

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6471 SENATE RESOURCES

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1 of ANILCA pertains to the "subsistence way of life", making
2 provision for subsistence management and use of "public lands" in
3 Alaska. ANILCA §§ 801-816, 16 U.S.C. §§ 3111-3126, Title VIII.
4 The term "public lands" is defined by ANILCA § 102(3). 16 U.S.C.
5 § 3102(3). With certain exceptions "public lands" are lands
6 situated in Alaska, the title to which is in the United States
7 after December 2, 1980.

8 Lands owned by the State of Alaska and privately owned
9 lands were thus not directly affected by ANILCA. However, ANILCA
10 § 805(d), 16 U.S.C. § 3115(d), provided that the State of Alaska
11 might opt to enact laws of general applicability consistent with
12 ANILCA and thereby become entitled to manage fish and game on
13 public lands as well as state-owned lands in Alaska. ANILCA
14 § 805(d) provides:

15 (d) The Secretary shall not implement [the
16 federal subsistence management program] if
17 within one year from December 2, 1980, the
18 State enacts and implements laws of general
19 applicability which are consistent with, and
20 which provide for the definition, preference,
21 and participation specified in, sections
22 3113, 3114 and 3115 of this title, such laws,
23 unless and until repealed, shall supersede
24 such sections insofar as such sections govern
25 State responsibility pursuant to this sub-
26 chapter for the taking of fish and wildlife
on the public lands for subsistence uses.
Laws establishing a system of local advisory
committees and regional advisory councils
consistent with this section shall provide
that the State rulemaking authority shall
consider the advice and recommendations of
the regional councils concerning the taking
of fish and wildlife populations on public
lands within their respective regions for
subsistence uses. The regional councils may
present recommendations, and the evidence

1 upon which such recommendations are based, to
2 the State rulemaking authority during the
3 course of the administrative proceedings of
4 such authority. The State rulemaking author-
5 ity may choose not to follow any recommenda-
6 tion which it determines is not supported by
7 substantial evidence presented during the
8 course of its administrative proceedings,
9 violates recognized principles of fish and
10 wildlife conservation or would be detrimental
11 to the satisfaction of rural subsistence
12 needs. If a recommendation is not adopted by
13 the State rulemaking authority, such author-
14 ity shall set forth the factual basis and the
15 reasons for its decision.

16 Anticipating the enactment of ANILCA by over two years,
17 the Legislature of the State of Alaska adopted a subsistence
18 priority statute in 1978. Ch. 151, SLA 1978.² Significantly,
19 the Alaska priority for subsistence fishing and hunting thusly
20 created was not restricted to Alaskans residing in rural areas.
21 However, the Alaska Board of Fisheries adopted first a policy and
22 later a regulation³ which in effect linked subsistence fishing to
23 particular geographic communities. Effective May 30, 1982, the
24 Board of Fisheries and the Board of Game jointly adopted a regu-
25 lation which for the first time expressly associated subsistence
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2 The full text of ch. 151, SLA 1978, is reproduced in
Appendix I at 1-5, inasmuch as relevant provisions are no
longer published in Alaska's fish and game code (Alaska
Statute 16), nor is it readily available in print elsewhere.

3 5 AAC § 01.597, reprinted in Madison v. Alaska
Department of Fish & Game, 696 P.2d 168, 172 (Alaska 1985).

1 fishing and hunting rights with rural residents through regula-
2 tions adopted in 1982. 5 AAC § 99.010 (1982).⁴

3 By various submissions made by the State of Alaska
4 between December 2, 1981, and April 29, 1982, the State of Alaska
5 obtained, on May 14, 1982, a determination by the Secretary that
6 the State's:

7
8 [Subsistence P]rogram will be in compliance
9 with Sections 803, 804, and 805 of ANILCA as
10 of June 2, 1982. As a result of this certi-
11 fication of compliance, the State retains its
12 traditional role in the regulation of fish
13 and wildlife resources on public lands in
14 Alaska.

15 Letter, James Watt (Secretary) to Jay Hammond (Governor of
16 Alaska), dated May 14, 1982; Appendix II at 1. By reason of the
17 foregoing determination, Alaska's 1978 subsistence priority
18 statute became operative as to all state lands and to virtually
19 all federally owned lands in Alaska.

20 Alaska's first subsistence fishing policies were
21 successfully challenged in Madison v. Alaska Department of Fish &
22 Game, 696 P.2d 168 (Alaska 1985). The Alaska Supreme Court held
23 that Alaska's priority for subsistence fishing (and therefore

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25 4 Appendix I at 12-13. The Alaska Board of Fisheries
26 understood ch. 151, SLA 1978, (in particular § 17,
AS 16.05.940(23) (1978)) to permit the restricting of fish-
ing by area of residence as a part of "first tier" subsis-
tence use management, that is, area restrictions on use not
preceded by elimination of other consumptive uses such as
sport and commercial fishing. See Madison v. Alaska Depart-
ment of Fish & Game, 696 P.2d 168, 174 (Alaska 1985).

1 presumably hunting also) would not permit the implementation of
2 the subsistence community concept. After a detailed review of
3 the legislative history of ch. 151, SLA 1978, the Alaska Supreme
4 Court observed:

5 The legislative history indicates that the
6 legislature intended to protect subsistence
7 use, not limit it. The words "customary and
8 traditional" serve as a guideline to recog-
9 nize historical subsistence use by individu-
10 als, both native and non-native Alaskans. In
11 addition, subsistence use is not strictly
12 limited to rural communities. For these rea-
13 sons, the board's interpretation of "custom-
14 ary and traditional" as a restrictive term
15 conflicts squarely with the legislative
16 intent.

17 Madison, 696 P.2d at 176 (emphasis supplied, footnote omitted).

18 At this juncture, the Alaska Supreme Court makes refer-
19 ence to ANILCA in a footnote. In addressing an argument made by
20 the Board of Fisheries, the Alaska Supreme Court observes that
21 legislation pending before Congress with regard to subsistence
22 hunting and fishing when the Alaska Legislature adopted ch. 151,
23 SLA 1978, did not then contain the "rural Alaska resident" limi-
24 tation which ultimately became a part of ANILCA as now expressed
25 in ANILCA § 803, 16 U.S.C. § 3113. In retrospect, it is clear
26 that Alaska's first subsistence law failed in one material
respect to anticipate what Congress would require in ANILCA:
ch. 151, SLA 1978, did not restrict the subsistence priority to
rural Alaskans.

As a consequence of Madison, on September 23, 1985, the
Secretary advised the Governor of the State of Alaska that the

1 State's subsistence program was no longer in compliance with
2 ANILCA. Letter, Department of the Interior to Governor William
3 Sheffield, dated September 23, 1985; Appendix II at 2. The
4 Secretary further advised the State that it had until June 1,
5 1986, to bring its subsistence program into compliance with
6 ANILCA; that is, "requir[ing] that the subsistence preference be
7 limited to those rural Alaskans who customarily and traditionally
8 make use of subsistence resources." Id.

9 In response to the foregoing, the Alaska Legislature,
10 in early 1986, adopted Alaska's second subsistence law, ch. 52,
11 SLA 1986.⁵ This act effected multiple amendments to the earlier
12 subsistence statute. The main operative provision of chapter 52
13 is codified as AS 16.05.258 which, along with applicable statu-
14 tory definitions, expressly limit subsistence hunting and fishing
15 to rural areas of the state and those residing in rural areas.⁶

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20 5 The full text of ch. 52, SLA 1986, is reproduced in
21 Appendix I at 6-11 inasmuch as it is difficult to identify
22 the various provisions of this chapter in codified form as a
23 part of AS 16. Hereinafter, chapter 52 is sometimes referred
24 to for convenience as "Alaska's second subsistence law".

25 6 The question of whether or not the State of Alaska has
26 defined rural areas in too restrictive a fashion to comport
with the requirements of ANILCA is the subject of a recent
decision by the Ninth Circuit Court of Appeals in Kenaitze
Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir.
1988). The mandate of the court of appeals has not yet
issued with respect to this decision. There is no dispute
here as regards the Lime Village area being rural.

1 requiring the State to submit to the court, for approval and
2 incorporation into a final judgment, regulations pertaining to
3 the subsistence uses of moose and caribou by the plaintiffs.

4 The defendant denies the essential operative allega-
5 tions of the complaint.

6 The court has under consideration four motions which
7 will be discussed in the following order:

8 I. Defendant's motion for summary judgment,
9 which addresses the principal issues
10 raised by plaintiffs' second amended and
11 supplemental complaint; namely, the
12 regulation of the taking of moose and
13 caribou through the imposition of hunt-
14 ing seasons and bag limits.

15 IIA. Plaintiffs' supplemental motion for par-
16 tial summary judgment on a collateral
17 issue, pertaining to the taking of
18 antlerless moose and the impact of
19 AS 16.05.780 thereon.

20 IIB. Defendant's motion to dismiss, also
21 directed at the antlerless moose stat-
22 ute. This motion to dismiss also seeks
23 to carve out of plaintiffs' complaint a
24 challenge to the creation of a manage-
25 ment area for Lime Village.
26

1 III. Plaintiffs' motion for partial summary
2 judgment, which puts before the court a
3 second collateral issue concerning the
4 interpretation and application of
5 AS 16.05.259, which statute purports to
6 prohibit persons such as plaintiffs from
7 asserting subsistence priority rights as
8 a defense to state prosecution for the
9 violation of game regulations.

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12 DISCUSSION

13 I.

14 Regulation of the Taking of Moose & Caribou

15 The court takes up first the issues which are the
16 primary focus of the case and the State's motion for summary
17 judgment. This motion brings before the court the contentions of
18 plaintiffs' second amended and supplemental complaint with
19 respect to the imposition of seasons and bag limits on the taking
20 of caribou and moose by the residents of Lime Village (the plain-
21 tiffs here). The motion is opposed. Before addressing the sub-
22 stance of these issues, some preliminary comments upon the nature
23 of these proceedings, and in particular the scope and type of
24 judicial proceedings under ANILCA § 807, 16 U.S.C. § 3117, are
25 appropriate.

1 A.

2 Judicial Enforcement of ANILCA

3 Section 805(a)-(c) of ANILCA, 16 U.S.C. § 3115(a)-(c),
4 sets out the basic federal structure for implementation of the
5 subsistence rights created by Title VIII of ANILCA on public
6 lands within the State of Alaska. Prior to ANILCA, management of
7 fish and wildlife on public lands in the State of Alaska had been
8 carried out by the State of Alaska through its Department of Fish
9 & Game. But for the provisions of ANILCA § 805(d), 16 U.S.C.
10 § 3115(d), management of fish and game on federally owned public
11 lands in the State of Alaska would have been given over to the
12 Department of the Interior.

13 ANILCA § 805(d), 16 U.S.C. § 3115(d), in substance
14 provides that the Secretary will not implement the federal sub-
15 sistence priority program if the State of Alaska, "enacts and
16 implements laws of general applicability which are consistent
17 with, and which provide for the definition, preference, and
18 participation specified in, §§ 3113, 3114, and 3115 of [ANILCA]."
19 ANILCA §§ 803, 804, and 805. The State of Alaska has adopted
20 such a law in Chapter 52, Session Laws of Alaska 1986,
21 AS 16.05.258. Section 6, ch. 52, SLA 1986, AS 16.05.258, sets
22 forth the detailed procedure by which the Board of Game is to
23 allocate fish and game for subsistence uses. Plaintiffs do not
24 challenge the consistency of ch. 52, SLA 1986, with ANILCA.

25 AS 16.05.255 has at all times here pertinent provided
26 generally that:

1 (a) The Board of Game may adopt regulations
2 it considers advisable in accordance with the
Administrative Procedure Act (AS 44.62) for

3

4 (2) establishing open and closed seasons
5 and areas for the taking of game;

6

7 (4) setting quotas, bag limits, harvest
8 levels, and sex, age, and size limitations on
the taking of game

9 Section 6, ch. 52, SLA 1986, AS 16.05.258(f), specifically pro-
10 vides that:

11 (f) Takings authorized under this section
12 are subject to reasonable regulation of
13 seasons, catch or bag limits, and methods and
means

14 Pursuant to the foregoing state authority, the Board of Game has
15 undertaken from time to time the enactment of various regulations
16 pertaining to the taking of moose and caribou by plaintiffs,
17 residents of Lime Village, Alaska.

18 It is entirely clear that Congress understood that
19 there would be state regulation of subsistence uses and made
20 provision for the same in ANILCA. In this regard, ANILCA
21 § 805(d), 16 U.S.C. § 3115(d), in authorizing state management of
22 subsistence uses, provides in part:

23 Laws establishing a system of local advisory
24 committees and regional advisory councils
25 consistent with this section [16 U.S.C.
26 § 3115] shall provide that the State rule-
making authority shall consider the advice
and recommendations of the regional councils
concerning the taking of fish and wildlife

1 populations on public lands within their
2 respective regions for subsistence uses.
3 ...If a recommendation is not adopted by the
4 State rulemaking authority, such authority
5 shall set forth the factual basis and the
6 reasons for its decision.

7 (Emphasis supplied.) Plaintiffs do not challenge the Board of
8 Game's power to promulgate regulations.

9 Plaintiffs do challenge the Board of Game's various
10 regulations which establish seasons and bag limits for the taking
11 of moose and caribou. They contend these regulations are "arbi-
12 trary, unreasonable, and unnecessary, and they fail to accord to
13 plaintiff and his class the priority for non-wasteful subsistence
14 uses required by Section 804 [16 U.S.C. § 3114] of ANILCA."
15 Plaintiffs' Second Amended and Supplemental Complaint at 9, ¶ 15.

16 Section 807(a) of ANILCA, 16 U.S.C. § 3117(a), provides
17 in pertinent part:

18 Local residents ... aggrieved by a failure of
19 the State ... to provide for the priority for
20 subsistence uses set forth in section 3114 of
21 this title (or with respect to the State as
22 set forth in a State law of general applica-
23 bility if the State has fulfilled the
24 requirements of section 3115(d) of this
25 title) may ... file a civil action in the
26 United States District Court for the District
of Alaska to require such actions to be taken
as are necessary to provide for the priority.
...In a civil action filed against the State,
the court shall provide relief, other than
preliminary relief, by directing the State to
submit regulations which satisfy the require-
ments of section 3114 of this title; when
approved by the court, such regulations shall
be incorporated as part of the final judicial
order, and such order shall be valid only for
such period of time as normally provided by
State law for the regulations at issue.

1 Defendant does not challenge this court's jurisdiction,
2 nor does it contest this court's authority under ANILCA § 807,
3 16 U.S.C. § 3117, to invoke the remedy which plaintiffs seek in
4 the event that the Board of Game regulations are found deficient
5 or unlawful. It is therefore this court's duty to determine
6 whether or not the Board of Game has failed to afford subsistence
7 uses of moose and caribou the priority to which these uses are
8 legally entitled and, if so, to require defendant, through its
9 Board of Game, to adopt and to submit new regulations to the
10 court for review.

11 Section 807 of ANILCA, 16 U.S.C. § 3117, does not
12 prescribe any particular mode of analysis for an inquiry into the
13 consistency of state rulemaking with the State's general law on
14 subsistence. Since both ANILCA § 805(d), 16 U.S.C. § 3115(d),
15 and AS 16.05.255(a) expressly contemplate a formal rulemaking
16 process, and since it is abundantly clear, from the record before
17 the court, that the State of Alaska undertook to employ a formal
18 rulemaking process as required by AS 16.05.255(a), the court
19 selects as the appropriate mode or scope of review that employed
20 in analogous federal proceedings for the review of formal rule-
21 making undertaken by federal agencies.⁷ Thus, "rulemaking must
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23

24 ⁷ The court recognizes that the State does not have the
25 status of a federal agency. Kenaitze Indian Tribe v. State
26 of Alaska, 860 F.2d 312, 313-14 (9th Cir. 1988). The scope
of review here adopted is appropriate to the state's status
as a "separate sovereign". Id. at 314.

1 be set aside if arbitrary, capricious, or an abuse of discre-
2 tion." Citizens to Preserve Overton Park, Inc. v. Volpe,
3 401 U.S. 402, 413-14 (1971); American Tunaboat Association v.
4 Baldrige, 738 F.2d 1013, 1016 (9th Cir. 1984). In the latter
5 case, the Ninth Circuit Court of Appeals elaborated on the scope
6 of review in cases such as this as follows:

7 Despite the narrow scope of review under
8 this standard and the broad discretion
9 afforded NOAA in administering the MMPA, we
10 affirm the decision of the district court.
11 In doing so, we have in mind the rule that,
12 even though an agency decision may have been
13 supported by substantial evidence, where
14 other evidence in the record detracts from
15 that relied upon by the agency we may prop-
16 erly find the agency rule was arbitrary and
17 capricious.

18 Id. at 1016.

19 More generally, but also appropriate to this case,
20 Professor Davis in his text addressed the issues which might
21 arise with regard to legislative rulemaking (and plainly the
22 regulations with which we deal are such) as follows:

23 Whenever a legislative body has delegated
24 power to an agency to make rules having force
25 of law (whether or not the delegation is
26 explicit) the rules the agency makes pursuant
to the granted power have the same force as a
statute if they are valid, and they are valid
if they are constitutional, within the
granted power, and issued pursuant to proper
procedure; a court may no more substitute its
judgment as to the content of a legislative
rule than it may substitute its judgment as
to the content of a statute.

K.C. Davis, Administrative Law & Government at 119 (2d ed. 1975).

1 In this case, the challenge is not a constitutional
2 one. Rather, the issues presented here have to do with whether
3 or not the Board of Game regulations imposing seasons and bag
4 limits upon subsistence hunters are or are not "within the grant
5 of power" accorded the Board of Game by Alaska's second subsis-
6 tence law. Id. The case also presents issues of whether or not
7 the Board of Game failed to use proper procedures. The court's
8 point of reference for purposes of evaluating the Board of Game
9 regulations is Alaska's second subsistence law because, as dis-
10 cussed in the above background material, the State's regula-
11 tory scheme has "supplant[ed] the federal regulatory scheme".
12 Kenaitze Indian Tribe, at 314. Regulations which are not within
13 such grant are unlawful and must be enjoined as required by
14 ANILCA § 807(a), 16 U.S.C. § 1317(a).

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17 B.

18 History of Adoption of
19 Bag Limits & Seasons for Lime Village

20 The underpinnings for defendant's motion for summary
21 judgment on the issue of the lawfulness of the Board of Game's
22 regulations pertaining to the taking of moose and caribou by
23 plaintiffs are to be found in state law and the record of pro-
24 ceedings before the Board of Game. There is no disagreement
25 between the parties as regards the makeup of that administrative
26

1 record which consists of both transcribed Board proceedings and
2 exhibits.⁸

3 The Alaska Board of Game is established for the pur-
4 poses of "conservation and development", and is composed of seven
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7 8 During the course of its analysis of the Board of Game
8 proceedings, the court became uncertain as to whether
9 certain of the exhibits before the court were actually
10 before the Board of Game. Since the court's task is to
11 evaluate the work of the Board of Game and the consistency
12 of that work with state law, it is not appropriate (except
13 in unusual circumstances and for good cause shown) that the
14 court consider evidence which the Board of Game did not have
15 an opportunity to consider during the course of its proceed-
16 ings. Counsel have informally advised the court that the
17 Board of Game considered the following State exhibits now
18 before the court in promulgating the regulations in ques-
19 tion: State's Exhibits 1 through 5, 11, 12, 15 through 22,
20 and 24 through 27, and plaintiffs' Exhibits 5 and 6 and 16
21 through 22 were before the Board of Game. Additionally, a
22 report entitled "Land Use and Economy of Lime Village",
23 Technical Paper No. 80 of the Alaska Department of Fish &
24 Game, Division of Subsistence, by Priscilla Russell Kari,
25 (the "Kari Report" herein) was before the Board of Game and
26 has been considered to be plaintiff's Exhibit 1. The Kari
Report was submitted to the court as a part of plaintiffs'
motion for certification of the residents of Lime Village as
a class. This document is probably the most important
source of background data available to the Board of Game
during its consideration of the regulations in question.
With regard to these exhibits, the reader must understand
that there were ongoing proceedings before the Board of Game
from 1985 through April, 1987. The court deems it necessary
and appropriate that the continuum of this process be under-
stood in evaluating the final regulations of the Board of
Game which are under direct consideration by the court. The
State has also submitted as exhibits certain of the regula-
tions which the Board of Game adopted from time to time here
pertinent (Exhibits 9, 10, and 14) and the findings of the
Board of Game in connection with certain of these regula-
tions (State's Exhibit 14). Certain of the exhibits
(State's Exhibits 6 through 8) were not considered by the
Board of Game. Exhibits 6 and 8 are depositions taken in
this case which were reviewed by the court solely for
background purposes.

1 members. AS 16.05.221(b). The board members are not state
2 employees, and meet two or three times a year to adopt hunting
3 regulations. The Board of Game is distinct from the Alaska
4 Department of Fish & Game which is a full-time state agency, the
5 powers and duties of which are set out in general in AS 16.05.020
6 and AS 16.05.050. The department has within it a number of divi-
7 sions, including the Division of Game and the Division of Sub-
8 sistence. The responsibilities of those divisions generally
9 consist of compiling biological information about the resources,
10 and to some extent about the harvest of resources, and providing
11 that information to the Board of Game. The Division of Subsis-
12 tence is statutorily charged with conducting socio-economic and
13 resource use research, the data from which is provided to the
14 Board of Game to assist it in making regulatory decisions.
15 AS 16.05.094.

16 ANILCA § 205(d), 16 U.S.C. § 3115(d), mandates that any
17 Alaska general subsistence law make provision for advisory
18 committees and regional councils, and board consideration of
19 their recommendations. In 5 AAC § 96, the joint Boards of
20 Fisheries and Game have established a system of advisory commit-
21 tees throughout the state, pursuant to their authority under
22 AS 16.05.260. There are currently approximately 75 advisory
23 committees which hold meetings and provide a vehicle for public
24 input to the board process. Individuals are able to testify or
25 submit written comments to the committees directly. 5 AAC
26 §§ 96.021 and -.050. The advisory committees are permanent

1 committees established at geographic locations throughout the
2 state, sometimes serving more than one community, with specified
3 representation from their constituent communities.

4 The joint Boards of Fisheries and Game have also
5 established six fish and game regional councils, composed of the
6 chairmen of the advisory committees within each region. 5 AAC
7 § 96.220. The specified functions of the councils include
8 holding public meetings to provide a forum for, and to assist the
9 advisory committees in, obtaining opinions and recommendations
10 from people interested in fish and wildlife matters "so as to
11 achieve the greatest possible local participation in the deci-
12 sion-making process." 5 AAC § 96.250(b). If a regional council
13 makes a recommendation to the board concerning subsistence uses,
14 the board should implement that recommendation unless it deter-
15 mines that it is not supported by substantial evidence presented
16 during the board meeting, violates recognized principles of
17 conservation, or would be detrimental to subsistence. 5 AAC
18 § 96.610(e).⁹

19 The format of the regulatory cycle of the Board of Game
20 follows generally the same pattern for each meeting. 5 AAC
21 § 96.610. Certain kinds of regulations are open by the board for
22 review and, several months before the meeting date, the Board of
23 Game puts out a "call for proposals" to the public which is dis-

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25 ⁹ This special deference to regional council recommenda-
26 tions mirrors ANILCA § 805(c), 16 U.S.C. § 3115(c).

1 tributed to the advisory committees, and to any other interested
2 individuals or groups. A period of time follows during which the
3 public, including the advisory committees, can submit proposals
4 for the Board of Game either to modify or repeal existing regula-
5 tions or to adopt new regulations. The advisory committees meet
6 during that time period to develop any proposals to submit. The
7 proposals are transmitted to the department which assembles a
8 proposal packet and sends those back out to the public and the
9 advisory committees for review and comment. Written comments on
10 the proposals may be submitted once the proposal packet has been
11 distributed. The advisory committees generally have another set
12 of meetings during this period to review those proposals and to
13 develop positions on them. This proposal packet is in addition
14 to the legal notice required by the state Administrative Proce-
15 dure Act, AS 44.62.190.

16 The Board of Game meetings are organized largely on a
17 regional basis, so that people are able to talk about all the
18 different species that occur in a particular region, and not have
19 to remain at the location of the meeting for its entire duration.
20 In proceeding through each geographic area of the state during a
21 meeting, the board follows the same general procedure. Reports
22 are given by the department, oral public testimony is taken, and
23 board deliberations begin.

24 Shortly after this lawsuit was filed, attorneys for
25 plaintiffs submitted a proposal to the Board of Game for consid-
26 eration during its March 1985 meeting. The proposal read:

1 In order to provide for subsistence uses, it
2 is proposed that with respect to moose and
3 caribou there be no closed season and no
individual bag limits for those domiciled in
Lime Village in Unit 19.

4 The justification for the proposal was the Kari Report (plain-
5 tiffs' Exhibit 1; see footnote 8) and that report was available
6 to and considered by the Board of Game during the March meeting.
7 Plaintiffs' attorneys participated extensively in the Board of
8 Game proceedings.

9 At the March 1985 meeting, the Board of Game was
10 operating under the Madison decision pursuant to which, under
11 Alaska's first subsistence law, subsistence uses of game had to
12 be authorized for both urban and rural Alaskans. The Board of
13 Game addressed the problem posed by Madison as regards meeting
14 the subsistence needs of the residents of Lime Village by
15 creating the Lime Village management area. 5 AAC § 38.500(6)(A);
16 Appendix I at 30. In support of that regulation, the Board of
17 Game adopted formal "findings". State's Exhibit 13. Based upon
18 public testimony and the Kari Report, the Board of Game found:

19 (1) that the residents of Lime Village are
20 "extremely dependent on moose and cari-
21 bou in [game management unit] 19(A)."
22 State's Exhibit 13.

23 (2) that "the 40 residents of Lime Village
24 are probably the most geographically
25 isolated and subsistence dependent
26 people in the state." Id.

1 (3) that moose and caribou were particularly
2 important to Lime Village residents and
3 that these animals "supply the highest
4 proportion of the food eaten by resi-
5 dents of the area." Id.

6 (4) that Lime Village residents have "cus-
7 tomarily harvested moose and caribou on
8 an opportunistic basis throughout the
9 year." Id.¹⁰

10 (5) that the moose populations were stable
11 and that the caribou population in the
12 area was at a high level and growing.
13 Id.

14 The Board of Game concluded that establishing a management area
15 for Lime Village would provide a reasonable opportunity for the
16 residents of Lime Village and other Alaskans to harvest moose in
17 the area, and that an increase in the caribou bag limit in the
18 area as well as an increase in the length in the moose season
19 would be a more reasonable mechanism for providing for subsis-
20 tence uses than the then current, more limited, opportunities.

21 Id.

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23 10 The Board of Game noted that the usual hunting periods
24 for moose and caribou include fall, winter, and spring, and
25 that recent short seasons in September, November, and
26 February (which were authorized by regulation) have "not
fully accommodated the opportunity for local residents to
legally obtain the moose they need." State's Exhibit 13.

1 Based on these findings, caribou hunting regulations
2 for the Lime Village management area were reviewed by the Board
3 of Game, increasing the caribou bag limit to five for Lime
4 Village residents. 5 AAC § 81.320 (Register 94 at 5-144d; Appen-
5 dix I at 23).¹¹ The caribou season remained the same, August 10
6 through March 31. With respect to moose hunting, the Board of
7 Game extended the season within the Lime Village management area
8 to be open August 10 through September 25, November 20 through
9 December 31, and February 1 through March 31, for a total of 148
10 days. 5 AAC § 81.320 (Register 94 at 5-144n; Appendix I at 16).
11 Although based upon subsistence related information, these regu-
12 lations were included in the generally applicable "big game"
13 regulations. Id.

14 In June, 1985, as a consequence of the holding in State
15 of Alaska v. Eluska, 698 P.2d 174 (Alaska Ct. App. April 12,
16 1985)¹², the Board of Game met in emergency session to adopt sub-
17 sistence regulations separate from the general hunting regula-
18 tions in order to make the closed season regulations enforceable
19 as to subsistence hunters. The interpretation of Madison--that
20 all Alaskans were eligible to participate in subsistence uses--

21 -----

22 11 The various regulations which, at times pertinent
23 hereto, have been promulgated by the Board of Game with
24 respect to the taking of moose and caribou are collected in
25 Appendix I at 14 to 32. The regulations are most easily
26 distinguished by reference to the "Register" number assigned
to each. Lime Village is located in Game Management
Unit 19A.

26 12 Reversed, 724 P.2d 514 (Alaska Aug. 29, 1986).

1 still applied at that time. During that meeting, the regulations
2 governing the harvesting of moose and caribou in the Lime Village
3 management area were not modified except that they were denomi-
4 nated "subsistence regulations" separate from the general hunting
5 regulations. 5 AAC §§ 88.025(2) and 88.045(2) (Register 95 at
6 ER-100 and ER-102; Appendix I at 24 and 17). These regulations
7 appear to have been subsequently republished without change as
8 permanent regulations. 5 AAC §§ 88.025(2) and 88.045(2) (Regis-
9 ter 96 at 5-166.17 and 5-166.19; Appendix I at 25 and 18).

10 Because of the adoption of Alaska's second subsistence
11 law in early 1986, an emergency meeting of the Board of Game was
12 called in May and June of 1986 to address those regulations most
13 in need of modification. At that meeting, the Board of Game
14 examined the moose regulations applicable to Lime Village.

15 Preliminarily, the Board of Game determined that, under
16 AS 16.05.940(25), Lime Village is a rural area and that the uses
17 of moose by residents of that area were customary and traditional
18 under the eight criteria outlined in 5 AAC § 99.010(b). The
19 Board of Game then discussed various modifications which could be
20 made to the moose hunting regulations under the new subsistence
21 law, which were not possible under Madison. The major difference
22 in the legal parameters was that the Board of Game again had the
23 authority to identify subsistence uses on a community or area
24 basis, and thus could once again legally authorize subsistence
25 hunting for only those residents domiciled in Lime Village,
26 rather than being required to authorize subsistence hunting for

1 all Alaskans, both rural and urban residents, who wished to par-
2 ticipate if subsistence uses were present.

3 The Board of Game modified the applicable regulations
4 by closing the Lime Village management area to hunting by persons
5 other than those domiciled within the area. Within the Lime
6 Village management area, moose hunting was allowed (open season)
7 from August 10 through September 25, and November 20 through
8 March 31, a total of 179 days. 5 AAC § 88.045(2) (Register 100
9 at 5-166.19; Appendix I at 19). Additionally, the Board of Game
10 raised the bag limit from one to two moose, and established a
11 quota for the Lime Village management area of twenty moose, ten
12 of which could be cows. Id.

13 In the finding of an emergency, which the Board of Game
14 made in order to support the emergency regulations adopted at the
15 June 1986 meeting, the Board of Game explained that:

16 [I]n light of the recent legislation, a com-
17 prehensive review of the hunting regulations
18 is ... required, to maximize enforceability,
19 and to make subsistence and other hunting
opportunities for the coming seasons as
consistent as practicable with the legisla-
ture's intent.

20 State's Exhibit 19 at 1. The Board of Game explained that it had
21 to review at that emergency meeting certain regulations which had
22 been adopted the previous year in response to the Eluska decision
23 in combination with the Madison decision, and also "regulations
24 about which public comment or Department of Fish and Game recom-
25 mendations were received since the regulations were adopted in
26 June 1985." Id. The Board of Game explained in the findings

1 that at its next regular meeting on hunting regulations, then
 2 scheduled to begin March 30, 1987, that public comment would be
 3 taken. The Board of Game acknowledged that due to the emergency
 4 nature of the meetings, decisions had been made without public
 5 comment and might require amendment. The Board of Game looked
 6 toward modifying both the emergency and other regulations in
 7 response to the new legislation and "in light of public testimony
 8 and comments from the advisory committees and regional councils
 9 at future meetings, and as more information becomes available
 10 over time." State's Exhibit 19 at 2.

11 In April 1987, the Board of Game met. Based upon the
 12 second subsistence law, the management area for Lime Village, as
 13 well as the antlerless moose and moose guttas, were repealed.
 14 Based upon the cumulative 1985-1987 record and further delibera-
 15 tions at the April meeting, the Board of Game adopted the follow-
 16 ing regulations applicable to the taking of caribou and moose by
 17 subsistence hunters in the game management area in which Lime
 18 Village is located:

19	<u>UNIT</u>	<u>OPEN SEASON</u>	<u>BAG LIMIT</u>
20	(2)		
21	Unit 19(A) south of the	Residents of Lime	Five caribou.
22	Kuskokwim River and	Village:	
23	Unit 19(B)	Aug. 10 - Mar. 31	
24		Other Subsistence	
25		Hunters:	
26		Aug. 10 - Oct. 31	One caribou.
		Nov. 1 - Mar. 31	Three caribou.

26 5 AAC § 88.025(2) (Register 103 at 5-166.16; Appendix I at 27).

<u>UNIT</u>	<u>OPEN SEASON</u>	<u>BAG LIMIT</u>
(2)		
Unit 19, for residents of Lime Village only	Aug. 10 - Sept. 25 Nov. 20 - Mar. 31	Two moose, only one of which may be a cow.
Unit 19(A)	Sept. 1 - Sept. 20 Nov. 20 - Nov. 30 Feb. 1 - Feb. 10	One bull. One moose.

5 AAC § 88.045(2) (Register 103 at 5-166.18; Appendix I at 20).

C.

Consistency of Regulations with State Law

The Alaska Boards of Game and Fisheries, or their equivalents, have regulated the taking of fish and game by commercial operators and by the general public in Alaska for almost thirty years. There has been significant competition between commercial interests and sport hunters and fishermen. Alaska's endorsement of the subsistence lifestyle pursuant to ANILCA has required that the state game managers deal with a new, third, competing claim upon available fish and game. This task has not been easy, as the history of the development of Alaska law regarding subsistence hunting and fishing indicates. Fish and game authorities have not only had to deal with another competing application of fish and game, but one entitled to "preference over other consumptive uses" § 6, ch. 52 SLA 1986, AS 16.05.258(c). The job of dealing with subsistence was rendered even more difficult for the Board of Game because it has been caught between the demands of the courts of the State of Alaska and the Alaska Legislature.

1 The court commends the Board of Game for its efforts to
2 fit subsistence in its proper place in light of the difficult (if
3 not impossible) situation which arose from the Madison decision.
4 Madison opened subsistence hunting and fishing to urban as well
5 as rural residents of Alaska under Alaska's first subsistence
6 law. Ch. 151, SLA 1978. The result in Madison was, for a time,
7 the last word on the subject under Alaska law; but the result was
8 totally at odds with ANILCA, which defines the subsistence uses
9 which are entitled to priority in terms of "the customary and
10 traditional uses by rural Alaska residents of wild, renewable
11 resources". ANILCA § 803, 16 U.S.C. § 3113.

12 With the enactment of Alaska's second subsistence law,
13 ch. 52, SLA 1986, the tension created by the conflicting demands
14 of Madison and ANILCA were resolved. Subsistence usage of game
15 was again the province of those living in "rural" Alaska. Sec-
16 tions 6, 10, 11, ch. 52, SLA 1986, AS 16.05.258, AS 16.05.940(25)
17 and (30).¹³ The Board of Game has now reviewed its Lime Village
18 hunting regulations twice since the latter statute was enacted.

19 As discussed hereinabove, plaintiffs claim that the
20 Board of Game regulations establishing seasons and bag limits on
21 the taking of moose and caribou are unlawful and therefore not
22 valid. The court concludes that the Lime Village hunting regula-
23 tions are indeed unlawful.

24 -----
25 ¹³ So codified in AS 16.05. In ch. 52, the definition of
26 "subsistence uses" and "rural area" were set out as
AS 16.05.940(23) and (32).

1 As already noted, AS 16.05.255(a) grants the Board of
2 Game the general authority to adopt regulations "it considers
3 advisable" on the subjects of "open and closed seasons", Sec-
4 tion 255(a)(2), and "bag limits", Section 255(a)(4). The second
5 subsistence law grants the Board of Game specific authority to
6 adopt regulations fixing "seasons [and] bag limits" with respect
7 to subsistence hunting. § 6, ch. 52, SLA 1986, AS 16.05.258(f).
8 Clearly, the Board of Game has the power to establish seasons and
9 bag limits as to the subsistence taking of moose and caribou.

10 As a predicate to issuing regulations, Alaska's second
11 subsistence law requires extensive analysis of underlying data,
12 fact-finding, and then decision-making by the Board of Game. The
13 board is required to "identify game populations ... that are
14 customarily and traditionally used for subsistence in each rural
15 area identified by the boards." § 6, ch. 52, SLA 1986,
16 AS 16.05.258(a). The board is required to find what portion, if
17 any, of game populations identified under Section 258(a) "can be
18 harvested consistent with sustained yield." Section 258(b)(1).
19 The Board of Game is then to determine how much of that harvest-
20 able game is needed to "provide a reasonable opportunity to
21 satisfy the subsistence uses [of game]." Section 258(b)(2).
22 Finally, upon completion of this evaluation process, the board is
23 to adopt regulations for each game population for which a har-
24 vestable portion is determined to exist. Applicable to the facts
25 of this case, Section 258(c) provides that:
26

1 If the harvestable portion [of the game popu-
2 lation] is not sufficient to accommodate all
3 consumptive uses of the [game] population,
4 but is sufficient to accommodate subsistence
5 uses of the [game] population, then nonwaste-
6 ful subsistence uses shall be accorded a
7 preference over other consumptive uses, and
8 the regulations shall provide a reasonable
9 opportunity to satisfy the subsistence uses.
10 If the harvestable portion is sufficient to
11 accommodate the subsistence uses of the
12 [game] population, then the boards may
13 provide for other consumptive uses of the
14 remainder of the harvestable portion.

15 The foregoing discussion suggests three areas of possible
16 inquiry with respect to the regulations adopted by the Board of
17 Game and pertaining to the taking of moose and caribou by the
18 residents of Lime Village, Alaska:

- 19 (1) Do bag limits and seasons for the taking
20 of moose and caribou on their face vio-
21 late Alaska's second subsistence law?
- 22 (2) Has the Board of Game followed the
23 required statutory analytical process in
24 adopting bag limits and seasons for the
25 taking of moose and caribou by Lime
26 Village residents?
- 27 (3) Are the game regulations in question
28 arbitrary or capricious in the light of
29 the evidence in the record?

30 The text of the current Board of Game subsistence
31 hunting regulations pertaining to the taking of caribou and moose
32 by Lime Village residents is set forth above. See also, Appen-

1 dix I at 20 and 27. These regulations make express provision for
2 "residents of Lime Village". Over the relevant period of time
3 (1980 to 1987), the regulatory provisions applicable to open
4 seasons and bag limits for the taking of moose and caribou by
5 Lime Village residents have moved in the direction of expanding
6 the seasons and the take allowed. See Appendix I at 14 to 32.

7 On their face, these regulations do not conflict with
8 Alaska's second subsistence law. That law expressly authorizes
9 utilization of seasonal and bag limitations upon subsistence
10 hunting. § 6, ch. 52, SLA 1986, AS 16.05.258(f). It is neither
11 impossible nor necessarily unlikely that the seasons or bag
12 limits as presently constituted would fail to accommodate the
13 customary and traditional uses of moose and caribou by Lime
14 Village residents, both in terms of the times of taking and the
15 quantities of meat taken. If the required analysis were per-
16 formed, and with a supporting record, the season and bag limit
17 regulations now in force would survive plaintiffs' challenge.

18 However, the court feels constrained, as a result of
19 its review of the transcripts of the Board of Game hearings which
20 are part of the record, to observe that the Board of Game must in
21 the future proceed with scrupulous care and caution in imposing
22 seasons and bag limits on subsistence hunting. Bag limits and
23 seasons are game management tools which have seen extensive use
24 in Alaska and nationally. These restrictions have typically, if
25 not universally, been used to regulate sport hunting. In this
26 case, bag limits and seasons are being applied to a very differ-

1 ent type of game use. In its purest form, the subsistence life-
2 style is quite literally the gaining of one's sustenance off the
3 land. Typically, the sport hunter does not go hungry if the
4 season ends without his taking any game or if he has taken and
5 eaten his bag limit. The subsistence hunter who is without meat
6 during a closed season or who has with his family consumed a
7 fixed bag limit will go hungry unless some other game or fish are
8 available and in season. Hunger knows nothing of seasons, nor is
9 it satisfied for long after one's bag limit has been consumed.

10 The Board of Game must be attentive to the statutory
11 definition of "subsistence hunting" and "subsistence uses".
12 §§ 10 and 11, ch. 52, SLA 1986, AS 16.05.940(29) and (30).¹⁴
13 When read together as is necessary, these terms define subsis-
14 tence hunting in terms of:

15 [N]on-commercial, customary and traditional
16 uses of wild, renewable resources by a resi-
17 dent domiciled in a rural area of the state
18 for direct personal or family consumption as
19 food ... and for the customary trade, barter,
20 or sharing for personal or family consumption

21

22 This definition is critical to the proper implementation of
23 Alaska's second subsistence law and will be discussed further
24 hereinafter. The court would emphasize at this initial stage of
25 the review that the Board of Game should not take the court's
26 foregoing comments to mean that the availability of one game

25 ¹⁴ Thus as codified. These definitions appear in Appen-
26 dix I as subsections 940(23) and 940(33). Appendix I at 9,
10.

1 population or of a fish stock is an element or a consideration
2 which may be employed to restrict or reduce the demonstrated
3 customary and traditional use of another game population.
4 Established use of moose may not be restricted solely because
5 fish are available. The Board of Game must determine separately
6 the level of subsistence usage of each game population. § 6,
7 ch. 52, SLA 1986, AS 16.05.258(b)(2).

8 If bag limits and seasons are imposed on subsistence
9 hunting, there must be substantial evidence in the record that
10 such restrictions are not inconsistent with customary and tradi-
11 tional uses of the game in question. It must be clear in the
12 record that subsistence uses will be accommodated, as regards
13 both the quantity or volume of use and the duration of the use.
14 Need is not the standard. Again, it matters not that other food
15 sources may be available at any given time or place. The stand-
16 ard is customary and traditional use of game.

17 We turn now to the second and third areas of inquiry--
18 namely, the analysis used and procedures followed by the Board of
19 Game in issuing regulations of subsistence hunting by Lime
20 Village residents and the evidentiary support for those regula-
21 tions. Based upon the following analysis, the court has con-
22 cluded that the current regulations for the subsistence hunting
23 of moose and caribou, 5 AAC § 88.025 (Register 103) and 5 AAC
24 § 88.045 (Register 103) are deficient and must be reevaluated by
25 the Board of Game.
26

1 The great bulk of the work done by the Board of Game
2 with respect to the evaluation of subsistence taking of moose and
3 caribou by Lime Village residents was accomplished between 1983
4 and 1985. State's Exhibit 1. That work culminated in the Board
5 of Game hearings of March 27 and 29, 1985. State's Exhibits 12A
6 and 12B. As a result of those hearings, the Board of Game made
7 certain findings, State's Exhibit 13, and regulations were
8 adopted fixing seasons and bag limits for the taking of moose and
9 caribou by Lime Village residents. 5 AAC § 81.320 (Register 94;
10 Appendix I at 16 and 23). Although, as discussed above, some
11 adjustments were subsequently made to the latter regulations (see
12 Appendix I at 17-20 and 24-27), the underlying evidentiary foun-
13 dation and substance of the regulations pertaining to the taking
14 of moose or caribou by Lime Village residents for subsistence
15 uses was and is to be found in the March 1985 proceedings. What
16 followed was refinement and perhaps reaction to continued
17 pressure from plaintiffs.

18 At the time when the foundational work for the regula-
19 tions in question was accomplished by the Board of Game, Alaska's
20 first subsistence law was still in force. Ch. 151, SLA 1978
21 (Appendix I at 1-5). The March 1985 proceedings of the Board of
22 Game must have been conducted under and with reference to that
23 statute, not Alaska's second subsistence law. The plaintiffs'
24 claims and the regulations now in force must be evaluated under
25 Alaska's second subsistence law which became effective June 1,
26 1986. Section 13, ch. 52, SLA 1986 (Appendix I at 11).

1 Naturally, there were substantial similarities between
2 the first and second Alaska subsistence laws inasmuch as both
3 sought to qualify the State to manage fish and wildlife on public
4 lands pursuant to ANILCA § 805(d), 16 U.S.C. § 3115(d). As dis-
5 cussed above, the first subsistence law was adopted before
6 Congress finalized and enacted ANILCA; and the second subsistence
7 law was not enacted by the Alaska Legislature until after the
8 1985 Board of Game proceedings. Not surprisingly, therefore,
9 many of the considerations which were relevant to the 1985
10 proceedings are also relevant under the second Alaska subsistence
11 law. Unfortunately, there is not an identity of considerations
12 insofar as the questions now before the court. As discussed
13 below, the court concludes, on the basis of the transcript of the
14 June 1986 Board of Game proceedings, State's Exhibits 17A and
15 17B, that the current regulations for the taking of moose and
16 caribou by Lime Village residents for subsistence purposes which
17 have their genesis in the March 1985 and June 1986 board proceed-
18 ings were not promulgated through the use of the procedural
19 analysis mandated by Alaska's second subsistence law, see § 6,
20 ch. 52, SLA 1986, AS 16.05.258, and do not have the required
21 evidentiary support.

22 Under Section 6 of Alaska's second subsistence law, the
23 Board of Game is to identify game populations "that are custom-
24 arily and traditionally used for subsistence in each rural area
25 identified by the boards." In the March 1985 proceedings, the
26 Board of Game identified moose and caribou as game populations

1 customarily and traditionally used by plaintiffs for subsistence
2 purposes. This finding is not disputed. Likewise, there is no
3 dispute in this case but that the plaintiffs are residents of and
4 that Lime Village is a rural area.

5 In March 1985, the Eoard of Game also expressly found
6 that "residents of this area have customarily harvested moose and
7 caribou on an opportunistic basis throughout the year", that
8 seasons established under prior regulations had not permitted
9 Lime Village residents to "legally obtain the moose they need",
10 and that this led to under-reporting of harvests. State's Exhib-
11 it 13. No additional evidence was taken nor were additional find-
12 ings made as to the duration of plaintiffs' customary usage of
13 moose and caribou during the June 1986 Board of Game proceedings.

14 The record now before the court does not provide an
15 adequate basis for understanding or resolving the obvious con-
16 flict between a finding that Lime Village residents customarily
17 and traditionally take moose and caribou "throughout the year"
18 and a regulation that precludes them from taking moose during
19 almost six months of the year and from taking caribou during just
20 over four months of the year.¹⁵ The court concludes that the
21 currently operative season regulations are necessarily arbitrary

22 -----
23 ¹⁵ In fact, the Board of Game gave consideration to the
24 availability of other food sources in restricting the taking
25 of moose. State's Exhibit 17B at 234. As discussed herein-
26 above at page 32, need or other food sources are not appro-
priate considerations in determining customary and tradi-
tional use of game.

1 for they substantially fail to accommodate what the board has
2 determined to be the customary and traditional use of moose and
3 caribou for subsistence purposes without first eliminating other
4 consumptive uses. § 6, ch. 52, SLA 1986, AS 16.05.258(c).

5 Much the same analysis applies to the Board of Game's
6 adoption of bag limits; however, for this discussion, the statu-
7 tory focus shifts to some further provisions of Alaska's second
8 subsistence law. See § 6, ch. 52, SLA 1986, AS 16.05.258(b).
9 Section 258(b) requires that the Board of Game determine both
10 acceptable game harvest levels and the portion of those harvests
11 needed to satisfy subsistence uses.

12 Despite the fact that the March 1985 Board of Game
13 proceedings predated the second Alaska subsistence law, the board
14 did take evidence on and discuss harvest levels. Understandably,
15 the Board of Game did not make the express numerical findings
16 which the second Alaska subsistence law requires. It did find
17 that moose populations in the Lime Village area were of "moderate
18 density and ... relatively stable". State's Exhibit 13. It
19 found that caribou populations were at "high levels and [have]
20 been growing in recent years." State's Exhibit 13.

21 The June 1986 Board of Game proceedings did not produce
22 additional evidence as to harvest levels. No finding as to
23 appropriate harvest levels for moose or caribou were made. The
24 Board of Game appears to have adopted its 1986 revised moose and
25 caribou regulations on the basis of the above generalized find-
26

1 ings made in 1985 and without performing the analysis required by
2 the second subsistence law.

3 What the Board of Game clearly did not do, at either
4 the 1985 or the 1986 hearing, was come to grips with the question
5 of how much game--how many moose and caribou--were required to
6 accommodate the customary and traditional use of these game popu-
7 lations by Lime Village residents. Alaska's first subsistence
8 law did not require the same specificity concerning the level of
9 subsistence use as was required by Alaska's second subsistence
10 law. Compare § 9, ch. 151, SLA 1978, to § 6, SLA 1986,
11 AS 16.05.258(b)(2). In 1986, Alaska's second subsistence law did
12 require a finding as to "how much of the harvestable portion [of
13 moose and caribou] is needed to provide a reasonable opportunity
14 to satisfy the subsistence uses" This the Board of Game
15 failed to do.

16 Certainly it is true that the board had some evidence
17 before it in March of 1985 regarding the level of subsistence use
18 of moose and caribou by Lime Village residents. However, due to
19 a lack of findings or a clearly articulated analysis in the
20 record, it is not possible for the court to ascertain how the
21 board reached its determinations in 1985 and 1986 that the speci-
22 fied bag limits would accommodate the Lime Village subsistence
23 usage of moose and caribou. The Board of Game findings conclude
24 (at least as to caribou, but impliedly also as to moose) that the
25 established bag limits "will provide a reasonable opportunity for
26 customary levels of harvest for [Lime Village] residents".

1 State's Exhibit 13 at 2. Without a finding or other clear arti-
2 culation of the mode of analysis used as to what the subsistence
3 use levels of moose and caribou were, and a finding or analysis
4 of how those use levels were translated into bag limits, the
5 court cannot evaluate the bag limits for consistency with the
6 second Alaska subsistence law requirement that the State provide
7 adequately for customary and traditional usage of game and that
8 it permit other consumptive uses only out of the excess harvest-
9 able game beyond that which is required for subsistence uses.
10 § 6, ch. 52, SLA 1986, AS 16.05.258(c).

11 Because the Board of Game did not follow or articulate
12 its use of the statutory analytical process for adopting bag
13 limits as to subsistence hunting, those regulations are also
14 arbitrary.

15 A specific aspect of the bag limit regulations on
16 subsistence hunting by Lime Village residents requires further
17 comment. There is substantial evidence in the March 1985 record
18 that moose and caribou are taken by a few hunters who then share
19 their take with the whole community. It appears well established
20 by the record that customary and traditional uses of moose and
21 caribou have a communal aspect at Lime Village. Simply put, the
22 very young, the old, and the infirm of the community are provided
23 with meat by the healthy adult members of the community who are
24 skilled at hunting. It is not clear from the Board of Game
25 findings or the discussions of the board members how this aspect
26 of the Lime Village subsistence tradition of hunting and game-

1 sharing interrelates with bag limits. The court is concerned
2 that the established bag limits do not accommodate this tradi-
3 tional aspect of Lime Village hunting of moose and caribou.

4 The court makes specific mention of this point because
5 it is necessary for the Board of Game, in reviewing the subject
6 regulations, to give due consideration to the entirety of the
7 definition of "subsistence uses" as set out in § 10, ch. 52,
8 SLA 1986, AS 16.05.940(30).¹⁶ Such uses of game are defined in
9 terms of customary and traditional use by rural Alaska residents.
10 That definition is further qualified in a manner which is parti-
11 cularly pertinent to the foregoing discussion. The uses of game
12 which are included for subsistence and therefore for priority
13 purposes are "for direct personal or family consumption as food
14 ... and for customary ... sharing for personal or family consump-
15 tion" The Board of Game must take care to accommodate the
16 Lime Village tradition of sharing the moose and caribou they take.

17 Since the subject regulations must be reviewed, there
18 are two other subsidiary areas of concern which the court feels
19 obliged to comment upon. Firstly, the court is concerned that
20 customary and traditional use data is likely to be skewed down-
21 wards due to the fact that subsistence hunting was for some early
22 years carried on, quite probably illegally with respect to both
23 bag limits and seasons, under sport hunting regulations and most
24 recently under subsistence regulations which (by the Board of

25 -----
26 ¹⁶ See footnote 14.

1 Game's own evaluation) failed to accommodate Lime Village area
2 requirements. State's Exhibit 13. The Board of Game and the
3 Division of Subsistence of the Department of Fish & Game must do
4 their best to correct and adjust their data to take account of
5 the under-reporting which almost surely occurred as a result of
6 fear of criminal sanctions which could follow accurate reporting
7 of the taking of game for community use in excess of bag limits
8 or out of season. For their part, plaintiffs must cooperate
9 fully with regulators, through their advisory committees and
10 regional council, in making a record that will support the
11 regulations which are ultimately adopted.

12 Secondly, and although not a primary issue in this
13 case, some attention has focused upon the provisions of Alaska's
14 second subsistence law which operate when the Board of Game
15 determines that there is not sufficient harvestable game to
16 accommodate all competing uses (e.g., both subsistence and sport
17 hunting), but is adequate to accommodate subsistence uses. In
18 such event, the second subsistence law dictates priority for sub-
19 sistence uses over other uses, and further provides that regula-
20 tions "shall provide a reasonable opportunity to satisfy the
21 subsistence uses." § 6(c), ch. 52, SLA 1986, AS 16.05.258(c).

22 It is not clear to the court how the above-quoted
23 language was intended to operate, nor how (if at all) the Board
24 of Game has applied it in this case. The Board of Game did make
25 express reference to the quoted statutory language in the final
26 paragraph of its April 4, 1985, findings. State's Exhibit 13.

1 The court understands that the determination of the quantity of
2 game which may be harvested consistent with recognized scientific
3 principles of game management involves professional judgment
4 based upon surveys which cannot be exact or calculated with math-
5 ematical precision. The court further understands that success-
6 ful hunting is partly skill and partly chance. It follows that
7 subsistence hunters cannot be guaranteed that they will locate
8 some predetermined number of moose or caribou in a given area and
9 take them in a given period of time. All of the variables--the
10 predictions, the skill, and chance--impact actual results. If
11 the quoted language is reflective of the vagaries of the fore-
12 going variables, it is no cause for particular concern at this
13 time. However, if that language is meant to have a more specific
14 meaning or impact on subsistence hunting, then the Board of Game
15 must take care to evaluate and articulate the meaning they
16 attribute to this language and take care that its implementation
17 does not adversely impact the preference to which subsistence
18 hunting is entitled under Alaska's second subsistence law.

19 D.

20 Conclusion

21 On the basis of the extensive briefing by both plain-
22 tiffs and defendant on the State's motion for summary judgment,
23 and in consideration of the nature of these proceedings (review
24 of administrative rulemaking), the court is in a position as dis-
25 cussed above to rule on plaintiffs' claims. The court concludes
26 that plaintiffs are entitled to the declaratory relief they seek

1 with respect to 5 AAC §§ 88.025 and -.045. The current version
2 of these regulations, as well as their precursors (including the
3 1985 version, 5 AAC § 81.320), were not adopted in conformity
4 with § 6, ch. 52, SLA 1986, AS 16.05.258. They impose seasons
5 not consistent with the board's findings as to established
6 customs of the people of Lime Village, and thereby unacceptably
7 restrict the preference for subsistence uses dictated by § 6,
8 ch. 52, SLA 1986, AS 16.05.258. The regulations impose bag
9 limits which were not demonstrably of a size sufficient to accom-
10 modate the customary taking of moose or caribou at Lime Village.
11 The Board of Game shall review its subsistence hunting regula-
12 tions for Lime Village, Alaska, and shall submit to the court for
13 review reenacted subsistence hunting regulations in accordance
14 with Alaska's second subsistence law and this decision.

15 In the absence of evidence of imminent, irreparable
16 harm to plaintiffs, the court declines to enter an injunction
17 against the enforcement of 5 AAC §§ 88.025 and -.045 at this
18 time. The court does, of course, retain jurisdiction of this
19 matter under ANILCA § 807(a), 16 U.S.C. § 3117(a), and, upon
20 request of the plaintiffs, the court will review its ruling as to
21 injunctive relief if the State has not submitted revised regula-
22 tions by June 15, 1989.

23 II.

24 Taking of Antlerless Moose; Lime Village Management Area

25 By its motion to dismiss, the State in substance argues
26 that the application to plaintiffs of AS 16.05.780 concerning the

1 taking of antlerless moose and 5 AAC § 88.500(6)(A) establishing
2 the boundaries of the Lime Village management area present issues
3 which were either moot or not ripe for judicial review. The
4 motion is opposed by plaintiffs.

5 The Alaska Board of Game, at its meeting of April 1987,
6 repealed 5 AAC § 88.500(6)(A). Accordingly, plaintiffs' chal-
7 lenge of that regulation is indeed rendered moot.

8 The situation as regards AS 16.05.780, the antlerless
9 moose statute, presents a slightly different problem. By Sec-
10 tion 780 of the Alaska game laws, it is provided that:

11 (a) The taking of antlerless moose in any
12 game management unit or subunit or a portion
13 of a unit or subunit is prohibited except
14 that antlerless moose may be taken only under
15 regulations adopted under (b) of this section
16 after

17 (1) the department recommends the season
18 be opened in that year, based on biological
19 evidence, and

20 (2) a majority of active local advisory
21 committees for that unit or subunit have
22 recommended an opening for that year, after
23 each has taken a vote and a majority of the
24 members of those committees have voted in the
25 affirmative.

26 (b) Pursuant to (a) of this section the
board, in its regularly scheduled annual game
board meeting, may adopt regulations for the
taking of antlerless moose in any game man-
agement unit or subunit in any year.

This statute was enacted prior to ANILCA and the
state's election to assume responsibility for the management of
game in Alaska consistent with ANILCA. The state concedes that
it is unclear how the provisions of Alaska's second subsistence

1 law, and the antlerless moose statute are to interact. State's
2 Memorandum in Support of Motions, March 17, 1987, at 31-32.
3 However, counsel for the State further asserts that:

4 The antlerless moose statute must be imple-
5 mented by the advisory committees and the
6 board [of game] in a manner consistent with
7 the mandate that customary and traditional
8 uses in rural Alaska are to be authorized
9 unless sustained yield or subsistence uses
10 themselves would be jeopardized.

11 Id. at 32.

12 The court has hereinabove ordered a review of subsis-
13 tence hunting regulations pertaining to the taking of moose for
14 subsistence purposes. The court takes counsel's assertion to
15 mean that the State will, in further analysis of its regulation
16 of the taking of moose for subsistence purposes, interpret
17 AS 16.05.780 in a fashion which will prevent subsistence users of
18 moose from losing the preference to which they are entitled under
19 § 6, ch. 52, SLA 1986, AS 16.05.258(c).

20 As plaintiffs point out, the antlerless moose statute,
21 unlike the management area regulation, remains in force and
22 presumptively binding upon the Board of Game. Thus the issue
23 presented regarding AS 16.05.780 is not moot; neither, however,
24 is it ripe for a decision.

25 The antlerless moose issue is not ripe for decision due
26 to the court's holding that the Board of Game's current regula-
27 tions pertaining to the taking of moose do not pass muster under
28 Alaska's second subsistence law. Stated somewhat differently,
29 because extant season and bag limit regulations concerning the

1 taking of moose must be reviewed by the Board of Game and poten-
2 tially replaced with new regulations, it is simply not possible
3 for the court to discern whether AS 16.05.780 will have any
4 future adverse impact upon the preference to which subsistence
5 moose hunting is entitled. If the bag limits adopted by the
6 Board of Game in furtherance of this decision are constructed so
7 as to apply Alaska's generally applicable game laws in a fashion
8 consistent with Alaska's second subsistence law, then the plain-
9 tiffs may well have no objection based upon AS 16.05.780.
10 Conversely, it is conceivable that in reviewing and/or revising
11 moose seasons and bag limits, the Board of Game might in fact
12 apply the antlerless moose statute in a fashion which would
13 arguably deprive plaintiffs of their subsistence rights. In the
14 latter event, the plaintiffs may present their arguments in the
15 light of the revised regulations for the subsistence taking of
16 moose.

17 Thus, in carrying out this court's order, the Board of
18 Game must be on notice that its treatment of the taking of
19 antlerless moose for subsistence purposes will come under scru-
20 tiny. The board must, as counsel represents it will, permit on a
21 preference basis the taking of antlerless moose consistent with
22 AS 16.05.258.

23 A word must be said as regards the State's qualifica-
24 tion that antlerless moose seasons would be allowed "where no
25 biological problem would exist". State's Memorandum in Support
26 of Motions, March 17, 1987, at 33. With regard to any portion of

1 a ~~wildlife~~ population (which the court understands to include
2 antlerless moose), the taking of which must be restricted for
3 conservation purposes, all other uses must be reduced or pro-
4 scribed before subsistence use is restricted. § 6(c), ch. 52,
5 SLA 1986, AS 16.05.258(c). The limiting or restricting of all
6 consumptive uses including subsistence uses in an equal or
7 roughly equal fashion is unlawful. An established subsistence
8 use of a particular wildlife population must be afforded its
9 statutory preference, and such use may be curtailed or proscribed
10 only as a last resort and then only in accordance with § 6(c) of
11 Alaska's second subsistence law. AS 16.05.258(c).

12 The State's motion to dismiss is granted as regards
13 State Regulation 5 AAC § 88.500(6)(A). The State's motion to
14 dismiss, as well as the plaintiffs' supplemental motion for
15 partial summary judgment as to the antlerless moose statute,
16 AS 16.05.780, are both denied; subject, however, to the court's
17 declaration of the State's obligation as enunciated above to
18 apply the antlerless moose statute in conformity with Alaska's
19 second subsistence law.

20 III.

21 No Subsistence Defense

22 As discussed at length hereinabove, Alaska's second
23 subsistence law created a preference for customary and tradi-
24 tional uses of game and made provision for the adoption of
25 regulations to effect this right. § 6, ch. 52, SLA 1986;
26 AS 16.05.258(f).

1 Alaska's second subsistence law further provided that:

2 In a prosecution for the taking of fish or
3 game in violation of a statute or regulation,
4 it is not a defense that the taking was done
5 for subsistence uses.

6 § 7, ch. 52, SLA 1986; AS 16.05.259.¹⁷

7 By motion for partial summary judgment, plaintiffs con-
8 tend that Section 7 is null and void by reason of the Supremacy
9 Clause of the United States Constitution.¹⁸ The motion is
10 opposed by defendant. For the reasons discussed below, plain-
11 tiffs' motion for partial summary judgment with respect to § 7,
12 ch. 52, SLA 1986, AS 16.05.259, is in substance granted.

13 Plaintiffs' Supremacy Clause argument must, however, be
14 rejected. ANILCA § 804 most certainly creates federal rights
15 which would ordinarily supersede any conflicting state law provi-
16 sion. However, in ANILCA Congress made express provision for

17 -----
18 ¹⁷ Section 7 of ch. 52, SLA 1986, was added to AS 16.05 by
19 the Alaska Legislature with the expectation that it would be
20 codified as "Sec. 16.05.261". This provision was renumbered
21 by the codifier as AS 16.05.259. To avoid confusion, the
22 "no subsistence defense" statute is herein sometimes
23 referred to as "Section 7".

24 ¹⁸ Article VI of the United States Constitution provides
25 in pertinent part that:

26 This Constitution, and the Laws of the United
States which shall be made in Pursuance
thereof; and all Treaties made, or which
shall be made, under the Authority of the
United States, shall be the supreme Law of
the Land; and the Judges in every State shall
be bound thereby, any Thing in the Constitu-
tion or Laws of any State to the Contrary
notwithstanding.

1 state law to be substituted for ANILCA Sections 803, 804, and
2 805(a)-(c), ANILCA § 805(d), 16 U.S.C. § 3115(d). As discussed
3 above, the State of Alaska has adopted a state law that has been
4 recognized as a substitute for ANILCA. Kenaitze Indian Tribe v.
5 State of Alaska, 860 F.2d 312, 314 (9th Cir. 1988). Plaintiffs
6 have not argued that the preference terms of Alaska's second
7 subsistence law is in any respect in conflict with Sections 803,
8 804, or 805 of ANILCA. 16 U.S.C. §§ 3113, 3114, 3115. Congress
9 understood and expected that the subsistence hunting priority
10 created by ANILCA would be effected by a "State rulemaking
11 authority". ANILCA § 805(d), 16 U.S.C. § 3115(d). The pertinent
12 part of § 6 (AS 16.05.258(c)) provides:

13 (c) The boards shall adopt subsistence
14 fishing and subsistence hunting regulations
15 for each stock and population for which a
harvestable portion is determined to exist
under (b)(1) of this section.

16 Alaska's decision to adopt regulations covering the full scope of
17 the subsistence right (that is, to require all subsistence hunt-
18 ing to be within and pursuant to regulation) is not inconsistent
19 with ANILCA when, by necessary implication (§ 6, ch. 52,
20 SLA 1986, AS 16.05.258(c)), those regulations are required to be
21 consistent with Alaska's equivalent of ANILCA § 804. Because the
22 regulations must be coextensive with the subsistence right, the
23 "no subsistence defense" (whatever it was intended to mean--a
24 subject to be taken up below) does not diminish the subsistence
25 hunting rights created under ANILCA and Alaska's second subsis-
26 tence law.

1 What should be, and presumably is, important to plain-
2 tiffs is that they have the opportunity to challenge the regula-
3 tions which are promulgated for the purpose of giving effect to
4 subsistence rights. Plaintiffs believe that § 7, ch. 52, SLA
5 1986:

6 [U]nambiguously and without exception, pre-
7 cludes any defendant in a prosecution for
8 violating a fish or game statute or regula-
9 tion from defending the prosecution on the
ground that the statute or regulation being
applied violates either the state or federal
subsistence laws.

10 Plaintiffs' Brief in Support of Motion for Partial Summary
11 Judgment at 19. For its part, the State argues similarly, urging
12 that plaintiffs' remedy as regards regulations adopted by the
13 Board of Game is a civil action such as this, not a subsistence
14 defense to the criminal prosecution.

15 Clearly, plaintiffs have the remedy of a civil action
16 such as this available to them under ANILCA. However, a civil
17 action is not the only means of challenging state subsistence
18 regulations, and the court is of the opinion that neither the
19 Alaska Legislature nor the Alaska appellate courts have said
20 otherwise, nor does ANILCA provide otherwise.

21 It must be said at the outset that § 7, ch. 52,
22 SLA 1986, AS 16.05.259, is not unambiguous. Both plaintiffs and
23 defendant read Section 7 to say that a defendant charged with
24 hunting violations may not argue that the regulation under which
25 he is charged fails to afford him the statutory subsistence
26 rights that the legislature intended. The words used could mean

1 that. However, the words employed by the Alaska Legislature in
2 creating the "no subsistence defense" could also mean that a
3 defendant may not argue for some kind of right in gross outside
4 of and apart from validly enacted subsistence hunting regula-
5 tions. The latter meaning is suggested, if not required, given
6 the circumstances under which the provision was enacted.

7 The addition of the so-called "no subsistence defense"
8 provision to Alaska's second subsistence law was the result of
9 ongoing subsistence law litigation in the courts of the State of
10 Alaska. Just after the Alaska Supreme Court concluded its work
11 in Madison, the Alaska Court of Appeals (which has jurisdiction
12 in the first instance of criminal appeals) was considering State
13 v. Eluska, 698 P.2d 174 (Alaska Ct. App. Apr. 12, 1985), re-
14 versed, 724 P.2d (Alaska Aug. 29, 1986).

15 In May 1983, after the closure of deer hunting season
16 in Game Unit 8, Mr. Eluska was found in possession of a freshly
17 killed doe. He was prosecuted for violation of 5 AAC § 81.320(6)
18 and 5 AAC § 81.140(a). The former regulation established the
19 season and bag limit for the taking of deer in Game Unit 8 for
20 the 1982-83 season. The latter regulation prohibited the posses-
21 sion of game taken in violation of AS 16 or any regulation prom-
22 ulgated thereunder. (This regulation in substance repeats the
23 provisions of AS 16.05.920(a) which is still in force.) Defen-
24 dant Eluska contended that he was a subsistence hunter and that
25 extant regulations failed to adequately provide for subsistence
26 hunting. At the time of the charges brought against Mr. Eluska,

1 there were no regulations differentiating between sport hunting
2 and subsistence hunting. The trial court held for defendant on
3 the basis that the State had failed to enact subsistence regula-
4 tions as required by AS 16.05.255(b).¹⁹ The Alaska Court of
5 Appeals in substance held for the defendant as well, and the case
6 was remanded for purposes of having the trial court reconsider
7 Mr. Eluska's subsistence defense employing the parameters set out
8 by the court of appeals.

9 The State appealed to the Alaska Supreme Court which,
10 in a split decision, reversed and remanded the case to the trial
11 court for further proceedings. The Alaska Supreme Court rejected
12 the conclusion of the Alaska Court of Appeals that AS 16.05.255(b)
13 required that separate regulations be promulgated governing sub-
14 sistence hunting and sport hunting. In so holding, the Alaska
15 Supreme Court held:

16 We find no evidence, however, of an intent to
17 grant any personal right to take or possess
18 game in the absence of such regulations.
19 Section 255(b) merely established the prior-
20 ity of subsistence uses within the regulatory
21 scheme. If the regulations adopted by the
22 Board fail to establish the desired priority,
23 it is difficult to believe that the legisla-
24 ture intended unregulated hunting to be the
25 result.

22 Eluska, 724 P.2d at 515 (emphasis in original; footnotes omit-
23 ted).

25 ¹⁹ AS 16.05.255(b) was repealed by § 12, ch. 52, SLA 1986.
26 The text of § 255(b) is reproduced in Appendix I at 2.

1 In order to understand why the "no subsistence defense"
2 provision was adopted, one must bear in mind that the Alaska
3 Legislature was considering the matter after the Alaska Court of
4 Appeals created a "subsistence defense" and before the Alaska
5 Supreme Court rejected that defense as set out above. The Court
6 of Appeals decision was rendered in April of 1985. Alaska's
7 second subsistence law, including the "no subsistence defense",
8 was enacted in early 1986 and became effective June 1, 1986.
9 § 13, ch. 52, SLA 1986. The Alaska Supreme Court decision was
10 not released until August 29, 1986. The legislative history of
11 Section 7 expressly states that the "no subsistence defense"
12 clause was a reaction to Eluska. State's Exhibit 20 at 8-9.

13 The Alaska Legislature, through enactment of §§ 6 and
14 7, ch. 52, SLA 1986, in substance said in response to the first
15 Eluska decision that: the Board of Game regulations shall
16 provide a preference for subsistence hunting and, since we have
17 made provision for subsistence hunting, a person may not subsis-
18 tence hunt or claim to have done so except as permitted by these
19 regulations. This is, of course, the same result reached by the
20 Alaska Supreme Court in the second Eluska decision under Alaska's
21 first subsistence law. As set out above, the Alaska Supreme
22 Court concluded that the legislature had not created subsistence
23 hunting rights absent or independent of Board of Game regula-
24 tions. Eluska, 724 P.2d at 515. There is no suggestion in
25 ch. 52, SLA 1986, that the intent of the legislature had changed
26 in this respect. Indeed, the above-quoted portions of the second

1 subsistence law in conjunction with the provisions of
2 AS 16.05.920(a)²⁰ can only be viewed as a reaffirmation by the
3 legislature that complete provision for the statutory preference
4 afforded subsistence hunting was to be made by regulation.

5 The context within which Section 7 was enacted strongly
6 suggests that this provision was intended to preclude a defendant
7 in a criminal proceeding from claiming a subsistence right in
8 gross outside of and apart from validly enacted subsistence hunt-
9 ing regulations. The legislative history of Section 7 reinforces
10 this conclusion. The legislature, like the Alaska Supreme Court,
11 intended to proscribe unregulated hunting.

12 The legislative history of Section 7 also sheds light
13 upon the question of whether a person charged with a subsistence
14 hunting violation may challenge the regulation he is alleged to
15 have violated based upon the contention that the regulation fails
16 to afford subsistence rights. The staff of the Senate Resources
17 Committee of the Alaska Legislature prepared a section-by-section
18 analysis of ch. 52, SLA 1986. With respect to Section 7, the
19 report reads:

20 This section does not [a]ffect
21 AS 16.05.930(b) which allows people to take
22 fish and game in case of emergency. This

23 20 AS 16.05.920(a) reads:

24 Unless permitted by AS 16.05 - AS 16.40 or by
25 regulation adopted under AS 16.05 - AS 16.40,
26 a person may not take, possess, [or]
transport ... game

1 section is also not intended to limit a
2 person's ability to challenge a regulation
3 that is unreasonable in its terms or fails to
4 provide a reasonable opportunity to satisfy
5 subsistence uses as required in proposed
6 AS 16.05.258(c). An example might be a hunt-
7 ing season on caribou that was open in a
8 particular area before or after the caribou
9 migrated through the area, but was closed
10 while the caribou were in the area. Such a
11 regulation would be unreasonable on its face
12 and would fail to provide a reasonable oppor-
13 tunity for subsistence uses as required by
14 AS 16.05.258(c).

15 State's Exhibit 20 at 9. Clearly the legislature intended that
16 defendants be permitted to challenge subsistence hunting regula-
17 tions despite the enactment of the "no subsistence defense".

18 The State's other arguments that persons charged with
19 violations of Alaska's subsistence hunting regulations should be
20 precluded from challenging those regulations are without merit.
21 Firstly, even if Section 7 were interpreted as plaintiffs and
22 defendants suggest, the legislature may not preclude a defendant
23 from challenging the statute or regulation under which he is
24 charged.²¹ See Eluska, 698 P.2d 174 (Alaska Ct. App. Apr. 12,
25 1985). K.C. Davis, Administrative Law Text § 23.05 (3d ed.
26 1972); Bernard v. Gulf Oil Co., 619 F.2d 459, 469 (5th Cir.
1980). Davis states:

21 The Eluska decisions are illustrative of such cases.
22 In Eluska, the State appears not to have contended that
23 Mr. Eluska was foreclosed from questioning the regulations
24 under which he was being prosecuted.

1 In general, a defendant in a civil or
2 criminal proceeding brought to enforce an
3 administrative order or regulation may defend
4 on the ground of invalidity of the order or
5 regulation, in absence of affirmative legis-
6 lative intent to the contrary. The natural
7 assumption is that one may not be held
8 civilly or criminally liable for violating an
9 invalid order or regulation. The tradition
10 is deeply embedded that even statutes may be
11 challenged by resisting enforcement.

12 K.C. Davis, Administrative Law Text § 23.05 at 446-447 (footnotes
13 omitted). As set out above, the intent of the Alaska Legislature
14 was that such challenges be permitted.

15 Secondly, no provision of ANILCA precludes the defen-
16 dant in a criminal case from challenging the State's subsistence
17 hunting regulations. ANILCA § 807(a) deals exclusively with
18 civil actions and creates an "exhaustion precondition" only with
19 respect to bringing a civil action. Section 807(a) does not
20 address criminal proceedings for the violation of regulations
21 promulgated by the State in furtherance of its election to assume
22 ANILCA responsibilities. Even if the exhaustion requirement were
23 applicable, there are no such administrative remedies attendant
24 to criminal proceedings.

25 Similarly, the State's position is not aided by ANILCA
26 § 807(c), 16 U.S.C. § 3117(c). Section 807(c) makes the judicial
remedy provided by Section 807(a) the exclusive "Federal judicial
remedy" for those "aggrieved by a failure of the State to provide
for the priority of subsistence uses set forth in Section 804."
Section 807(c) does not address criminal prosecutions in state
courts. Even assuming that it could do so, Congress has not

1 ~~purpose~~ to substitute a civil action such as this for the right
2 of a defendant in a criminal case to challenge the validity of
3 the statute or regulation under which he is charged.

4 Neither ANILCA nor Alaska's second subsistence law
5 preclude a defendant from challenging the validity of a hunting
6 regulation as a defense to a criminal prosecution.²²

7 The State's suggestion that this court's rejection of
8 Section 7 as a basis for precluding challenges to subsistence
9 regulations will lead to chaos is essentially an emotional argu-

10 -----
11 22

12 Not before this court, and therefore not addressed or
13 considered, is the situation where a person is charged with
14 a game violation other than one based upon subsistence
15 hunting, where the defendant seeks to defend on the basis of
16 a claim that he was subsistence hunting. If one were so
17 charged and could demonstrate that he was entitled to the
18 benefit of a specific subsistence hunting regulation, this
19 would appear to be an adequate defense. But suppose, for
20 the sake of discussion, that a resident of rural Alaska were
21 to take a moose contrary to sport hunting regulations and in
22 an area where there was no subsistence hunting regulation
23 permitting the taking of such wild game. Seemingly this
24 would present the identical situation as arose in Eluska.

25 This court shares the concern of the Alaska Supreme
26 Court that assertion of a subsistence defense in a case
where there is no applicable subsistence regulation, if
permitted, would result in unregulated hunting which could
in the long run be contrary to the purposes of ANILCA and
Alaska's second subsistence law. Such a case will not arise
in the future if advisory committees, regional councils, and
the Board of Game operate as they are intended to and give
full effect to § 6, ch. 52, SLA 1986, AS 16.05.258.

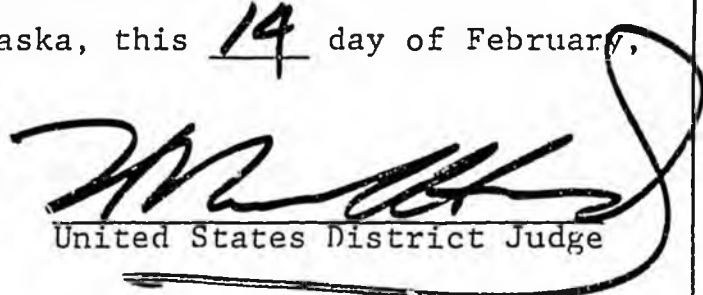
For now, and because this case does not present or
develop the latter problem, the court need not address it
and expresses no opinion as to whether or not § 7, ch. 52,
SLA 1986, AS 16.05.259, would be enforceable in a prosecu-
tion brought in the absence of an applicable subsistence
hunting regulation.

1 ment without substance. Certainly it has been difficult for the
2 State, and in particular the Board of Game, to find its way
3 through the maze of conflicting demands placed upon it as a
4 result of the several Alaska subsistence statutes and the
5 judicial decisions made under them. The court does not wish to
6 minimize the difficulty which may be presented through the
7 assertion of a subsistence defense in the form of a challenge to
8 subsistence regulations brought in the context of a criminal
9 prosecution. However, to the extent that we deal here with this
10 issue, the court believes that the State's vision of problems
11 which may come from this court's holding are exaggerated.

12 Certainly there may be a number of claims at the
13 outset. However, as a body of precedents is developed, it can
14 easily be predicted that the difficulties will diminish, at least
15 through the application of the principle of stare decisis. Once
16 a given regulatory concept has been thoroughly litigated, the
17 matter should be ended unless there are regulatory changes. The
18 court is not unmindful that recent history indicates such changes
19 may be frequent; but here also, the court is not persuaded that
20 the problem is as horrendous as the State suggests. If the work
21 of local advisory committees and regional councils and the Board
22 of Game is effectively done, and if the board's decisions are
23 well supported and documented, the temptation or need to chal-
24 lenge those regulatory decisions will be minimized along with the
25 prospects for the success of such challenges.

1 Be the foregoing as it may, the State of Alaska cannot
2 authorize the Board of Game to adopt regulations which can lead
3 to criminal sanctions and make them incontestable by defendants
4 when the State seeks to enforce the regulations. Plaintiffs and
5 defendant's contention that Section 7 (AS 16.05.259) so operates
6 is rejected on the foregoing authorities and for the foregoing
7 reasons. Plaintiffs or persons similarly situated are entitled
8 to test the validity of subsistence hunting regulations in a
9 criminal prosecution seeking to enforce those regulations.
10 Although the court's analysis of Section 7 is different from that
11 of the plaintiffs, the result favors plaintiffs and, therefore,
12 plaintiffs' motion for partial summary judgment on the "no sub-
13 sistence defense" is in substance granted.

14 DATED at Anchorage, Alaska, this 14 day of February,
15 1989.


United States District Judge

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99902-2000
PHONE: (907) 465-4100

March 29, 1990

The Honorable Bettye Fahrenkamp
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Your March 15 letter requests information about how the subsistence law was working before the McDowell decision and what management problems we expect as a result of that decision. This letter responds to that request. We are consolidating our response to your other questions in a separate letter from the Department of Law.

Before the Alaska Supreme Court decision in McDowell, state law required that subsistence uses by rural Alaskans be authorized and protected, as long as sustained yield allowed a harvest. The court ruled that the rural limitation in the law violated the Alaska Constitution; still pending is whether the mandate and priority for subsistence have also fallen because they were not severable, or whether they remain in place but apply to all Alaskans.

The decision that Alaska's rural limitation is unconstitutional may result in loss of state management of subsistence fish and game on federal land in Alaska. This problem arises because the federal subsistence law, Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), provides that subsistence uses by "rural Alaska residents" have a priority on federal land in Alaska.

Under ANILCA, those subsistence protections are to be administered by the Secretaries of Interior and Agriculture unless the state has laws of general applicability providing the rural limitation and the priority. As a result of the McDowell decision, the state no longer has the option of defining subsistence uses in a way consistent with federal law, absent a change in the state constitution.

How the process worked before McDowell

In assessing how the subsistence law worked before the McDowell decision, it seems useful to begin by describing the procedures used by the Boards of Fisheries and Game to implement the law. The boards followed a three-step process in making subsistence regulations:

1. The Joint Boards of Fisheries and Game decided which communities and areas were "rural." In state law, "rural" is defined as communities and areas in which customary and traditional, noncommercial uses of fish and game are a principal characteristic of the local economy. The board adopted a regulation listing thirteen criteria as a guide in determining rural (5 AAC 99.012). Federal law does not define rural.
2. Each board decided which rural communities or areas had "customary and traditional" uses of particular fish stocks and game populations. The boards adopted a regulation with eight criteria to guide these stock specific decisions (5 AAC 99.010(b)6). Only residents of those rural communities or areas showing a customary and traditional pattern of use of a particular fish stock or game population could participate in subsistence hunting or fishing for that particular resource.
3. Each board adopted regulations providing for subsistence uses by the residents of qualifying communities. AS 16.05.258 requires each board to adopt regulations giving a reasonable opportunity for customary and traditional uses for each game population and fish stock for which a harvestable surplus exists, with a priority over nonsubsistence uses, if necessary. This was done on a case-by-case basis, in response to proposals submitted by the public, fish and game advisory committees, and other groups.

If a fish stock or game population was in such short supply that only some subsistence users could be allowed to harvest it, the boards used three criteria to select among subsistence users. This has been called a "Tier 2" situation, in contrast with "Tier 1," where all subsistence uses could be accommodated. The three criteria for determining who can harvest at Tier 2 are (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood, (2) local residency, and (3) availability of alternative resources (AS 16.05.258). All nonsubsistence uses must be eliminated before "Tier 2" can be implemented.

Once the boards provided for customary and traditional subsistence uses, they could allocate any additional harvest surplus to other user groups. The 1986 law recognized personal use fisheries as a way to ensure that all Alaskans had an opportunity to harvest salmon and other fish by efficient means, primarily by net, dip net, and fishwheel (AS 16.05.251(d)). It also created a resident preference for taking moose, caribou, elk, and deer (AS 16.05.255).

Results of implementing the subsistence law

By 1989 the joint boards had designated 225 Alaskan communities as rural, encompassing about 110,000 people, approximately 20 percent of the state's population. Enclosure 1 lists which communities in the state were initially identified as rural. The boards had not fully completed refining the identification of rural areas at the time of the McDowell decision.

The separate boards had also largely completed a first cut at deciding which fish stocks and game populations were subject to subsistence uses. Rural residents did not automatically qualify for subsistence uses. In some remote areas, the boards concluded that most fish and game were customarily and traditionally used. In other areas, where people had more recently settled, they concluded that subsistence uses did not occur. For example, in some rural areas, they decided that sheep populations were not subject to subsistence uses. Enclosure 2 lists the game populations and fish stocks which the boards concluded were customarily and traditionally used, and the communities and areas which qualified for those uses.

In many cases the Board of Game decided that existing general hunting regulations provided sufficient opportunity for subsistence. In these cases they adopted parallel subsistence hunting regulations. In some areas where demand for wildlife was high, longer seasons, larger bag limits, or other changes in regulations were provided for subsistence use of selected species. Most of these advantages were in caribou, dall sheep, and moose regulations. Enclosure 3 lists hunts where subsistence regulations differ from general hunting regulations.

Review of this list shows that subsistence and resident hunting regulations are identical in more than half the game management units in the state. In 1989 there were only two game populations in the state limited to subsistence hunting only. These were the GMU 1D moose hunt, near Haines in southeast Alaska, and the moose hunt in the Minto Management area, a portion of GMU 20(B), near Fairbanks. In both cases, very small moose populations can support only a very limited harvest.

Longer seasons for subsistence provided advantages in some hunts. Subsistence regulations provided 8,635 potential hunting days for caribou statewide (the total of all the open hunting seasons in all the game management units). Resident regulations provided 7,550 hunting days, or 13 percent fewer. Resident moose hunts had 25 percent fewer hunting days compared with subsistence hunts.

Subsistence regulations provided other advantages in some game management subunits. These included less restrictive regulations about horn and antler size, for example. In other subunits, the bag limit was higher for subsistence. In some subunits, a combination of regulations provided multiple advantages, such as a longer season and less restrictive antler limits.

Caribou seasons are open in 50 of Alaska's 69 game management subunits. In 31 of the hunts, there is no difference between resident and subsistence regulations. Of those where subsistence has an advantage, five have longer seasons, five have less restrictive regulations, and two have higher bag limits. Seven hunts have multiple advantages.

Moose hunting is open in 62 of the 69 subunits. In 34 there is no difference in regulations. Fifteen have longer seasons, four have higher limits, and eight have multiple advantages for subsistence.

For example, the moose season in GMU 9B, in the northern Bristol Bay watershed, opens five days earlier in September for subsistence than for the general hunt. Other regulations are identical for subsistence and other resident hunters. A December season is open to both subsistence and resident hunters.

The situation is slightly different for subsistence fisheries, which frequently have shorter seasons than sport fisheries but allow more efficient gear and more liberal bag limits. Personal use fisheries, which are open to all Alaska residents, allow the same efficient gear but typically have shorter seasons and smaller bag limits than subsistence fisheries.

One example of a situation where all uses are accommodated while protecting subsistence is the Kuskokwim River, where subsistence fishing is extremely important to local residents. Any Alaska resident may fish for salmon with nets under personal use regulations, but because of high demand and competition for kings, the personal use fishermen may only fish after July 1 and cannot use king gear.

A very low percentage of the harvestable surplus of fish and wildlife in Alaska goes to subsistence--less than 4 percent of the total fish and wildlife by weight (enclosure 4). This is an extremely important contribution to the economy of rural villages,

providing 35 to 45 million pounds of high quality, nutritious food, that would otherwise have to be purchased with the limited cash typically available in these areas of the state.

The relatively small, clearly specified set of people who qualify for subsistence uses has created predictability for management and enforcement purposes, as well as for other user groups. For this reason, implementation of subsistence regulations has created few real conflicts with sport and commercial uses.

A number of controversies and court cases have resulted from the boards' ongoing efforts to implement the subsistence law. Enclosure 5 summarizes the status of current court cases involving subsistence.

What happens to alaskan's hunting and fishing opportunities and to fish and game management after July 1?

Attorneys still disagree about many of the legal and management implications of the McDowell decision. However, they seem to agree that there will be major changes in the way fish and game is managed and allocated in Alaska. Two of the largest problems appear to be "Tier 2" management and the division of fish and wildlife management jurisdiction between state and federal agencies.

One area of legal uncertainty is whether the McDowell decision means that only the rural limitation in the state subsistence law is unconstitutional, or whether the entire statute is unconstitutional. This hinges on whether or not the rural limitation is severable. If it is not severable, then in addition to the rural limitation, the definitions and priority for subsistence fall. This would mean that the boards could still authorize subsistence fisheries at their discretion that would be open to all Alaskans, but would not have a priority over other uses. If it is severable, then all Alaskans qualify for subsistence uses, and subsistence still has a priority.

We will not know the answer to these questions until the state superior court takes further action in the McDowell case.

Tier 2 disruptions

If the rural limitation is severable from the remainder of the subsistence law and all Alaskans qualify for subsistence uses, we face the same type of management chaos and harvest disruptions for the 1990 hunting seasons that we experienced after the Madison

court decision in 1985. Any subsistence hunts or fisheries on state lands where participation must be limited in order to protect the resource would have to be managed under the Tier 2 procedures described above.

The department has conducted a preliminary assessment of which hunts and fisheries may have to be limited to Tier 2 if all Alaskans qualify for subsistence. This assessment, enclosure 6, indicates that more than 30 hunts would have to be limited to Alaskans who qualify under Tier 2 criteria. These include some of the most popular hunts in the state, including the Nelchina caribou hunt.

Tier 2 hunts would substantially reallocate game and disrupt normal hunting opportunity because permit drawings could no longer be used to decide who participates in these hunts. Instead, the Tier 2 statutory criteria would have to be applied to create a point system to rank applicants and to decide who could hunt.

Because the McDowell decision appears to mean that one of the Tier 2 criteria (local residency) is invalid, the boards and department would have to rely on the other two criteria, "direct dependence on the resource" and "availability of alternative resources" in allocating permits. Nonresidents would have to be excluded from these hunts.

Tier 2, as the department learned from its experience in 1985, is time consuming and expensive to administer. It affects big-game guiding because of the nonresident exclusions. It also results in loss of revenues to the state from nonresident licenses and tag fees. It may be necessary for the Division of Wildlife Conservation to seek supplemental funds to operate these hunts in 1990. Enclosure 7 is a paper prepared by the department describing the effects of the 1985 Tier 2 hunts.

Federal management takeover

If the state cannot provide a rural preference for subsistence, ANILCA Title VIII requires federal agencies to provide a subsistence preference on federal lands. Federal agencies are currently planning for subsistence management on federal lands beginning July 1, unless the state is able to extend the stay granted by the Alaska Supreme Court after McDowell.

Although discussions between the state and the Department of Interior are underway, the scope of federal subsistence management is still unclear. Federal land managers are just beginning to draft a federal subsistence management plan. Until it is completed and released, we can only provide a broad overview of the possible effects of federal management.

The specific effects of federal subsistence management will depend to a large extent on the position the federal government takes, or is required by the courts to take, on three major issues. These are: (1) what lands and resources they will exert jurisdiction over, (2) what communities and areas the federal agencies will define as "rural", and (3) what process they will use for adopting subsistence regulations for federal areas. Their decisions on these questions will significantly affect all Alaskans who use fish and wildlife. In addition, Alaskans may have little say in these decisions.

"Jurisdiction"

About 60 percent of Alaska is federal land. Many popular and important hunting and fishing areas in Alaska are on or adjacent to federal lands.

The federal government's jurisdiction over hunting and fishing in these areas is unclear and subject to a number of untested legal theories. At one extreme, the federal government may have very broad authority to reach out and control fish and wildlife far from federal land if necessary to protect subsistence uses on federal lands. At the other extreme, their authority may be very narrow, limited only to closing federal areas to access. It seems clear that federal agencies will regulate hunting on federal lands. For fishing, the issue is much more complicated. The federal government might initially claim relatively narrow jurisdiction and authority, and then face court challenges to determine whether ANILCA requires a broader interpretation.

Even a narrow interpretation of ANILCA, however, is likely to mean serious fish and game management problems and disruptions to users. The interlocking nature of federal, state, and private lands and waters, together with conflicting management goals, are likely to result in serious difficulty in coordinating state and federal management.

For example, the state boards may not be able to adopt regulations and authorize harvests until they know what regulations will apply on federal lands or waters. They might also have to reassess state regulations in light of each regulatory change by federal agencies. Otherwise, the state runs the risk of allowing an overharvest, which would be prohibited by the state constitution's sustained yield mandate. This problem would be exacerbated by emergency circumstances, which call for quick and effective action. This could result in the loss of harvest opportunities for Alaskans.

Alaskan hunting and fishing regulations are already complicated. Different regulations adopted by different agencies for adjacent lands are likely to seriously increase regulatory complexity. This will not only be frustrating for hunters and fishermen, but will also increase enforcement problems. In most areas of the state it is very difficult to determine where state lands end and federal lands begin. People cited for hunting or fishing violations may claim as a defense that they were confused as to what regulations apply at any given location.

Alaskans' hunting and fishing opportunities could be reduced by a federal takeover. This could occur because federal management would be less precise than state management has been, if the federal government does not adequately fund management on federal lands. This could force federal managers to be more conservative in authorizing harvests. If they do authorize harvests without adequate data, they could run the risk of overharvest.

Another potential reason for reductions in harvest opportunities are the management philosophies of the federal agencies. For example, the National Park Service (NPS) has attempted to minimize hunting and fishing, even in national preserves where those uses were authorized by Congress, by narrowly interpreting access provisions. NPS regulations closing subsistence and commercial fishing in the waters of Glacier Bay National Monument are another recent example with serious implications for both subsistence and commercial users. Other federal agencies have also demonstrated a disregard for Alaskan's uses of fish and wildlife.

Moreover, even if they initially choose to interpret ANILCA narrowly, over time the federal agencies are likely to exert jurisdiction over fish and game management on state lands and waters in cases where these resources are important for subsistence. ANILCA and its legislative history indicate Congress's intent to protect subsistence uses broadly. Together with other legal precedents, this may cause federal agencies, either through choice or court direction, to exert wider jurisdiction over fish and game. It seems safe to predict that Alaskans will be in court for many more years in order to establish the respective jurisdictions of the state and federal government over fish and wildlife, if federal agencies take over subsistence management under ANILCA.

"Rural"

During their 1985-86 contingency planning, federal agencies indicated that they would define "rural" as places smaller than 2500 in population. This straightforward population definition would be administratively convenient, but it would eliminate some places that many Alaskans and Congress agreed should have

subsistence uses, such as Bethel (4000), Barrow (3000), Nome (3100), and Kotzebue (2600). It might also include, as rural, places like Sterling (population 1700), which is only a few miles from Soldotna (population 3800) and Kenai (population 6500), and which is closely connected to those larger towns.

If federal agencies take a very narrow view of rural, they may cut out places that many agree should have subsistence uses. If they take a broad view and include more places as rural, urban Alaskan's hunting and fishing opportunities on federal lands may be more restricted.

"Federal Process"

Probably the most critical issue is who will make the decisions about hunting and fishing on federal lands, and what role the Alaskan public will have in making those decisions. As they planned to do in 1985-86, the federal agencies will probably create some type of federal subsistence board, with representation from the four major federal landowners. Federal land management policies can therefore be expected to be major forces in deciding hunting and fishing regulations.

A federal takeover is likely to accelerate the trend toward increased influence from national organizations in determining how fish and wildlife are used and managed on federal lands. Federal land managers may face greater pressure from national anti-hunting and trapping interests than the boards did in deciding hunting and fishing regulations.

We expect the federal government to initially adopt as much of the state's hunting and fishing regulations as they can. However, in areas of controversy over limited resources, they may act more conservatively by closing areas or reducing seasons or bag limits for nonsubsistence uses. We expect this to occur particularly in areas managed by the NPS, such as national preserves.

One suggestion has been for the state to contract or work out cooperative agreements with the federal government to allow the state to continue a major role in management on federal lands. While this is still being examined, it is possible that the state could contract for studies and information gathering for the federal agencies. However, it is unlikely that the state could make management decisions, in part because the federal agencies may not be able to delegate away the final decisions.

Another suggestion is that over time we will be able to develop a greater role for Alaskans and to resume state fish and game management on federal lands. One option for doing this would be

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amending ANILCA. However, the state's experience with federal statutes concerning the division of wildlife management responsibilities is not encouraging.

It is clear that under federal management Alaskans would have less say in how fish and game are managed and who gets how much. Federal regulations would be adopted under federal procedures, and would be ultimately signed off on in Washington, D.C. Alaskans would have less access to this regulatory process, compared with the state's board system, with its open public participation.

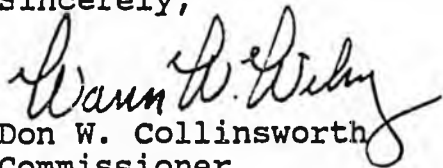
Summary

In summary, Alaska is faced with an extremely serious situation after July 1. In the short run, we face disruptions to Alaskans hunting and fishing opportunities. In the long run, we risk damage to highly valued resources, as well as even greater disruptions for users. On state lands, if all Alaskans qualify for subsistence, we will have to implement expensive and onerous Tier 2 hunts to determine which Alaskans are allowed to participate. On federal lands, federal agencies will be determining which hunts and fisheries are open, how many animals can be taken, and who gets to participate. Perhaps the greatest danger, however, is that for the first time since statehood, Alaskans will be letting the federal bureaucracy make these decisions for us.

As indicated throughout this analysis, there is tremendous uncertainty concerning the effects of the McDowell decision on fish and game management and Alaskans' uses of these resources. Because of the wide range of variables, including the fact that the federal plan is still being developed, this description of implications may be far from complete.

Please feel free to contact us for more detail on specific areas of concern.

Sincerely,


Don W. Collinsworth
Commissioner

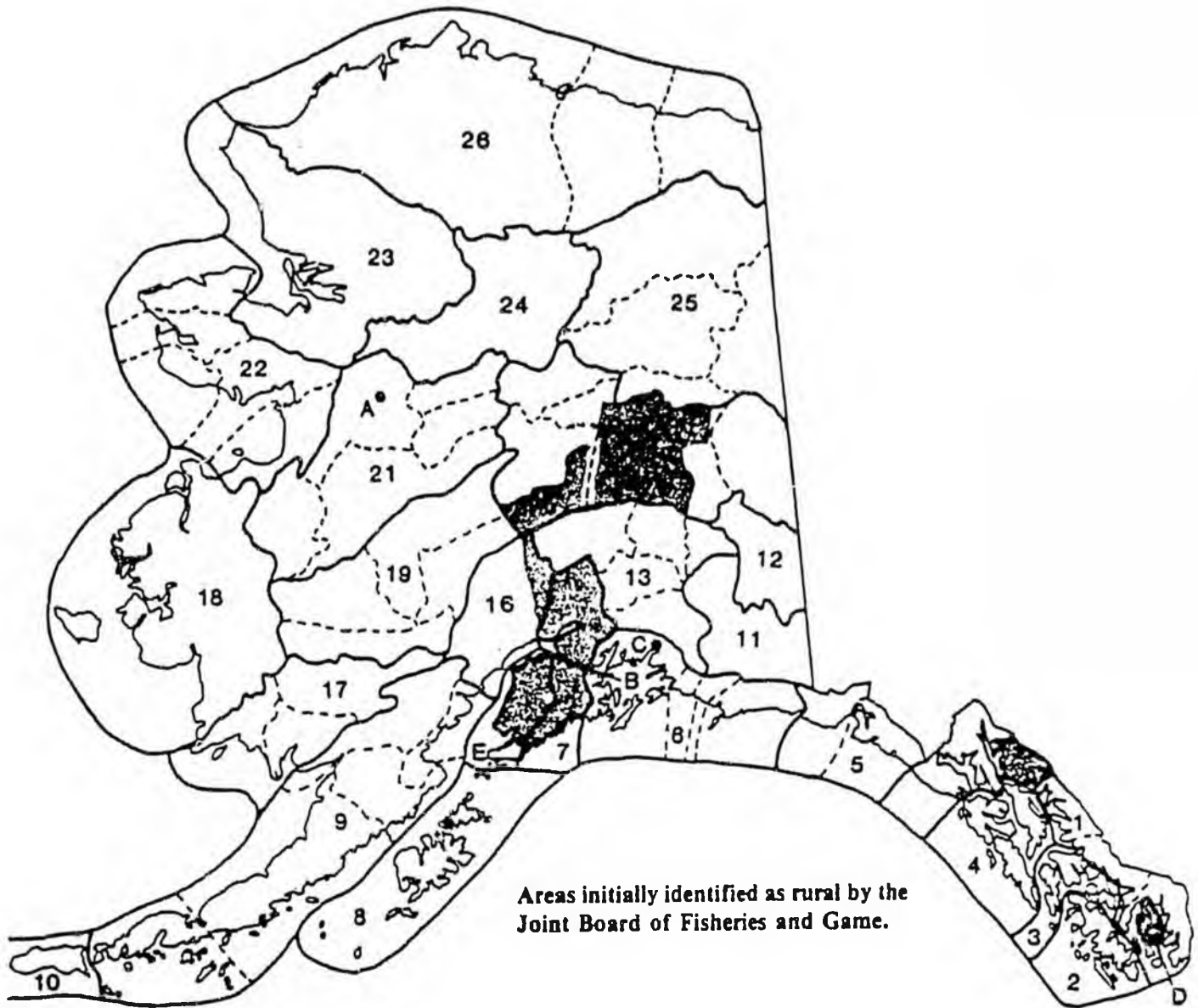
Enclosures

Senator Fahrenkamp

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cc: Senate Resources Committee members
House Resource Committee members
Department of Law
Denby Lloyd, Governor's Office
Mike Irwin, Governor's Office
Glenn Elison, FWS



Areas initially identified as rural by the Joint Board of Fisheries and Game.

■ Non-Rural

A - Galena Airforce Station within the Galena dike

B - Whittier city limits

C - Valdez city limits

□ Rural

D - Saxman city limits

E - Unit 15(C) west of a line from the northern most point of Rocky Bay to the head of Tutka Bay on the Kenai Peninsula

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDDEMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Balance of Eielson Reservation Census Sub-Area	ADOL	85	132 Interior	Fairbanks Area	20B	Nonrural
Balance of Fairbanks-Northstar Census Sub-Area	ADOL	85	29634 Interior	Fairbanks Area	20A, 20B, 20F	Nonrural
Balance of Southeast Fairbanks Census area	ADOL	85	1933 Interior	Fairbanks Area	20, 12	Nonrural
Big Delta	ADOL	85	388 Interior	Fairbanks Area	20D	Nonrural
College	ADOL	85	6646 Interior	Fairbanks Area	20B	Nonrural
Delta Junction	ADOL	85	1299 Interior	Fairbanks Area	20D	Nonrural
Eielson Air Force Base	ADOL	85	4932 Interior	Fairbanks Area	20B	Nonrural
Ester	ADOL	85	285 Interior	Fairbanks Area	20B	Nonrural
Fairbanks	ADOL	85	27099 Interior	Fairbanks Area	20B	Nonrural
Fort Greely	ADOL	85	1672 Interior	Fairbanks Area	20D	Nonrural
Fox	ADOL	85	189 Interior	Fairbanks Area	20B	Nonrural
Harding Lake Census Designated Place	ADOL	85	58 Interior	Fairbanks Area	20B	Nonrural
Moose Creek Census Designated Place	ADOL	85	803 Interior	Fairbanks Area	20B	Nonrural
North Pole	ADOL	85	1640 Interior	Fairbanks Area	20B	Nonrural
Salcha	ADOL	85	533 Interior	Fairbanks Area	20B	Nonrural
Two Rivers	ADOL	85	523 Interior	Fairbanks Area	20B	Nonrural
Anchorage	ADOL	85	235269 Southcentral	Anchorage	14C	Nonrural
Balance of Matanuska-Susitna Census area	ADOL	85	26378 Southcentral	Matanuska-Susitna	13, 14, 16	Nonrural
Big Lake	ADOL	85	610 Southcentral	Matanuska-Susitna	14A	Nonrural
Bodenburg Butte Census Designated Place	ADOL	85	1232 Southcentral	Matanuska-Susitna	14A	Nonrural
CHICKALOOM	ADFG		Southcentral	Matanuska-Susitna	14A	Nonrural
Houston	ADOL	85	725 Southcentral	Matanuska-Susitna	14A	Nonrural
Montana Census Designated Place	ADOL	85	103 Southcentral	Matanuska-Susitna	14B	Nonrural
Palmer	ADOL	85	3016 Southcentral	Matanuska-Susitna	14A	Nonrural
PETERSVILLE	ADFG		Southcentral	Matanuska-Susitna	16A	Nonrural
Sutton	ADOL	85	340 Southcentral	Matanuska-Susitna	14A	Nonrural
Talkeetna	ADOL	85	269 Southcentral	Matanuska-Susitna	14B	Nonrural
TRAPPER CREEK	ADFG		Southcentral	Matanuska-Susitna	16A	Nonrural
Vasilla	ADOL	85	3666 Southcentral	Matanuska-Susitna	14A	Nonrural
Willow	ADOL	85	494 Southcentral	Matanuska-Susitna	14A	Nonrural

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COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Valdez	ADOL	85	3271 Southcentral	Prince William Sound	60	Nonrural
Whittier	ADOL	85	344 Southcentral	Prince William Sound	60	Nonrural
Anchor Point	ADOL	85	327 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Balance of Kenai-Cook Inlet Census Sub-Area	ADOL	85	12821 Southcentral	Upper Kenai Peninsula	15,168,9A	Nonrural
Balance of Seward Census Sub-Area	ADOL	85	303 Southcentral	Upper Kenai Peninsula	7	Nonrural
Clam Gulch	ADOL	85	166 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Cooper Landing	ADOL	85	386 Southcentral	Upper Kenai Peninsula	7	Nonrural
Fritz Creek Census Designated Place	ADOL	85	1610 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Halibut Cove	ADOL	85	52 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Homer	ADOL	85	3632 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Hope	ADOL	85	224 Southcentral	Upper Kenai Peninsula	7	Nonrural
Jakolof Bay Census Designated Place	ADOL	85	81 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Kachemak City	ADOL	85	338 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Kalifornsky Census Designated Place	ADOL	85	332 Southcentral	Upper Kenai Peninsula	15B	Nonrural
Kasilof	ADOL	85	643 Southcentral	Upper Kenai Peninsula	15B	Nonrural
Kenai	ADOL	85	6518 Southcentral	Upper Kenai Peninsula	15A	Nonrural
Moose Pass	ADOL	85	145 Southcentral	Upper Kenai Peninsula	7	Nonrural
Nikishka	ADOL	85	1630 Southcentral	Upper Kenai Peninsula	15A	Nonrural
Ninilchik	ADOL	85	451 Southcentral	Upper Kenai Peninsula	15C	Nonrural
Salamatof Census Designated Place	ADOL	85	737 Southcentral	Upper Kenai Peninsula	15A	Nonrural
Seward	ADOL	85	2152 Southcentral	Upper Kenai Peninsula	7	Nonrural
Soldotna	ADOL	85	3818 Southcentral	Upper Kenai Peninsula	15A	Nonrural
Sterling	ADOL	85	1732 Southcentral	Upper Kenai Peninsula	15A	Nonrural
Juneau	ADOL	85	26270 Southeast	Juneau	1C	Nonrural
Balance of Ketchikan Census Area	ADOL	85	351 Southeast	Ketchikan	1A	Nonrural
Clover Pass	ADOL	85	547 Southeast	Ketchikan	1A	Nonrural
Herring Cove	ADOL	85	120 Southeast	Ketchikan	1A	Nonrural
Ketchikan	ADOL	85	7311 Southeast	Ketchikan	1A	Nonrural

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COMMUNITY	POPULATION SOURCE	COMMUNITY YEAR POPULATION	REGION	SUBREGION	GMU	RURAL STATUS
Ketchikan East	ADOL	85	469 Southeast	Ketchikan	1A	Nonrural
Mountain Point	ADOL	85	480 Southeast	Ketchikan	1A	Nonrural
North Tongass Highway	ADOL	85	2089 Southeast	Ketchikan	1A	Nonrural
Pennock Island	ADOL	85	109 Southeast	Ketchikan	1A	Nonrural

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COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Anaktuvuk Pass	ADOL	85	238 Arctic	North Slope	24	Rural
Atkasuk	ADOL	85	190 Arctic	North Slope	26A	Rural
Balance of Barrow-Point Hope Census Sub-Area	ADOL	85	19 Arctic	North Slope	23, 26	Rural
Balance of Prudhoe Bay-Kaktovik Census Sub-Area	ADOL	85	101 Arctic	North Slope	25B, 26C	Rural
Barrow	ADOL	85	3075 Arctic	North Slope	26A	Rural
Cape Lisburne	ADOL	85	11 Arctic	North Slope	23, 26A	Rural
Deadhorse	ADOL	85	65 Arctic	North Slope	26B	Rural
Kaktovik	ADOL	85	209 Arctic	North Slope	26C	Rural
Nuiqsut	ADOL	85	337 Arctic	North Slope	26A	Rural
Point Hope	ADOL	85	597 Arctic	North Slope	23	Rural
Point Lay	ADOL	85	104 Arctic	North Slope	26A	Rural
Prudhoe Bay	ADOL	85	56 Arctic	North Slope	26B	Rural
Wainwright	ADOL	85	508 Arctic	North Slope	26A	Rural
Ambler	ADOL	85	255 Arctic	Northwest	23	Rural
Balance of Kobuk Census Area	ADOL	85	85 Arctic	Northwest	23	Rural
Buckland	ADOL	85	248 Arctic	Northwest	23	Rural
Deering	ADOL	85	153 Arctic	Northwest	23	Rural
Kiana	ADOL	85	392 Arctic	Northwest	23	Rural
Kivalina	ADOL	85	285 Arctic	Northwest	23	Rural
Kobuk	ADOL	85	65 Arctic	Northwest	23	Rural
Kotzebue	ADOL	85	2633 Arctic	Northwest	23	Rural
Noatak	ADOL	85	330 Arctic	Northwest	23	Rural
Noorvik	ADOL	85	529 Arctic	Northwest	23	Rural
Selawik	ADOL	85	589 Arctic	Northwest	23	Rural
Shungnak	ADOL	85	226 Arctic	Northwest	23	Rural
Balance of Nome Census area	ADOL	85	122 Arctic	Seward-Norton	22	Rural
Brevig Mission	ADOL	85	165 Arctic	Seward-Norton	22D	Rural
Diomedes	ADOL	85	158 Arctic	Seward-Norton	22E	Rural
Elim	ADOL	85	237 Arctic	Seward-Norton	22B	Rural
Gambell	ADOL	85	494 Arctic	Seward-Norton	22D	Rural

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COMMUNITY	POPULATION		COMMUNITY POPULATION	REGION	SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR					
Golovin	ADOL	85	131	Arctic	Seward-Norton	22B	Rural
Koyuk	ADOL	85	202	Arctic	Seward-Norton	22B	Rural
Nome	ADOL	85	3191	Arctic	Seward-Norton	22C	Rural
Perkinsville Census Designated Place	ADOL	85	45	Arctic	Seward-Norton	22C	Rural
Port Clarence	ADOL	85	39	Arctic	Seward-Norton	22D	Rural
Saint Michael	ADOL	85	287	Arctic	Seward-Norton	22A	Rural
Savoonga	ADOL	85	487	Arctic	Seward-Norton	22D	Rural
Shaktolik	ADOL	85	163	Arctic	Seward-Norton	22A	Rural
Shishmaref	ADOL	85	410	Arctic	Seward-Norton	22E	Rural
Stebbins	ADOL	85	372	Arctic	Seward-Norton	22A	Rural
Teller	ADOL	85	247	Arctic	Seward-Norton	22D	Rural
Unalakleet	ADOL	85	759	Arctic	Seward-Norton	22A	Rural
Wales	ADOL	85	143	Arctic	Seward-Norton	22E	Rural
White Mountain	ADOL	85	164	Arctic	Seward-Norton	22B	Rural
Anderson	ADOL	85	566	Interior	Parks Highway	20A	Rural
Healy	ADOL	85	414	Interior	Parks Highway	20C	Rural
McKinley Park Village	ADOL	85	65	Interior	Parks Highway	20C	Rural
Usibelli Mine	ADOL	85	6	Interior	Parks Highway	20A	Rural
Cantwell	ADOL	85	91	Southcentral	Parks Highway	13E	Rural
CHASE-GOLD CREEK	ADFG	87	78	Southcentral	Parks Highway	13E	Rural
Balance of McGrath-Holy Cross Census Sub-Area	ADOL	85	102	Interior	Upper Kuskokwim	19,21	Rural
LAKE WINCHUMINA	ADFG			Interior	Upper Kuskokwim	20C	Rural
McGrath	ADOL	85	509	Interior	Upper Kuskokwim	19D	Rural
MEDFRA	ADFG			Interior	Upper Kuskokwim	19D	Rural
Nikolai	ADOL	85	122	Interior	Upper Kuskokwim	19D	Rural
Takotna	ADOL	85	54	Interior	Upper Kuskokwim	19D	Rural
Tatalina Station Census Designated Place	ADOL	85	13	Interior	Upper Kuskokwim	19	Rural
Telida	ADOL	85	38	Interior	Upper Kuskokwim	19D	Rural
CHISANA	ADFG	87	13	Interior	Upper Tanana	11	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

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COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Doł Lake	ADOL	85	77 Interior	Upper Tanana	200	Rural
Healy Lake	ADOL	85	37 Interior	Upper Tanana	200	Rural
NORTH WRANGELL MOUNTAINS	ADFG		Interior	Upper Tanana	12	Rural
Northway	ADOL	85	239 Interior	Upper Tanana	12	Rural
Tanacross	ADOL	85	149 Interior	Upper Tanana	12	Rural
Tetlin	ADOL	85	89 Interior	Upper Tanana	12	Rural
Tok	ADOL	85	692 Interior	Upper Tanana	12	Rural
ALATHA	ADFG	85	Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Allakaket	ADOL	85	188 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Anvik	ADOL	85	83 Interior	Upper Yukon-Koyukuk-Lower Tanana	21E	Rural
Arctic Village	ADOL	85	132 Interior	Upper Yukon-Koyukuk-Lower Tanana	25A	Rural
Balance of Koyukuk-Mid Yukon Census Sub-Area	ADOL	85	924 Interior	Upper Yukon-Koyukuk-Lower Tanana	20,24,21	Rural
Balance of Yukon Flats Census Sub-Area	ADOL	85	41 Interior	Upper Yukon-Koyukuk-Lower Tanana	25	Rural
Beaver	ADOL	85	80 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Bettles	ADOL	85	86 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Birch Creek	ADOL	85	29 Interior	Upper Yukon-Koyukuk-Lower Tanana	25	Rural
Campion Station	ADOL	85	12 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural
Central	ADOL	85	42 Interior	Upper Yukon-Koyukuk-Lower Tanana	25C	Rural
Chalkyitsik	ADOL	85	94 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Chicken	ADOL	85	48 Interior	Upper Yukon-Koyukuk-Lower Tanana	20E	Rural
Circle	ADOL	85	94 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Eagle	ADOL	85	273 Interior	Upper Yukon-Koyukuk-Lower Tanana	20E	Rural
Fort Yukon	ADOL	85	678 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Galena	ADOL	85	947 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural
Grayling	ADOL	85	225 Interior	Upper Yukon-Koyukuk-Lower Tanana	21E	Rural
Holy Cross	ADOL	85	238 Interior	Upper Yukon-Koyukuk-Lower Tanana	21E	Rural
Hughes	ADOL	85	92 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Huslia	ADOL	85	272 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Indian Mountain Census Designated Place	ADOL	85	13 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Kaltag	ADOL	85	278 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural
Koyukuk	ADOL	85	143 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDDEM0G.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION			
Manley Hot Springs	ADOL	85	88	Interior	Upper Yukon-Koyukuk-Lower Tanana 20B	Rural
Minto	ADOL	85	209	Interior	Upper Yukon-Koyukuk-Lower Tanana 20B	Rural
Menana	ADOL	85	544	Interior	Upper Yukon-Koyukuk-Lower Tanana 20A	Rural
Mulato	ADOL	85	368	Interior	Upper Yukon-Koyukuk-Lower Tanana 21D	Rural
Rampart	ADOL	85	59	Interior	Upper Yukon-Koyukuk-Lower Tanana 18	Rural
Ruby	ADOL	85	241	Interior	Upper Yukon-Koyukuk-Lower Tanana 21B	Rural
Shageluk	ADOL	85	144	Interior	Upper Yukon-Koyukuk-Lower Tanana 21E	Rural
Stevens Village	ADOL	85	97	Interior	Upper Yukon-Koyukuk-Lower Tanana 25D	Rural
Tanana	ADOL	85	425	Interior	Upper Yukon-Koyukuk-Lower Tanana 20F	Rural
Venetie	ADOL	85	237	Interior	Upper Yukon-Koyukuk-Lower Tanana 25D	Rural
WISEMAN	ADFG			Interior	Upper Yukon-Koyukuk-Lower Tanana 24	Rural
Chistochina	ADFG	87	79	Southcentral	Copper River Basin 11	Rural
Chitina	ADFG	87	35	Southcentral	Copper River Basin 13D	Rural
Copper Center	ADFG	87	493	Southcentral	Copper River Basin 13D	Rural
EAST GLENN HIGHWAY	ADFG	87	217	Southcentral	Copper River Basin 13A, 13D	Rural
Gakona	ADFG	87	209	Southcentral	Copper River Basin 13B	Rural
Glennallen	ADFG	87	469	Southcentral	Copper River Basin 13A, 13D	Rural
Gulkana	ADFG	87	67	Southcentral	Copper River Basin 13B	Rural
KENNY LAKE	ADFG	87	321	Southcentral	Copper River Basin 13D	Rural
LAKE LOUISE	ADFG	87	39	Southcentral	Copper River Basin 13A	Rural
MCCARTHY ROAD	ADFG	87	38	Southcentral	Copper River Basin 11	Rural
MENTASTA LAKE	ADFG	87	77	Southcentral	Copper River Basin 13C	Rural
MENTASTA PASS	ADFG	87	26	Southcentral	Copper River Basin 13C	Rural
NABESNA ROAD	ADFG	87	37	Southcentral	Copper River Basin 11, 12	Rural
NORTH SLANA HOMESTEAD	ADFG	87	61	Southcentral	Copper River Basin 13C	Rural
Paxson-Sourdough	ADFG	87	65	Southcentral	Copper River Basin 13B	Rural
Slana	ADFG	87	57	Southcentral	Copper River Basin 13C	Rural
SOUTH SLANA HOMESTEAD	ADFG	87	186	Southcentral	Copper River Basin 11	Rural
SOUTH WRANGELL MOUNTAINS	ADFG	87	48	Southcentral	Copper River Basin 11	Rural
Tazlina	ADFG	87	365	Southcentral	Copper River Basin 13D	Rural
Tonsina	ADFG	87	297	Southcentral	Copper River Basin 13D	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	SOURCE	POPULATION		COMMUNITY REGION	SUBREGION	GMU	RURAL STATUS
		YEAR	POPULATION				
WEST GLENN HIGHWAY	ADFG	87	281	Southcentral	Copper River Basin	13D,13A	Rural
English Bay	ADOL	85	192	Southcentral	Lower Kenai Peninsula	15C	Rural
Port Graham	ADOL	85	188	Southcentral	Lower Kenai Peninsula	15C	Rural
Seldovia	ADOL	85	403	Southcentral	Lower Kenai Peninsula	15C	Rural
Balance of Cordova Census Sub-Area	ADOL	85	362	Southcentral	Prince William Sound	6	Rural
Balance of Prince William Sound Census Sub-Area	ADOL	85	47	Southcentral	Prince William Sound	6D	Rural
Chenequa Bay	ADOL	85	60	Southcentral	Prince William Sound	5D	Rural
Cordova	ADOL	85	1901	Southcentral	Prince William Sound	6C	Rural
Eyak	ADOL	85	44	Southcentral	Prince William Sound	6C	Rural
SAN JUAN BAY	ADFG			Southcentral	Prince William Sound	6D	Rural
Tatitlek	ADOL	85	112	Southcentral	Prince William Sound	6D	Rural
ALEXANDER CREEK	ADFG			Southcentral	Upper Cook Inlet	16B	Rural
SKWENTNA	ADFG			Southcentral	Upper Cook Inlet	16B	Rural
Tyonek	ADOL	85	269	Southcentral	Upper Cook Inlet	16B	Rural
Angoon	ADOL	85	588	Southeast	Southeast	4	Rural
Annette	ADOL	85	158	Southeast	Southeast	1A	Rural
Balance of Angcon Census Sub-Area	ADOL	85	64	Southeast	Southeast	4	Rural
Balance of Haines Census Area	ADOL	85	840	Southeast	Southeast	1D	Rural
Balance of Hoonah-Yakutat Census Sub-Area	ADOL	85	226	Southeast	Southeast	4	Rural
Balance of Outer Ketchikan Census Sub-Area	ADOL	85	8	Southeast	Southeast	2	Rural
Balance of Petersburg Census Sub-Area	ADOL	85	318	Southeast	Southeast	3	Rural
Balance of Prince of Wales Census Sub-Area	ADOL	85	451	Southeast	Southeast	2	Rural
Balance of Skagway Census Sub-Area	ADOL	85	27	Southeast	Southeast	1D	Rural
Balance of Wrangell Census Sub-Area	ADOL	85	193	Southeast	Southeast	1B,3	Rural
Cape Pole	ADOL	85	50	Southeast	Southeast	2	Rural
Coffman Cove	ADOL	85	272	Southeast	Southeast	2	Rural
Craig	ADOL	85	924	Southeast	Southeast	2	Rural
EDNA BAY	ADFG			Southeast	Southeast	2	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION			COMMUNITY REGION	SUBREGION	CNU	RURAL STATUS
	SOURCE	YEAR	POPULATION				
Elfin Cove	ADOL	85	47	Southeast	Southeast	4	Rural
Gustavus	ADOL	85	217	Southeast	Southeast	1C	Rural
Haines	ADOL	85	1151	Southeast	Southeast	1D	Rural
HOLLIS	ADFG			Southeast	Southeast	2	Rural
Hoonah	ADOL	85	917	Southeast	Southeast	4	Rural
Hydaburg	ADOL	85	463	Southeast	Southeast	2	Rural
Hyder	ADOL	85	73	Southeast	Southeast	1A	Rural
Kake	ADOL	85	634	Southeast	Southeast	3	Rural
Kasaan	ADOL	85	83	Southeast	Southeast	2	Rural
Klawock	ADOL	85	613	Southeast	Southeast	2	Rural
Klukwan	ADOL	85	153	Southeast	Southeast	1D	Rural
Kupreanof	ADOL	85	41	Southeast	Southeast	3	Rural
Metlakatla	ADOL	85	1270	Southeast	Southeast	1A	Rural
Meyers Chuck	ADOL	85	53	Southeast	Southeast	1A	Rural
Pelican	ADOL	85	234	Southeast	Southeast	4	Rural
Peteraburg	ADOL	85	3145	Southeast	Southeast	3	Rural
Point Baker/Port Protection	ADOL	85	108	Southeast	Southeast	2	Rural
Port Alexander	ADOL	85	131	Southeast	Southeast	4	Rural
Saxman	ADOL	85	772	Southeast	Southeast	1A	Rural
Sitka	ADOL	85	8160	Southeast	Southeast	4	Rural
Skagway	ADOL	85	610	Southeast	Southeast	1D	Rural
Tenakee Springs	ADOL	85	142	Southeast	Southeast	4	Rural
Thorne Bay	ADOL	85	412	Southeast	Southeast	2	Rural
Whale Pass	ADOL	85	83	Southeast	Southeast	2	Rural
Wrangell	ADOL	85	2387	Southeast	Southeast	1B	Rural
Yakutat	ADOL	85	456	Southeast	Southeast	5A	Rural
Chignik Bay	ADOL	85	129	Southwest	Alaska Peninsula	9E	Rural
Chignik Lagoon	ADOL	85	40	Southwest	Alaska Peninsula	9E	Rural
Chignik Lake	ADOL	85	164	Southwest	Alaska Peninsula	9E	Rural
Cold Bay	ADOL	85	157	Southwest	Alaska Peninsula	9D	Rural
Egegik	ADOL	85	112	Southwest	Alaska Peninsula	9E	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDDEMOG.WK1)

COMMUNITY	POPULATION			COMMUNITY REGION	SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION				
Ivanof Bay	ADOL	85	49	Southwest	Alaska Peninsula	9E	Rural
King Cove	ADOL	85	547	Southwest	Alaska Peninsula	9D	Rural
King Salmon	ADOL	85	648	Southwest	Alaska Peninsula	9C	Rural
Naknek	ADOL	85	382	Southwest	Alaska Peninsula	9C	Rural
Nelson Lagoon	ADOL	85	44	Southwest	Alaska Peninsula	9D	Rural
Perryville	ADOL	85	137	Southwest	Alaska Peninsula	9E	Rural
Pilot Point	ADOL	85	79	Southwest	Alaska Peninsula	9E	Rural
Port Heiden	ADOL	85	108	Southwest	Alaska Peninsula	9E	Rural
PORT MOLLER	ADFG			Southwest	Alaska Peninsula	9E	Rural
Sand Point	ADOL	85	671	Southwest	Alaska Peninsula	9D	Rural
South Naknek	ADOL	85	195	Southwest	Alaska Peninsula	9C	Rural
UGASHIK	ADFG			Southwest	Alaska Peninsula	9E	Rural
Atka	ADOL	85	93	Southwest	Aleutian-Pribilof	14C	Rural
Nikolski	ADOL	85	46	Southwest	Aleutian-Pribilof	10	Rural
Adak Station	ADOL	85	4665	Southwest	Aleutian-Pribilof	10	Rural
Saint George	ADOL	85	191	Southwest	Aleutian-Pribilof	10	Rural
Attu	ADOL	85	31	Southwest	Aleutian-Pribilof	10	Rural
Saint Paul	ADOL	85	466	Southwest	Aleutian-Pribilof	10	Rural
DUTCH HARBOR	ADFG			Southwest	Aleutian-Pribilof	10	Rural
Shemya Station Census Designated Place	ADOL	85	613	Southwest	Aleutian-Pribilof	10	Rural
Akutan	ADOL	85	80	Southwest	Aleutian-Pribilof	10	Rural
False Pass	ADOL	85	77	Southwest	Aleutian-Pribilof	10	Rural
Balance of Aleutian Island Census Area	ADOL	85	49	Southwest	Aleutian-Pribilof	10	Rural
Unalaska	ADOL	85	1331	Southwest	Aleutian-Pribilof	10	Rural
New Stuyahok	ADOL	85	339	Southwest	Bristol Bay	17C	Rural
Pedro Bay	ADOL	85	70	Southwest	Bristol Bay	9B	Rural
PORT ALSWORTH	ADFG			Southwest	Bristol Bay	9B	Rural
Balance of Bristol Bay Census Area	ADOL	85	101	Southwest	Bristol Bay	9C	Rural
Portage Creek	ADOL	85	35	Southwest	Bristol Bay	17C	Rural
Clark's Point	ADOL	85	79	Southwest	Bristol Bay	17C	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Togiak	ADOL	85	556 Southwest	Bristol Bay	17A	Rural
Ekwok	ADOL	85	107 Southwest	Bristol Bay	17C	Rural
Twin Hills	ADOL	85	44 Southwest	Bristol Bay	17A	Rural
Iliamna	ADOL	85	126 Southwest	Bristol Bay	9B	Rural
Alaknagik	ADOL	85	180 Southwest	Bristol Bay	17C	Rural
Balance of Dillingham Census Area	ADOL	85	128 Southwest	Bristol Bay	9,17	Rural
Levelock	ADOL	85	109 Southwest	Bristol Bay	9B	Rural
Dillingham	ADOL	85	2141 Southwest	Bristol Bay	17C	Rural
Newhalen	ADOL	85	165 Southwest	Bristol Bay	9B	Rural
Igiugig	ADOL	85	38 Southwest	Bristol Bay	9B	Rural
Koliganek	ADOL	85	161 Southwest	Bristol Bay	17B	Rural
Hondalton	ADOL	85	234 Southwest	Bristol Bay	9B	Rural
Menokotak	ADOL	85	309 Southwest	Bristol Bay	17C	Rural
Kokhanok	ADOL	85	68 Southwest	Bristol Bay	9B	Rural
Akhlok	ADOL	85	109 Southwest	Kodiak Island	8	Rural
Balance of Kodiak Island Census Sub-Area	ADOL	85	3727 Southwest	Kodiak Island	8	Rural
Karluk	ADOL	85	114 Southwest	Kodiak Island	8	Rural
Kodiak City	ADOL	85	6173 Southwest	Kodiak Island	8	Rural
Kodiak Coast Guard Station	ADOL	85	1731 Southwest	Kodiak Island	8	Rural
Larsen Bay	ADOL	85	217 Southwest	Kodiak Island	8	Rural
Old Harbor	ADOL	85	344 Southwest	Kodiak Island	8	Rural
Ouzinkie	ADOL	85	235 Southwest	Kodiak Island	8	Rural
Port Lions	ADOL	85	302 Southwest	Kodiak Island	8	Rural
Cape Mendenham Census Designated Place	ADOL	85	9 Western	Central Bering Sea	18,17A	Rural
Chefornak	ADOL	85	277 Western	Central Bering Sea	18	Rural
Goodnews Bay	ADOL	85	241 Western	Central Bering Sea	18	Rural
Kipruk	ADOL	85	408 Western	Central Bering Sea	18	Rural
Kongiganak	ADOL	85	291 Western	Central Bering Sea	18	Rural
Kwigillingok	ADOL	85	244 Western	Central Bering Sea	18	Rural
Mekoryuk	ADOL	85	152 Western	Central Bering Sea	18	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMI	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Newtok	ADOL	85	207 Western	Central Bering Sea	18	Rural
Nightmute	ADOL	85	153 Western	Central Bering Sea	18	Rural
Platinum	ADOL	85	65 Western	Central Bering Sea	18	Rural
Quinhagak	ADOL	85	453 Western	Central Bering Sea	18	Rural
Toksook Bay	ADOL	85	362 Western	Central Bering Sea	18	Rural
Tuxunak	ADOL	85	318 Western	Central Bering Sea	18	Rural
Akiachak	ADOL	85	459 Western	Lower Kuskokwim	18	Rural
Akiak	ADOL	85	289 Western	Lower Kuskokwim	18	Rural
Atmoutluak	ADOL	85	234 Western	Lower Kuskokwim	18	Rural
Balance of Lower Kuskokwim Census Sub-Area	ADOL	85	338 Western	Lower Kuskokwim	13	Rural
Bethel	ADOL	85	4006 Western	Lower Kuskokwim	18	Rural
Eek	ADOL	85	257 Western	Lower Kuskokwim	18	Rural
Kasigluk	ADOL	85	405 Western	Lower Kuskokwim	18	Rural
Kwethluk	ADOL	85	546 Western	Lower Kuskokwim	18	Rural
Mapakiak	ADOL	85	299 Western	Lower Kuskokwim	18	Rural
Mapeskiak	ADOL	85	303 Western	Lower Kuskokwim	18	Rural
Munapitichuk	ADOL	85	356 Western	Lower Kuskokwim	18	Rural
Oscarville	ADOL	85	63 Western	Lower Kuskokwim	18	Rural
Tuluksak	ADOL	85	321 Western	Lower Kuskokwim	18	Rural
Tuntutuliak	ADOL	85	293 Western	Lower Kuskokwim	18	Rural
Alakanuk	ADOL	85	556 Western	Lower Yukon	18	Rural
Chavak	ADOL	85	532 Western	Lower Yukon	18	Rural
Emmonak	ADOL	85	613 Western	Lower Yukon	18	Rural
Hooper Bay	ADOL	85	686 Western	Lower Yukon	18	Rural
Kotlik	ADOL	85	409 Western	Lower Yukon	18	Rural
Marshall (Fortuna Ledge)	ADOL	85	281 Western	Lower Yukon	18	Rural
Mountain Village	ADOL	85	682 Western	Lower Yukon	18	Rural
Pilot Station	ADOL	85	425 Western	Lower Yukon	18	Rural
Pitka's Point	ADOL	85	106 Western	Lower Yukon	18	Rural
Russian Mission	ADOL	85	231 Western	Lower Yukon	18	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION		COMMUNITY REGION	SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR				
Saint Marys (Andreafsky)	ADOL	85	458 Western	Lower Yukon	18	Rural
Scammon Bay	ADOL	85	304 Western	Lower Yukon	18	Rural
Sheldon Point	ADOL	85	124 Western	Lower Yukon	18	Rural
Aniak	ADOL	85	481 Western	Middle Kuskokwim	19A	Rural
Balance of Aniak Census Sub-Area	ADOL	85	64 Western	Middle Kuskokwim	19	Rural
Balance of Wade Hampton Census Sub-Area	ADOL	85	184 Western	Middle Kuskokwim	18	Rural
Chuathbaluk	ADOL	85	124 Western	Middle Kuskokwim	19D	Rural
Crooked Creek	ADOL	85	126 Western	Middle Kuskokwim	19A	Rural
GEORGETOWN	ADFG		Western	Middle Kuskokwim	19A	Rural
Lima Village	ADOL	85	48 Western	Middle Kuskokwim	19A	Rural
Lower Kalskag	ADOL	85	281 Western	Middle Kuskokwim	19A	Rural
HAPAIMUTE	ADFG		Western	Middle Kuskokwim	19A	Rural
Red Devil	ADOL	85	42 Western	Middle Kuskokwim	19A	Rural
Sleetmute	ADOL	85	130 Western	Middle Kuskokwim	19A	Rural
Sparrevohn Air Force Base	ADOL	85	15 Western	Middle Kuskokwim	19B	Rural
Stony River	ADOL	85	92 Western	Middle Kuskokwim	19A	Rural
Upper Kalskag	ADOL	85	154 Western	Middle Kuskokwim	19A	Rural

Attachment 1

**Species/Areas Where Subsistence
Is Currently Limited**

The following listing is based on the table presented in 5 AAC 99.025.

SPECIES/AREA**COMMUNITY OR UNIT RESIDENCY**BLACK BEAR

Unit 1(C)

Haines, Gustavus, Klukwan and Hoonah, and, except as provided in 5 AAC 99.014(1)(B), Unit 1(C).

Unit 6(A)

Yakutat.

Units 6(B) and 6(C)

Units 6(B) and 6(C) except Cordova.

Unit 6(D)

Cherega Bay, Tatitlek.

BROWN BEAR

Unit 4

Unit 4 and Kake.

Unit 5

Yakutat.

Unit 9(B)

Unit 9(B).

Unit 9(E)

Chignik Lake, Ivanof Bay, and Perryville.

Unit 17(A)

Unit 17, Goodnews Bay, and Platinum.

Those portions of Units 17(A) and 17(B) north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southeast part of Upper Togiani Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills

Kwethluk.

Units 17(B) and 17(C)

Unit 17.

SPECIES/AREA**COMMUNITY OR UNIT RESIDENCY**

Units 13 and 14(B)
(Nelchina herd)

Unit 11, Unit 12 along the Nabesna
Road, and Unit 13.

Unit 17

Unit 9(B), Unit 17, Lime Village, and
Stony River.

Those portions of
Units 17(A) and 17(B)
north and west of a line
beginning from the
GMU 18 boundary at the
northwest end of Nenevok
Lake, to the southern
point of Upper Togiak
Lake and northeast to
the northern point of
Nuyakuk Lake, northeast
to the point where the
GMU 17 boundary inter-
sects the Shotgun Hills

Kwethluk.

Unit 18

Kwethluk.

Units 19(A) and 19(B)

Fall:
Units 19(A) and 19(B), and Kwethluk.

Winter:
Unit 18 in the Kuskokwim drainage and
Kuskokwim Bay, Units 19(A) and 19(B),
and Kwethluk.

Unit 19(C)

Unit 19(C), Lime Village, McGrath,
Nikolai, and Telida.

Unit 19(D)

Unit 19(D), Lime Village, Sleetmute,
and Stony River.

Unit 20(D)
(40-Mile herd)

Unit 12 north of the Wrangell-St.
Elias National Park and Preserve,
Unit 20(D) except as provided in
5 AAC 99.014(1)(E), Unit 20(E), and
Dot Lake.

Macomb herd

Dot Lake.

Unit 20 (E)
(40-Mile herd)

Unit 12 north of the Wrangell-St. Elias
National Park and Preserve, Unit 20(D)
except as provided in 5 AAC 99.014
(1)(E), and Unit 20(E).

Units 21(A) and 21(E)

Unit 21(A), Aniak, Chuathbaluk, Crooked

SPECIES/AREA

COMMUNITY OR UNIT RESIDENCY

from the northernmost point of Rocky Bay to the head of Tutka Bay and east of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay

MOOSE

Unit 1(B), Stikine Drainage

Wrangell.

Unit 1(D)

Unit 1(D).

Unit 5

Yakutat.

Units 9(A), 9(B), 9(C), and 9(E)

Units 9(A), 9(B), 9(C), and 9(E).

Unit 11

Unit 11, Unit 12 along the Nabesna Road and Units 13(A)-(D).

Unit 12 East, that portion lying east of the Nabesna River and south of the winter trail running southeast from Pickeral Lake and the Canadian border

Unit 12.

Unit 12 South, that portion south of a line from Noyes Mountain southeast to the confluence of Tatschunda Creek and the Nabesna River

Unit 11 north of the 62nd parallel and excluding BLM parcels of north and south Slana; Unit 12, Units 13(A)-(D), and Dot Lake.

Unit 12 North, the remainder of the unit not described above

Unit 12, Dot Lake, and Mentasta Lake.

Unit 13

Unit 13.

Unit 15(C), that portion southwest of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay

English Bay and Port Graham.