statewide and regional management plans so that those plans [recognize] and incorporate the needs of subsistence users of fish and game.

teins. These economies are systems of production, distribution, and consumption that are based upon the harvest of renewable resources. Within subsistence economies, a substantial portion of the goods produced are for direct local consumption rather than for export and sale on external markets. Modern subsistence systems have some cash flow, but the cash sector is generally limited, seasonal, and tenuously linked with exogenous economic systems (Lonner 1980). Even in towns having viable non-subsistence sectors of production and exchange, subsistence production and distribution nevertheless may be functional and vital to the entire community at certain times of the year, especially for subcommunities, groups, or households within the town that rely on subsistence harvests. Recent data suggest that, in many rural Alaska communities, the "commercial" and "subsistence" sectors of the economy are complementary and mutually supportive (Wolfe 1981: 88-96, 1979: 264-266, Ellanna 1980: Vol I).

Subsistence uses of locally available resources often provide substantial community and family self-sufficiency. In much of Alaska, the absence of reliable alternatives means that subsistence may be the only stable economic base. This is not to suggest that subsistence should be viewed as a less desirable alternative than the commercial economies which typify most other areas in the United States. Indeed, because connections to commercial markets are limited, it has been argued that subsistence economic systems tend to be "buffered" against the vagaries of inflation and other external economic effects (Lonner 1980).

Use of locally available resources—although dynamic—is so well established in many areas of Alaska that human communities may properly be viewed as integral parts of the ecosystems in which they participate. Accordingly, much of the Division's current research is, in effect, addressed to questions about human ecology. The presence and distribution of human populations as well as their social and cultural forms are viewed as beneficial adaptations, developed over time, in response to natural environments of fish and wildlife resources (Steward 1972, Cohen 1974, Vayda 1969, Lee and DeVore 1968).

Ethnohistorical data as well as information on current practices and use patterns are important in developing this picture of ecological relationships over time. Historic sites used for harvest or other subsistence activities provide a chronicle of relative resource abundance and movements (Fall 1981a, 1981b: 3-8, Table 1, Map No. 1). Traditional names also provide valuable information on resource use (Kari, cited in Fall 1981b: Table 3). For example, the Dena'ina name for Point McKenzie near present day Anchorage in Cook Inlet, *Dilhi Tunts' del'ust Beydegh* ("hooligans are transported point"), derives from the significant trade in eulachon oil that occurred here during April and May (Fall 1981b:8). Similarly, names of sites, seasons, and activities offer keys to understanding the annual cycle of subsistence resource uses and, concomitantly, the resources upon which the local economy depended.

In order to assess current uses, a variety of well-established social science methods are employed by the Division of Subsistence. The Division has conducted research using literature reviews, oral histories, participant-observation methods, informal interviews, interview surveys, mail surveys, and combinations of these techniques. In addition, particular field studies may require stratified sampling, selection of index study communities, comparative approaches, longitudinal designs, and other specialized applications. After data have been gathered in the field,

analysis involves standard quantitative and descriptive treatments. Quantitative information is evaluated using accepted statistical computer programs. Where appropriate, geographic data are mapped in order to facilitate their use in land and water management decisions.

### Considerations in Subsistence Policy Formulation

Reliable research data on subsistence uses in Alaska are extremely limited; indeed, comprehensive research efforts are just beginning. Nevertheless, studies completed to date and current field experience permit generalizations indicating certain components essential for effective management of subsistence resources.

For purposes of evaluating the factors to be considered in formulating management policy, I shall assume that a fundamental management goal is to maintain the productivity of the resource base so human use may continue. In addition, I shall assume that the word "subsistence" does not refer to resource uses that are characterized by "primitive" methods or limited to bare, physical survival. Instead, subsistence involves the use of locally available resources primarily for local consumption as part of the complex economic systems described earlier.<sup>7</sup> Although other views of "subsistence" have been articulated based upon various configurations of political values, the assumptions offered here have the advantage of being consistent with available research data concerning resource uses in Alaska.

The following discussion draws upon research findings, field experiences, and other current developments related to diverse Alaskan subsistence uses.

### *Cooperation Between Managers and Users in Development of Reliable Data and Management*

Effective management of wild renewable resources can be achieved only if resource managers have reliable data and if resource users cooperate in the implementation of the desired management regime. Of course, user cooperation is necessary in order to obtain high quality data on harvests and other aspects of subsistence use. However, accurate harvest data are of only limited utility if harvest timing or other features of the harvest are inconsistent with the management plan. Neither reliable data nor other types of cooperation are likely to result unless users are assured that their interests are recognized and their uses are protected. Because use of wild resources is so important to many communities and households, unrealistic regulations may virtually compel uses outside the regulatory system (Collins 1982, Stickney 1981). If this occurs, the users may feel extremely uneasy<sup>8</sup> and reluctant to provide information.

<sup>7</sup>Alaska law provides a technical definition:

'[S]ubsistence uses' means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption. . . .

AS 16.05.940(26). The definition appearing in federal law is substantially similar but includes the limiting language, "by rural Alaska residents". 16 U.S.C.A. §3113 (1980 Laws Special Pamphlet).

<sup>8</sup>This discomfort is not merely due to anxiety about possible arrest. Many subsistence users strongly desire to comply with societal standards but believe they cannot do so and still provide for their families (Davidson 1974). In addition, some rural residents attempt to comply with ill-suited regulations simply from a sense of deference to the legal system, frequently absorbing significant losses and hardships in the process.

For example, Robert J. Wolfe conducted his initial research on food production in a village near the mouth of the Yukon River in 1978 (Wolfe 1979). Village residents recognized that regulations did not reflect certain characteristics of their harvest activities, such as spring take of waterfowl. Accordingly, local representatives insisted upon guarantees of confidentiality at the outset, in addition to the anonymity that Wolfe had already built into his design. Limitations on that portion of the research data dealing with waterfowl were imposed as preconditions to his conducting any research in the village (Wolfe, pers. comm. 1982). Representatives of Yukon Delta residents feared adverse enforcement attention if details of waterfowl use on the Delta were published and they took action consistent with this concern.

By contrast, a different regulatory climate existed on the Delta when Wolfe conducted additional research during 1981. In the interim, federal enforcement policy had moderated, and proposals to amend migratory bird treaties had been made.<sup>9</sup> There was less fear among Delta residents that information presented about their use of migratory birds would result in damage to their communities, and their representatives approved the reporting of important harvest and use data (Wolfe, pers. comm. 1982). The resulting research product provided previously unavailable insight into the complex socioeconomic systems of the Yukon Delta (Wolfe 1981).

Subsistence uses in rural communities can be expected to continue regardless of whether harvest regulations are consistent with the realities of local practice. Quite simply, users will take the actions they believe necessary to provide for their families and communities. If seasons, bag limits, or other limitations are inconsistent with these practices, they will be perceived as irrelevant and are unlikely to be effective.

For example, the migratory bird treaty with Canada prohibits the taking of most migratory birds between March 10 and September 1. This would eliminate virtually all use of these resources in northern and western Alaska because they are not present prior to March 10 and are migrating again at the time the treaty would

<sup>9</sup>Migratory birds are addressed in bilateral treaties between the United States and Canada, Japan, Mexico, and the Soviet Union. The most recent agreement, signed with the Soviet Union in 1976, authorizes the United States to set seasons which permit the taking of migratory birds and their eggs by indigenous inhabitants of Alaska for their own nutritional and other essential needs, but the seasons must provide for the preservation and maintenance of the migratory bird stocks. See Convention Concerning the Conservation of Migratory Birds and Their Environment, Nov. 19, 1976, United States - Union of Soviet Socialist Republics, 19 U.S.T. 4647, T.I.A.S. No. 5604. The treaty with Japan contains provisions allowing harvests by Eskimos and Indians for food and clothing. See Convention for the Protection of Migratory Birds in Danger of Extinction and Their Environment, Mar. 4, 1972, United States - Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990. The treaty with Canada prohibits the hunting of most migratory birds during spring and summer, with certain exceptions. See Convention for the Protection of Migratory Birds, Aug. 16, 1916, United States - Great Britain (signatory for Canada), 39 Stat. 1702, T.S. No. 628. The treaty with Mexico does not refer to subsistence hunting. See Convention for the Protection of Migratory Birds and Game Mammals, Feb. 7, 1936, United States - Mexico, 50 Stat. 1311, T.S. No. 912. When the Migratory Bird Treaty Act was amended to implement the Soviet treaty, 16 U.S.C. §712 (Supp. III 1979), Congress indicated its intention that the language of the Soviet treaty should be followed in amending the treaties with Canada, Japan, and Mexico to provide consistency among provisions governing subsistence. See S. Rep. No. 1175, 95th Cong., 2nd Sess., reprinted in 1978 U.S. Code Cong. & Ad. News 7641, 7645.

Negotiations with Canada produced a protocol amendment signed by both parties on January 30, 1979. A request for negotiations on similar amendatory language was made by the Department of the Interior in late 1979. However, these negotiations have not been concluded; nor has the protocol amendment with Canada been ratified.

allow harvests in the fall. Of the species excepted, many are neither readily available nor commonly used throughout much of Alaska and Canada. Obviously, subsistence use of migratory birds is not likely to occur without violating these limitations.

Similar problems have arisen because of inconsistencies between regulations and social or cultural roles of subsistence. For example, the usual "bag limit" concept in wildlife management allows a licensed hunter to fill his bag limit for the day or season and then to take no more animals. In rural Alaska, however, one hunter may be responsible not only for supplying his own immediate family but also for a system of community sharing with elders and others who need meat but cannot hunt. A hunter with those responsibilities may "overharvest" according to the bag limit; but when considered in light of the distribution among family and community members, the average individual use may be well within the established bag limit. In such circumstances, the regulatory intent actually may be met but the hunter and his social responsibilities are in conflict with the letter of the law (Skoog 1980).

Major discontinuities between management regulations and local practices may, in some instances, produce total lack of management effectiveness. Our research suggests, for example, that in some interior Alaskan communities where regulatory measures have shown great inconsistencies with local practice, the regulations are considered to be applicable only to other users; in fact, to follow such regulations would, from the perspective of local residents, be irrational, since it would make long-established harvest strategies ineffective (Stickney 1981). Instead, it is their belief that the Board of Game could not have intended the regulations to apply to subsistence uses or else the provisions would have been drafted differently. The practical effect of this discontinuity is that parallel systems now exist: codified management regulations and enforcement, and non-codified local practice and social control.

An additional problem for wildlife managers arises if this divergence is not recognized. Because most managers are accustomed to a system of regulatory restraints, it is easy to assume that regulations have direct effects in controlling harvest; that is, changes in bag limits or seasons are presumed to produce corresponding changes in behavior. Where this is not the case but management nevertheless proceeds without modifying the assumption, serious management shortcomings may result.<sup>10</sup>

### **Harvest Levels Based Upon the Ability of Resource Populations to Sustain Take Rather Than Upon Arbitrary Limits**

Because subsistence economic systems in Alaska are both diverse and dynamic, demand for resources should not be regarded as a constant. Indeed, variability in species selection and in food output over short and long-term cycles may be one

<sup>10</sup>The significance of this effect should not be overstated, however. Harvest practices and cycles of activity are long-established in many areas. As a result, managers' assessments of population status may unknowingly take into account unreported harvest or other use characteristics that may affect resource abundance and distribution.

defining characteristic of subsistence economies. Demand for wildlife, like other products, is not static but is affected by many factors including:

1. the availability of the resource; (seasonal, annual, or longer-term fluctuations occur and populations are often subject to impact by "non-consumers" such as industrial development);
2. the relative expense, in time, effort, and money, required to harvest a resource;
3. the relative utility of a product in comparison with other products, including other species; and
4. the relative perceived need for the resource.

(Wolfe 1979:214-244). Each of these is influenced by a number of other factors, such as resource population size, geographic distances of resources from a user group, levels of harvest for other species during a year, monetary income during a year, restrictions placed upon methods of harvest and harvest seasons, competition among user groups, climatic and geophysical conditions (such as ice conditions), and other considerations. Many of these variables may fluctuate from year to year. It is clear that regulations are only one factor, and in many cases not a significant one, affecting demand for resources and harvest levels.

Because of these dynamics, arbitrary harvest limits have no place in a sensible management program. A static ceiling is not responsive to cycles of harvestable resources that often occur over long periods. If an arbitrary ceiling is imposed, it may lead to inhibition or distortion of harvest patterns associated with these resources and may cause unanticipated changes in other parts of the annual harvest cycle. The net effect could be impairment of both subsistence use patterns and management plans. An alternative approach would be based upon potentially flexible harvest levels or ranges derived from longitudinal data on resource populations and harvests by humans. Such an approach would allow for possible variation in use without adversely affecting the population base.

### **Management in Light of All Relevant Factors—Not Overemphasizing Harvest by Humans**

Harvest by people is only one of many variables affecting abundance and distribution of resources. Wildlife management analyzes the dynamics of a species by means of population data (census, distribution and composition), fecundity and recruitment, mortality factors (including losses to predation, disease, weather, and harvest), and habitat condition (Skoog 1980). Overemphasis on the influence of the "human harvest" factor may lead to a mischaracterization of overall ecosystem dynamics and potentially ineffective management methods.

Similarly, evaluation and prediction of the subsistence use component of this harvest should not rely solely on quantified harvest data for particular species. Research on the dynamics of social and biological systems interacting over time can provide much better indices of resource demand than single species harvest data. This is not to denigrate the importance of harvest data but merely to recognize its limitations for predicting future changes in subsistence practices.

### **Effective Mutual Education About the Desirability of Management and the Significance of Local Conditions**

Accurate subsistence harvest data can be obtained only if users understand the purposes for which the data are being sought and if they perceive those purposes

as consistent with desirable ends. In the field work conducted by the Division of Subsistence, evidence has been found repeatedly that management concepts, procedures, and agencies are poorly understood in much of rural Alaska. Few distinctions are drawn between management or enforcement agencies such as the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, and the Division of Fish and Wildlife Protection (Alaska Department of Public Safety). In addition, the processes by which regulations are developed, the uses of research data, and the reasons for management choices tend to be much more mysterious to local users than resource managers frequently assume.

Division of Subsistence field staff have noted that taking of fish or game frequently occurs outside the regulations—not because participants wish to break the law but because they perceive that the regulations are irrelevant to their long-established practices. In some areas the harvesters may be only vaguely aware of the regulations, harvest reporting requirements, or uses of management data. Even if the regulatory requirements are known, some residents have virtually no choice; to provide for their families is the major directive. Accordingly, if management is to be effective, a sensitive program of mutual education must be undertaken, in which each party seeks to understand the orientation of the other for their common benefit. This is particularly important where compulsory rules and regulations are not elements of the indigenous culture.

### **Meaningful Involvement of Users in Development of Regulations**

Regardless of the quality of data gathered through field observations, local users consistently have additional information about production and exchange practices and resource conditions. The users typically have unique insight into what management measures are likely to be acceptable. Because effective management fundamentally depends upon voluntary compliance,<sup>11</sup> it is desirable to build these dimensions of user experience into the regulations.

Cooperation by users in implementation of management measures also is made more likely if the users have a meaningful role in formulating regulations. Effective participation means more than simply receiving information. Instead, it requires that user representatives be involved in understanding the problem to be addressed and in identifying management options. One potential component of this process is creation of a formal participation role such as the local advisory committee and regional council system established by the Alaska Boards of Fisheries and Game.<sup>12</sup>

<sup>11</sup>It is unrealistic to assume that enforcement activity will be adequate to assure compliance with regulations. For example, the Yukon-Kuskokwim Delta contains more than 55 separate villages and many additional summer fish camps. Enforcement of fish and game regulations throughout this large area is obviously impractical unless most users comply voluntarily.

<sup>12</sup>On March 1, 1982, there were 67 local advisory committees recognized by the Boards: several petitions for new committees also were pending. The committees perform a variety of functions, including development and evaluation of regulatory proposals. See 5 AAC 96.050.

The Boards also have designated six regions within which operate councils composed of advisory committee representatives. The regional councils are intended to facilitate communication among local committees, to provide a forum for resolving disagreements about management issues, to make recommendations to the Boards, and to perform a variety of other authorized functions. See 5 AAC 96.250. The importance of the regional council and advisory committee system also is recognized by federal law. See 16 U.S.C.A. §3115 (1980 Laws Special Pamphlet).

Another opportunity for strengthening cooperative relationships between managers and users is the employment of local field staff.<sup>13</sup> In this way, local people can be involved in resource assessment activities that provide insight into the issues of concern to regulatory authorities. After regulations have been adopted, local field staff can make unique contributions to the implementation phase, in part by conveying information to other members of the community.<sup>14</sup>

Local resource users have shown great interest in the management of fish and game. In several instances, user representatives have formed organizations to facilitate their participation in management. For example, coastal communities that utilize marine mammals have formed the Eskimo Walrus Commission (EWC). In addition to sharing information and advising on management matters, the Commission for two years has conducted studies, under grants from the Alaska Legislature, on uses of marine mammals.

In support of the Commission, the Pacific Walrus Technical Committee (PWTC) was created at the suggestion of the U.S. Fish and Wildlife Service. The Technical Committee includes scientific and management personnel from federal and state agencies as well as commission representatives. The PWTC provides technical information and liaison to the Commission. Together, the EWC and the PWTC provide a direct user-manager dialogue and a means for shared management discussions. They also represent a significant initiative by local users in developing a meaningful management role.<sup>15</sup>

### *Summary and Conclusions*

Effective wildlife management in Alaska requires an approach reflecting the realities of today's subsistence way of life. Otherwise, management will be hampered by a significant data shortfall, possibly producing virtual inability to manage. Wildlife managers have a real opportunity to gather reliable data and to achieve local cooperation. Because subsistence use data have not previously been available to managers, even a relatively small investment in the necessary research has produced a substantial return of usable information. The potential benefits include both better management decisions and more effective execution of management programs.

<sup>13</sup>The Division of Subsistence has enjoyed considerable success in employing local and bilingual staff in professional resource specialist positions and in technical assistant roles. Their contributions to field data and analysis have been substantial (See, e.g., Stokes and Andrews 1982). The Division views the technician responsibilities as valuable experience which may lead to higher level program positions. The U.S. Fish and Wildlife Service also has employed local staff in gathering subsistence use data (See Copp and Smith 1981).

<sup>14</sup>Management approaches sometime have encountered resistance because they attempt to impose unfamiliar forms of social control that conflict with long-established local mechanisms. Traditional methods of encouraging socially acceptable behavior may help provide effective limits for use in fish and wildlife management. Indeed, it has been argued that such methods offer far greater potential for success than the Anglo-American codifications used in the United States (See Worl Associates 1978, Worl 1979, see also Hallowell 1955).

<sup>15</sup>Other users have established organizations with similar purposes. The Alaska Eskimo Whaling Commission is involved directly in monitoring bowhead whale harvest quotas, through a cooperative agreement with the National Marine Fisheries Service, U.S. Department of Commerce. Similarly, rural Alaskan users of the Porcupine Caribou Herd have joined with their counterparts in the Yukon Territory to form the International Porcupine Caribou Commission.

Short-term results may include not only better maintenance of the resource base but also continuation of opportunities for non-subsistence use. Wildlife users outside of Alaska may benefit directly from this improved management. In the context of migratory birds, for example, more reliable harvest and use data could lead to projections of take which, in turn, could produce more accurate assessments of harvestable surplus.

Plans for better research and management probably will be ineffective, however, if users perceive management to be either antithetical or irrelevant to their interests. To increase the probability that management will be effective, several specific measures have been suggested:

1. Cooperation between managers and users in development of reliable data and management.
2. Harvest levels based upon the ability of resource populations to sustain take rather than upon arbitrary limits.
3. Management in light of all relevant factors—not overemphasizing harvest by humans.
4. Effective mutual education about the desirability of management and the significance of local conditions.
5. Meaningful involvement of users in development of regulations.

These steps are mutually supportive and should not be considered in isolation.

Because subsistence economic systems are dynamic, research data should include all aspects of system functioning—not merely harvest data. Only in that way will predictive ability be developed, since harvest data alone, even when suggesting historical trends, do not identify causal factors. In addition, existing data are inadequate in most parts of Alaska to allow reliable estimates of current harvests. Even if such information were available, resulting estimates would not provide an adequate basis for management because current harvest levels, lacking both longitudinal data and analysis of system dynamics, are not meaningful as projections for the future.

The potential rewards of realistic management policies for subsistence include long-term benefits as well. Wise harvest allocation policies will enable subsistence-reliant communities to retain the economic base that best meets their needs—including nutritional, social, and cultural components. To the extent these communities continue their subsistence way of life, concern about wildlife populations and habitats will be an important theme of local and regional planning decisions. As with improved management, users in Alaska and in other places stand to benefit.

The value of using fish and game as part of the self-sufficiency base is, at best, difficult to quantify, but its importance to Alaskan communities and households is clear. Managing in recognition of subsistence realities can protect these opportunities while maintaining the resource populations that all user groups value.

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ECONOMIC OVERVIEW OF FISH AND WILDLIFE: STATEWIDE OVERVIEW  
OF SUBSISTENCE AND OTHER LOCAL USE

IV. ROLE OF SUBSISTENCE IN COMMUNITY AND REGIONAL ECONOMIES

Non-commercial fishing and hunting figure prominently in the economy and social welfare of many Alaskan communities. The subsistence harvest of fish and game is a relatively hidden component of Alaska's economy, unmeasured in indices of economic production or social welfare. Although unmeasured, food and material from wild resource harvests are providing substantial economic and social benefits to the state. If subsistence foods were not produced annually in rural Alaska, they would have to be replaced by imported products at substantial economic and social costs to the state.

This section provides information on the large contribution that subsistence fishing and hunting makes to the state. The section provides recent subsistence harvest estimates in Alaska and compares the level of harvest to levels of meat, fish, and poultry production and consumption in the United States as a whole. These comparisons demonstrate the significant roles that fishing and hunting are currently making to the economic welfare of the state. The information also demonstrates the unique nature of

Alaska's economy in comparison with the rest of the United States: in Alaska, many rural regions are supported by a mixed subsistence-cash economy.

Subsistence harvests contained in this section primarily have been gathered by the Division of Subsistence, Alaska Department of Fish and Game. The materials were originally summarized in Wolfe and Walker (1985). Table A lists the major sources of harvest information. These sources should be consulted for harvest methodologies.

#### Food Consumption Patterns: U.S. and Alaska

The important economic role subsistence plays in Alaska can be understood by looking at food consumption patterns in the United States as a whole. On average, residents of the United States consume about 1,371 pounds of food per person every year, depicted in Figure 1 (U.S. Department of Commerce 1984). "Consumption" in this sense refers to the amount of food produced annually by the American and foreign food industries for U.S. domestic consumption (technically, "consumption" is the residual after exports, nonfood use, and ending stocks are subtracted from the sum of beginning stocks, domestic production, and imports). As shown in Fig. 1, Americans consume a varied inventory of food products, including dairy products, grains, vegetables, fruits, meat-fish-poultry products, potatoes-beans, sugar-corn sweeteners, and other fats and oils, totalling altogether 1,371 pounds per person annually. The largest single item

in the American diet is dairy (339 pounds per person). Meat, fish, and poultry together provide 255 pounds in the American diet each year. The 255 pounds of meat-fish-poultry will serve as a convenient national standard with which to assess the economic contribution of subsistence harvests in Alaskan communities.

The diet of rural Alaska often stands in marked contrast to the average American diet. Figures 3, 4, and 5 illustrate the amount of subsistence foods produced and consumed in a year in three rural Alaskan communities in Southwest Alaska, Western Alaska, and Northwest Alaska (Behnke 1982, Wolfe 1981, Burch 1985). Residents of Nondalton in Southwest Alaska produce on average about 738 pounds of subsistence foods per person each year (usable product). Unlike the average American, Nondalton residents consume large quantities of fish, primarily salmon (508 lbs per person), but also grayling, whitefish, pike, trout, and Dolly Varden/char. Nondalton residents also consume substantial quantities of moose (85 lbs), caribou (61 lbs), and small game (31 lbs), as well as smaller quantities of black and brown bear, waterfowl, and grouse (cf., Behnke 1982).

Residents of Alakanuk in Western Alaska also produce and consume large quantities of subsistence foods each year, about 730 pounds per person (Fig. 3). Their diet is more varied than at Nondalton, containing bearded seal (42 lbs) spotted and ringed seal (44 lbs), and belukha whale (35 lbs)

in addition to fish and game. Certain fish species utilized are also different from those at Nondalton, including cisco, Alaska blackfish, cod, smelt, sheefish, lamprey, and burbot. Like Nondalton, salmon comprises the largest single resource consumed (198 lbs per person) (cf, Wolfe 1981).

Residents of Kivalina in Northwest Alaska produce and consume even larger amounts of subsistence foods (968 lbs per person per year) than Nondalton and Alakanuk. The largest single food item is caribou (302 lbs), followed by char (189 lbs), belukha (177 lbs), and bowhead whale (136 lbs). Like Alakanuk, other wild resources in the food inventory include bearded seal, ringed seal, moose, polar and brown bear, and waterfowl. Unlike Nondalton and Alakanuk, salmon make only modest contributions to the family larder (22 lbs) (cf. Burch 1985). Of course, harvest levels of particular species vary from year to year in these three case communities; however, the overall volume of all resources harvested remains relatively stable between years, as has been documented by Wolfe (1979, 1981), Benhke (1982), and Burch (1985).

The examples subsistence harvests of Nondalton, Alakanuk, and Kivalina illustrate that diets in some rural Alaska communities vary substantially from the American norm. They also demonstrate that wild food consumption in rural Alaska can be at levels two to three times the national average domestic meat-fish-poultry consumption. This high level of use of subsistence fish and game exists

because many of the perishable items found in the U.S. diet are not sold in rural village stores, especially dairy products, fruits, vegetables, and potatoes, which collectively comprise 56 percent of the American diet (767 lbs per person annually). The larger quantities of wild fish and game harvested in place like Nondalton, Alakanuk, and Kivalina are substituting for the nutrients provided by dairy products, fruits, vegetables, and potatoes in the typical American diet. The primary food groups imported into rural Alaska are grains, sugars, and fats which are less perishable.

Persons unfamiliar with rural Alaskan economies are often surprised at the high quantities of wild food products harvested each year, commonly between 700-800 lbs per person. However, compared with the levels of production by the U.S. food industry (1,371 lbs per person annually), subsistence production at 700-800 lbs per person annually is understandable.

#### Regional Subsistence Harvests

Using the 255 lbs of meat-fish-poultry consumed by the average American as a standard, Figure 5 compares wild resource harvests across regions in Alaska. As shown in Fig. 5, most rural regions of the state are harvesting at least half or more of the national standard level of meat-fish-poultry consumption in the United States as a whole. Areas where lower wild harvests occur in Alaska include the

large urban centers (Fig. 6) and certain communities of the Kenai Peninsula (Fig. 7). The lower per capita harvests in these areas are due to the market-based economic systems of the communities: resource harvests by families primarily follow a recreational pattern of use, that is, harvest activities represent periodic breaks from stable wage employment. While highly valued for their recreational nature by community residents, fishing and hunting do not contribute much to the community's food supply.

In contrast, the wild resource harvests of other regions are substantial. Harvest levels in the road-connected areas of the Copper Basin (Fig. 8) and Upper Tanana River drainage (Fig. 9) are commonly half or more of the national standard. The major species harvested are salmon, moose, and caribou. In some communities, game provides about as much as fish to the families' diet. As is discussed further below, the wage sector of the economies of the Copper Basin and Upper Tanana regions are not as stable or diversified as wage opportunities in Alaska's urban centers. Seasonal and part-time employment is the norm, and low household incomes are common (Fall and Stratton 1984; Haynes et al 1984). Fishing and hunting provides an important component to the domestic family's livelihood under these economic circumstances.

Resource harvest levels are at or somewhat exceeding the national standard meat-fish-poultry consumption level in communities of the Southeast archipelago (Fig. 10), Kodiak

Island (Fig. 11), and the Alaska Peninsula (Fig. 12). In the communities of these regions, fish comprises the bulk of the subsistence harvest, although game harvests are often high in certain communities. Harvesting wild resources is conducted in association with seasonal commercial fisheries in these regions. Commonly, the earnings from commercial fishing are invested in equipment which is used for both commercial and subsistence fish harvests. The economies of coastal fishing communities of Alaska commonly exhibit this unique combination of subsistence activities and market activities: high subsistence harvests contribute food for local family consumption and commercial fish harvests produce commodities for export sale.

The largest subsistence harvests occur within the Bristol Bay-Iliamna region (Fig. 13), Subarctic Interior (Fig. 14), Yukon-Kuskokwim Delta (Fig. 14), and Arctic Coastal region (Fig. 10). As described earlier, annual subsistence harvests in the 700-800 lbs per person range are common, two to three times the national standard meat-fish-poultry consumption level. Some communities produce in the 1,000 lb per capita range. These areas of the state are relatively remote from the urban centers. The socioeconomic systems of communities commonly follow traditional cultural patterns distinctively different from cultural patterns of the Euro-American tradition. In these regions, high subsistence production results from a combination of subsistence-wage activities at the domestic family level.

Cash incomes are used by families to capitalize in fishing and hunting equipment. Productive labor is organized primarily by kinship and other traditional principles. Subsistence products are widely shared along local non-market distribution networks. In this manner, the regional economies are able to produce and distribute high subsistence outputs that rival on a per capita basis the productivity of the U.S. food industry.

#### Mixed Subsistence-Cash Economies

This statewide survey indicates that subsistence harvests are a prominent part of the economy and social welfare of many Alaskan regions. Subsistence productivity is substantial in most areas except the large population centers of Anchorage, Fairbanks, Juneau, Palmer-Wasilla, and the northern Kenai Peninsula area. Most rural regions in Alaska harvest wild resources at levels half or greater than the mean per capita use of meat, fish, and poultry in the United States.

Fishing and hunting for subsistence provides a reliable economic base for many regions. This type of regional economy has been termed a "mixed, subsistence-cash economy" (Wolfe 1979; Wolfe et al 1985). It is this type of economy that makes Alaska unique among other states. In a mixed economy, subsistence production is augmented and supported by cash employment. As stated above, depending upon the region, employment may be in commercial fishing, public

sector wage employment (schools, local government), capital construction, and other types of economic enterprises. A region is able to support itself by investing a portion of the monetary earnings into the subsistence sector to produce a portion of the region's food supply. Commonly this is the only viable economic strategy, because the cash sector of the regional economy is of modest size, or is insecure.

Table B depicts community differences in monetary income levels, grouped by region. The Table provides the amount of taxable income reported on individual 1982 income tax returns, averaged by community. Taxable income represents an individual's monetary income after deductions. For example, in the Anchorage area, the average taxable income reported on 1982 income tax returns from Fort Richardson was \$12,135. Table B groups communities by region, and provides the median community income for each region. For example, in the Anchorage area, Girdwood is the middle community, with a 1982 income of \$22,709.

Based on median community incomes, a ranking of each region's monetary income is possible. Anchorage is number one (\$22,709), Fairbanks number two (\$22,698), and so forth, with Bristol Bay-Iliamna last (\$8,892).

Reported taxable income is deceptive in one respect: it does not represent the real purchasing value of earned income because of statewide cost of living differentials. In more remote regions, store prices are commonly much higher in comparison with store prices in Anchorage or

Fairbanks. Table A depicts the cost of food by region in Alaskan communities, using the market basket price of food in Anchorage as an index of 100 (University of Alaska Cooperative Extension Service). It shows that food that costs \$1.00 in Anchorage costs \$1.85 in Hoonah, and \$2.26 in Fort Yukon. Thus, the real purchasing power of earned income in many remote regions is about one-half of the value of money in Anchorage.

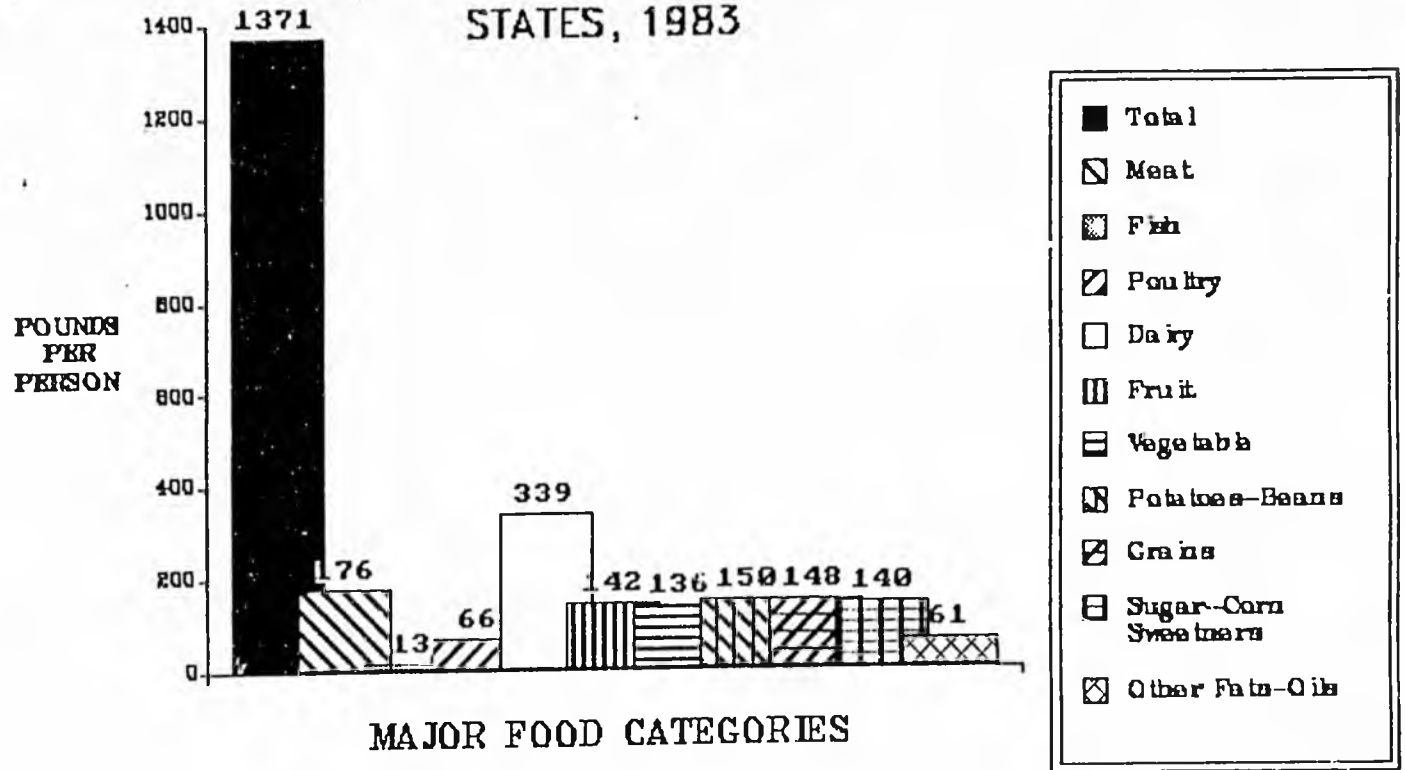
Table B provides regional estimates of the cost of living differentials based on the food price indexes of Table A, and adjusts the region's median community income levels. For example, the Fairbanks region's median community income of \$22,698 is adjusted down to \$20,635 because food prices are 110% higher in Fairbanks in comparison with Anchorage.

The adjusted median community income in Table B is a good indicator of the strength of the wage sectors of each region's economy. Remarkably, once incomes are adjusted to their true purchasing potential, some regions are shown to be extremely poor in terms of cash. In the Arctic region, the median 1982 taxable income was only \$5,841 per income tax return. In Interior Alaska communities, the median 1982 taxable income was only \$4,695. The poorest regions in the state were the Yukon-Kuskokwim Delta (\$4,446) and Bristol Bay-Iliamna (\$4,322).

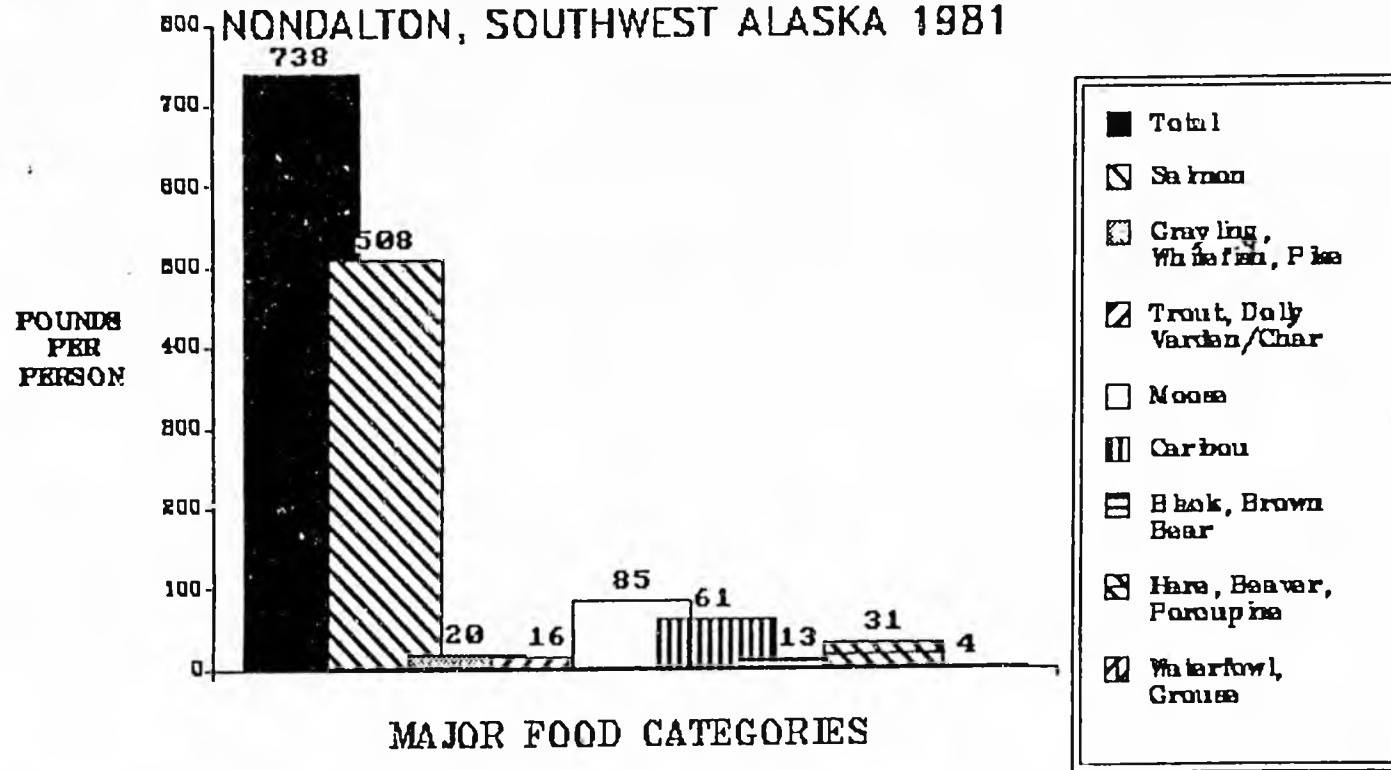
Clearly, communities in these cash-poor regions could not possibly manage on such low earnings if it were not for

the way that money is used. The low monetary incomes are invested into subsistence fishing and hunting activities, producing large quantities of subsistence foods which support the region's population. If it were not for the operation of these mixed, subsistence-cash economic systems, many rural communities in most regions in Alaska would experience significant economic hardships. In fact, even the poorest Alaskan communities with mixed subsistence-cash economies do quite well in regards to food. The poorest (in monetary terms) families in rural Alaska eat better than the richest families in the continental United States. The mixed subsistence-cash economy is the economic backbone of Alaska's rural regions.

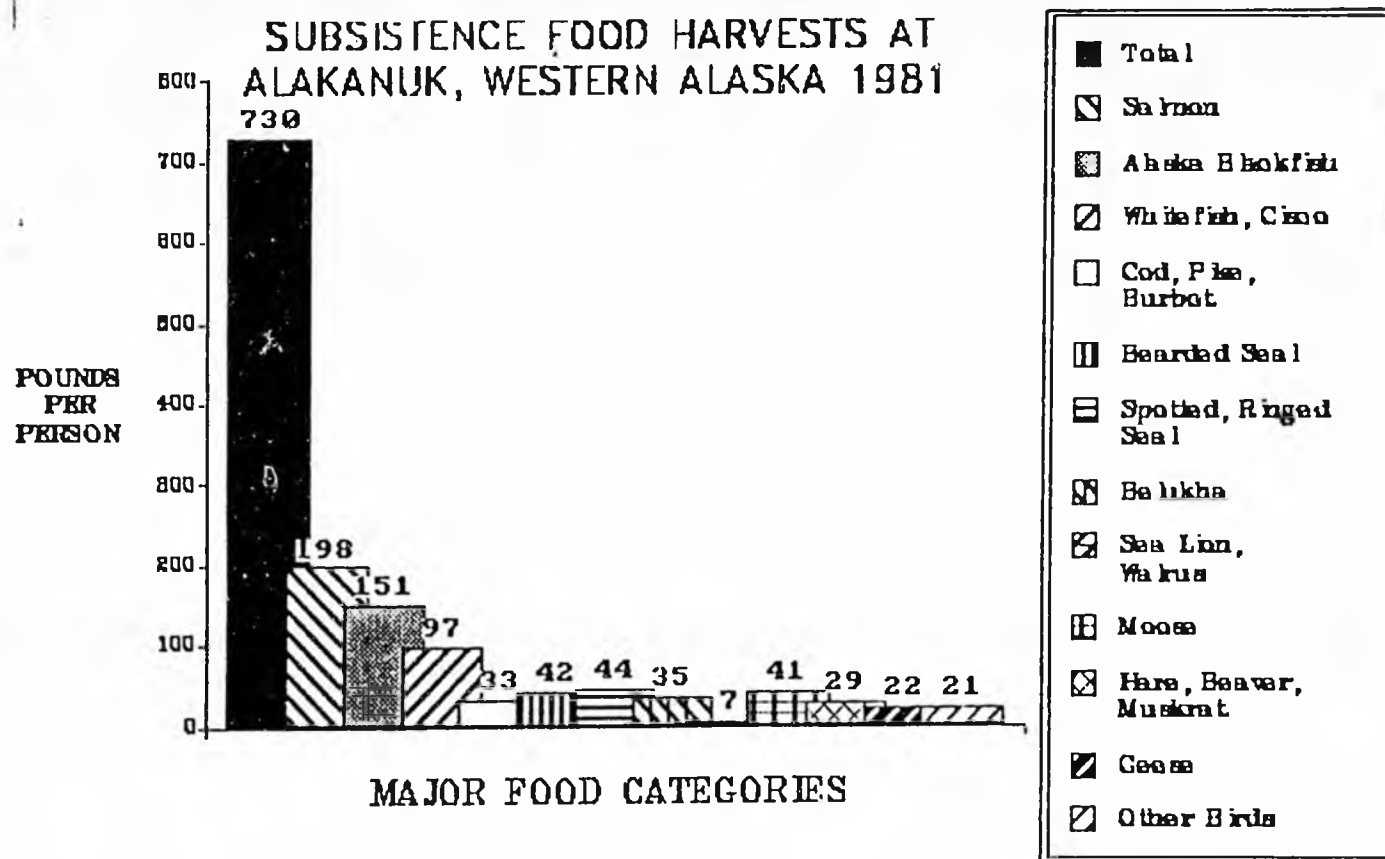
# FOOD CONSUMPTION IN THE UNITED STATES, 1983



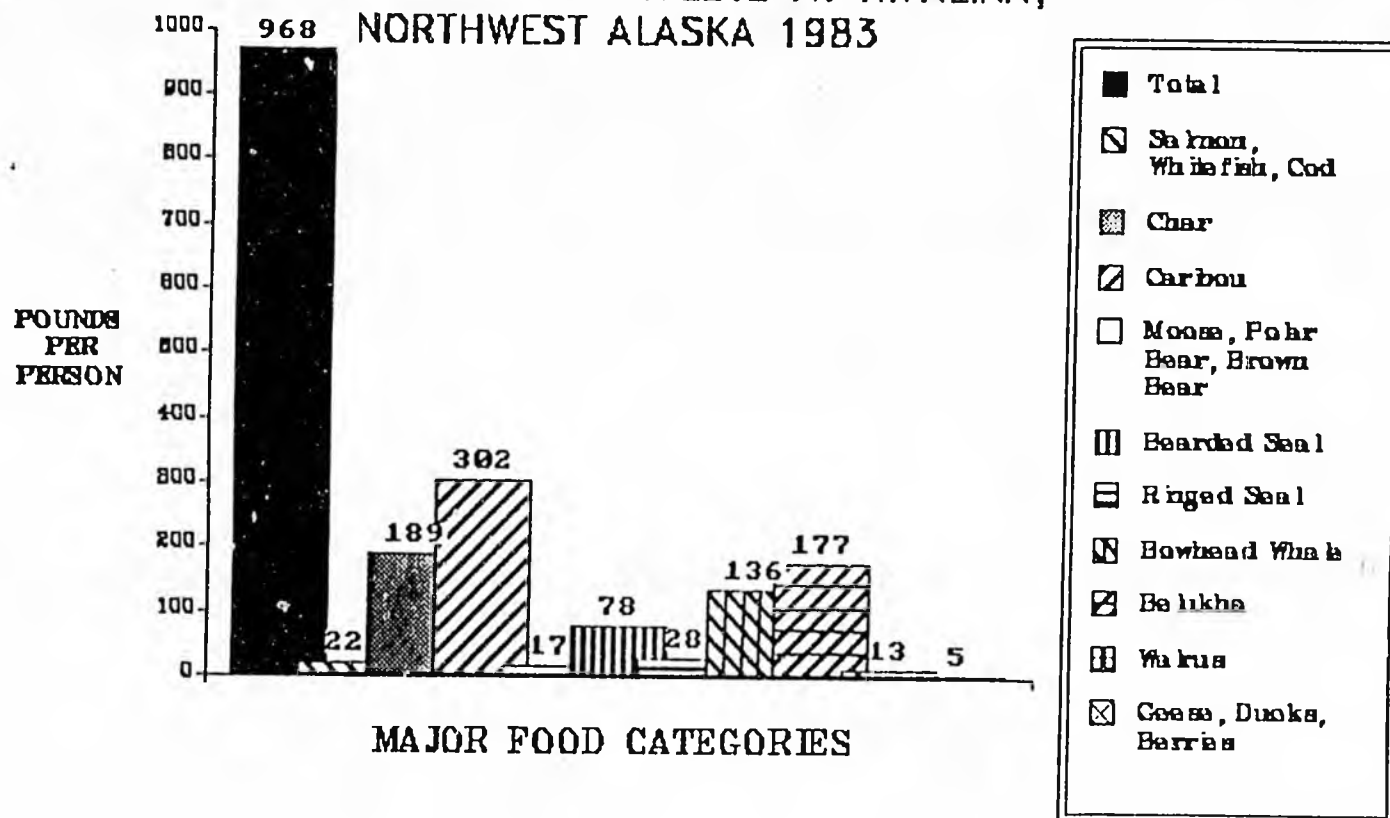
SUBSISTENCE FOOD HARVESTS AT  
 NONDALTON, SOUTHWEST ALASKA 1981



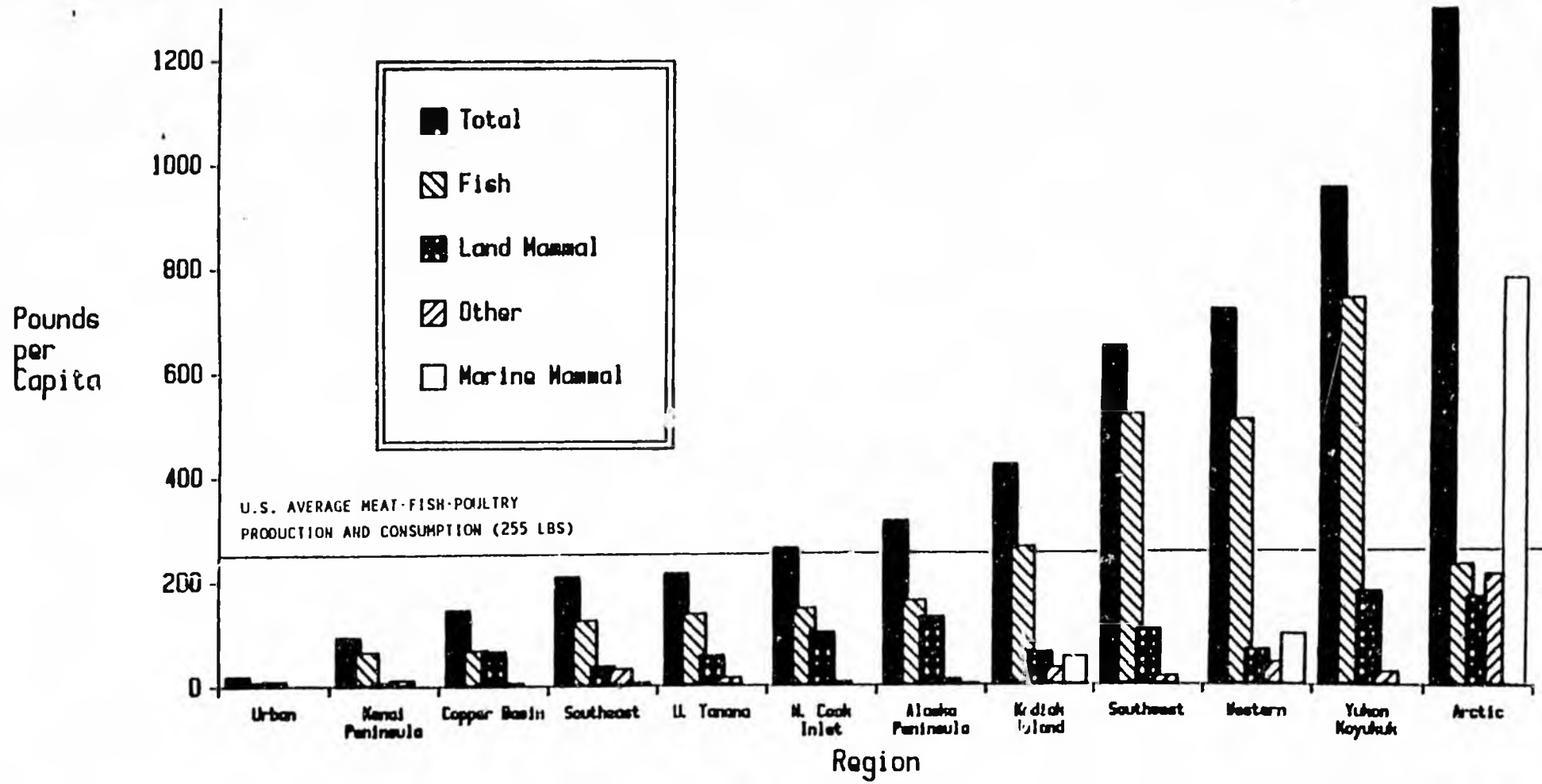
## SUBSISTENCE FOOD HARVESTS AT ALAKANUK, WESTERN ALASKA 1981



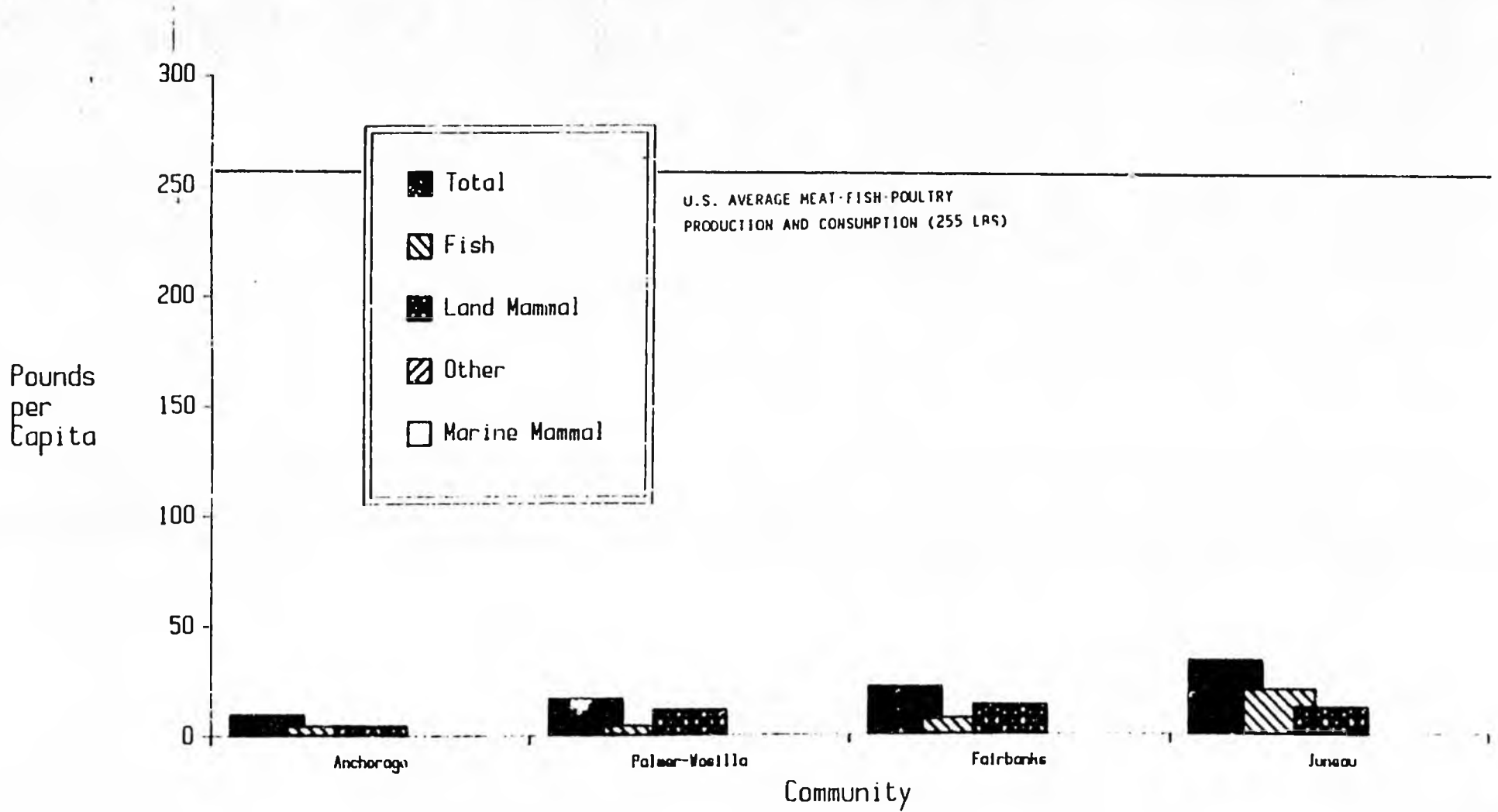
SUBSISTENCE FOOD HARVESTS AT KVALINA,  
NORTHWEST ALASKA 1983



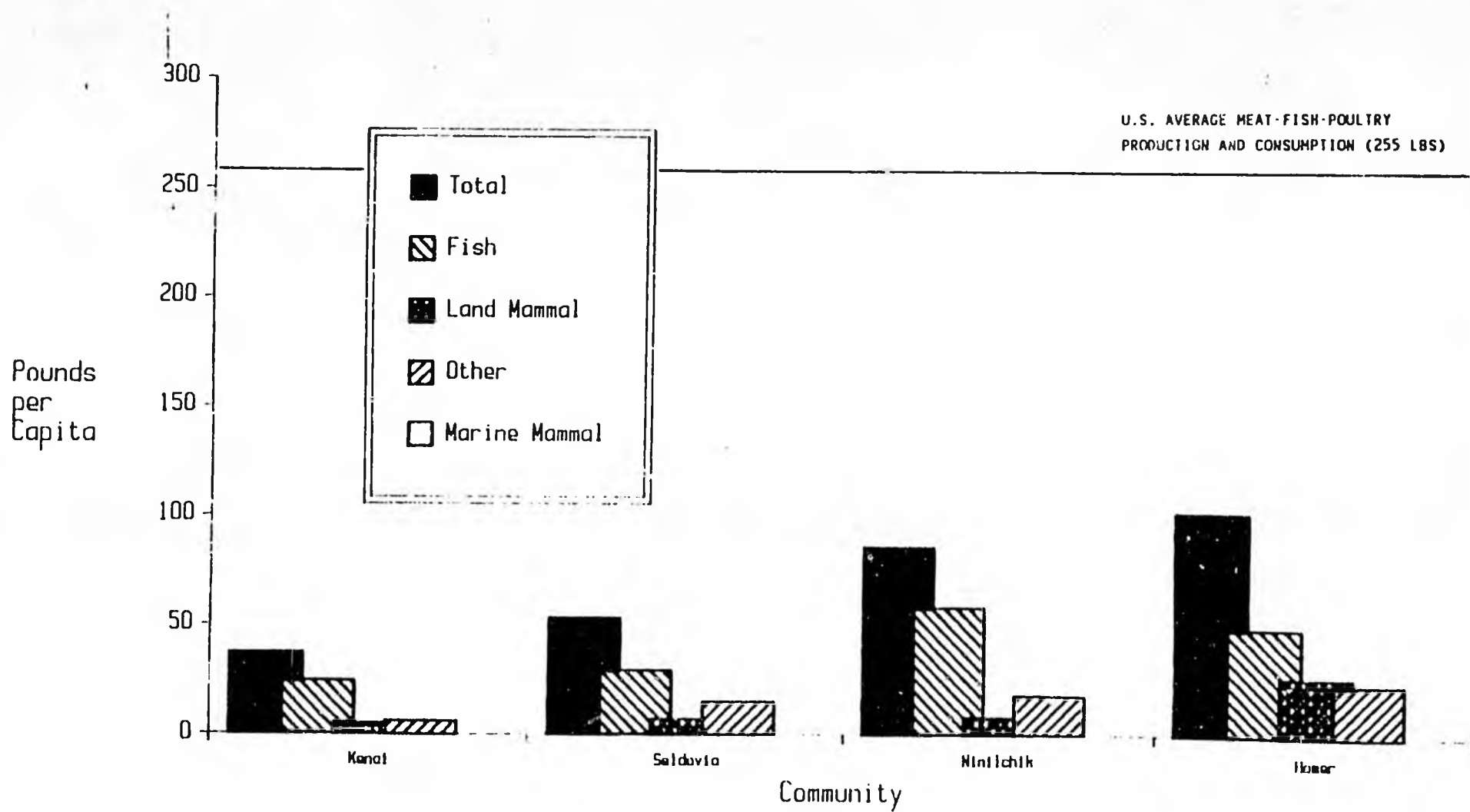
## RESOURCE HARVEST BY REGION



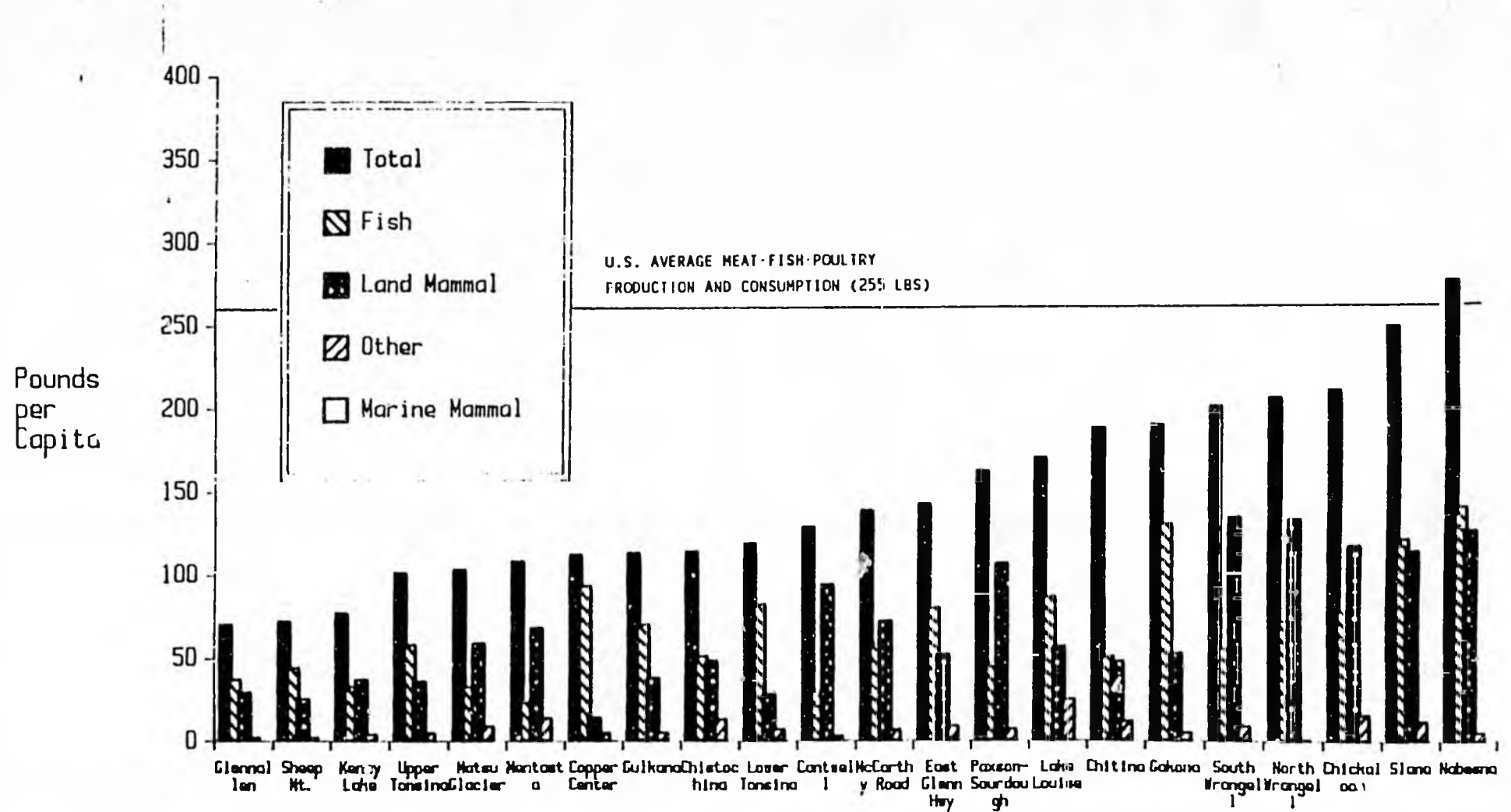
# RESOURCE HARVEST, FOUR URBAN AREAS



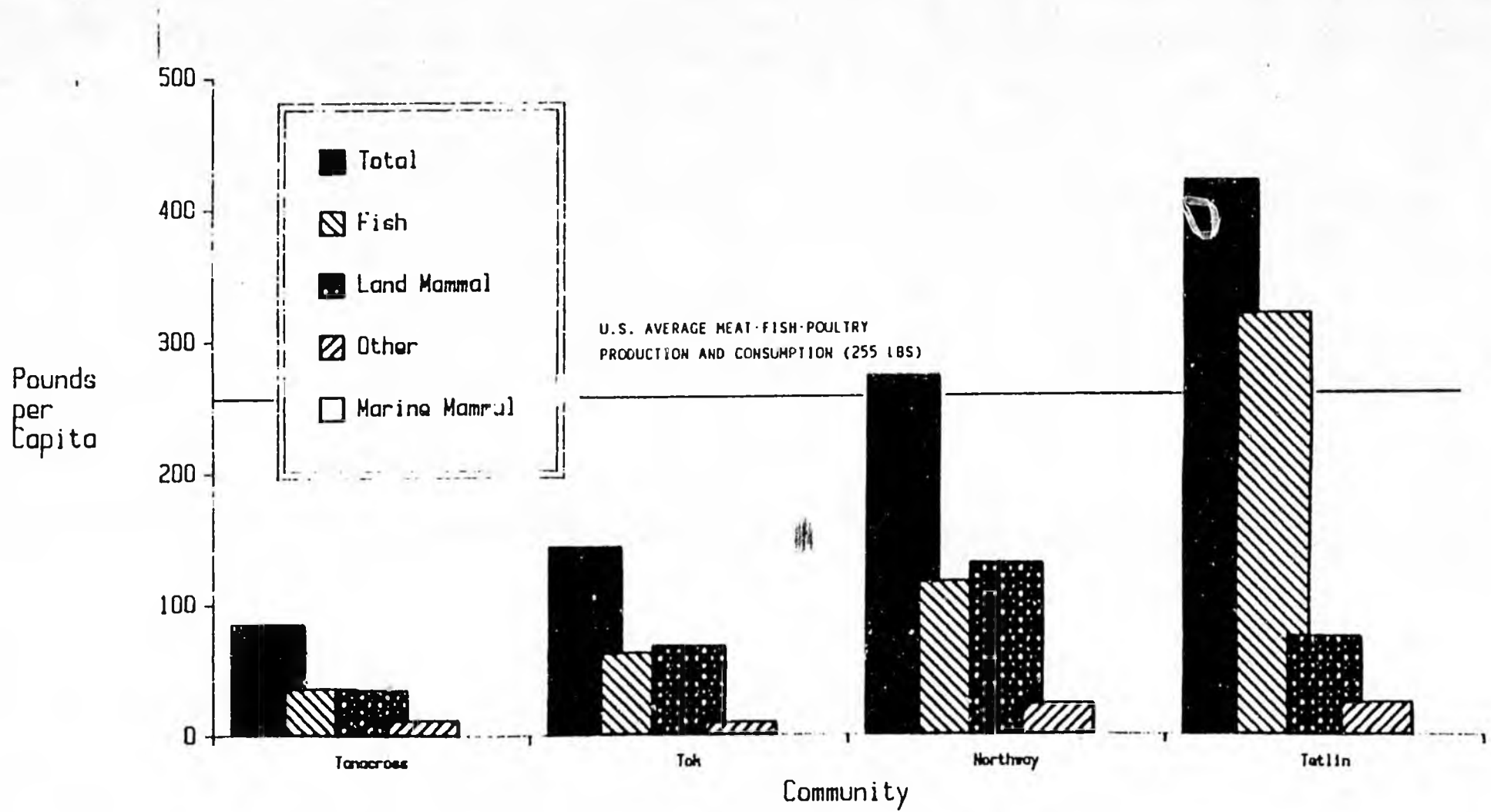
# RESOURCE HARVEST, NORTH KENAI PENINSULA



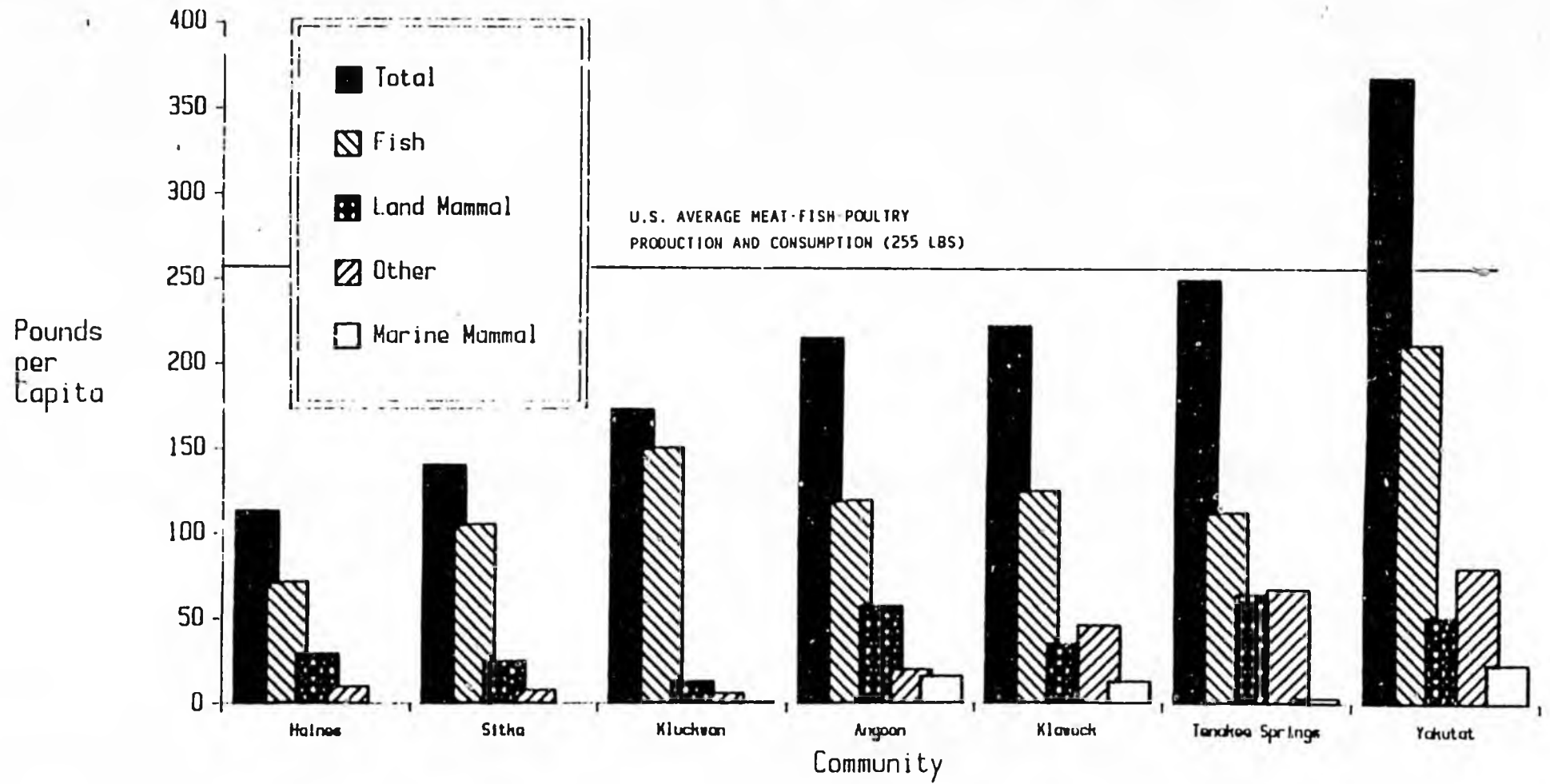
## RESOURCE HARVEST, COPPER BASIN



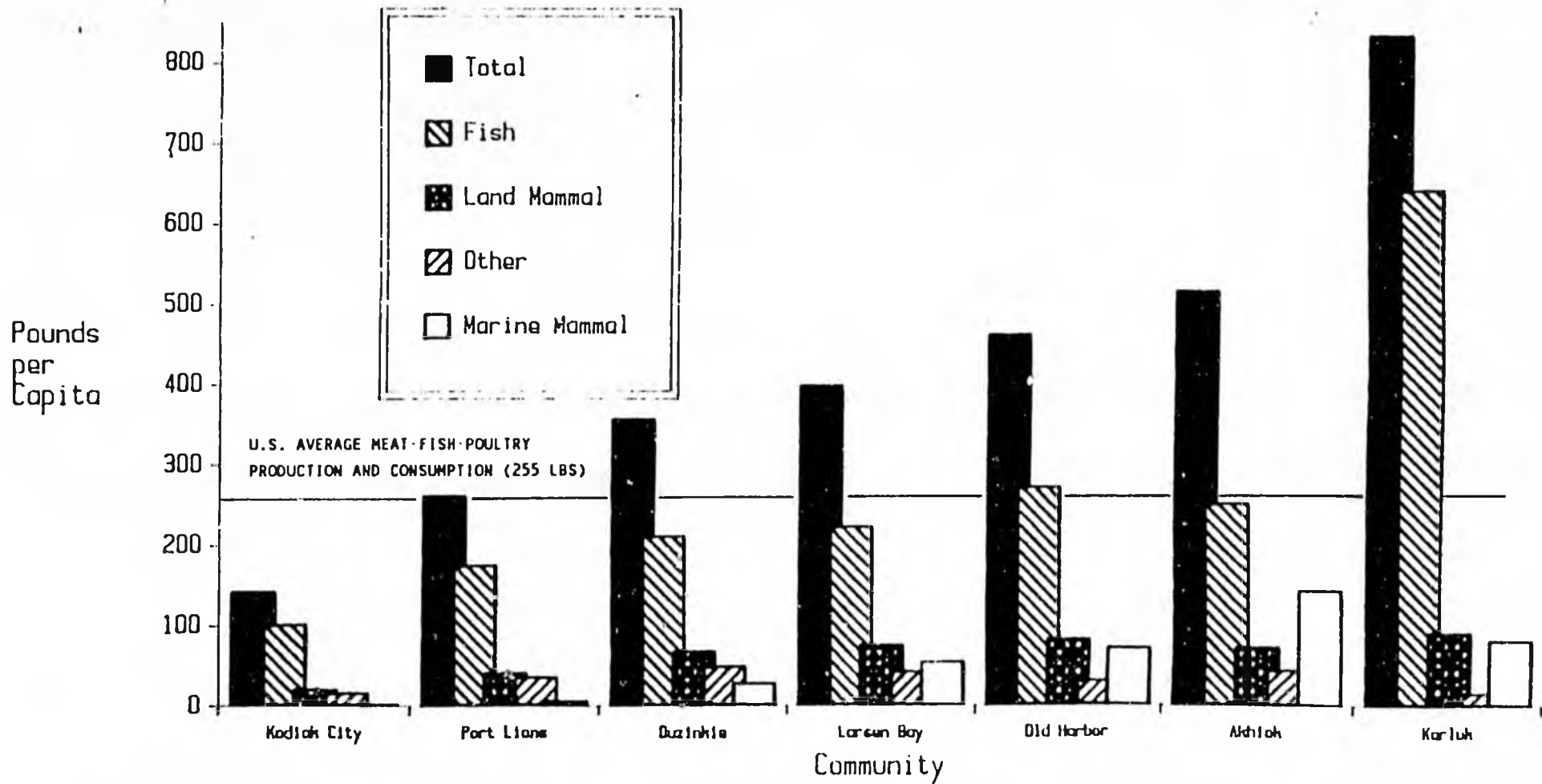
# RESOURCE HARVEST, UPPER TANANA



## RESOURCE HARVEST, SOUTHEAST



# RESOURCE HARVEST, KODIAK ISLAND



## RESOURCE HARVEST, ALASKA PENINSULA

