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Cowper weighs support for special session



Mindful before the legislature adjourned Tuesday night, Senate President Tim Kelly takes a phone call from Gov. Steve Cowper. Cowper sought a special session for consideration of his education endowment bill. He dropped the request because of lack of support for his bill in the Senate.

Governor's ready to call legislators back to reach agreement on subsistence law

Daily News staff and wire services

JUNEAU — Gov. Steve Cowper said Friday he is prepared to call a special session of the legislature to settle the controversy over subsistence hunting and fishing rights in Alaska — if enough lawmakers want it.

Senate President Tim Kelly, R-Anchorage, and Tony Knowles, a Democrat candidate for governor, called for a special session Friday, and U.S. Sen. Ted Stevens, R-Alaska, warned of dire consequences if the legislature does not settle the issue this summer.

Cowper said several legislators have asked him about the prospects for a special session since the legislature adjourned its regular session Tuesday without acting on the issue.

"I've certainly gotten a strong indication from several people that they wish they had acted favorably on subsistence before they left town," he said. "People simply did not understand the implications of a failure to act."

Kelly met with Cowper Friday and asked him to call a special session within the next six weeks to reconsider subsistence, legislative ethics reform and new regulations for hunting guides and outfitters.

"I think we're going to be here in June," Kelly said. "The governor is actively going to work to put together a consensus on the subsistence issue."



House Majority Leader Mike Navarre, D-Kenai, said it was ironic that Kelly was calling for a special session when the Senate never even voted on the subsistence issue. But Navarre said House leaders were open to the idea.

"We're going to wait a few weeks and see how people are feeling then, and if it looks like some votes have changed we'll give it a try," he said.

The Alaska Supreme Court ruled in December that the rural subsistence preference in state law was unconstitutional. But federal law requires a rural preference on federal land in Alaska.

Cowper and some lawmakers proposed a constitutional amendment to guarantee the rural preference. But lawmakers were unable to agree on the best solution.

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ADN 5-12-70

COWPER: If enough lawmakers support special session, governor says he'll call one

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Stevens would not say at a news conference in Anchorage Friday if he supports a special session, but said it is the only way for the state to fend off congressional action that he said would hurt the state while not leading to the best solution to the subsistence problem.

Stevens opposes changing the Alaska National Interest Lands Act of 1980, which mandates a subsistence preference for rural Alaskans, but said ANILCA will be changed if the legislature does not act on the subsistence issue in a special session.

"There isn't a single segment of Alaska that isn't going to suffer by having that issue opened up by Congress," Stevens said.

He said the U.S. House is against having state management of fish and game on federal lands.

Stevens said Rep. Morris Udall, D-Arizona, plans to try to amend the law anyway, and will be joined by various members of Congress who want to reduce access to Alaska national parks by hunters, cabins owners and pilots.

"There are people in Con-

gress who don't believe in hunting, there are a lot more who don't believe in guns at all, and there are many who believe that larger areas of Alaska should be set aside with no access to hunting," Stevens said.

Besides, he said, he supports the rural preference for subsistence rights.

"In times when there is a shortage of game, then people in the area should be able to hunt first," Stevens said.

Knowles also called for a special session Friday.

"We can't let others decide our future by default,"

Knowles said. "That would be a step backward."

The legislature's failure means the federal government will take over management of its land in Alaska — about 60 percent of the state — starting in July when the court ruling takes effect.

"They don't have any choice," Cowper said. "They have to come in, they have to take over and impose their own rules whether we like them or not. And they're preparing to do that."

"People are going to realize because of the announcements that are being made practically on a daily basis

by the federal agencies involved, that we're in deep trouble. And we've got to come back and resolve this."

Early Wednesday, minutes after the legislature adjourned, Cowper said it would be up to lawmakers to call themselves back into session. That would require a two-thirds vote of both houses.

But he said Friday he will call the special session himself if he confirms there is the two-thirds majority needed to refer a constitutional amendment to voters.

"At the moment the votes aren't there," Cowper said.

The governor said the Republican minority voted almost as a bloc against a subsistence amendment when it failed on a 20-20 vote in the House Sunday. Cowper said some of those Republicans are among the lawmakers who have called him expressing their regret.

"People are looking at them and saying, 'My God, why didn't you resolve that? What's the matter with you folks?'" Which is exactly the kind of the public pressure that's going to have to be put on the legislators that voted against it, specifically in the House minority," Cowper said.

Legislature Fails to Act on Subsistence; Federal Management Next

By LARRY PERSILY

Associated Press Writer

JUNEAU (AP) - The proposed constitutional amendment on subsistence hunting and fishing has died, and with it the state is expected to lose control of fish and game management on federal lands July 1.

Although the House had the subsistence resolution on the floor Monday night, supporters never put the issue to a vote because they lacked the two-thirds majority needed for passage.

The Senate never made it that far. Its resolution was stuck in the Judiciary Committee, headed by Sen. Jan Faiks, R-Anchorage.

There will be no special session, Gov. Steve Cowper said late Monday night. "I'm not going to haul them in there when the votes aren't there," Cowper said.

The Legislature's failure to put a rural preference for subsistence hunting and fishing on the November general election ballot guarantees federal takeover of fish and game management on federal lands, Cowper said.

Federal agencies control more than 60 percent of the land in Alaska.

"We'll have to sort it out when it comes," Cowper said.

The Alaska Supreme Court in December ruled that state law providing rural residents a subsistence preference violated the state constitution. But federal law requires rural preference, and a court stay giving the state time to resolve the dilemma will expire July 1.

"Hello federales," Rep. Mike Davis, D-Fairbanks, said Monday night.

Davis voted in favor of the constitutional amendment when it failed 20-20 on its first try Sunday.

The issue was scheduled for final reconsideration Monday, but after waiting until late into the evening supporters decided against taking a vote because they knew it would be a loser.

"I think it's a sad day for Alaska," said Rep. Peter Goll, D-Haines.

Cowper said he stopped badgering people to vote for the amendment about 8:30 p.m. He said the vote count had reached 24, maybe 25, and no more were forthcoming.

The constitutional amendment died when the Senate adjourned for the day shortly after 9 p.m., leaving only one day before tonight's adjournment deadline.

The constitution requires that legislative issues receive a minimum of two days consideration in each chamber.

Even if the House were able to pass the amendment today - or the Senate were to pass its version - the measure would fall short of the two-day requirement for consideration in the other chamber.

Lawmakers could vote to extend the session to consider subsistence, but that would take a two-thirds vote of each chamber, and no one in the Capitol said that is likely.

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House Republicans Take Control of Final Day's Agenda

By LARRY PERSILY

Associated Press Writer

JUNEAU (AP) - The Republican minority has taken control of the final day's agenda in the House, and several major bills could die without GOP support today.

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House defeats subsistence amendment, will vote again

ADN 5-7-90
By LARRY PERBILY
The Associated Press

JUNEAU — House members late Sunday night defeated a proposed constitutional amendment to allow rural preference for subsistence hunting and fishing, but supporters will have a second chance today.

The measure fell seven votes short of the required two-thirds majority needed

to pass a constitutional amendment. Senate approval also would be needed for the issue to win a spot on the November election ballot.

A similar constitutional amendment was in the Senate Judiciary Committee Sunday, with a vote by the full Senate possible today. Passage of either measure by both chambers before

Tuesday's adjournment deadline would put the issue on the ballot.

The Alaska Supreme Court in December said state law giving rural residents a preference for subsistence hunting and fishing violated the state Constitution. But federal law requires a rural preference, and the legislature has spent much of the session debating possible an-

swers to the legal dilemma. Supporters of a constitutional amendment say failure to legalize the rural preference will result in the loss of state control over fish and game management on federal lands.

The House vote was 20-20. It had been 21-19, but Rep. Loren Leman, R-Anchorage, changed his vote to "no."

"The first vote was my

heart, the second vote was my district," he said.

Rep. Richard Foster, D-Nome, said he was not optimistic about winning approval on the second try.

"There's just not only any understanding of the rural problem, there's not even any sympathy," he said.

Sunday's failure was not a surprise, Foster said. All but five of the 24

House Democrats voted for the measure, and all but one Republican voted against it. Rep. Bill Hudson, R-Juneau, voted in favor of House Joint Resolution 74. "No" votes came from Democratic Reps. Mark Boyer of Fairbanks; Curt Menard of Wasilla; Ron Larson of Palmer; Kay Wallis of Fort Yukon; and Dave Donley of Anchorage.

Poll backs Cowper

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On amendment for subsistence

By BRIAN S. AKRE
The Associated Press

JUNEAU — A majority of Alaskans support Gov. Steve Cowper's proposed constitutional amendment to retain the state's rural preference for subsistence fishing and hunting, according to a recent statewide poll.

The poll conducted by Dittman Research Corp. of Anchorage showed 51 percent of the respondents supported the amendment, 34 percent were opposed and 15 percent were undecided.

The results do not indicate that the issue has sharply divided Alaskans, as some lawmakers predict it will, pollster Dave Dittman said Friday.

"I just don't see it as being that divisive," he said. "There's just not that strong an opposition to it, but there's not that strong support either at 51 percent. I think it's something folks would rather not worry about."

The random telephone survey of 547 Alaskans was conducted March 13-18. It has an error margin of plus or minus 4.5 percent.

The subsistence question was one of 26 questions on a monthly survey that Dittman conducts for a variety of clients. No client sponsored the subsistence question, Dittman said.

The legislature is considering several subsistence measures in response to a recent Alaska Supreme

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POLL: Alaskans favor rural preference for subsistence

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Court ruling. The court ruled the state subsistence law was unconstitutional because it provided a preference to rural residents.

Federal law, however, requires a rural preference. Cowper has proposed changing the state constitution to allow that preference. If two-thirds of the House and Senate agrees, the measure will be referred to voters in November.

Should the legislature fail to come up with a solution, the federal government may assume management of fish and game on its lands within

Alaska as early as summer, officials say.

Cowper reacted cautiously to the poll results.

"This trend looks good, but it's very early and the public hasn't really heard the arguments on both sides," he said. "The amendment just keeps the status quo, and my guess is that most people are satisfied to keep things as they are."

Sen. John Binkley, who supports Cowper's proposal, said he was not surprised by the results. "I think it's encouraging. It shows the majority of Alaskans support the system of subsistence that we have."

Rep. Ramona Barnes, an

Anchorage Republican who opposes solving the problem with a constitutional amendment, said it's too early in the debate for a poll to have much meaning.

"There's not been a great deal of discussion statewide," she said. "Only now are the sports groups getting involved."

Respondents were asked if they would support or oppose Cowper's amendment "which would allow preference to rural residents in the taking of fish and game." The question did not specifically mention "subsistence" and did not provide any further information.

"I don't think people un-

derstood the question," Barnes said. "When it's explicit, they're very opposed to amending the constitution."

According to the poll, support for the amendment is strongest among rural residents — 69 percent in favor compared with 20 percent opposed. It was weakest in the Fairbanks-Interior region — 47 percent in favor compared with 46 percent opposed.

Anchorage was 47 percent in favor and 38 percent opposed. Southcentral had 41 percent in favor and 33 percent opposed, and Southeast residents favored the measure 55 percent to 23 percent

Governor and lawmakers split on subsistence

By DAVID POSTMAN
Daily News reporter

JUNEAU — Gov. Steve Cowper believes lawmakers fear a vote on subsistence and their failure to act is illogical and jeopardizes fish and game management "for years and years to come."

"They haven't done a cock-eyed thing on subsistence except dodge it," Cowper said in an interview Wednesday.

"I think they are afraid to vote on it."

The future of Alaska Natives' traditional right to hunting and fishing was thrown into doubt when the Alaska Supreme Court ruled that the state law giving rural residents preference was unconstitutional.

Rather than change the state's subsistence law to conform with the constitution, Cowper wants lawmakers to put a constitutional amendment on the November ballot to change the constitution to match the existing law.

Some lawmakers have criticized the governor's approach, saying a ballot measure would bring a bitter campaign pitting Natives against urban sportsmen — a replay of a 1982 subsistence election. Native groups and sportsmen's organizations have already faced off as they lobbied the legislature this session.

But Senate President Tim Kelly, R-Eagle River, said that rather than being afraid of bringing on a divisive campaign, the Senate has not done much with Cowper's proposal because there aren't the votes to place it on the ballot.

"We wasted a lot of time on his plan," Kelly said. "Until he recognizes that he does not have the support of the Alaska Legislature or



Gov. Steve Cowper

the public, we're high-centered."

In the House, Rep. Max Gruenberg, D-Anchorage, co-chairman of the House Judiciary Committee which is considering Cowper's proposal, would not respond to Cowper's comments.

"I cannot give you a comment," he said. "We are still talking about it."

Both the House and Senate are considering bills that would place constitutional amendments on the fall ballot that would guarantee a subsistence priority. Cowper and several lawmakers have introduced slightly different versions of the proposed amendment.

If the legislature does not act, state officials have said the federal government will be forced to take over management of Alaska's fish and game.

So far, the Senate Resources Committee has given very little attention to Cowper's proposal.

"We've been trying to

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COWPER: Subsistence strife

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find something that works," said committee Chairwoman Sen. Bettye Fahrenkamp, D-Fairbanks. "He doesn't have any support, but I could move the bill tomorrow if he wants."

In the Democratic-controlled House the bill has been approved by the resources committee and is now being considered by the judiciary committee, which was scheduled to hold a meeting on the bill Wednesday night.

"They're running a terrible risk," Cowper said. "The action has effectively stopped in the House Judiciary Committee and the people on that committee are jeopardizing fish and wildlife management for

years and years to come."

Cowper said he was concerned about reports that the subsistence bill is being held up by House Democrats who are angry that their rural colleagues are trying to kill a bill that would give public school teachers the right to strike.

"That's not very smart to link up something as important to all Alaska as subsistence with something that has absolutely no relationship to it," Cowper said.

Rep. Peter Goll, D-Haines, co-chairman of the judiciary committee, said he wasn't aware of any link between the two issues.

"It might be happening with out my knowledge," he said. "This is a very strange political world we are working in right now."

Outside activists join Alaska fight over subsistence

'Indian has license to steal,' leader says

By DAVE PATRICK
Times Journal Bureau

JUNEAU — The leader of a Wisconsin group that opposes Indian treaty rights said the group will become involved in Alaska's subsistence fight if a state constitutional amendment goes to voters in November.

Larry Peterson, chairman of Protect Americans' Rights and Resources, said Alaska is one of 41 states where federal policies and court decisions have created a special class of people.

"The reservation Indian has been given a license to steal by the federal courts," Peterson said.

He said Alaska's natives have

been amply compensated for the loss of their historical land rights by the 1971 Alaska Native Claims Settlement Act. The ANCSA settlement gave natives \$1 billion dollars and 44 million acres of land.

PARR claims a membership of 8,000 hunters and other outdoors enthusiasts in Wisconsin. The group has acquired a reputation among Indian rights advocates, who say the group promotes racial bigotry.

Sue Erickson, spokeswoman for The Great Lakes Indian Fish and Wildlife Commission, says PARR and Peterson have wrapped themselves in patriotism and fundamental constitutionalism while spreading rumor and misinformation.

"As far as I'm concerned, it's just a lynching of minority

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Subsist

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rights," Erickson said. The Wisconsin-based tribal commission, working with a \$2.6 million appropriation from Congress this year, oversees harvest areas, seasons and bag limits of the Chippewa Indians in three Midwest states.

Erickson accused PARR members of provoking violence last year in northcentral Wisconsin over the fish spearing rights of Chippewa Indians.

Peterson denies any role in the ugly racial attacks on Indians, recorded by network news television crews covering the protests. He says his organization will support any member implicated in the confrontations.

Peterson claims his group's reputation springs from federal bureaucrats and Indian rights attorneys who feel threatened by PARR's assaults on Indian treaties.

The strident exchanges may be a harbinger of the debate to come in Alaska as Lower 48 hunting, fishing and outdoors organi-

zations are turning their attention to the state's struggle over subsistence hunting and fishing rights.

"There are five or six major organizations in America that will come on board, on this fight," said Sam McDowell, who brought the lawsuit that resulted in an Alaska Supreme Court ruling on subsistence last year.

The court in December declared the state's subsistence law unconstitutional finding that it illegally discriminates against city residents who may want to subsistence hunt and fish. The decision stands at odds with provisions in the Alaska National Interest Lands Conservation Act that require a rural preference.

The conflict could set the stage for a federal takeover of subsistence hunting on more than half the land in Alaska.

Gov. Steve Cowper proposed a constitutional amendment Friday to re-establish the hunting and fishing preference for rural residents. The proposal requires a two-thirds vote of each house of the legislature, which would place the amendment on the November ballot.

Peterson said his group will lend financial support to defeat the constitutional amendment.

Apr 4-11-90

Emotions run high on subsistence rights

By DAVID HUIEN
Daily News reporter

Evelyn Alexander, a 74-year-old Athabascan from the Interior village of Minto, stood in front of the representatives of the National Rifle Association and the Alaska Outdoor Council and stared them in the face. Behind her, some 600 Natives from around the state fell silent.

Her voice, amplified by a microphone, was loud and stern.

"I live off the world," she began.

"I live off Native food my whole life. I still live in camp. I still live on trapline. I go out in winter on snow-go. I fish summer time with fish net.

"You people that work, have a steady job, you have money, you have money to buy hamburger. But if you don't have that kind of money, it's going to hurt you. And that's what I am today. I live on

little money. ... It's nothing. Lots of you don't know what's going on in the villages. ... I'm trying to say what I can for my people.

"And subsistence means lots to me."

Alexander, a stout, wrinkled woman in a long print dress, checkered jacket and speakers, said she's worried about the future. Her voice wavered with emotion.

"That's why I come. I don't

know what you're going to do to us. I'm Indian, Athabascan Indian. I live on Native foods. ... And if you shut down that subsistence," she said, waving her hand, "you just threw me in the river right now. You don't know what you do to old people like me."

She is among hundreds of Natives in Anchorage this week for a two day gathering on perhaps the thorniest, most complicated issue in Alaska — subsistence.

Alexander expressed no preference for any of the constitutional amendments being pondered by state legislators, nor did she have a specific opinion on how Alaskans should resolve the tangled legal debate over who should have access to a limited amount of fish and game.

But like other village residents at the conference, Alexander con-

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NATIVES: Emotions run high at subsistence conference

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veyed a fear that appears to be growing among many Natives around the state — that their right to customary and traditional hunting and fishing is under attack by outsiders, from the Alaska Supreme Court to recreational hunters and fishermen.

In December, the state Supreme Court declared Alaska's old subsistence law unconstitutional because it gave preferential treatment to rural residents.

"Us old people in Minto gathered up as soon as we heard about it," said Alexander. "It really hurt me."

The conference was organized by the Alaska Federation of Natives to spread information and try to bring closer together various Native groups, which disagree on what should be done. The court has given the state until July 1 to resolve the issue.

The session Tuesday featured an almost-unheard-of face-to-face meeting between Native political leaders and their biggest foes in the subsistence battle — groups representing the state's sports hunters and fishermen.

Wayne Anthony Ross, an Anchorage lawyer and a national vice president of the NRA, and Bud Burris, president of the Alaska Outdoors Council, both told the gathering that they weren't at all opposed to subsistence by Natives. They're opposed to others being



BOB HALLBERG / Anchorage Daily News
Mitch Demientieff of Tanana Chiefs: "The Native people have compromised again and again."

denied equal access to fish and game.

In fact, they said, sport hunters have a lot in common with Natives. Ross' four kids grew up on moose, he said — he and his wife even put moose meat in a blender to feed them as babies.

The real enemies of all hunters and fishermen in Alaska, Ross and Burris told the gathering, are animal-rights activists and environ-

mental groups outside the state. The pair want Natives and sports groups to work closer together to fight them.

"The only time we talk to one another is in court," Ross said.

He and Burris received polite applause, especially when they said they wanted nothing to do with a Wisconsin group that has staged violent protests against Indian subsistence hunts there and has threatened to come to Alaska if there's a subsistence election.

But it became clear during Tuesday's session that many Natives fear a loss of subsistence rights, and that the issue is highly emotional. Evelyn Alexander got a standing ovation, and several people talked about how any loss of subsistence rights would further erode Native culture in the state.

"The Native people have compromised again and again," said Mitch Demientieff, chairman of the Fairbanks-based Tanana Chiefs Conference. "We've had to fight for everything we do. It shouldn't be insulting to the non-Native community that we want to practice our culture."

Native groups disagree on what the answer should be. The AFN, the state's largest Native group, has backed a plan by Gov. Steve Cowper for a constitutional amendment to give all rural residents a subsistence priority. It would essentially restore the state's old subsistence law.

But other Native groups, includ-

ing the Tanana Chiefs Conference and the Southeast Native Subsistence Commission, want subsistence priority explicitly given to all Natives, as well as rural residents. AFN leaders say this has little chance of getting support from non-Natives.

The sport-hunting groups oppose any constitutional amendment to give a subsistence preference to anyone. It discriminates against other hunters, they say. The answer, they say, is more aggressive game management by the state so there's more wildlife to go around. They favor, for example, bigger seasons on predators such as bear and wolf to boost moose and caribou populations.

But despite opposition from outdoors groups and in the legislature, Demientieff said people in Interior villages are adamant about a Native preference, as are those in several other regions of the state.

"People don't look at it as just Native preference — they see it as cultural restoration," Demientieff said. "They want a guarantee they'll have that right in the future."

Leaders of some Native groups want to try to develop a statewide Native consensus on subsistence at today's session. Gov. Steve Cowper is scheduled to speak this morning, and a joint hearing of the House and Senate Resources Committees is scheduled for tonight at the Egan Convention Center from 5:30 to 9.

Natives favor state control of subsistence

Proposal called vital for Alaska

By JACQUES PICARD
Times Writer

Several Native leaders told state legislators Wednesday they support a proposed constitutional amendment giving the Legislature broad power to regulate subsistence hunting and fishing.

The proposal by Rep. Lyman Hoffman, R-Bethel, would say that nothing in the state constitution prohibits the Legislature from regulating subsistence activities if they comply with federal law.

Byron Mallott, executive director of the Native Sealaska Corporation, said an amendment to the state constitution is vital not only for preserving subsistence hunting and fishing but also to prevent federal control of Alaska wildlife management.

"I think that it is very important that the state of Alaska maintain management control over all of its resources in its boundaries," Mallott said.

He was among more than 50 people to testify at a Joint Resources Committee hearing on subsistence issues. The hearing was held in Anchorage to coincide with a conference of the Alaska Federation of Natives.

Mallott said he favored the Hoffman amendment because the broad language would give the state flexibility to comply with federal law as the subsistence needs of Alaska residents change.

But support for the Hoffman proposal was not unanimous.

Some speakers supported House Joint Resolution 88, the constitutional amendment proposed by Governor Steve Cowper.

Cowper's bill would specifically allow the Legislature to limit subsistence hunting and fishing to rural residents, based on community residence and tradition.

Sam McDowell urged the Legislature not to pass the Cowper bill. He said if fish and game were managed to provide a sustained yield there would be no problem. McDowell, an Anchorage resident, was a co-defendant in the case that resulted in an Alaska Supreme Court ruling

that threw out the present subsistence law, saying it discriminated against urban residents.

McDowell urged the legislature to file a lawsuit against the



Katie John
... unhappy with laws

federal government. "If you don't do so, I'm pleased to tell you, we are going to do that," McDowell said.

Trefon Angusan, a member of the Bristol Bay Native Corporation, said he supports subsistence rights for both Native and non-Native rural residents.

Angusan said he favored the Hoffman amendment because it had the best chance of receiving broad political support.

Katie John, 74, of Mentasta, said she was unhappy with laws telling her where and when she could fish.

"There's a lot of old people living here, and still they make all kinds of laws, and we can't go out and do anything," she said.

Katie John was one of many Native elders who testified about the importance of subsistence to the Native culture.

"We are tradition. We have been in Alaska for many, many years," she said.

"I have been fighting for five years for my own land, my own fishing place. Still somebody push me around and somebody tells me what to do — that many days you go fishing, that many fish you get," she said.

"This year I ask for nets. Nobody wants to give me nets. I wonder why? A lot of people using nets. Look at them down at the ocean. The big fishermen they all use nets. And there's one little creek I want to use nets, and they won't let me have them."

TIMES 46-90

Rural lawmaker dishes up subsistence amendment

By LARRY PERSILY
Associated Press

JUNEAU — The newest proposal for a constitutional amendment on subsistence hunting and fishing tries to solve the state's legal dilemma without specifically guaranteeing a subsistence priority.

The amendment would simply say that nothing in the state constitution prohibits the Legislature from passing laws governing subsistence activities, as long as they comply with federal law.

That differs from the proposals by Gov. Steve Cowper and Rep. George Jacko, who would amend the constitution to provide a specific preference for rural subsistence hunters and fishermen.

The Alaska Supreme Court in December ruled the state's subsistence law unconstitutional because it gave a preference to rural residents. Federal law, however, requires a rural subsistence preference in Alaska.

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Hunting

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Supporters of the latest proposal by Rep. Lyman Hoffman, D-Bethel, say it would give legislators flexibility in responding to federal laws, while also preserving state management rights.

"It's the best I've seen that would be close to acceptable in my district," Rep. Curt Menard, D-Wasilla, said Thursday. Menard is co-chairman of the House Resources Committee, which plans to hold hearings on the issue Wednesday in Anchorage. The committee will be in Anchorage for the Alaska Federation of Natives convention, he said.

The Senate Resources Committee also is scheduled to hold subsistence hearings that day in Anchorage, said Sen. Bettye Fahrenkamp, D-Fairbanks and committee chairwoman.

In addition to the amendments proposed by Cowper and Jacko, D-Pedro Bay, a native-preference amendment has been offered by Rep. Kay Wallis, D-Fort Yukon.

Hoffman said the other proposals lack the political support needed to win a two-thirds majority in the House and Senate and approval by the voters in November.

Rep. Dick Shultz, R-Tok, said he opposes a constitutional amendment guaranteeing a subsistence preference, but he said Hoffman's proposal may be acceptable.

Not everyone is sold on Hoffman's proposal.

"It probably will gain ground, but it won't gain my ground," said Sen. Steve Frank, R-Fairbanks. Frank favors changing federal law instead.

Cowper's special assistant for resource issues, Denby Lloyd, said Hoffman's proposal appears to have fewer legal problems than other plans.

But some lawmakers said it could result in pressure on the state to change its laws if Congress decides in the future to modify the rules for subsistence.

Hoffman is circulating his proposal among lawmakers and administration officials. It's too late in the session for individual lawmakers to introduce legislation, and Hoffman said he expects his proposal could be substituted for one of the other measures in committee.

Lawmakers face a May 8 adjournment deadline.

The Alaska Federation of Natives in February gave its support to a rural-based subsistence preference in the constitution, and Hoffman said he plans to discuss his proposal with the group.

"This amendment does not address the controversy of rural or native," he said. "That can be dealt with, but let's not deal with it now."

Failure by the state to resolve its legal conflict with federal law could result in federal takeover of fish and game management on federal lands. "That is the problem that the residents of the state have to realize," Hoffman said.

Subsistence debate continues to expand

Fort Yukon legislator says preference should go to Natives, rural residents

By LARRY PERSILY
The Associated Press

JUNEAU — A Native-preference proposal has been added to the legislature's constitutional amendment debate on subsistence hunting and fishing rights.

Gov. Steve Cowper and many legislators support a rural preference amendment to govern subsistence hunting and fishing, but Rep. Kay Wallis, D-Fort Yukon, said that falls short of protecting the Native culture.

Wallis introduced a measure Wednesday that would amend the state constitution to limit subsistence rights to Natives and rural residents.

"I'm just coming from a cultural basis," she said. "This isn't a you-against-me type of thing."

Her proposal also would extend Native preference to urban residents, a group not covered by previous subsistence laws or Cowper's proposal.

But Rep. Richard Foster, D-Nome, said it would be hard enough to convince people of the

need for rural preference, and he doubts a Native preference amendment could win public support.

The Alaska Supreme Court in December declared the state's subsistence law unconstitutional because it gives preference to rural residents for limited fish and game resources.

Cowper last week proposed amending the constitution to allow rural preference. Rep. George Jacko, D-Pedro Bay, offered the same proposal in January.

Although many Natives find it hard to support anything less than Native preference, such an amendment likely would fail to gain legislative or public support, Jacko said.

"We really need unity," he said.

Foster agreed that divisiveness among rural lawmakers is a problem. "The Bush caucus is so split on this that everyone is doing their own idea."

The Alaska Federation of Natives last month said it supports a

rural-preference amendment. A Native-first constitutional amendment is supported by the Southeast Native Subsistence Commission of the Tlingit and Haida Central Council.

Sen. John Binkley, R-Bethel, predicted failure for a Native-preference amendment.

"The rural preference gets us back to the status quo, and I think, a majority of the people were satisfied with that," Binkley said.

The state faces a legal deadline to solve its subsistence problem because federal law requires rural preference. The state Supreme Court issued a stay on its ruling until July 1 to allow the state time to cope with its dilemma.

Lack of state action to follow federal law could result in federal takeover of subsistence management on federal lands.

Rep. Cliff Davidson, D-Kodiak and co-chairman of the House Resources Committee, said a full day of public testimony will be heard by the committee Saturday.

ADN 3-8-70

Jacko seeks subsistence amendment

By LARRY PERSILY
Associated Press

JUNEAU — A proposed constitutional amendment that would guarantee rural Alaskans continued preference for subsistence hunting and fishing rights has been added to the legislative debate on the issue.

Rep. George Jacko's proposal would amend the state constitution to allow subsistence preference based on rural residency, traditional use or dependence on fish and game for food.

Two-thirds of the House and Senate must approve Jacko's resolution before the amendment can go before voters in the November general election.

The Alaska Supreme Court last month ruled the state's subsistence law was unconstitutional because it gives preference to rural residents. Federal law, however, requires a rural preference, putting the state in a legal dilemma.

The court has granted a stay in the case until July 1 to give the state time to solve the problem.

A state constitutional amendment is the answer, rather than federal legislation, Jacko said Tuesday.

House Joint Resolution 74 is the third proposal offered this session to resolve the subsistence issue.

A group of House Republicans Jan. 15 proposed that subsistence privileges be based on economic need only. They later amended their bill to drop the need provisions and instead proposed a subsistence program for urban and rural residents.

Rural lawmakers said the income-based plan was inappropriate. They said it failed to consider subsistence as a way of life that is not necessarily based on economic need.

The second proposal came from Gov. Steve Cowper, who last week said he was working on a bill to establish a permit system for subsistence hunting and fishing. Permits would be granted based on past use of fish and game.

Jacko, D-Pedro Bay, said he opposes a permit system.

"It is inconceivable and incompatible with the subsistence concept to think that subsistence users will fill out paperwork to report their take of fish and wildlife," he said.

Times, 1-31-70

SUBSISTENCE SOLUTIONS

Options for managing Alaska's wildlife resource

✓ Judicial Solution

Action — The Alaska Supreme Court could reconsider and reverse its Dec. 22 decision that said the state's subsistence law is unconstitutional. The state of Alaska and Alaska Federation of Natives have filed petitions for rehearing with the court.

Process — The court would make the decision.

✓ Alaska Legislature Solution

Action — Amend the Alaska Constitution to allow the Legislature greater flexibility to provide a subsistence priority. There are two options: provide a "rural" priority or a Native-and-rural priority.

Process — The Legislature must pass an amendment by a two-thirds vote in both the Senate and the House. The amendment must then be approved by a majority of the voters.

✓ Congressional Solution

Action — Amend Title VIII of the Alaska National Interest Lands Conservation Act, which requires that the state give "rural" residents a subsistence priority.

Process — The U.S. Congress would amend Title VIII, drop the existing rural subsistence priority and allow a different means of determining priority, such as by individual evaluation.

✓ Federal Court Solution

Action — Delete Title VIII of the Alaska National Interest Lands Conservation Act.

Process — The state or another party would have to sue the federal government, alleging that Title VIII is in violation of the U.S. Constitution because it does not provide equal protection under the law. The court would strike down the law.

✓ Federal Takeover

Action — No action

Process — Under Title VIII of the Alaska National Interest Lands Conservation Act, unless Alaska provides a priority use of fish and wildlife for rural residents, federal agencies will take over management on federal lands. The law would remain in conflict with the Alaska Constitution.

Gina Hines/News Miner

Solution to subsistence morass won't come easily

By KELLY BOSTIAN
Staff Writer

Plans to mop up the legal quagmire created when the Alaska Supreme Court ruled the state's subsistence law unconstitutional are as varied as Alaska's people, and the only thing anyone seems to know is that all sides will put up a tough fight.

With anglers lining riverbanks shoulder to shoulder, thousands applying for a few dozen special hunting permits and Bush residents worrying about the future of their lifestyles, the court decision has added even more pressure to the controversy over how Alaska doles out its wildlife resources.

The problem is finding a solution that is equitable but also recognizes the unique lifestyles of some Alaskans.

The state is in a quandary because the 1980 Alaska National Interest Lands Conservation Act mandates that state law give rural Alaska residents a hunting and fishing preference. The approach has outraged hunters from urban areas, and they want it changed. They convinced the state Supreme Court to support them.

But if the state doesn't give a rural priority, the federal government can take over wildlife man-

agement on federal lands—more than half the state.

Now three basic strands emerge from the pools of public opinion: amend the state constitution to bring it in line with federal law and save the status quo; amend federal law to bring it in line with the state constitution and create a new system; or challenge the federal law in the courts, do away with it, and create a new system.

The Supreme Court still could make all points moot by reversing its December decision, but officials are not hopeful.

Restore status quo

Gov. Steve Cowper is pushing for an amendment to the state's constitution. That would bring state law in line with the Alaska lands act and save the regulation system presently in use.

Following the court's decision, the governor did not immediately support a constitutional amendment, but he said Wednesday that he finally concluded it was the only practical solution. "I came to this out of a process of elimination," Cowper said in a Wednesday interview. "I just don't see any other way to restore the status quo."

The Supreme Court's decision all but spelled out the need for a sub-

sistence system based on individual permits, Cowper said. Evaluating that option, he saw a "specter of an enormous bureaucracy."

The status quo seems the best of all solutions. "Essentially, this is an accepted way of doing business in Alaska," Cowper said. "This law has been worked out over the last 12 years. It's revisited us a time or two but it's always worked out as the same sort of deal."

A Native preference

Opinion among Alaska Native leaders appears divided, with some backing the governor's proposal and others demanding that a Native preference is the only logical solution.

Rep. Kay Wallis, D-Fort Yukon, introduced a resolution similar to Cowper's, only it stretches the priority to Natives, as well as rural dwellers.

Wallis said her measure is vital to the future of Alaska Natives. More than half of the state's Natives are not eligible for subsistence uses under current law because they live in urban areas.

"Providing for a Native Alaskan priority will make it clear that the state wants the culture to persevere," Wallis said in a telephone interview. (See *SUBSISTENCE*, Back Page)

SUBSISTENCE: Solution not easy to find

(Continued from page 1)
interview from Juneau
Wednesday.

"To me, if the resolution makes it to the floor, a no vote against the resolution will be a vote against the survival of the culture. That's about the bottom line," she said.

Tanana Chiefs Conference delegates voted Thursday to support a Native preference.

The Alaska Federation of Natives, on the other hand, voiced support for the governor's proposal. Loph Eluska, chairman of AFN's board of directors, pitched AFN's stance to Tanana Chief Conference delegates in Fairbanks this week.

Eluska said that after months of studying the issue, AFN concluded that Cowper's bill could pass, while Wallis' bill faces slim chances.

While Cowper and Native Alaskans push for constitutional amendment, the Alaska Outdoor Council, an 11,000-member sporting interest lobby, pushes for an amendment to, or challenge of, the Alaska lands act.

"ANILCA forces the state to violate its own constitution. How can Congress, which approved our constitution, then enforce a law that forces us to violate it," said Fairbanks resident Bud Burris, the Council's president.

In a memorandum released last week, the Council called for changes to the Alaska lands act, which the Council noted has been amended nine times already since its enactment.

Burris said the act could be amended again to create a subsistence preference based on some criteria other than urban verses rural, such as personal need and lack of alternative means of getting food.

The rural priority assumes that urban people have grocery stores as an alternate to wild fish and game, Burris said. "But it's not an alternate option if you don't have money," he said.

The council memorandum also calls for the state to sue the federal government. "No other state has this kind of blackmail hanging over it," Burris said.

If nothing else, the Council said, the state could provide a rural subsistence preference through "method and means" regulations adopted by the state fish and game boards.

For example, the boards could limit transport of meat by airplane,

which gives local hunters an advantage. Also, winter seasons can be provided, which also gives local residents an extra crack at the game.

If the effort that has been put into regulating subsistence were put into game management, more animals would be available for everyone, Burris said.

Both Cowper and Sen. Ted Stevens say the Council's approach won't work.

Cowper said the demand for fish and wildlife is too great for a subsistence preference based only upon methods and means.

"I'm not sure it could it work that way anymore. Alaska's not the same state it used be," he said.

Sen. Stevens said Alaska will "rue the day we stir up a debate about ANILCA in Washington." Stevens said he instead supports an amendment to the state's constitution, but not one that creates an ethnic preference.

TIMES 3-2-75
**Cowper backs
subsistence
amendment**

By LARRY PERSILY
Associated Press

JUNEAU — Gov. Steve Cowper has decided to support a state constitutional amendment to grant rural residents a preference for subsistence hunting and fishing.

Cowper confirmed Thursday that he would seek legislative approval of a constitutional amendment and scheduled a press conference today to introduce his plan. He declined to release the details Thursday.

Five weeks ago Cowper said a constitutional amendment was not "politically practical."

See Amend, page A-8

Amend

Continued from page A-1

An amendment would need approval by two-thirds of the House and Senate to win a spot on the November general election ballot.

The Alaska Supreme Court in December ruled the state's subsistence law unconstitutional because it gave preference to rural residents. Federal law, however, requires a rural preference in Alaska.

Cowper in January proposed to solve the problem by setting up a permit system to regulate subsistence hunting and fishing. He said a point system based on past use and other factors could be adopted, similar to the limited entry system used for commercial fishermen.

Rural legislators and native groups severely criticized the permit system as too cumbersome and inconsistent with the traditional harvest of fish and

game by rural Alaskans.

Cowper's new support for a constitutional amendment gained favor with rural lawmakers Thursday, but their urban colleagues said it's going to be tough to win enough votes for passage in the legislature and on the ballot.

Rep. Curt Menard, D-Wasilla, said he supports a constitutional amendment, although "it's probably not the most popular thing in my district." He said he expects a bitter fight over the issue in the final nine weeks of the legislative session.

Rep. Ramona Barnes, R-Anchorage, opposes an amendment. She said it would create two classes of residents in the state. Barnes favors regulating subsistence users by hunting and fishing methods and harvest limits.

House Republicans can be expected to oppose the amendment, she said. "I don't know many Republicans who believe in discrimination."

Sen. John Binkley, R-Bethel, said a constitutional amendment to conform with federal law is

the state's only solution. "The alternative is doing nothing and having federal management," he said.

If given a chance on the ballot, the public would support the constitutional change because it would maintain the rural preference law that existed before the court decision, Binkley said.

Alaska voters in 1982 rejected a ballot initiative that would have repealed the state's subsistence law.

The Alaska Federation of Natives supports a constitutional amendment and last month called on lawmakers to push for an amendment as the best solution to the state's legal problem.

The court has granted the state a stay in the case until July 1 to allow time to solve the problem. But the Alaska Supreme Court on Monday ruled it would not grant a further extension of the stay, Assistant Attorney General Tom Koester said.

The July 1 deadline worries Sen. Betsy Fahrenkamp, D-Fairbanks, who said she fears federal takeover of fish and game management.

Income-based subsistence bill draws fire

By LARRY PERSILY
The Associated Press

JUNEAU — Rural lawmakers on Thursday attacked a proposal by Anchorage-area Republicans that would grant subsistence hunting and fishing rights based on financial need.

House Bill 415 would limit subsistence rights to people living in households at or below the poverty level. Low-income urban residents would have the same rights as rural Alaskans under the bill, introduced Monday by Rep. Ramona Barnes, R-Anchorage.

It would be inappropriate to define subsistence by income level only and ignore Native culture, said Rep. Eileen MacLean, D-Barrow, co-chairwoman of the Bush



caucus. The caucus represents 13 rural legislators.

"Subsistence embraces our whole way of life," MacLean said. "It does not simply refer to hunting and fishing, but describes an integral part of our lifestyle that reflects our cultural heritage.

"Determining subsistence on the basis of income ignores and insults its signifi-

cance to rural Alaskans."

An income-based application process to determine subsistence rights also would require more bureaucracy, opponents of the measure say.

The caucus comprises almost one-quarter of the legislature, and likely would be able to block any subsistence legislation it disapproves.

Although the caucus opposes the income-based proposal, it has not offered an alternative bill. The group is reviewing other options, MacLean said. The income-based bill has been the only subsistence measure introduced during the first two weeks of the session.

"Nobody knows what the solution is ... nobody has

provided the details for what that solution might be," said House Speaker Sam Cotten, D-Eagle River.

The Alaska Supreme Court in December ruled the state's subsistence law unconstitutional. The ruling said the law discriminated against urban residents by giving preference to rural Alaskans.

The problem for lawmakers is that federal law requires a rural preference. The state court granted a stay on its ruling until July 1 for state officials to deal with the ruling.

Rep. Ben Grussendorf, D-Sitka and a caucus member, said possible solutions include a change in federal law or in the state constitution.

Subsistence rift draws Stevens warning

By BRIAN S. AKRE

1-18-90, p. 1B

UNFAVORABLE U.S. Sen. Ted Stevens told state legislators Wednesday they must resolve the quandary over subsistence rights in Alaska or face a federal takeover of wildlife management on federal and state lands.

The Alaska Supreme Court ruled Dec. 22 that a state law limiting subsistence hunting and fishing rights to rural residents was unconstitutional. Legislators remain uncertain how a subsistence law could be worded to meet federal requirements and those of the state constitution.

Stevens bluntly told a joint session of the 16th Alaska Legislature not to look for a federal solution.

"I think the subsistence issue can be dealt with here at home and it should be," the Republican said. "Before the year's out we will have federal management of fish

NEW CHALLENGE: Hunters have asked the Alaska Supreme Court for immediate end to Alaska's subsistence priority law. E-2

and game in Alaska unless you act."

It was not the answer some lawmakers wanted to hear.

"He had no plan, nor are there any plans to do anything on the federal level to prevent a federal takeover," said Sen. Pat Pourchof, D-Anchorage. "He pretty much threw the ball back in our court."

"I remain skeptical that there is any state legislative solution to this that doesn't smack right up against our constitution or the federal law."

Stevens said if Congress tried to tackle the issue, Alaska would lose more than it would gain. That's because environmentalists would get other issues tack-



Daily News file photo

Sen. Ted Stevens

ed onto a subsistence bill, such as a ban on oil drilling in the Arctic National Wildlife Refuge or reductions in logging in the Tongass National Forest, he said.

Sen. John Binkley, R-

Bethel, praised Stevens' speech.

"He impressed me with the urgency of dealing with the matter at the state level, and impressed upon the legislature that takeover by the federal government is imminent if we don't act," Binkley said. "The problem is, what is the solution at the state level? Nobody's come up with it yet."

Rep. Peter Goll, D-Haines, said a legislative solution is preferable but may be impossible. "I'm tending to believe that a constitutional amendment is going to be required," he said.

Stevens also spoke briefly on the congressional stalemate over changes in management of the Tongass National Forest in southeast Alaska. The main "sticking point" in unsuccessful negotiations last fall was the amount of additional land to

Please see Page E-2, STEVENS

Daily News 1-18-90

STEVENS: Issues a warning

Continued from Page E-1

be removed from timber harvesting, he said.

Stevens also promised tougher legislation to control the use of drift nets on

the high seas, and said Congress has no choice but to open the Arctic National Wildlife Refuge for oil drilling.

"The question is when they'll do it," he said.

December 26, 1990
Empire

Court nixes subsistence preference

THE ASSOCIATED PRESS

ANCHORAGE — The Alaska Supreme Court declared unconstitutional Friday a state law that limits subsistence hunting and fishing to rural residents.

In a 4-1 decision, the court said excluding all urban residents from subsistence hunting and fishing violates three clauses of the constitution. Those clauses preclude exclusive fisheries and deal with uniform application of the law and equal rights protections.

"Although the ramifications of these clauses are varied, they share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited," the court said.

The opinion written by Chief Justice Warren Matthews said the ruling does not mean that everyone can engage in subsistence hunting and fishing.

"We do not imply that the constitution bars all methods of exclusion where the exclusion is required for species protection reasons," the court said. "We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents ... regardless of their individual characteristics is unconstitutional."

The 1986 law was enacted after the Alaska Supreme Court struck down an earlier subsistence statute, and the federal government threatened to take over fish and game management on federal lands if a new law wasn't passed.

All the fish and wildlife in Alaska are supposed

to be managed by the state, regardless of what land or water they occupy. But the 1980 Alaska National Interest Lands Conservation Act stipulates there must be subsistence priority for rural residents.

The state defined rural as "a community or area of the state in which the non-commercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area."

The way that definition has been applied is under attack in federal court in another case. But the Alaska Supreme Court said Friday that whatever the definition, it is unconstitutional to treat hunters and fishermen differently based solely on where they live.

"There are...substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users," the court observed. "Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims."

The majority of justices agreed the state has a compelling interest in preserving Alaska's subsistence lifestyle. But they said in order for the subsistence preference to be constitutional, it must involve minimal infringement on individual rights.

"A law providing for individual determinations of eligibility would in my view be sufficiently tailored to the state's interest to withstand a constitutional challenge," Justice Daniel Moore wrote in a

concurring opinion.

"The state may, indeed must, make allocation decisions between sport, commercial and subsistence users," the court ruled. "That authority, however, does not imply a power to limit admission to a user group."

In a 15-page dissent attached to the 38-page majority opinion, Justice Jay Rabinowitz reached exactly the opposite conclusions from analyses of the constitutional clauses cited by the majority.

"In my view ... the right to participate in subsistence hunting and fishing is not a fundamental right," Rabinowitz said. As such, it doesn't enjoy the same degree of constitutional protection as other basic rights, he said.

The case has been wending its way through the courts since 1983. The challenge was brought by Sam McDowell and Ron Mahle of Anchorage, Dale Bondurant of Cooper Landing and Harold Eastwood of McKinley Park.

The court noted all four were Alaska residents who had engaged in subsistence hunting and fishing in the past, and wished to continue doing so.

McDowell and Mahle were excluded because they lived in Anchorage, while Bondurant and Eastwood's residence fell within the state's definition of rural.

The Alaska Federation of Natives and several individual Natives intervened on the side of the state in trying to preserve the law.

Gov. Steve Cowper called the court's decision Friday unfortunate.



FAX
265-6470

ALASKA OUTDOOR COUNCIL, INC.

Ben R. Milam, VP Southcentral Region
3410 E. 42d Street, Apt. 1
Anchorage, Alaska 99508

28 June, 1990

Mr. William Wade
President
ARCO Alaska

Dear Mr. Wade:

I am utilizing this method of correspondence because we have been unable to contact you by telephone. I trust you will understand that I would prefer a much more personal contact to discuss this critical issue.

I am sure you are aware of the fact that the Alaska Outdoor Council is the only environmental organization in Alaska to publicly support development of the Arctic National Wildlife Refuge. This has caused a lot of controversy within our organization for over three years when we first made that commitment.

Because of your decision to foster the debate between natives and non natives in the subsistence issue, our Board of Directors have met to reconsider this decision. It now appears we will no longer be able to support your organization or development of ANWR if the rumors of your support for a constitutional amendment prove to be true. I trust you understand that we cannot support any organization who cannot foster equal rights for all the people of Alaska.

Please publicly withdraw your support for a constitutional amendment so we can continue our relationship to develop the resources of ANWAR in an environmentally safe manner.

Cordially,

Ben R. Milam

For Oliver (Bud) Burris
President

SENT VIA FAX 1:10 PM
6-28-90



FAX
564-5900

ALASKA OUTDOOR COUNCIL, INC.

Ben R. Milam, VP Southcentral Region
3410 E. 42d Street, Apt. 1
Anchorage, Alaska 99508

28 June, 1990

Mr. Julian Darley
President
BP Exploration Alaska

Dear Mr. Darley:

I am sure you are aware of the fact that the Alaska Outdoor Council is the only environmental organization in Alaska to publicly support development of the Arctic National Wildlife Refuge. This has caused a lot of controversy within our organization for over three years when we first made that commitment.

Because of your decision to foster the debate between natives and non natives in the subsistence issue, our Board of Directors have met to reconsider this decision. It now appears we will no longer be able to support your organization or development of ANWR if the rumors of your support for a constitutional amendment prove to be true. I trust you understand that we cannot support any organization who cannot foster equal rights for all the people of Alaska.

Please publicly withdraw your support for a constitutional amendment so we can continue our relationship to develop the resources of ANWAR in an environmentally safe manner.

Cordially,

Ben R. Milam
for Oliver (Bud) Burrie
President

Sent via FAX 1:17 PM
6-28-90

Al Judson (Big Eagle)

These are my statements made at the Federal Hearing held at the Centennial Hall June 13, 1990---on behalf of Douglas Indian Association.

(some Racists had made some derogatory statements earlier about Alaska Natives and subsistence) I was on the 3rd list of people to comment--I had waited all night and finally testified at about 10:30 p.m. and my testimony took 10 minutes.

I have a comment to make but first Douglas Indian Association would like to be the first to request transcripts of this hearing to be sent to: Douglas Indian Association box 434 Douglas, Alaska 99824.

"Earlier tonight, someone stated that Alaska Native People were given land under land claims. My comment is--"You cannot GIVE anyone anything that RIGHTFULLY belongs to them."

Also---Subsistence is a Basic Right--a Basic Right is something that cannot be given to you or taken away-it is a right of all Human Beings. I challenge anyone and everyone in this country to prove that Alaska Native People are NOT Human Beings.

Currently, I am Spokesman for Douglas Indian Association and their Representative on Public Issues. My Missionary Name is Al Judson. I am Kogwanton/Eagle. My real name is-- Schkadanah , my other name from Hoonah area is Ganaa Eesh, and my other name given to me by Joe White of Hoonah is- Big Eagle. My father was Nakweh he was DAKDeintan--also, he was a soldier/U.S.Army W.W. I, My Uncles fought for the U.S. in W.W.II and Korea--some of them died there, my brothers fought for the U.S. in Vietnam--some of them died there.

Douglas Indian Association has 10 major points on the issue of SUBSISTENCE.

1st _____ Formally, we PROTEST the fact that Halibut is NOT included for Subsistence purposes. The reason that it isn't is because of an International Treaty between the U.S. and Canada.

2nd _____ We also PROTEST against Alaska Native People being left-out of the International Treaty Process between the U.S. and Canada. Our people fought for the U.S. in WWI, WWII, Korea and Vietnam-- "How many more times do we have to pay for our Citizenship? Is my question. At the United Nations we are considered NATIONALS because we do not have a Treaty with the State of Alaska.

3rd _____ We agree with the definition of Henry Shue who states that Subsistence is: "to put food on the table."

4th _____ We would like to emphasize ALL Seafood as well.

5th _____ We would like TRIBAL CARDS/ issued by the Tribes in Alaska-- recognized by the Federal and State Governments.....for Subsistence Purposes.

6th _____ We disagree with Subsistence being managed, regulated, and further RESTRICTED by people who have NEVER lived off the land or the ocean.

7th _____ We believe the I.R.A. and Traditional Councils in Alaska should be recognized and NOT left-out of the Management of the Subsistence effort.

8th _____ The Federal and State Governments should recognize the fact that Alaska Native People have "GRANDFATHER RIGHTS" which is a legal term that recognizes that we as a people have Basic Rights that Pre-empt all efforts that have come behind us...long AFTER-THE-FACT.

9th _____ We Formally PROTEST on behalf of our Elderly Native People in Pioneer Homes who have been DENIED Native Food as part of their diet. (This is happening today/RIGHT NOW.)

10th _____ We disagree with the use of the word RURAL and would like to see "food" and "food gathering purposes" to be interjected into ANILCA to replace the current wording.

FINALLY, We would like to re-emphasize the fact that Subsistence is a Basic Right, a right that cannot be given or taken away.

IF the U.S. Government and the State of Alaska proves to be unfair, unjust, inequitable in the treatment of Alaska Native People in the area of Subsistence and further restricts our Basic Right of Subsistence---then we as Alaska Native People will become PRISONERS in a FREE COUNTRY, a Country we have fought and died for.



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: June 26, 1990

SIGN-IN

Subject of meeting:

SUBSISTENCE

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
PHILLIP GRAY	4110 N DOUGLAS HWY. JUNEAU, AK 99801	586-6913	MUSEUM + MY FAMILY	YES
✓ Bob Poksky	300908 Anchorage 99520	279-2511	Rural CAP	Yes
✓ Nick Jackson	406 W Firwood Anch.	274-7662	Ahtna	Yes
✓ GPHW Beeter	Drawer F1 Copper Center AK 99575	822-5241	CRNA	YES YES
✓ MATTHEW IYA	Box 948 Nome AK 99762	443-5231	RARA/Kawerak	Yes
✓ Bruce W. Campbell	Box 82245 Fairbanks AK 99708	488-1667	Tanana Valley Sports Assoc	Yes

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: June 25, 1990

Subject of meeting:

SUBSISTENCE ISSUES

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
EDWARD K. THOMAS	320 W. Willoughby, Suite 300 Juneau, AK 99801	586-1432	Tlingit-Haida	YES
* Robert M. Silas	122 First Ave Fairbanks Alaska	452-8251	*Testified April 12 Tanana Chiefs Conference	Yes
✓ Nelson Angood	1200 Redwood Ct Anchorage, AK 99508	253-7452		Yes
Paul Swanson	Juneau, AK 99801	586-3896	Self	Yes
Phillip Gray	Juneau on page 1			Yes



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: June 25, 1990

Subject of meeting:

SUBSISTENCE ISSUES

SIGN-IN

PLEASE PRINT!

NAME

ADDRESS

(MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
PHILLIP GRAY	4410 N DOUGLAS HWY 4 JUNEAU	562-6913	MYSELF	YES
✓ AL JUDSON	Box 434 DOUGLAS INDIAN ASSOCIATION	364-2482	DOUGLAS INDIAN ASSOCIATION	
✓ DICK BISHOP	1555 BASS GRIND, D. FAI. 99709	455-6151	SELF	Yes
✓ Julie Kitter	411 West 4th S. 301 DUNSMUIK 99501	274-3611	AFN	yes
✓ Rupa Andrews LUCIE SANDERS	Box 833 KATLISHNE MA 99722	492-2500	NANA / AFN	no
Wayne Anthony Ross	Box 101522 Anchorage AK 99510	276-5307	NRA-	Yes



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: June 26, 1990

SIGN-IN

Subject of meeting:

SUBSISTENCE

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

PHILLIP GRAY	4110 N DOUGLAS HWY. JUNEAU, AK 99801	586-6913	MUSELF + MY FAMILY	YES
✓ Bob Polasky	200908 Anchorage 99520	279-2571	Rural CAP	Yes
✓ Nick Jackson	406 W Firwood Anch.	2747662	Ahtna	yes
✓ ARLYN BECKER	Drawer F1 Copper Center AK 99575	822-5241	OKNA	yes yes
✓ MATTHEW IHA	Box 998 Nome AK 99762	443-5231	RARA/Kawerik	Yes
✓ Bruce W. Campbell	Box 82245 Fairbanks AK 99708	488-1667	Tanana Valley Sports Assoc	Yes

NATIONAL RIFLE ASSOCIATION OF AMERICA

Publishers of THE AMERICAN RIFLEMAN
AND
THE AMERICAN HUNTER



1600 Rhode Island Avenue, N.W. • Washington, D.C. 20036 • (202) 828-6000

22 June 1990

PRESS RELEASE

I am enclosing a copy of a resolution passed by the Board of Directors of the National Rifle Association of America, at our Annual Members Meeting, in Anaheim, California, last week.

The Resolution reflects the opposition of the NRA to Governor Cowper's attempt to bullyrag the Alaska Legislature into passing out legislation, or a proposed Constitutional Amendment, that would allow a rural preference for Subsistence.

In summary, it is the position of the National Rifle Association of America that:

1. There should be comprehensive management of fish and game resources to insure sustained development (sustained yield) of those resources for the maximum benefit of all citizens. This position is in keeping with the provisions of Alaska's Constitution, Art. VIII, Sec 1, 2, 3, and 4.

2. The NRA opposes any exclusive right or special privilege to take fish and game resources. Fish and game should be reserved to all the people for their common use. This position is in keeping with the provisions of Alaska's Constitution, Art. VIII, Sec. 2, 3, and 15.

3. Laws and regulations governing the use or disposal of fish and game resources should be applied equally to all persons.

4. The Alaska National Interest Lands Conservation Act (ANILCA) directly inhibits Alaska's ability to properly manage its fish and game resources, and interferes with Alaska's Constitutionally mandated duty to manage fish and game resources on a sustained yield basis. It inhibits Alaska by authorizing the direct intervention of the U.S. District Court, by allowing that Court to authorize specific hunts (which the Court has done, see Kwethluk IRA Council vs State of Alaska), and by allowing that Court to open and close seasons (which the Court has done, see Bobby and Lime Village vs State of Alaska). Such Judicial intervention in resource management is detrimental to the resources.

5. ANILCA, through its requirement for a rural preference for Subsistence, mandates discrimination by the U. S. Government, and

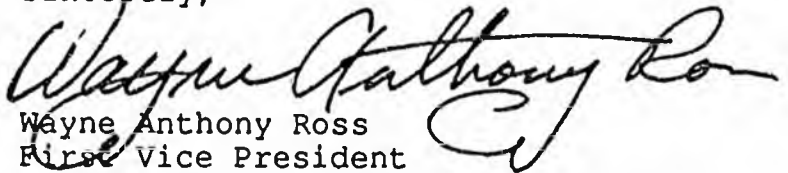
the State of Alaska, against Alaskan urban residents, and all non-residents. ANILCA's provision for a rural preference for Subsistence creates a special class of citizens (rural residents) who are eligible to participate in hunting and fishing in Alaska, to the exclusion of all others.

6. The NRA supports equal hunting and fishing rights for all citizens of the United States without regard to race, creed, or place of residence.

7. The NRA is aware that even though the Governor of the State of Alaska has, thus far, failed to file litigation, on behalf of the people of Alaska, to challenge the provisions of ANILCA, other Alaskan groups have done so this week.

8. The NRA Board has empowered its Executive Vice President to use all appropriate resources to oppose discriminatory allocation of fish and game resources in Alaska, to secure return of fish and game management to the State of Alaska itself, to oppose discriminatory allocation of fish and game resources (and to oppose those who advocate same), to assist in the litigation which has been filed this week by the Alaska Outdoor Council, the Isaak Walton League and others, and to seek from Congress appropriate changes in ANILCA.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Anthony Ross". The signature is written in dark ink and is positioned above the typed name and title.

Wayne Anthony Ross
First Vice President
National Rifle Association of America



THE NATIONAL RIFLE ASSOCIATION
OF AMERICA

Resolution



WHEREAS, The National Rifle Association of America supports and encourages comprehensive fish and game management of state resources to ensure sustained development of those fish and game resources for the maximum benefit of all citizens; and

WHEREAS, The National Rifle Association of America opposes any exclusive right or special privilege of fishery or hunting; and wherever occurring in their natural state, the fish, wildlife and waters of a state should be reserved to all the people for their common use; and

WHEREAS, All laws and regulations governing the use or disposal of natural resources, including a state's fish and wildlife resources, should apply equally to all persons similarly situated; and

WHEREAS, The Alaska National Interest Lands Conservation Act, enacted in 1980 by the United States Congress, directly inhibits the State of Alaska's ability properly to manage its fish and wildlife resources and to encourage a sustained yield of those resources for all citizens; and

WHEREAS, The Alaska National Interest Lands Conservation Act, by specifically authorizing direct intervention by the U.S. District Court in authorizing specific hunts, or the opening or closing of seasons, directly inhibits the ability of the State of Alaska meaningfully to manage its fish and wildlife resources, to the detriment of the resource itself; and

WHEREAS, The Alaska National Interest Lands Conservation Act mandates that both the Federal Government and the State of Alaska discriminate against Alaskan residents, and non-residents, by creating a special class of citizens, i.e., rural residents, eligible to participate in hunting and fishing in the State of Alaska, to the exclusion of all others; and

WHEREAS, The National Rifle Association of America supports equal hunting rights for all citizens of the United States without regard to race, creed or place of residence; and

WHEREAS, Legal action will be filed challenging federal management and rural preference for subsistence by Alaskan groups; now, therefore, be it

RESOLVED, That the Board of Directors of the National Rifle Association of America assembled at Anaheim, California, this 11th day of June, 1990, hereby directs the Executive Vice President of said association to use appropriate resources at his disposal to assist in securing an appropriate legal ruling to foster the intent of this resolution, and to encourage Congress to make the appropriate changes in the Alaska National Interest Lands Conservation Act to secure the intent of this resolution.

Attest:

Warren L. Cheek
Secretary



THE WILDLIFE LEGISLATIVE FUND OF AMERICA

To protect the Heritage of the American Sportsman to hunt, to fish and to trap

1000 Connecticut Avenue, N.W.
Suite 1202
Washington, D.C. 20036
202/466-4407

SUBSISTENCE ANALYSIS AND COMMENTS

BY: RON SOMERVILLE

June 13, 1990

The present arguments supporting the proposals to amend the Alaska State Constitution to provide authority for the State Legislature to establish a discriminatory subsistence preference law violating the common use clause of the Constitution are flawed for several reasons.

1. Amending the State Constitution does nothing to resolve the Kenaitze case which has now preempted the authority of the State to determine who is "rural". Because of the Federal Court ruling, there is virtually nothing the State can do in law which will override the effects of the court except to agree that every resident is a subsistence user, excluding only residents of Anchorage, Fairbanks, Juneau and Ketchikan.

2. Despite the fact that the Federal law has been in existence for ten years, several terms in the law, crucial to administrative implementation, still have not been defined to the satisfaction of the courts nor the public. Those terms are:

- a. rural
- b. customary
- c. traditional
- d. barter
- e. customary trade

3. To ask that the citizens of Alaska amend their Constitution to dismantle the common use, equal protection and uniform application provisions to comply with existing Federal law while hoping that somehow someone will amend the Federal law to acceptably define the above administrative terms is ludicrous.

4. Why shouldn't ANILCA be amended first so that Alaskans know precisely what they are getting when they modify provisions of their Constitution which has been regarded as one of the most progressive in the country?

5. It is argued that "the people should decide" whether or not the

Constitutional provision proposed should be adopted. This would make more sense if in fact the public were properly informed as to how the terms were going to be defined, how the law would be implemented and whether or not they are in or out as subsistence users. To ask the public to dismantle a major provision in the Constitution and give the legislators unlimited freedom to later interpret those provisions without Constitutional guidance is unreasonable.

6. The proponents of this Constitutional Amendment and the State Legislature have given cause for the public to be suspicious and overly cautious. As subsistence was first being debated the advocates clearly promoted that any Alaskan who takes fish and wildlife for food would be considered a subsistence user. When the first State subsistence law was passed, the Legislature assured the prime sponsor that the residents of Fairbanks would be considered as subsistence users and would not be eliminated under any circumstance as long as they took fish and wildlife for food. Alaskans were told when Title VIII was placed in ANILCA that the Boards of Fish and Game would be allowed the flexibility of determining who was "rural". The Boards of Fish and Game were clearly promised the authority to adopt regulations protecting the health and viability of the resources (note the Kwethluk caribou case as an example). None of the above promises have been fulfilled. This issue has been totally dominated by political rhetoric, lies, deceit and propaganda. What proof is there that the public should now trust the politicians and make one more sacrifice by amending a major common use clause in the Constitution which could adversely impact all fish and wildlife uses in the State.

7. Arguments that the Federal subsistence priority only applies when the resource is in short supply is false. See the Tyonek and Kenaitze cases. The subsistence priority is in existence at all times and must be specifically provided regardless of the status of the resource.

8. Since the McDowell decision, Federal preemption only applies to Federal lands as clearly defined in ANILCA. Despite all the rhetoric, again by those who have advocated the Subsistence Title in ANILCA, that the Feds will preempt State management on all State and private lands and waters, there are no provisions in ANILCA which authorize that type of preemption to occur. The Alaska Department of Fish and Game specifically requested the Congressional Delegation to insert a clause, should the State ever be found in noncompliance, specifically stating that nothing in the law would allow preemption of State fish and wildlife management on State and private lands and waters. That request was rejected only after we were assured that the provisions clearly limited the

authority of Federal subsistence management to Federal public lands.

Whenever Congress has intended for Federal preemption of State authorities (i.e. Marine Mammal Protection Act), it has specifically authorized such preemption. There is no such authorization in ANILCA and, in fact, provisions clearly limit its scope and jurisdiction to Federal lands and for subsistence uses only.

9. If Federal authority is limited to only Federal public lands, it is in the State's best interest to keep its lands and waters separated from any discriminatory allocation scheme until adequate modifications are made in Federal law which makes State compliance acceptable. By keeping State lands and waters separated, it protects all existing uses such as commercial fishing and recreational uses from being totally undermined or eliminated due to some unpredictable Federal judge's resource management whims.

10. If, under the worst case scenario, it is eventually determined that the Feds have some authorities to preempt State management of fish and wildlife on State and private lands and waters, we are no worse off than we are right now. At least, the State will know exactly where it stands and can then make the appropriate changes in its Constitution and laws or negotiate some sort of compromise.

11. Just because the State is not in compliance with the Federal subsistence law does not mean the State cannot continue to provide for subsistence uses for all residents of Alaska just as it had prior to the enactment of the first subsistence law. It just has to be done in concert with the State Constitution.

12. It is presently being argued that the State should change its Constitution or the existing commercial fisheries will be in jeopardy. It is arguable that the commercial fisheries may be in greater jeopardy, not only in the short run but the long run as well, if the proposed Constitutional amendment is adopted. The responses presented in #'s 8 and 9 illustrate a clear reason for separating State and private lands and waters from Federal lands until there are acceptable standards and definitions. If State lands and waters are kept separate, over 99% of all commercial fisheries in Alaska will not be impacted by any irrational subsistence court ruling such as in the Kenaitze case.

In addition, there is one major problem in ANILCA which could potentially affect the entire commercial fishery and it has never been resolved. The Attorney General under Governor Hammond pointed out that the Federal definition of "subsistence uses" includes

several parts. One key part is:

As used in the Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild renewable resources for; and for customary trade.

This term (and for customary trade) was not used in the State law and, in fact, the State law stated that subsistence could not be for commercial purposes. However, as the Attorney General pointed out then, this term in Federal law could mean for commercial purposes--how much, of course, is subject to the Federal courts interpretation. Judging by the recent rulings on Kenaitze, Kwethluk and others, it is doubtful that the commercial fishing industry should trust a Federal judge to make those decisions. It should also be pointed out that "commercial trapping" is considered a valid subsistence activity. Why not commercial fishing?

In the Tanana Fish and Game Association v. State of Alaska, residents of the village of Tanana are claiming that the commercial sale of salmon roe from subsistence harvested salmon has been traditional and customary for the last 20 years and should be considered a qualified subsistence use. Currently the sale of roe from subsistence taken salmon is illegal under State law. This is a major test of the customary trade provision of ANILCA. If it is successful it has phenomenal potentials for impacting virtually every fishery in the State.

Another key element is the potential impact on the limited entry system. At present, the State's limited entry system is run totally at the discretion of the State. If, the Federal courts decide that the term "and for customary trade" used in the Federal law includes "some" commercial purposes, and the State is in exact compliance with the Federal law, does the State's limited entry system still apply to subsistence users? What are the potential economic limits of "customary trade"? Will the State be required, again, to modify its Constitutional Limited Entry provision to make an exception to accommodate an undefined subsistence commercial user in order to stay in compliance with the Federal law? Under the present scenario being proposed, the Federal courts will make that decision, not the State courts.

13. Proponents of a Constitutional amendment have attempted to threaten the non-resident users continued access to hunting and fishing activities on all lands in Alaska--particularly as it relates to the hunting and fishing guiding industries. The fact is that the proposed Federal regulations will have virtually no immediate impact on the guiding industries on Federal lands. I agree that potential is there but the risk is no greater than it would be if the State was implementing the exact same regulations, which should be remembered are always subject to Federal court

interpretations. Both industries are presently much better off separating all State and private lands and waters from under the Federal subsistence provisions until some of the above uncertainties are settled.

It is my opinion that the nonresidents recreational activities and the guiding industries would be in greater jeopardy if the Constitutional amendment were adopted. Not only would all State and private lands and waters be subject to the provisions of the Federal law and the interpretations of the Federal courts, but the existing Kenaitze case would apply to all lands and waters in the State which appears to set a course where massive numbers of resident Alaskans will qualify as subsistence users.

If the latter were to occur it is an absolute sure bet that the remaining residents who are disenfranchised will resurrect Senator Vic Fisher's old proposal giving all residents a higher priority than non-residents in the taking of fish and wildlife for food. This provision would, for all practical purposes eliminate nonresident uses of most fish and wildlife resources.

14. The fuel driving the Constitutional amendment is the threat that the Feds are coming. Unfortunately, agreeing to the inclusion of the Subsistence Title in ANILCA guaranteed that the Feds were here as the entire legal remedy for any discontent lies in the Federal courts. The State has been given virtually no latitude to implement a fair and equitable solution or interpretation to the Federal law. To continue to argue that we should extend the uncertainties of the Federal subsistence law to all State and private lands without asking, at least, for further clarification and definition is totally irresponsible. The Feds are already managing fish and wildlife resources by telling the State exactly what they must do to meet Federal standards. That is not State management.

15. There appears to be a movement towards challenging the Constitutionality of the Federal subsistence law. If that lawsuit were successful, which some choose to debate, it would again put Alaska on the same footing with other States and force us to once again deal with the true subsistence needs of Alaskan residents under the provisions of the State Constitution.

16. An argument has been presented that opening ANILCA will create pressures from the environmental organizations to make additional amendments that are undesirable to Alaskans. One way or the other, ANILCA must be opened up to acceptably define the terms listed above, such as rural. The State is being asked to amend its Constitution first rather than waiting to see whether or not acceptable definitions are adopted. This just isn't a prudent way

to deal with Constitutional amendments.

17. There is only one reasonable long term solution to this dilemma and that is to force all parties to sit down and arrive at a reasonable long term legal remedy for identifying and protecting true subsistence uses and providing for the transition for communities and individuals that no longer qualify as being totally subsistence dependent. If the political leaders of the State allow this issue to continue to deteriorate, severe social wounds are going to be established that will take decades to heal.

***Subsistence
Miscellaneous***



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503



SUB

June 7, 1990

Senator Bettye M. Fahrenkamp
Chair, Senate Resources Committee
Room 125, Capitol
P.O. Box V
Juneau, AK 99811

Dear Ms. Fahrenkamp:

Enclosed you will find a copy of proposed regulations that were recently published in the Federal Register. The purpose of these regulations is to solicit input from resource users and the general public on how the Federal government should implement its subsistence responsibilities on public lands. These regulations are temporary and will expire on December 31, 1991.

I am forwarding these regulations to you because I am aware of your strong interest in subsistence. For your comments on these proposed regulations to be considered, they must be received by close of business, June 18, 1990. A greatly expanded public involvement opportunity will occur after July 1, 1990, in the course of developing permanent subsistence regulations. I look forward to receiving any comments you might have.

Sincerely,

Regional Director

Enclosure

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 40

Temporary Subsistence Management Regulations for Public Lands in Alaska

RIN 1018-AB43

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed Temporary Rule

SUMMARY: This rule provides temporary regulations implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980. The Alaska Supreme Court recently ruled that the laws used by the State of Alaska to provide the subsistence priority required by Title VIII violated the Alaska Constitution. The court's action placed the State out of compliance with Title VIII. Since the State has been unable to return to compliance with Title VIII, the Federal government is required to take over the implementation of Title VIII on public lands.

DATE: Comments on this proposed rule must be received by [10 days from date of publication].

ADDRESSES: Comments and materials concerning the proposal should be sent to Bill Knauer at the U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Bill Knauer, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION:

Background - Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the Interior to implement a program to grant a preference in favor of subsistence uses of fish and wildlife resources on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State implemented such a program which the Department found to be

consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in McDowell v. State of Alaska that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture will be required to take over the implementation of Title VIII of ANILCA on public lands. The Fish and Wildlife Service (Service) was delegated the lead responsibility for developing a contingency plan to fulfill the Department of the Interior's subsistence responsibilities. Five departments within the Federal government will be responsible for management of lands covered by Title VIII. All departments are cooperatively developing these regulations.

These temporary rules will impact the subsistence uses of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, USDA-Forest Service, Bureau of Indian Affairs, Air Force, Army and various other Federal land managing agencies.

On April 13, 1990, a Notice of Intent to Propose Rules was published in the Federal Register (55 FR 13922) which solicited comments from the public. Because of the short time available, the opportunity for public review and comment was limited. The Service received 72 written comments in response to the Notice of Intent. All of these comments were taken into account in developing these proposed regulations.

Given the short time frame to prepare these proposed temporary regulations, and in anticipation of the State returning to compliance with Title VIII, the proposed temporary regulations will establish a Federal program that minimizes change to the state program consistent with meeting the Federal government's responsibilities under Title VIII. To do otherwise would be extremely disruptive to subsistence users and create unnecessary chaos if and when the State is able to bring its subsistence program back into compliance with ANILCA. The various seasons and bag limits in effect under the State system are being reviewed by the various Federal land managers. Due to the short time frame, they will be published in late June and will be effective on July 1, 1990. Major changes to existing State seasons and bag limits are not anticipated. Should the Federal government be required to retain management responsibility beyond this year, changes to the seasons and bag limits will be considered according to the procedures set forth in section 40.16 of the regulations.

These temporary regulations will remain in place until December 31, 1991, or until the State brings its subsistence program back into compliance with ANILCA, whichever comes first. The

development of permanent regulations, which is expected to start in 1990, will involve extensive public interaction and comment throughout the regulations development process, and will be completed by December 31, 1991.

The following discussion addresses specific issues or sections of the proposed temporary regulations which may be particularly confusing, controversial, require additional explanation, or elaboration of intent.

The Federal Government intends to minimize disruption to traditional State regulation and management of fish and wildlife. A high level of coordination and cooperation between the State and Federal regulatory programs is anticipated. These temporary regulations represent the provisions necessary for the Secretaries to fulfill their responsibilities for subsistence pursuant to ANILCA Title VIII, in the event conflicts arise between the State and Federal programs. If the coordination and cooperation between the State and Federal regulatory programs are realized, then many of the regulatory tools contained herein will need to be used seldom or not at all.

A memorandum of agreement (MOA) will be developed with the State. The MOA will address the mechanics of how the State and Federal programs will interact and coordinate. Through the MOA, the Federal program will minimize disruption to the State's regulatory program while still meeting the Secretary's responsibilities under Title VIII.

Section 40.3, Applicability and Scope - Subsistence uses are not authorized in Glacier Bay National Park, Katmai National Park, Kenai Fjords National Park, or those portions of Denali National Park originally reserved as Mt. McKinley National Park. Consequently, the prohibition of subsistence uses in those areas is clarified in Section 40.3 of these regulations.

Section 40.4(e), Customary Trade - Customary trade is included in ANILCA as part of the definition of subsistence uses. It is the intent of these regulations, and consistent with U.S. Senate Report No. 96-413, that customary trade not be used for the establishment of significant commercial enterprises under the guise of subsistence uses. The regulations allow for those types and volumes of customary trade of subsistence resources which existed prior to ANILCA passage.

Section 40.4(m), Public Lands - Title VIII applies to public lands, which are defined in Section 102(3) of ANILCA. Lands validly selected by the State or Native corporations formed under the Alaska Native Claims Settlement Act are excluded from the public lands definition in Section 102(3).

About 29.1 million acres will be conveyed to fill State and Native Corporation entitlements. However, nearly 60 million acres have been selected by the State and Native Corporations. This means approximately 31 million acres of land are over-selected and therefore will not be transferred, and will become "public lands" as defined in Section 102(3) after final adjudication. Although Section 906(c) of ANILCA states that Federal agencies manage both Native-selected and State-selected lands, until transferred, the Departments consider the Section 102(3) public lands definition to be controlling.

Navigable waters generally are not included within the definition of public lands. Navigable waters are those rivers, streams, lakes, or other waters which are used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Section 40.10, Federal Subsistence Board - Federal management of subsistence uses on the public lands requires an administrative structure be established to execute the Secretaries' subsistence responsibilities and perform functions specific to public lands. The proposed structure is the Federal Subsistence Board which will function similarly to the State Boards of Fisheries and Game. The Board will broadly execute the Secretaries' subsistence responsibilities which include: maintaining healthy fish and wildlife populations; setting Federal subsistence seasons and bag limits; making determinations of rural and non-rural communities and areas; determining customary and traditional subsistence uses; establishing and determining the membership of Regional Advisory Councils and local advisory committees specific to public lands.

Board membership is the regional or state directors of the Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs. These are the chief officials in Alaska of the primary Federal land managing agencies. These officials were chosen because of their public land management responsibilities. The Secretary of the Interior shall appoint the Chair of the Board with the concurrence of the Secretary of Agriculture.

Sections 40.11 and 40.12, Regional Advisory Councils and Local Advisory Committees - Councils and committees are required by ANILCA Section 805. The existing State advisory system has broad responsibilities for dealing with subsistence take and uses as well as sport and commercial take statewide. These regulations require the Secretary to review the existing resource regions, regional advisory councils and local advisory committees to determine their adequacy for fulfilling the functions outlined in Section 805. This will be accomplished by June 30, 1991. If the Secretary determines that the resource regions, regional advisory

councils or local advisory committees are inadequate to fulfill the functions outlined in Section 805, then these regulations empower the Board to establish a system of resource regions, councils, and committees, which are focused on subsistence uses specific to public lands. Public comment and participation will occur throughout the process of making the Secretary's determination and any subsequent actions as a result of the determination. Establishment of councils and committees by the Board will occur within 12 months after the date of the Secretary's determination if he determines that the existing regions, councils or committees are inadequate to fulfill the functions in Section 805.

Pending the Secretary's determination pursuant to this section, the Boards shall review the administrative record developed by the State Board of Fisheries and Game, regional advisory councils and local advisory committees and associated public comment as an temporary means of fulfilling Section 805 and gaining the input from the existing system of boards, councils and committees. Nothing in these regulations requires the Secretary to establish a separate system of councils and committees, though he may do so if necessary to fulfill his responsibilities pursuant to Title VIII.

Section 40.14, Relationship to State Procedures and Regulation -

As stated in 40.5 these regulations anticipate an interactive process between the State fish and game regulatory procedure and the Federal subsistence regulatory procedure. The State, because of its Constitution, cannot provide a preference for rural residents with customary and traditional use of fish and wildlife as required by ANILCA. The State can facilitate harvest by rural residents through various regulations dealing with means and methods of take and perhaps other mechanisms.

If State regulations allow rural residents the opportunity to obtain their customary and traditional take and uses of fish and wildlife resources, the Federal regulations may closely parallel State regulations. The Federal program anticipates a highly cooperative, interactive relationship with the State system. To the extent that cooperation exists the Federal program will be able to minimize change to traditional State regulation and management of fish and wildlife.

Section 40.15(b), Rural and Non-Rural Determinations - The definition of rural is, perhaps, the key element in these regulations. ANILCA did not define rural. The State has been wrestling with the rural definition since passage of ANILCA. The Ninth Circuit Court of Appeals ruled in 1988 that the rural definition in the State's 1986 subsistence law is not consistent with ANILCA and the common meaning of the term rural.

The legislative history of ANILCA provides some insight. Senate Report 96-413 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

The Federal government recognizes that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. The process to determine rural is designed to incorporate the common meaning of rural and is based on two rebuttable presumptions.

A community or area of less than 2500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2500 and 7000 bears no presumption as to its rural or non-rural status. Some communities fall in this population range which clearly appear to have rural character.

Communities 7000 or greater in population are presumed to be non-rural. The 7000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7000 and still be rural in character.

Determinations of rural or non-rural status by the State will be adopted by these regulations until December 31, 1990, unless superseded by determinations by the Federal Subsistence Board. This six month grace period will minimize confusion for existing subsistence users while allowing the Board to determine, according to the procedures in 40.16, the rural or non-rural status of communities or areas within the State.

The Board will publish the characteristics it will use in determining rural or non-rural status. Communities with populations between 2500 and 7000 will be reviewed before other communities.

This definition and process recognize that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural. For example, the Department of Housing and Urban Development uses a population base of 2500 but employs indicators such "rural in character" or "has a serious lack of mortgage credit" to include larger communities in its definition of rural. Examples of indicators

which the Federal Subsistence Board may evaluate to decide if a community is rural or non-rural in character are: fish and game use; development and diversity of the economy, transportation, communication, infrastructure, and educational and cultural institutions.

Section 40.16, Regulation Adoption Process - The process for promulgating Federal subsistence regulations specific to public lands will be similar, and at least initially, will use much of the State regulatory process. The advisory structure contemplated by Title VIII of ANILCA will be an integral part of the Federal regulatory structure. As discussed previously in sections 40.11 and 40.12 regional advisory councils and local advisory committees may be established specific to Federal lands. Proposed regulations may originate from a variety of sources, but emphasis will be on the regional advisory council and local advisory committee system. While the public may comment and interact directly with the Board it is the intent of these regulations that most public comment and interaction with the regulatory process be channelled through the councils and committees. However, during the effective period of these temporary regulations the Federal regulatory process will rely substantially on the administrative record of the State system.

Subpart D - Subpart D extensively adopts existing State regulations dealing with methods and means of take. The State regulations are codified in Title 5 of the Alaska Administrative Code. In many cases the language is verbatim from the State regulations. In other cases minor modifications have been made to make the regulation specific to this Federal program or Federal lands. The regulations cite the State regulations from which they were derived. These temporary regulations attempt throughout to limit change to the State regulations to that necessary to fulfill the Secretaries' responsibilities pursuant to Title VIII.

Section 40.24(a) - Subsistence fishing for halibut is not authorized under the convention between the United States of America and Canada for the preservation of the halibut fishery of the northern Pacific Ocean and Bering Sea, as amended, or by National Marine Fisheries Service in 50 CFR 301, and is, therefore, prohibited.

Other Wild Renewable Resources - ANILCA Section 803 does not limit "subsistence uses" to fish and wildlife, but instead, uses the term "wild renewable resources." Vegetative resources and even water are included in this term. ANILCA Section 805(d) allows the State of Alaska to regulate take of fish and wildlife for subsistence uses on public lands if in compliance with sections 803, 804 and 805, but does not include other renewable resources.

Federal agencies have managed these other resources through various policies and regulations. Some agencies, like NPS, BLM, and the USDA-Forest Service, have adopted subsistence wood harvest policies which allow subsistence harvest under a permit system. Water was treated as a subsistence resource in BLM's Central Yukon Resource Management Plan/EIS. Because of past management and the desire to avoid confusion, wherever possible, regulation of the use of other wild renewable resources will be left to the individual land managing agency. The various Federal land managing agencies will continue to follow existing regulations with respect to non-fish and wildlife resources. See, for example, 36 CFR 13.49.

Access - Section 811 of ANILCA addresses "Access" for subsistence as follows:

(a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands 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."

Generally, access by foot, snow machine, aircraft, and boat is allowed on public lands, but the use of all-terrain vehicles is on a site-specific basis. In National Parks and Park Monuments only, "...subsistence uses without use of aircraft as a means of access..." is allowed (46 FR 31849, June 17, 1981). The Park Service currently provides for "certain exceptions" which are managed under special permits issued by park superintendents for unusual circumstances, such as matters involving safety.

The NPS prohibition on the use of aircraft for subsistence in national parks or park monuments is consistent with the position taken in the FEDERAL REGISTER notice published on June 17, 1981 (46 FR 31836). It provides for exceptions to the aircraft prohibition in individual hardship situations (46 FR 31841). A local rural resident or community who believes they qualify under the hardship criteria at 36 CFR 13.45(b)(2) may apply for a permit as provided at 36 CFR 13.51. Nothing in these rules is intended to alter the existing NPS regulations on aircraft use for subsistence.

Decisions and regulations concerning access are the responsibility of the respective Federal land manager. Correspondingly, information on access is available from the Federal agencies for the lands they manage. Appeals on access

rulings are handled according to the appeal procedures of the agency in question.

Healthy Fish and Wildlife Populations - The term healthy populations of fish and wildlife appears in Title VIII as the standard against which subsistence use is to be regulated, and fish and wildlife are to be managed. The State uses the concept of sustained yield for its fish and wildlife regulatory program. Since the term healthy fish and wildlife populations appears in ANILCA, it is used instead of the term sustained yield, when identifying the standard for managing fish and wildlife under this regulatory program, although the terms in practice are frequently similar. National Parks and Park Monuments are managed according to the more restrictive natural and healthy populations standard.

Permanent Regulations - These temporary regulations automatically expire on December 31, 1991. Consequently, the Federal government will begin development of permanent regulations shortly after the temporary regulations take effect, if the State appears to be unable to resume subsistence management on public lands in 1990. Public comment will be solicited. Public meetings will also be held in the affected areas to solicit comments. The Federal government will then revise the proposed regulations in response to public comments and agency and legislative mandates and publish them as final regulations. Once implemented, the permanent regulations would remain in effect until the State brings its subsistence program back into compliance with ANILCA.

Conformance with Statutory and Regulatory Authorities - The impact of these regulations on subsistence uses has been evaluated as required by Section 810 of ANILCA. Subsistence use and access is expected to differ little from that previously allowed under State management. If change occurs it is expected to be beneficial to subsistence users. The regulations are consistent with the purposes and intent of Section 810 and will result in no significant restrictions on subsistence activities.

Properly regulated and managed subsistence use is consistent with the purposes for which the various public lands in Alaska were established.

National Environmental Policy Act Compliance: The Federal assumption of subsistence management would generally maintain the status quo from the user's perspective. Responsibility and on the ground implementation would shift from State to Federal officials. Changes in environmental effects would be negligible. Therefore, the implementation of regulations relative to Federal assumption of subsistence management on public lands is determined to be a categorical exclusion as detailed in the USDI Departmental Manual (516 DM 6, Appendix 1).

Paperwork Reduction Act - The collections of information contained in this rule are being submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Economic Effects - Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretary to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

William Knauer, Refuges and Wildlife, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this proposed rulemaking document.

LIST OF SUBJECTS

Administrative Practice and Procedure, Alaska Fish, Public Lands, Reporting and Recordkeeping Requirements and Wildlife.

50 CFR Part 40

For the reasons set out in the preamble, Subchapter C of Title 50 of the Code of Federal Regulations is proposed to be amended as shown below:

50 CFR Subchapter C [Amend]

Amend Subchapter C by adding the following new Part 40:

PART 40 - SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

Subpart A - General Provisions

§40.1 Purpose

§40.2 Authority

§40.3 Applicability and Scope

§40.4 Definitions

§40.5 Federal Subsistence Policy, General

Subpart B - Program Structure

§40.10 Federal Subsistence Board

§40.11 Regional Advisory Councils

§40.12 Local Advisory Committees

§40.13 Board/Agency Relationships

§40.14 Relationship to State Procedures and Regulations

§40.15 Board Determinations

§40.16 Regulation Adoption Process

§40.17 Closures

§40.18 Appeals

Subpart C - General Requirements

§40.20 Subsistence Use Qualifications

§40.21 Licenses, Permits, Harvest Tickets, Tags, and Fees

§40.22 Penalties

Subpart D - Subsistence Hunting, Trapping, and Fishing

§40.23 Subsistence Hunting and Trapping

§40.24 Subsistence Fishing

§40.25 [Reserved]

§40.26 Subsistence Shellfish

Authority: 16 U.S.C. 3101 et seq.; 668dd et seq; 3; 551; 472; 18 U.S.C. 7; 3559; 3571; 43 U.S.C. 1733.

Subpart A - General Provisions

§ 40.1 Purpose

The regulations in this Part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ 40.2 Authority.

These regulations are issued pursuant to the Secretary of the Interior and of Agriculture authority specified in § 814 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487).

§ 40.3 Applicability and scope.

The regulations of this Part 40 apply to subsistence taking and uses of fish and wildlife on all public lands in the State of Alaska, and do not supersede agency specific regulations. Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park originally reserved as Mt. McKinley National Park are closed to subsistence activities.

§ 40.4 Definitions.

The following definitions apply to all regulations contained in this part unless otherwise provided in other regulations of this part.

(a) "Agency" means a subunit of a cabinet level Department such as U.S. Fish & Wildlife Service, USDA-Forest Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, Department of Army, Department of Air Force, National Marine Fisheries Service, etc.

(b) "ANILCA" means the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 94 Stat. 2371, as amended.

(c) "Barter" means the exchange of fish or wildlife or their parts taken for subsistence uses: for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(d) "Board" means the Federal Subsistence Board as described in § 40.10 of this part.

(e) "Council" means the Regional Subsistence Advisory Councils as described in § 40.11.

(f) "Customary trade" means types and volumes of trade in existence among rural resident subsistence users prior to the passage of ANILCA, and not of a level considered to be a significant commercial enterprise.

(g) "Customary and traditional use" means a consistent pattern of, and reliance for subsistence purposes

upon fish and wildlife and other wild renewable resources near or reasonably accessible from the users' place of residence. Customary and traditional use determinations are community or geographic area based, except that outside established subsistence resident zones in certain National Parks or Park Monuments determinations may be specific to individuals.

(h) "Federal lands" means lands the title to which is in the United States.

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

(j) "Fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(k) "Local resident" means a rural resident with subsistence use in a specific geographic area.

(l) "Person" means an individual and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

(m) "Public lands" means lands situated in Alaska which are Federal lands, except-

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act 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 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.

(n) "Regulatory year" means July 1 through June 30.

(o) "Resident" means any person who has their primary, permanent home within Alaska 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 address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose. Individuals are not required to occupy a home twelve months per year to be considered resident.

(p) "Rural" means any area of Alaska determined by the Board to qualify as such under the process described in § 40.15 of this part.

(q) "Secretary" means the Secretary of the Interior, except that in reference to matters related to the National Forest System, such term means the Secretary of Agriculture.

(r) "State" means the State of Alaska.

(s) "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 family consumption; and for customary trade.

(t) "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.

§40.5 Federal Subsistence Policy, General

The Secretary under Title VIII of ANILCA must accord a preference to subsistence uses of fish and wildlife on public lands. It is the policy of the Department to minimize conflict between resource uses on public and non-public lands. The Board will consider the recommendations of the State regional councils and local advisory committees, public input and comment, and actions of the State Boards of Fisheries and Game, as reflected in the administrative record, as a basis for decisions related to subsistence. The Board will give full consideration to state regulatory measures for fish and game uses and, where appropriate, adopt such measures, including state seasons and bag limits. However, the Secretary reserves the discretion, as embodied in these regulations, to prescribe different regulatory measures on public lands to protect subsistence uses consistent with Section 804 of ANILCA.

Subpart B - Program Structure

§ 40.10 Federal Subsistence Board

(a) Subsistence taking and uses of fish and wildlife on public lands shall be administered by a Federal Subsistence Board.

(b) **Membership**

(1) The Board shall consist of five members. The members are: Alaska Regional Director, Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA-Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) The Chair of the Board shall be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

(c) **Powers and Duties**

(1) Meetings shall occur at least annually, and at such other times as deemed necessary by the Board. Meetings will normally occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of three members but no action may be taken unless three members are in agreement.

(3) The Board is empowered, to the extent necessary to implement Title VIII of ANILCA, to:

(i) promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) establish rules and procedures for the operation of the Board, the regional advisory councils and local advisory committees established pursuant to this part;

(iii) apply a subsistence priority, as necessary for rural Alaska residents on public lands;

(iv) assess the biological status of fish and wildlife populations used for subsistence on public lands;

(v) determine if a harvest from populations of fish and wildlife is consistent with the ANILCA requirement to maintain healthy fish and wildlife populations on public lands;

(vi) make rural and non-rural determinations;

(vii) determine which rural Alaska areas or communities have customary and traditional subsistence uses of fish and wildlife. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may extend to individual rural residents;

(viii) review and respond to proposals by regional advisory councils for regulation, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(ix) close public lands to the taking of fish and wildlife authorized by State fish and game laws and regulations which may adversely affect subsistence taking and uses on those lands;

(x) prioritize subsistence taking of fish and wildlife among users when necessary to maintain healthy fish and wildlife populations based on application of the following criteria:

(A) Customary and direct dependence upon the populations as the mainstay of livelihood;

(B) Local residency; and

(C) The availability of alternative resources.

(xi) restrict or eliminate harvest of fish and wildlife by subsistence users if necessary to maintain healthy fish and wildlife populations, or for reasons of public safety, or administration;

(xii) establish at least six geographic subsistence resource regions;

(xiii) establish a regional advisory council in each subsistence resource region and appoint its members pursuant to the Federal Advisory Committee Act;

(xiv) establish local advisory committees within the subsistence resource regions as necessary and appoint their members pursuant to the Federal Advisory Committee Act.

(xv) such other duties as are necessary to implement the Secretary's responsibilities under Title VIII of ANILCA.

(4) The Board shall consider the reports and recommendations of the Councils concerning the subsistence take of fish and wildlife on the public lands within their respective regions. The Board may choose not to follow any recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision.

(5) The Board will establish a Staff Committee composed of personnel from the U.S. Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs for administrative assistance. Personnel from other Federal and State agencies will be invited to participate on the Staff Committee as appropriate. The Staff Committee's functions will include, but not be limited to:

(i) making recommendations concerning the biological status of fish and wildlife populations;

(ii) making recommendations on which communities or areas are "rural" and which have demonstrated "customary and traditional uses"; and

(iii) compiling records of subsistence harvest of fish and wildlife resources.

(6) Additional committees may be formed as necessary to assist the Board.

(7) The Board may review and revise or rescind its actions.

(8) The Fish and Wildlife Service shall provide appropriate administrative support for the Board.

§ 40.11 Regional Advisory Councils

(a) The Secretary shall during the effective period of these regulations review and determine the adequacy, for the purposes of the Secretary's responsibilities under Title VIII of ANILCA, the existing State:

(1) subsistence resource region;

(2) regional advisory councils; and

(3) local advisory committees.

(b) If the Secretary determines pursuant to Section 40.11(a) that the subsistence resource regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions described in Section 805 of ANILCA, he shall establish

subsistence resources region, regional advisory councils or local advisory committees in accordance with Section 40.11 and 40.12.

(c) Pending the review and determination required by Section 40.11(a) the Federal Subsistence Board shall review the proposals, actions, and associated public comments contained in the administrative record produced by the existing State Board of Fisheries and Game, Regional Advisory Councils, and local advisory committees. This review shall be an interim measure to gain the public input described in Section 805 of ANILCA.

(d) The Board shall establish a Regional Advisory Council for each subsistence resource region within 12 months from the date of the Secretary's determination pursuant to Section 40.11(a), if the Secretary determines existing State Regional Advisory Councils are inadequate to meet the requirements of Section 805 of ANILCA. The Councils will provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Councils will provide for public participation in the regulatory process.

(e) Establishment of Councils-Membership

(1) The number of members of each council shall be established by the Board, and shall be an odd number. A Council member must be a resident of the region in which he/she is appointed and be knowledgeable about the region and subsistence uses therein. The Board shall solicit nominations from the public. Appointments to the Councils are made by the Board.

(2) Council members shall serve 3 year terms and may be reappointed. Initial members shall have staggered terms.

(3) The Chair of the Council shall be elected by the Council for a one year term and may be reelected.

(f) Powers and Duties

(1) The Councils are empowered to:

(i) hold public meetings on fish and wildlife subsistence matters;

(ii) elect officers;

(iii) in consultation with the local advisory committees in its region; review, evaluate, and make recommendations to the Board on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within or affecting its region.

(2) The Councils shall:

(i) prepare and submit to the Board an annual report containing;

(A) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(C) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(D) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(ii) provide a forum for, and assist the local advisory committees in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife.

(iii) attempt to develop areas of compromise and reach a regional consensus if differences of opinion exist among the local advisory committees.

(iv) perform other duties specified by the Board.

(3) Each Council must comply with rules of operation established by the Board.

(g) The Fish and Wildlife Service shall provide appropriate financial, technical and administrative assistance to the Councils.

§ 40.12 Local Advisory Committees

(a) The Board shall establish local advisory committees as deemed necessary within each subsistence resource region, if the Secretary determines pursuant to Section 40.11(a) that the existing state local advisory committees are inadequate to fulfill the requirements of ANILCA Section 805. The committees will provide a local public forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife, may make recommendations to the councils concerning regulations, and will provide for public participation in the regulatory process to help adequately protect subsistence uses.

(b) Establishment and membership of committees

(1) Committees and their membership shall be recommended by the Regional Councils to the Board. The membership of each committee shall be an odd number. Members must be residents of the local area, and be knowledgeable about the area and subsistence uses. Nominations will be from the Councils. Authorizations of and appointments to the committees are made by the Board.

(2) Committee members shall serve 3 year terms and may be reappointed. Initial appointments shall have staggered terms.

(3) The Chair of the committee shall be elected by the committee for a one year term and may be reelected.

(4) When considering a request by a Council to create a committee, the Board will consider:

(i) whether existing representation is adequate, and

(ii) whether participation in the Board's decision making process would be enhanced meaningfully.

(c) Powers and Duties

(1) The committees are empowered to:

(i) elect officers;

(ii) provide a local forum for proposing regulations of subsistence taking and uses of fish and wildlife, habitat management, and assisting the Councils in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife matters;

(iii) develop regulatory proposals for submission to the Council;

(iv) evaluate regulatory proposals submitted to the committees and make recommendations to the Council and Board;

(v) advise the appropriate regional council regarding the conservation, development, and subsistence use of fish and wildlife resources;

(vi) work with the appropriate regional council to develop subsistence management plans and harvest strategy proposals; and

(vii) cooperate and consult with interested persons and organizations, including government agencies, to accomplish their charge,

(viii) perform other duties specified by the Board.

(2) Committees must comply with rules of operation established by the Board.

(d) The Fish and Wildlife Service shall provide appropriate financial, technical, and administrative assistance to the committees.

§ 40.13 Board/Agency Relationships

(a) General

(1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on conservation system units or other public lands, recognizing that the management policies applicable to some units may entail methods of resource and habitat management and protection different from methods appropriate for other units.

(2) The Board shall promulgate a single set of regulations for subsistence taking of fish and wildlife on public lands. An agency may submit proposed regulations to the Board for inclusion. The Board is the final administrative authority on the promulgation of regulations relating to the subsistence taking of fish and wildlife on public lands, unless the Secretary at his discretion chooses to exercise his review authority.

(3) Nothing in these regulations shall abrogate the authority of individual Federal agencies to promulgate regulations necessary for the proper management of lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes park and park monument Subsistence Resource Commissions. Nothing in these regulations affects the appointments, duties or authorities of those Commissions.

§ 40.14 Relationship to State Procedures and Regulations

(a) State of Alaska fish and wildlife regulations, other than subsistence regulations, apply to public lands unless the Board finds it necessary to promulgate regulations which supersede State regulations in order to ensure the opportunity for subsistence take of fish or wildlife on public lands.

(b) The Board may close public lands to hunting and fishing, or establish seasons and bag limits different from the State. Such regulations may be implemented through individual agency closure authority. Where applicable to all public lands such regulations will be promulgated by the Board. The Board may allow State closures to stand which serve to achieve the objectives of Title VIII of ANILCA.

§ 40.15 Board Determinations

(a) Healthy Fish and Wildlife Populations - Determinations of healthy populations of fish and wildlife shall be based upon 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 and minimizes the likelihood of irreversible or long term adverse effects upon such populations and species. Natural populations, for this section, shall include existing, nonindigenous populations. Such determinations shall also recognize that customary and traditional subsistence uses by local rural residents may be a natural part of such ecosystems. Habitat manipulation or control of other species for the purpose of maintaining subsistence uses is not authorized within National Park System Units.

(b) Rural Determinations - Not later than December 31, 1990, the Board shall determine the rural or non-rural status of all areas or communities within Alaska. Pending such determination each area or community will retain its rural or non-rural status pursuant to Alaska Administrative Code (5 AAC 99.014). In determining whether a particular area of Alaska is rural, the Board will use the procedures set forth in 40.16 and use the following guidelines:

(1) A community or area with a population of 2500 or less will be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is part of an urbanized area.

(2) Communities or areas with populations between 2500 and 7000 will be determined rural or non-rural before other areas or communities are reviewed. The characteristics identified pursuant to 40.15(b)(5) will be used to make these determinations.

(3) A community with a population of 7000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.

(5) Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to: fish and wildlife use; and development and diversity of: the economy, transportation, communication links, community infrastructure, educational and cultural institutions, and government institutions.

(6) Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

(c) Customary and Traditional Determinations - In making determinations of whether subsistence uses are customary and traditional, the Board may examine but not be limited to the following factors which exemplify customary and traditional use:

(1) The length, consistency and pattern of use.

(2) The degree of past and current reliance upon particular subsistence uses near or reasonably accessible from the user's place of residence.

(3) Whether current consistent use patterns provide substantial economic, cultural, social, or nutritional elements of the subsistence users' lives, as related to the importance of such uses to subsistence users' lives in the past.

(4) How the methods and means of taking relate to efficiency and economy of effort and cost, as conditioned by local circumstances, and as related to past methods and means of taking.

(5) Whether the present means of handling, preparing, preserving, and storing fish or game have been traditionally used by past generations - without excluding consideration of recent technological advances where appropriate.

(6) The passage of knowledge of fishing and hunting skills, values, and lore from generation to generation.

(7) Distribution or sharing of hunting or fishing effort, or the products of that effort (by customary trade, barter, sharing, and gift-giving), among others according to custom and tradition.

§ 40.16 Regulation Adoption Process

(a) The public shall be provided opportunities to participate in and comment on proposed changes in the regulations. The regulation adoption process should reasonably coincide with the State of Alaska's annual process of establishing fish and game regulations.

(b) Early in the regulatory year the Board shall provide to the Councils and committees, once established, and public a schedule of the regulatory and amendment process.

(c) The committees and Councils must submit proposals to the Board in compliance with the schedule. Committee proposals

must be submitted through the Councils. Proposals, however, may originate from any source; but to receive full consideration, must meet the published schedule. Proposals originating from individuals other than the Board, Council or committee will be referred by the Board to the Councils for comments. Each Council and committee shall hold at least one public meeting per year in its region or area to solicit public comment on proposals. The publics' and Councils' comments shall be forwarded to the Board in accordance with the schedule.

(d) The Board, based on comments from the Councils and public, and on resource and resource use information, shall develop draft regulations, publish a notice of availability in the Federal Register, and provide other public notice necessary to obtain public participation. A comment period of no less than 30 days shall be provided. The Board shall hold at least one public meeting to obtain public comment on the proposed regulations.

(e) Following the comment period, the final regulations shall be published in the Federal Register and will become effective on the date of publication or such later date as may be determined by the Board.

§ 40.17 Closures

(a) The Board may make or direct temporary closures of subsistence taking on public lands, if necessary, for reason of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. In so doing, the Board will consult with the State, and provide adequate notice and public hearing to the affected communities.

(b) In an emergency situation, the Board may direct immediate closure of public lands to any or all hunting or fishing, including subsistence take. The Board shall publish notice and reasons justifying the closure in the Federal Register and in newspapers of the area(s) affected. The closure shall be effective when made, may not exceed 60 days, and may not be extended unless it is determined, after notice and hearing, that such closure should be extended.

(c) Any closure, pursuant to Title VIII, exclusive of those made through the annual regulatory process, which does not apply to all public lands will be implemented through the regulations governing such closures by each agency which manages public land in Alaska. Public notification and involvement procedures of the involved agency(s) shall be followed.

(d) Based on emergency need for subsistence, the Board may extend or change seasons or increase bag limits. The Board may consider an emergency under this item only upon a petition from an affected rural resident or community. If such changes are granted they shall be for the minimum time period and bag limit necessary to meet the need and may be made only after a determination by the Board that the proposed change will not affect the maintenance of healthy fish and wildlife populations.

The decision of the Board shall be the final administrative action.

§ Section 40.18 Appeals

(a) Decisions of the Board are subject to requests for reconsideration.

(b) Any affected person may file a request for reconsideration.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within 45 days of the date on the notice of the written decision for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why a decision by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, mailing address, and daytime telephone number (if any);

(2) The decision for which reconsideration is requested and the date of that decision;

(3) A statement of how the requestor is adversely affected by the decision;

(4) A statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the decision changed.

(e) Stays

(1) A decision may be implemented while the Board is reconsidering that decision unless the Board grants a stay.

(2) If a stay is desired, it must accompany the request for reconsideration. The stay request must contain a description of the decision to be stayed, specific reasons why the stay should be granted including specific adverse effect(s) upon the requestor, harmful site-specific impacts or effects on resources, and how the cited effects and impacts would prevent a meaningful reconsideration of the decision.

(3) The Board must issue a written decision on a stay request within 10 calendar days of receiving a stay request.

(f) The Board shall make a final decision on a request for reconsideration within 45 days after receiving such a request. The decision of the Board is the final administrative remedy except as specified in Section 40.18(g). Further relief is only available through the courts.

(g) The Secretary, at his discretion, may review actions by the Board.

(h) Decisions by a Federal agency outside its role on the Board are subject to appeal under the appeal procedures of that agency.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Subpart C - General Requirements

§ 40.20 Subsistence use qualifications.

(a) The taking of fish and wildlife on public lands for subsistence uses as defined in § 40.4 is restricted to Alaska residents of rural areas or communities. Non-rural residents are not provided a preference for the taking of fish and wildlife on public lands.

(b) This section does not limit the authority of the Board, or individual Federal land management agencies, to further restrict the class of qualifying subsistence users in particular cases based upon specific authority in ANILCA or other Federal statutes.

§ 40.21 Licenses, permits, harvest tickets, tags, and fees.

(a) Persons engaged in subsistence activities related to the taking of fish or wildlife on public lands must possess State of Alaska licenses, permits, harvest tickets, and tags and must comply with reporting and validation requirements. The intent of these regulations is to maximize the use of the State license and permit system, consistent with the sound management of fish and wildlife and fulfillment of the Secretary's Title VIII responsibilities.

(b) In addition to any licenses or permits required by paragraph (a) of this section, persons engaged in subsistence activities on public lands must possess any Federal licenses or permits that may be required for such activities.

(c) Upon request of a State or Federal law enforcement officer, individuals must produce: licenses, permits, harvest tickets, tags, or other pertinent documents required by this Section; and, any apparatus designed to be, or capable of being used to harvest fish or wildlife.

§ 40.22 Penalties.

Any person convicted of violating any provision of 43 CFR Part 40 may be punished by a fine not to exceed \$5,000 or imprisonment not to exceed six months or both in accordance with the penalty provisions prescribed by the applicable listed authorities of Part 40.

Subpart D - Subsistence hunting, trapping, and fishing

Subpart D closely follows existing State Fish and Game regulations which are codified in Title 5 of the Alaska Administrative Code. In many cases the language is identical to state regulation or modified so it applies only to this Federal program on public lands. The regulations note particular State provisions from which they were derived.

§ 40.23 - Subsistence Hunting and Trapping

(a) Definitions - The following definitions shall apply to all regulations contained in this subpart (derived from 5 AAC 92.990):

- (1) "ADF&G" means Alaska Department of Fish and Game.
- (2) "Aircraft" means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.
- (3) "Airport" means an airport listed in the Federal Aviation Agency, Alaska Airman's Guide and chart supplement.
- (4) "Animal" means those species with a vertebral column (backbone).
- (5) "Bag limit" means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person or designated group exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A subsistence bag limit and a general bag limit for the same species are not cumulative.
- (6) "Big game" means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.
- (7) "Bow" means long bow, recurve bow, or compound bow, but not crossbow.
- (8) "Broadhead" means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eighths inch.
- (9) "Brow tine" means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.
- (10) "Bull moose" means any male moose.
- (11) "Closed season" means the time when wildlife may not be taken.
- (12) "Cub bear" means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.
- (13) "Dire emergency" means a situation in which a person:
 - (i) Is in a remote area;
 - (ii) Is involuntarily experiencing an absence of food required for sustenance;
 - (iii) Will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems if wild game food is not immediately taken and consumed; and
 - (iv) Cannot expect to obtain alternative food sources in time to avoid the consequences described in (iii) of this sub paragraph.
- (14) "Drawing permit" means a permit issued in a limited number to people who are selected by means of a lottery

held for all people submitting valid applications for such persons, and who agree to abide by the conditions specified for each hunt.

(15) "Full curl horn" means the horn of a male mountain or Dall sheep, the tip of at least one of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least eight (8) years of age as determined by horn growth annuli.

(16) "Fur animal" means coyote, arctic fox, red fox, lynx, raccoon, or red squirrel, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting license.

(17) "Furbearer" means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

(18) "Highway" means the drivable surface of any constructed road.

(19) "Household" means that group of people domiciled in the same residence.

(20) "Hunting area for a species" means that portion of a game management unit where a subsistence season and a bag limit for that species are set.

(21) "Motorized vehicle" means a motor-driven land or water conveyance.

(22) "Open season" means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

(23) "Permit hunt" means a hunt for which permits are issued by drawing, registration or other means.

(24) "Poison" means any substance which is toxic or poisonous upon contact or ingestion.

(25) "Registration permit" means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received, and are issued:

(i) Beginning on a date announced and continuing throughout the open season, or until the season is closed by emergency order when a harvested quota is reached; or

(ii) Beginning on a date announced and continuing until a predetermined number of permits has been issued.

(26) "Sealing" means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

(27) "Seven-eights curl horn" means the horn of a mountain sheep, the tip of which has grown through seven-eights

of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side, or with both horns broken.

(28) "Skin", "hide" and "pelt" are all the same thing, and mean any tanned or untanned external covering of an animal's body: skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

(29) "Small game" means all species of grouse, hares, rabbits, ptarmigan, waterfowl, cranes and Wilson or jacksnipe.

(30) "Tine" or antler point refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured in a straight line across the base.

(31) "Transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(32) "Unclassified game" means all species of game not otherwise classified in the definitions.

(33) "Unit" means one of the 26 geographical areas listed under game management units in the ADF&G's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

(34) "Year" means calendar year unless another year is specified.

(b) Small game and unclassified game, fur animals, furbearers, big game, and waterfowl, snipe and cranes may be taken for substance by any method, unless prohibited below or by other Federal statute.

(1) The following methods of taking game are prohibited (derived from 5 AAC 92.080):

(i) by shooting from, on, or across a highway;
(ii) with the use of any poison;
(iii) knowingly, or with reason to know, with the use of a helicopter in any manner, including transportation to or from the field of any unprocessed game or parts of game, any hunter or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of a hunter, hunting gear, or game during an emergency rescue operation in a life-threatening situation;

(iv) unless otherwise provided in this chapter, from a mechanical vehicle, or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased, except that a motor-driven boat may be used to take caribou in (State Game Management Unit) Unit 23;

(v) with the use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(vi) with the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) with the aid of a pit, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights), radio communication, artificial salt

lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) with a snare, except for taking unclassified game, furbearer, grouse, hare, or ptarmigan.

(ix) by intentionally feeding a bear, wolf, fox, or wolverine, or intentionally leaving human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping furbearers or hunting black bears consistent with following regulations.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in 4C.23(b)(1) (derived from 5 AAC 92.075 and 92.085):

(i) with the use of a firearm other than a shotgun, muzzle-loaded rifle without scope, or rifle or pistol using a center-firing cartridge, except that:

(A) in Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges;

(B) the use of a muzzleloading rifle is prohibited for brown/black bear, moose, bison, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) with a crossbow in any area restricted to hunting by bow and arrow only;

(iii) with a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally, the arrow is tipped with a broadhead, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed, and unless the hunter has successfully completed an ADF&G approved bowhunter education course and minimum shot placement qualification test and carries an endorsement to this on their license;

(iv) with the use of bait; except that black bears may be taken with the use of bait between April 15 and June 15, but only in Units 1 (except 1(C)), 2, 3, 5, 6, 7 (except Resurrection Creek and its drainages), 11, 13, and 15-17; the season shall be April 15 through June 30 in Units 12, 19-21, 24, and 25, and April 15 through May 31 in Units 14(A) and 14(B). In these units, baiting of black bears is subject to the following restrictions:

(A) only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) no person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) no person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) a hunter using bait shall clearly mark the bait station with a sign that displays the hunter's hunting license number and ADF&G assigned number;

(E) a hunter using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) no person may give or receive remuneration for the use of a bait station, including barter or exchange of goods; however, this does not apply to licensed master or registered guides, or their assistant guides, who personally accompany the client at the bait station site;

(G) no person may have more than two bait stations established (bait present) at any one time;

(H) no person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(v) with the aid or use of a dog, except that a dog may be used to hunt black bear by permit issued at the discretion of the ADF&G;

(vi) with the use of a trap or snare;

(vii) while a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(viii) no person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence uses a big game animal in a National Preserve units until 3:00 a.m. following the day in which the flying occurred.

(ix) no person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence purposes or assist in taking a big game animal until after 3:00 a.m. following the day in which the flying occurred; however, this paragraph does not apply to subsistence taking of deer, or to subsistence taking of wolves during August 10-March 31 in Units 9, 11, 12, 13 (excluding that portion of Unit 13(E) west of the Parks Highway), 17, 19, 20, 21, 24, 25(B), 25(C), and 25(D); additionally with respect to wolves:

(A) no person may take a wolf without first obtaining from ADF&G, a numbered registration permit and numbered, nontransferable locking tags;

(B) shotguns may not be used to take wolves;

(C) a person taking a wolf shall immediately affix one of the tags to the skin of the wolf until the skin is sealed according to ADF&G procedures;

(x) from a boat in Units 1--5.

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in 40.23(b)(1) (derived from 5 AAC 92.090):

(i) by using a dog, trap, snare, net, or fish trap;

(ii) by disturbing or destroying a den;

(iii) by having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3:00 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking furbearers for subsistence under a trapping license are prohibited, in addition to the prohibitions in 40.23(b)(1) (derived from 5 AAC 92.095):

(i) by disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) by disturbing or destroying any beaver house;

(iii) taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) taking land otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same game management unit;

(v) using a dog, net, or fish trap (except a blackfish or fyke trap);

(vi) taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) taking a wolf in Units 12 and 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) having been airborne and using a firearm to take or assist in taking an arctic fox, red fox, wolf, or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a fox, wolf, or wolverine caught in a trap or snare;

(ix) taking a red fox in Unit 15 by any means other than a steel trap or snare.

(5) The following methods and means of hunting waterfowl, snipe, and cranes for subsistence are prohibited, in addition to the prohibitions in 40.23(b)(1) (derived from 5 AAC 92.100):

(i) with a rifle or pistol, a shotgun larger than 10 gauge, or a shotgun not plugged to 3 shell capacity;

(ii) from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased;

(iii) from sunset to one-half hour before sunrise.

(c) Possession and Transportation of Wildlife (derived from 5 AAC 92.130 and 92.140)

(1) Unless otherwise provided, no person may take a species of game in any unit or portion of a unit if that person's total statewide take of that species already equals or exceeds the bag limit for that species in that unit or portion of a unit in that regulatory year.

(2) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not separate and

distinct. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional animals of that species under any other bag limit specified for a State general season.

(3) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(4) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(5) No person may possess, transport, or give, receive or barter game or parts of game that the person knows or should know were taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(d) Evidence of sex and identity (derived from 5 AAC 92.150)

(1) No person may possess or transport a mountain sheep unless both horns accompany the animal if the subsistence take is restricted to a single sex.

(2) If the subsistence taking of a big game animal, except sheep, is restricted to one sex, no person may possess or transport the carcass of an animal unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to the carcass of a big game animal that has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(4) Until the hide has been sealed by a representative of the ADF&G, no person may possess or transport the hide of a brown bear taken in Unit 4 which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(e) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or an agency, if identified on the collar or marker, when and where the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the

ADF&G or to an agency identified on such equipment (derived from 5 AAC 92.160).

(f) Sealing of Bear Skins and Skulls (derived from 5 AAC 92.165).

(1) As used in this section,

(i) "bear" means brown bears in all units, and black bears of all color phases taken in Units 1-7, 11-16, and 20;

(ii) "temporary sealing form" means a form available at ADF&G offices for providing information regarding date and location of bear kill, species of bear, name and address of the hunter, name of the guide, and other information requested by the ADF&G on the form;

(iii) "sealing certificate" means a form used by the ADF&G for recording information when sealing a bear.

(2) No person may possess, transport, or export from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of the ADF&G within 30 days after the taking, or a lesser time if requested by the ADF&G. The seal must remain on the skin until the tanning process has commenced. A brown bear taken in Units 8 or 12 may not be transported from that unit until it has been sealed. A brown bear taken in Unit 20(E) may not be transported from that unit, except to Tok, until it has been sealed.

(3) Except as provided in (c) of this section, a person who kills a bear must personally present the skin and the skull to an authorized representative of the ADF&G for sealing within 30 days after the taking, or a shorter time if requested by the ADF&G, and must sign the sealing certificate at the time of sealing.

(4) A person who takes a bear but is unable to present the skin and skull in person must complete and sign a temporary sealing form and ensure that the completed temporary sealing form, along with the bear skin and skull, are presented to an authorized representative of the ADF&G for sealing within 30 days after the taking.

(5) If a person kills a brown bear, while on a guided hunt or while hunting with a resident relative, the hunter, as well as the guide or resident relative who accompanied the hunter, shall sign the sealing certificate. If a temporary sealing form is used, the hunter, as well as the guide or resident relative, shall sign the temporary sealing form.

(6) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin. The ADF&G may require that the skull of the bear be skinned and that the skin and skull not be frozen at the time of sealing.

(7) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G.

(g) Sealing of Martin, Lynx, Beaver, Otter, Wolf, and Wolverine (derived from 5 AAC 92.170).

(1) No person may possess, transport, or export from the state the untanned skin of a marten taken in Units 1--5, 7, and 15, or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the state, unless the ADF&G has sealed the skin. The seal must remain on the skin until the tanning process has commenced or the skin has been transported from the state; however, the seal may be removed from the skin of a marten taken in Units 1--5 when the skin has been prepared for shipment from the state.

(2) The sealing of marten, lynx, beaver, land otter, wolf, or wolverine must be accomplished as follows:

(i) Wolf (in Unit 15(A)) taken by hunting or trapping must be sealed on or before the 5th day after the date of taking;

(ii) Wolf (except in Unit 15(A)), wolverine, and lynx taken by hunting must be sealed on or before the 30th day after the date of taking;

(iii) Marten (Units 1--5, 7, and 15 only), wolf (except in Unit 15(A)), wolverine, lynx, beaver, and otter taken by trapping must be sealed on or before the 30th day after the close of the season in the unit where taken.

(3) The sealing periods described in 40.23(g)(2) of this section may be temporarily reduced by an authorized employee of the ADF&G.

(4) A person who takes a species listed in 40.23(g)(2) of this section must bring the skin for sealing to an authorized representative of the ADF&G and must complete a report on a form provided by the ADF&G.

(h) No person may use game as food for a dog or furbearer, or as bait, except for the following (derived from 5 AAC 92.210):

- (1) the hide, skin, viscera, head, or bones of game;
- (2) the skinned carcass of a furbearer or fur animal;
- (3) red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;
- (4) legally taken unclassified game.

(i) (1) The following definitions shall apply to this paragraph (derived from 5 AAC 92.220):

(i) "wild fowl" means species of wild bird for which seasons or bag limits have been established by State or Federal law.

(ii) "edible meat" means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast: however, "edible meat" of big game, wild fowl or fish does not include: meat of the head; meat that has been damaged and made inedible by the method of taking, bones, sinew and

incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

(2) A person taking game for subsistence shall salvage the following parts for human use:

(i) the hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(ii) the hide, skull and edible meat of a brown bear;

(iii) the hide, skull and edible meat of a black bear.

(3) A person who kills a big game animal or a species of wild fowl may not intentionally, knowingly, recklessly, or with criminal negligence fail to salvage for human consumption the edible meat of the animal or fowl.

(4) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(5) If a person is convicted of violating this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (stifle joint), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less than \$2,500.

(6) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

(j) Subsistence taking of fish or wildlife shall not be considered an emergency taking. Situations where emergency taking of wildlife are allowed are defined in 40.23(a)(13).

(k) (1) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if (derived from 5 AAC 92.410):

(i) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(ii) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(iii) All other practicable means to protect life and property are exhausted before the animal is taken.

(2) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide including claws and surrender it to the State immediately. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately.

The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking.

(i) As used in this section, "property" is limited to:

- (A) A dwelling, permanent or temporary.
 - (B) An aircraft, boat, automobile, or other means of conveyance;
 - (C) A domesticated animal.
 - (D) Other property of substantial value necessary for the livelihood or survival of the owner.
- Game taken by hunters is not "property" in the sense of this regulation.

(ii) [Reserved].

(l) Subsistence harvest of Endangered or Threatened species will conform to provisions of the Endangered Species Act, as amended, and its implementing regulations.

(n) Subsistence harvest of Marine Mammals will conform to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations.

(o) Reserved

§ 40.24 Subsistence Fishing

(a) Regulations in this subsection apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants only on public lands in Alaska (derived from 5 AAC 01.001).

(b) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on any public lands in the state of Alaska by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section (derived from 5 AAC 01.005).

(c) The following definitions shall apply to all regulations contained in sections 40.25 and 40.26 (derived from 5 AAC 39.105(d) and 39.975).

(1) "Abalone Iron" is a flat device used for taking abalone and which is more than one inch (24mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

(2) "Anchor" is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

(3) "Bag Limit" means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

(4) "Crab" means the following species: Paralithodes camshatica (red king crab); Paralithodes platypus (blue king crab); Lithodes couesi; Lithodes aequispina (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); Cancer magister (Dungeness crab).

(5) "Diving Gear" is any type of hard hat or skin diving equipment.

(6) "Dipnet" is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

(7) "Drainage" means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

(8) "Fishing Site" means a structure or vessel used by an Alaska Commercial Fisheries Entry Commission permit holder for providing shelter in support of the operation of stationary net gear.

(9) "Fishwheel" is a fixed, rotating device for catching fish which is driven by river current or other means of power.

(10) "Freshwater of streams and rivers" means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

(11) "Fyke net" is a fixed, funneling (fyke) device used to entrap fish.

(12) "Gear" means any type of fishing apparatus.

(13) "Gill net" is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

(14) "Drift gill net" is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

(15) "Set gill net" is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

(16) "Grappling hook" is a hooked device with flukes or claws and attached to a line and operated by hand.

(17) "Groundfish - Bottomfish" means any marine finfish except halibut, osmerids, herring and salmonids.

(18) "Hand troll gear" consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

(19) "Herring pound" is an enclosure used primarily to retain herring alive over extended periods of time.

(20) "Hung measure" means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

(21) "Hydraulic clam digger" is a device using water or a combination of air and water to remove clams from their environment.

(22) "Inclusive season dates" means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period.

(23) "Lead" is a length of net employed for guiding fish into a seine or set gill net.

(24) "Legal limit of fishing gear" means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

(25) "Long line" is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

(26) "Mechanical clam digger" is a mechanical device used or capable of being used for the taking of clams.

(27) "Mechanical jigging machine" is a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

(28) "Net gear site" means the in-water location of stationary net gear.

(29) "(to) Operate fishing gear" means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirements.

(30) "Possession limit" means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

(31) "Power gurdy troll gear" consists of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy.

(32) "Pot" is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

(33) "Purse seine" is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

(34) "Hand purse seine" is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

(35) "Beach seine" is a floating net designed to surround fish which is set from and hauled to the beach.

(36) "Ring net" is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

(37) "Rockfish" means all species of the genus

Sebastes.

(38) "Salmon stream" means any stream used by salmon for spawning or for travelling to a spawning area.

(39) "Salmon stream terminus" means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

(40) "Scallop dredge" is a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

(41) "Seine vessel" means the largest vessel, as determined by keel length, used to operate a seine and the vessel from which the seine is set, and to which the seine is retrieved.

(42) "Shovel" is a hand-operated implement for digging clams or cockles.

(43) "Stretched measure" means the average length of a any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet after use, the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by the means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under the five-pound weight, except as otherwise provided.

(44) "Trawl" is a bag-shaped net towed through the water to capture fish or shellfish.

(45) "Beam trawl" is a trawl with a fixed net opening using a wood or metal beam.

(46) "Otter trawl" is a trawl with a net opening controlled by devices commonly called otter doors.

(47) "Pelagic trawl" is a trawl where the net, or the trawl doors or other trawl-spreading device, do not operate in contact with the seabed, and which does not have attached to it any protective device, such as chafing gear, rollers, or bobbins, that would make it suitable for fishing in contact with the seabed.

(d) Methods, Means, and General Restrictions

(1) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this chapter, the following are legal types of gear for subsistence fishing (derived from 5 AAC 01.010):

(i) gear specified in definitions in subsection (a)(3).

(ii) jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand;

(iii) a spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand;

(iv) a lead which is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals is prohibited.

(7) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(8) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(9) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(10) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(11) Gill net web must contain at least 30 filaments and all filaments must be of equal diameter. The web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(12) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(13) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(14) The use of live nonindigenous fish as bait is prohibited.

(e) Unlawful Possession of Subsistence Finfish - No person may possess, transport, give, receive or barter subsistence-

taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 01.030).

§40.25 [Reserved]

§ 40.26 Subsistence Shellfish

(a) Regulations in this section apply to subsistence fishing on public lands for dungeness crab, king crab, tanner crab, shrimp, clams, abalone and other types of shellfish or their parts. The descriptions of legal types of gear and definitions in 40.25(a) are applicable to the regulations of this section (derived from 5 AAC 02.001).

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section and Section 40.25 (derived from 5 AAC 02.005).

(c) **METHODS, MEANS, AND GENERAL RESTRICTIONS**

(1) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, the following are legal types of gear for subsistence fishing (derived from 5 AAC 02.010):

(i) gear specified in 40.25(a);

(ii) jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and which are drawn through the water by hand;

(iii) a spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and which is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fending employed for guiding fish into a fishwheel, fyke net, or dip net;

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bering Sea area.

(6) Each subsistence fisherman shall plainly and legibly inscribe his/her first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(7) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(8) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(9) In addition to the marking requirements in (5) of this subsection, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(10) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in subsection 40.26(f).

(11) In the subsistence taking of shrimp in the Southeastern Alaska-Yakutat and Prince William Sound Areas, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Southeastern Alaska-Yakutat Area, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Subsistence Take by Commercial Vessels - No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered (derived from 5 AAC 02.025).

(e) Unlawful possession of Subsistence Shellfish - No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 02.030).

JUN 01 1990

Dated


Acting Director, Fish and Wildlife Service

(sgd.) Bruce Blanchard