

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
6472 SENATE RESOURCES 8672

870

SPECIES/AREA	COMMUNITY OR UNIT RESIDENCY
	99.014(1)(E), and Tanacross.
Unit 20(F)	Unit 20(F), Manley, Minto, and Stevens Village.
Unit 21(A)	Units 21(A) and 21(E) except as provided in 5 AAC 99.014(1)(F), Takotna, McGrath, Aniak, and Crooked Creek.
Units 21(B) and 21(C)	Units 21(B) and 21(C) except as provided in 5 AAC 99.014(1)(F), and Russian Mission.
Unit 22	Unit 22.
Unit 23	Unit 23.
Unit 24	Unit 24, Anaktuvuk Pass, Koyukuk, and Galena.
Unit 25(A)	Unit 25(A) and Venetie.
Unit 25(D) west of a line from the Unit 25(D) boundary at Preacher Creek, downstream along Preacher Creek, Birch Creek, and Lower Mouth Birch Creek to the Yukon River; then downstream along the north bank of the Yukon River (including islands) to the mouth of Hadvsenzik River to its confluence with Forty and One-Half Mile Creek, then upstream along Forty and One-Half Creek, to Nelson Mountain on the Unit 25(D) boundary	Beaver, Birch Creek, and Stevens Village.
Remainder of Unit 25(D)	Residents of the remainder of Unit 25(D).
Unit 26	Unit 26(except the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass.

SPECIES/AREA

Units 11, 13, 15, 16
20(D), 22, and 23

COMMUNITY OR RESIDENCY

Units 11, 13, 15 (except as provided
in 5 AAC 99.014(1)(D)), Units 16 and
20(D) (except as provided in 5 AAC
99.014(1)(E)), and Units 22, and 23.

PTARMIGAN

Units 11, 13, 15, 16
20(D), 22, and 23

Units 11, 13, 15, (except as provided
in 5 AAC 99.014(1)(D)), Units 16 and
20(D) (except as provided in 5 AAC
99.014(1)(E)), and Units 22, and 23.

MEMORANDUM

State of Alaska

TO: Norman Cohen
Deputy Commissioner
Juneau

DATE: March 1, 1990

FILE NO:

TELEPHONE NO: 267-2231

THRU:


SUBJECT: Review of Subsistence
Regulations

SUBSISTENCE SECTION

RECEIVED

MAR 02 1990

DEPARTMENT OF FISH & GAME

FROM: 
Lew Pamplin
Director
Division of Wildlife Conservation
Department of Fish and Game
Anchorage

This is in response to your February 5 request on subsistence hunting regulations. As usual, our staff has done an excellent job in a short timeframe of compiling and analyzing pertinent information.

Those species and areas in which subsistence eligibility is currently limited are listed in Attachment I. The information on subsistence eligibility comes from 5AAC 99.025. At the end of this listing, we have included subsistence eligibility determinations which were passed in November 1989 by the Board of Game and were scheduled to become effective on July 1, 1990.

For your requests 2-6, we compiled the information on tabular format by region. Footnotes are used to provide clarification where necessary.

If you have questions on this material, please contact either me or the appropriate regional supervisor.

Attachments

cc: Steve Behnke
Steve Peterson
Wayne Regelin
Regional Supervisors, Division of Wildlife Conservation

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region I

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result? ⁴	Would Increased Harvest be of Biological Concern? ⁵	% of Harvest on Federal Lands? ⁶
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Deer 5 AAC 85.030 (3)

■ Unit 4, that portion north of Tenakee Inlet and East of Port Frederick, including all drainages of Tenakee Inlet.	370 ⁴	390 ⁵	Yes ⁶	Yes ⁶	90%
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SUBSISTENCE HUNTERS: Aug. 1-
Jan. 31

Six deer, antlerless deer may be taken after Sept. 15

OTHER HUNTERS: Aug. 1-
Jan. 31

Three deer, antlerless deer may be taken after Sept. 15

Moose 5 AAC 85.045 (1)

■ Unit 1(D)	210 ⁷	525 ⁸	Yes	Yes	0%
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SUBSISTENCE HUNTERS: Sep. 1-
Sep. 10

One bull by registration permit;
15 bulls may be taken.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
BROWN BEAR

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
5 AAC 85.020(15) Brown Bear Units 17(A) and 17(C)					
SUBSISTENCE HUNTERS:	Sept. 10-Oct. 10 April 10 - May 25	10-15	50-100 ⁴	YES ⁵	YES ⁵ 25%
One bear every four regulatory years.					
OTHER HUNTERS:					
	Sept. 10 - Oct. 10 May 10 - May 25				
One bear every four regulatory years.					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. An April and early May season would be attractive to residents and guide-outfitters.
5. If season dates were not changed.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
CARIBOU

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.025(4) Caribou					
<i>Unit 9(D) and Unit 10, Unimak Island only</i>					
SUBSISTENCE HUNTERS:					
Sept. 1 - Mar. 31					
Two caribou	175-225	50-100 ⁴	YES	YES ⁵	80%
OTHER HUNTERS:					
Sept. 1 - Oct. 31					
One caribou					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Most of the increase in hunting effort would be along the Cold Bay road system when the caribou frequent that area after mid November.
5. Staff is proposing to limit the bag limit in 1990-91 to 1 bull for all hunters because of the decreasing size of this herd.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
CARIBOU

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier I? Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.025(7) Caribou	152 ⁴	2000+ due to proximity to large population and relatively good access during the winter season.	Yes	Yes	40%

Unit 12, residents of Tetlin and Northway only:

1 caribou by registration permit only.

Season will be opened by Emergency Order when Nelchina caribou are present and Mentasta caribou are absent; season will be closed by emergency order after 80 Nelchina caribou have been taken.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of permits issued 1986-89.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOUNTAIN GOAT

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.040(2) Goat					
<i>Remainder of Unit 6</i> SUBSISTENCE HUNTERS: Aug. 1 - Jan. 31 One goat by registration permit.	30-40 ⁴	up to 100	Possibly ⁵	NO ⁶	50-60%
OTHER HUNTERS: Sept. 1 - Nov. 30 One goat by registration permit.					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on the number of permits issued. Harvest is usually 1-2 goats/year by subsistence users.
5. Tier II should be considered for Tatitlek and Chenega hunt areas due to relatively low allowable harvests.
6. Under the current management system specific hunts are closed by Emergency Order when allowable harvest limits are reached. It is anticipated that this would continue regardless of subsistence regulations.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOUNTAIN GOAT

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5AAC 85.040(3) Goat Unit 15(C), the English Bay hunt sub-area					
SUBSISTENCE HUNTERS: Aug. 10 - Oct. 31					
One goat by registration permit only.	<5	50-150 ⁴	YES ⁴	NO ⁵	0%
OTHER HUNTERS: No open season					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. If this area was open as drawing hunt we would anticipate up to 150 applicants; an open registration hunt would result in at least 50 applicants and we would not wish to administer on a registration permit basis.
5. Harvest would be controlled by Emergency Orders.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.045(8) Moose Unit 9(B), that portion draining Lake Clark					
SUBSISTENCE HUNTERS:					
Sept. 5 - Sept. 20					
Dec. 1 - Dec. 31	50-100	20-50 ⁴	NO	NO ⁵	20-25%
One moose; however, antlerless moose may be taken only from Dec. 16 - Dec. 31					
RESIDENT HUNTERS:					
Sept. 10 - Sept. 20					
Dec. 1 - Dec. 31					
One moose; however, antlerless moose may be taken only from Dec. 16 - Dec. 31					
NONRESIDENT HUNTERS:					
Sept. 10 - Sept. 20					
One bull					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimated increase in hunter numbers if subsistence eligibility is expanded to include all Alaskans.
4. The current subsistence priority consists of a 5 day earlier season. If this applied to all hunters there may be increased competition, but no large increase in the number of moose killed.
5. Staff is proposing to delete the antlerless season in 1990-91, for biological reasons; therefore the antlerless season would not be considered under a change in subsistence eligibility.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
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5 AAC 85.045(8) Moose
Unit 9(C), that portion
draining the Naknek River

SUBSISTENCE HUNTERS:

Sept. 5 - Sept. 20 ---->	50-100	10-20	NO	NO	10-20%
Dec. 1 - Dec. 31----->	60-100	20-50	NO	YES ⁴	10-20%

One moose; however antlerless
moose may be taken by
registration permit only.

OTHER HUNTERS:

Sept. 10 - Sept. 20

One moose.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. The current antlerless quota is about 10 cows; there are usually 7-10 moose killed without an Emergency Order closure.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.045(11) Moose	550-800 ⁴	4000+ due to good road system access, well developed trail systems, and high demand for moose in Unit 13	Yes ⁵	Yes ⁶	60%

Remainder of Unit 13

SUBSISTENCE HUNTERS: Aug. 25-Sept. 20

1 moose; however, bulls may be taken by registration permit only; only 1 permit will be issued per household. Antlerless moose may be taken only in Unit 13(E), by drawing permit only; up to 25 permits will be issued; no person may take a cow accompanied by a calf.

RESIDENT AND NONRESIDENT HUNTERS: Sept. 1-Sept. 20

1 moose; however, bulls must have 36-inch antlers. Antlerless moose may be taken only in Unit 13(E), by drawing permit only; up to 25 permits will be issued to Alaska residents only; no person may take a cow accompanied by a calf.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of permits issued 1986-89.
5. Tier II would be required for subsistence antlerless drawing permit hunt, but no permits will be issued in 1990 due to biological concerns.
6. Harvest quota/registration permit hunt would need to be established, or a more restrictive antler size bag limit established if a general open season was continued.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.045 (14) Moose	130 ⁴	1000+ due to proximity to large population and relatively good access during the winter season.	Yes ⁵	Yes	0%

Remainder of Unit 16(B)

SUBSISTENCE HUNTERS: Sept. 1-Sept. 30
Dec. 1-Feb. 28

1 moose; however, antlerless moose may be taken only from Sept. 25-Sept. 30, and during the period Dec. 1-Feb. 28, within which a two-week season for moose by registration permit only will be announced by Emergency Order

RESIDENT AND NONRESIDENT HUNTERS: Sept. 1-Sept. 30

1 bull

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of registration permits issued 1986-89.
5. A registration hunt with a limited allowable harvest would not be feasible with the expanded eligibility.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.045(15) Moose					
<i>Unit 17(C), that portion including the Iowithla drainage and Sunshine Valley</i>					
SUBSISTENCE HUNTERS:					
Aug. 20 - Sept. 15					
One bull	250-300	100-200	Possibly	YES (long term)	0%
RESIDENT HUNTERS:					
Sept. 1 - Sept. 15					
One bull					
NONRESIDENT HUNTERS:					
Sept. 5 - Sept. 15					
One bull					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
DALL SHEEP

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.055(4) Dall Sheep	200-250	400-600	No	No	30%

Units 6 and 9, remainder of Unit 13, and Units 14(B), 16, 17, and 19.

SUBSISTENCE HUNTERS: Aug. 10-Sept. 20
1 ram with 7/8 curl horn or larger.

RESIDENT AND
NONRESIDENT HUNTERS: Aug. 10-Sept. 20
1 ram with full-curl horn or larger.

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1. Subsistence hunts which are currently different from general hunts.
 2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
 3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region III -- Interior

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
GRIZZLY BEAR						
Unit 24 that portion of the Koyukuk River drainage upstream from, and including, the Alatna River drainage						
SUBSISTENCE HUNTERS: Residents of Anaktuvuk Pass: One bear every regulatory year.	Sept. 1- Oct. 31 Apr. 1- May 31	30 30	30 30	No No	No No	100% 100%
ALL OTHER SUBSISTENCE HUNTERS: One bear every four regulatory years by registration permit; 15 bears may be taken. registration permit;	Sept. 1- Oct. 31 May 10- May 31	100 100	10 10	No No	No No	50% 50%
RESIDENT/NONRESIDENT HUNTERS: One bear every four regulatory years by registration permit; 15 bears may be taken. registration permit;	Sept. 1- Oct. 31 May 10- May 31	50 50	100 100	No No	No No	50% 50%

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
Unit 19, residents domiciled in Lina Village only: No bag limit, provided that no more than 100 caribou are taken. Cows and calves may not be taken April 1-Aug. 9.	35-40	3500-4000	Yes	Yes	75%
SUBSISTENCE HUNTERS: July 1-June 30					
Unit 20(D) south of the Alaska Highway	2-4 Subsistence 40-80 Permits	500+	Yes	Yes	0%
SUBSISTENCE HUNTERS: One bull. Aug. 10-Sept. 30					
RESIDENT/NONRESIDENT HUNTERS: One bull by drawing permit only. 150 permits will be issued. Aug. 10-Sept. 30					
Unit 20(D) north of the Alaska Highway.	20*	250	No	No	0%
(*These numbers are included in data for GMU 12 & 20(D) north of the Alaska Hwy listed above)					
SUBSISTENCE HUNTERS: One caribou. Aug. 10-Sept. 30					
Dec. 1-Feb. 28					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Forty-mile River upstream from and including Katchumstuck Creek.						
SUBSISTENCE HUNTERS: One caribou	Aug. 10- Sept. 30	5-25	100-200 - Area is remote.	No	No	75% including BLM managed native selections.
	Dec. 1- Feb. 28	5-25	100-200 - Area is remote.	No	No	75% including BLM BLM managed native selections.
RESIDENT/MONRESIDENT HUNTERS: One bull	Aug. 10- Sept. 20					
Remainder of Unit 20(E) (accessible by the Taylor Highway and associated trails)						
SUBSISTENCE HUNTERS: One caribou by registration permit only. Season will be closed when 325 caribou have been taken.	Aug. 10- Sept. 30	400-500	2000-3000 [*]	Yes	Yes	75% including BLM managed native selections.
	Dec. 1- Feb. 28	400-500	2000-3000 [*]	Yes	Yes	75% including BLM managed native selections.

^{*}If all Alaskans were considered eligible for subsistence, most would hunt under the subsistence regulations, and not in this hunt.

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Units 24, and 26(A), those portions within the Gates of the Arctic National Park. Three sheep.						
SUBSISTENCE HUNTERS:	Aug. 1- Apr. 30	30	30	No	No	100
RESIDENT/NONRESIDENT HUNTERS:	No Open Season					
<u>MOOSE</u>						
Unit 12, that portion drained by the Tanana, Nebesna and Chisana Rivers east of the Tetlin Reservation boundary and north of the winter trail from Pickeral Lake to the Canadian border. One bull.						
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 20	75-100	100-150	No	No	60%; Tetlin MWR
RESIDENT/NONRESIDENT HUNTERS:	Sept. 10- Sept. 15					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
RESIDENT/NONRESIDENT HUNTERS: Unit 19(D), remainder of the Upper Kuekokwim Controlled Use Area. One bull.	Sept. 1- Sept. 20	25-30	50	No	Yes	50%
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 30	200	300	Yes	Yes	50%
	Dec. 1- Feb. 28	20	200	Yes	Yes	75%
RESIDENT/NONRESIDENT HUNTERS:	Sept. 1- Sept. 30	200	200	No	No	50%
Unit 20(B), that portion within the Minto Management Area. One bull by registration permit only. Season will be closed when 15 bulls have been taken.		75-100 ⁴	Over 500 due to proximity to Fairbanks, good access, and high demand for moose.	Yes	Yes	None
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 20					
	Jan. 10- Feb. 28					
RESIDENT/NONRESIDENT HUNTERS:	No Open Season					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Unit 20(F). One bull.	15-30	100	Yes, for	Yes, for	30% (BIM)	
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 15	Based on reported subsistence participation 1988.	the Dec. portion of the season. 1988.	the Dec. portion of the season.		
	Dec. 1- Dec. 10	I did not include Minto permit holders as eligible because in practice few Minto hunters would travel to 29F although eligible.				
RESIDENT/NONRESIDENT HUNTERS:	Sept. 1- Sept. 15					
Unit 21(D)						
SUBSISTENCE HUNTERS:	Sept. 5- Sept. 25	200	600	Yes	Yes	80%
One moose; antlerless moose may be taken only from Sept. 21- Sept. 25 and Feb. 1- Feb. 5. Moose may not be taken within 1/2 mile of the Yukon River during the February season.	Feb. 1- Feb. 5	200	600	Yes	Yes	80%
RESIDENT/NONRESIDENT HUNTERS: One bull.	Sept. 5- Sept. 25	400	400	No	No	80%

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
SUBSISTENCE HUNTERS:					
	Sept. 10- Sept. 30				
	Dec. 1- Dec. 10				
	Feb. 18- Feb. 28				
Remainder of Unit 25(D)					
One bull					
SUBSISTENCE HUNTERS:	Sept. 10- Sept. 30	280-310 Based on area biologist's est.	330-380	No	No
	Dec. 1- Dec. 10				100%
RESIDENT/NONRESIDENT HUNTERS:	Sept. 10- Sept. 20	31 (1989 hunters)			
Remainder of Units 26(B), and Unit 26(C)					
SUBSISTENCE HUNTERS:	Aug. 1- Dec. 31	50-60 Based on 1988 Subsistence Division est. of hunters in Kaktovik and Nuiqsut.	150-175	Yes	Yes
One moose.					50%

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region V -- Northwest

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
<u>Unit 18 (P/G Bear)</u>					
SUBSISTENCE HUNTERS: (Domiciled in Kwethluk) Sept. 10-Oct. 10 Apr. 10-May 25	12-16	20-40, mostly residents of Bethel	Yes	Yes	100
One bear every regulatory year					
ALL OTHER HUNTERS:					
Sept. 10-Oct 10 Apr. 10-May 25					
One bear every 4 regulatory years					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region V - Northwest

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
<u>Unit 26A (Moose)</u>					
SUBSISTENCE HUNTERS: Aug. 1-Dec. 31	20-40	80-100 ⁵	Yes	Yes ⁴	10

One moose. The taking of
cows accompanied by calves
is prohibited.

ALL HUNTERS:

Sept. 1 - Dec. 31

One moose. The taking of
cows accompanied by calves
is prohibited.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Overharvest can be prevented and Tier II would not be necessary if aircraft use is allowed only from Sept. 1 - Dec. 31.
5. Additional hunters would mostly come from the Fairbanks area.

MEMORANDUM

State of Alaska

TO: Norm Cohen
Deputy Commissioner
Department of Fish and Game

DATE: February 21, 1990

FILE NO

TELEPHONE NO

3/1/90
FROM: David Cantillon
Deputy Director
Division of Commercial Fisheries

SUBJECT: Response to
Subsistence
Questions Your Memo
of 02/05/90

The responses to the six questions you posed are organized by region with the various management areas lumped into each response. Due to the short time frame, some small details may have been overlooked.

REGION I

1. By board action in the spring of 1989, the residents domiciled in the communities of Yakutat, Klukwan, Haines, Hoonah, Angoon, Sitka, Kake, Saxman, Kasaan, Klawock, Craig and Hydaburg have a priority for a variety of fishery resources within specific described areas (5 AAC 01.665, 01.715 and 02.107). Additionally, 5 AAC 01.730(d) limits subsistence coho fishing in Mitchell Bay to residents of Angoon.
2. The subsistence halibut fishery is open year around while personal use fishing is open from 2/1 through 12/31. 5 AAC 77.624(1) and 77.676(1)

For herring roe on kelp in Yakutat a permit is required for personal use but not for subsistence. 5 AAC 77.620(4)

In Yakutat and Southeast, bottomfish may be taken by all gear types for subsistence, but personal use fishermen can only use longlines or hand held lines. 5 AAC 77.622(2). Additionally, in Southeast there are personal use rockfish limits in areas adjacent to Ketchikan and Sitka that do not apply to subsistence fishermen. 5 AAC 77.622(3)

In Yakutat, annual salmon bag limits are specified for personal use fishermen as well as no directed fishing for chinook. Personal use fishermen are restricted to taking salmon to the 7/1-9/30 period and can only fish in areas open to commercial fishing. 5 AAC 77.628(c&j)

In Southeast, a personal use open season, gear restrictions, seasonal bag limits, and open fishing area is provided for the Taku River and no such restrictions apply to subsistence fishing. 5 AAC 77.682(f)

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In Southeast, personal use regulations provide for the use of set nets in Shiplly Bay. No such provision is in the subsistence regulations. 5 AAC 77.682(g)(2)(C)

In Southeast, personal use regulations close the waters of Sitkoh Bay in order to provide a subsistence priority for Sitka and Angoon. 5 AAC 77.682(i)(1)

3. When the board established Southeast Alaska and Yakutat personal use fisheries, the intent was to allow individuals to continue to harvest resources, for their own personal consumption, in the same manner as was occurring before the customary and traditional findings. I do not anticipate any significant increases in demand or harvest resulting from the differences in personal use and subsistence regulations outlined in #2. Over time, if everyone in the region remained eligible for subsistence some increases could occur. If Juneau residents were eligible for subsistence, larger harvests of sockeye could be expected from the Taku River.
4. We do not anticipate the immediate development of any Tier II situations resulting from all Southeast Alaska residents becoming eligible for subsistence fishing.
5. The primary conservation situations involving subsistence and personal use fishing are already occurring. Rockfish populations near Ketchikan and Sitka and some small sockeye systems are of concern. Most of the rockfish are being harvested under sport licenses and little change to subsistence would occur if everyone was eligible. The small sockeye systems are already heavily utilized and the user level would probably stay about the same as has occurred in recent years.
6. This is a difficult question. Most of the actual harvest occurs in marine waters. A large portion of the salmon resource originates from streams that lie on federal lands.

REGION II

BRISTOL BAY - 5 AAC 01.335

1. Only those residents domiciled in the Nushagak District may take salmon in the Nushagak District and drainage.
2. Only Togiak drainage residents and residents of Manokotak may subsistence fish in Togiak.
3. Only Naknek and Kvichak drainage residents may subsistence fish in the Naknek drainage.
4. Only residents in the Iliamna and Lake Clark drainages may

subsistence fish in that drainage.

5. Only residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clarks Point and Ekuk may take subsistence herring and herring roe on kelp at Togiak. 5 AAC 27.805(a)

COOK INLET - 5 AAC 01.565(a&b)

1. Only Pt. Graham and English Bay residents may fish in the Pt. Graham and Dogfish Bay subdistricts.
2. Only Tyonek residents may fish in the Tyonek subdistrict.

PRINCE WILLIAM SOUND - 5 AAC 01.648

1. Only residents of the southwest district may subsistence fish in the Southwest District and Green Island.
2. Only residents of Tatitlek and Ellamar may fish in the area described in the Tatitlek area.

COPPER RIVER - 5 AAC 01.630(a)

1. Only those residents domiciled in Game management units 11, 13A, 13B, 13C, 13D as described in 5 AAC 88.005 may subsistence fish in the Upper Copper River.

QUESTION #2 & 3

In general, the Bristol Bay subsistence fisheries and personal use fisheries are different. The personal use fisheries on the Nushagak are only in the commercial fishing district and are limited 70 salmon per individual during the month of July. The PU fishery on the Naknek starts after the escapement goal has been reached (900,000) and dip net as well as gillnets can be used. It is doubtful there would be additional participation from what is correctly taking place with the exception of the Naknek River which has a large and growing sport fishery. If this fishery were made into a subsistence fishery this catch would increase to some unknown extent.

There are several PU fisheries in Cook Inlet, but all are managed on a quota system. Even if they were made into subsistence fisheries it is doubtful the harvest would increase substantially. The Tyonek subsistence fishery was opened to all residents in 1985 following the MADISON case. The number of permits increased to 176 from a average of 70. Tyonek was issued 73, 82 went to Anchorage area residents and 21 were issued to Kenai Peninsula residents. Only 17 percent of the total harvest was taken by non-Tyonek fishermen (326 kings).

It is doubtful if any changes could be projected for PWS at this

time since the subsistence regulations are so new and there doesn't appear to be much interest in a subsistence fishery in PWS from residents outside of the remote villages earlier mentioned.

The PU fishery in the Upper Copper River is another story, the current PU fishery issues approximately 4500 permits per year with bag limits of 15-30 fish. Subsistence bag limits are 30-50 with 200-500 per individual or family permitted. If the guideline harvest rates in the Copper River management plan were not used, the harvest could be expected to go up to at least the 120,000 fish that were documented in 1983 before the current plan was adopted. If the current guideline were maintained the harvest should remain stable at about 85,000.

It does not appear that Tier II would apply to any Region II salmon subsistence.

REGION III

1. Four finfish fisheries in the Kuskokwim Area are limited in subsistence eligibility. These are the salmon, halibut, Pacific cod and herring and herring roe fisheries. 5 AAC 01.285(a) (b) (c) (d)

Subsistence eligibility in the Yukon drainage is currently limited to residents of rural areas, as determined by the board for Yukon Area salmon and freshwater fish species including sheefish, char, whitefish, lamprey, burbot, sucker, grayling, pike and blackfish. Cape Romanzof herring also have limited access. 5 AAC 01.235(a) (b) (c) (d)

2. In the Kuskokwim Area, only the salmon fishery has regulations for personal use fishing that are different from those for subsistence fishing. Personal use fishermen must have a permit, cannot take king salmon and can only fish from 7/1-9/30. 5 AAC 77.?

In the Yukon there are no provisions for personal use fishing for freshwater finfish other than salmon. Permits are required for personal use salmon fishing, but are only required for select areas for subsistence salmon fishing - 5 AAC 01.230. Salmon taken for personal use may not be used for dog food.

3. In the Kuskokwim, no increase in effort is expected as the result of expanded eligibility.

In the Yukon, the main expansion would be from residents of the Fairbanks area who were formally limited to personal use fishing. These people could take subsistence fish for dog food which they could not do under personal use regulations. The Tanana River and the area in District 5 near the Haul Road

bridge are the locations increased effort is anticipated.

4. No Tier II situation is anticipated during the 1990 season. In the Yukon, participation in areas near Fairbanks may rise over time to levels that will require some limitation on effort.
5. No biological concern exists for the Kuskokwim as harvests are not expected to increase. In the Yukon, some concern exists for stocks in the Tanana drainage where effort increases can be anticipated. Management actions in the commercial and subsistence fisheries should be able to compensate for these increases, but fall chums are still considered rebuilding and weak returns may be impacted.
6. Again, this is a tough question. Considering that the state has jurisdiction in navigable waters, almost all the harvest occurs off federal lands.

REGION IV

1. In the Kodiak Area, the subsistence taking of king crab (5 AAC 02.465) and salmon (5 AAC 01.535) is limited to Kodiak Borough residents, excluding those persons residing on the Coast Guard base. These restrictions do not apply to the Mainland District.

In the Aleutians Islands Area, only those persons domiciled in the area and the Pribilof Islands may take halibut in the area and around the Pribilof Islands 5 AAC 01.365.

In the Alaska Peninsula Area, only the residents of the area, including those of the communities of Ivanof Bay and Perryville may take halibut in the area 5 AAC 01.415.

Only residents of the Chignik Area may take halibut for subsistence in the area 5 AAC 01.465.

2. There is only one personal use salmon fishery provided for in the region. This occurs in the Adak District in the waters around Adak and Kagalaska Islands 5 AAC 77.318.

For shellfish, the personal use, and subsistence regulations mirror each other.

3. Small increases in salmon subsistence participation would occur as a result of the participation of Coast Guard base personnel in Kodiak and by fishermen in the region that reside in other areas of the state. The increase in permits issued could range from 10-20 percent and the harvest increase would not exceed this amount.

No increase in shellfish subsistence participation or harvest is anticipated.

4. No Tier II situations are expected to develop in this region.
5. No biological concerns for fish stocks in this region have been identified.
6. In the Kodiak Area, a significant portion of the salmon harvest occurs in rivers or lagoons located in the Kodiak National Wildlife Refuge. A rough estimate of 40 percent of the Kodiak Area subsistence salmon catch falls into this category and additional salmon are harvested in marine waters adjacent to this refuge. In the other management areas of the region, almost all of the catch occurs on state or native lands or adjacent marine waters.

Composition of Statewide Subsistence Harvest

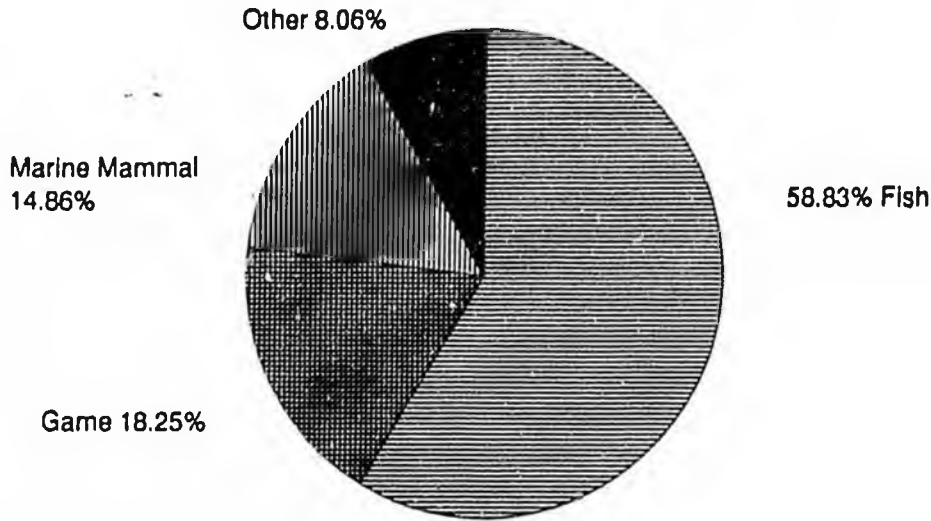


Figure 2. Statewide Subsistence Harvest Composition

How Large is the Subsistence Harvest?

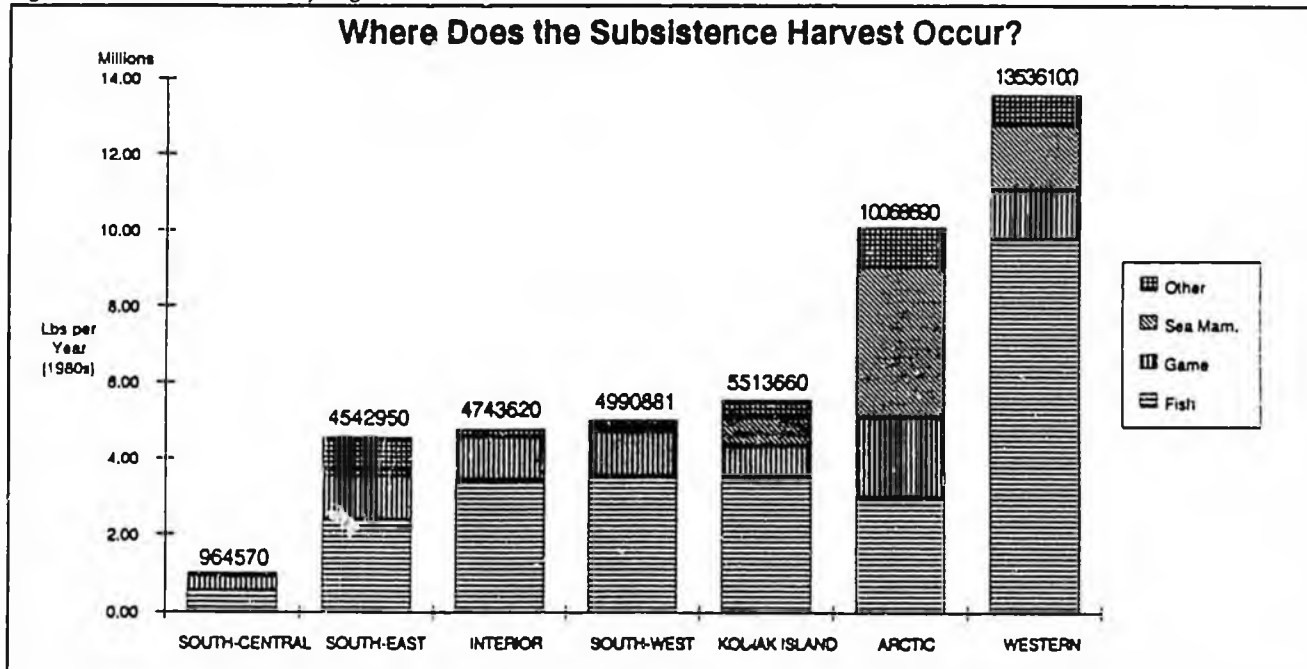
Statewide, non-commercial fishing and hunting provided an estimated 35-45 million pounds of food annually to rural areas during the 1980s. This comes to about 300-400 lbs per person a year, or about a pound of food per day.

Most of the subsistence harvest was fish (about 59 percent by weight), along with marine mammals (about 15 percent), land mammals (about 18 percent), and other wild resources (about 8 percent, including shellfish, birds, and wild plants) (Fig. 2).

Where Does the Subsistence Harvest Occur?

Subsistence uses occur in all regions of the state. The largest annual harvests occur in the Western Region (about 13.5 million lbs) and Arctic regions (about 10 million lbs). Other sizable non-commercial harvests occur on Kodiak Island (5.5 million lbs), Southwest Region (5.0 million lbs), the Interior Region (4.7 million lbs), and the Southeast Region (4.5 million lbs). The smallest harvest occurs in the Southcentral Region (.9 million lbs), primarily in the Copper River Basin, Tyonek, English Bay, and Port Graham (Fig. 3).

Figure 3. Subsistence Harvests by Region



How Does Subsistence Compare with Commercial and Sport Uses?

While subsistence is important, it represents a comparatively small portion of the wild resources harvested annually in Alaska. In Alaska's salmon fisheries, subsistence harvests generally represent less than 1 percent of the total salmon harvests. Considering all fish and game harvested in the state, about 4 percent by weight went to subsistence uses, 1 percent went to sport uses, and 95 percent went to commercial uses (Fig. 4).

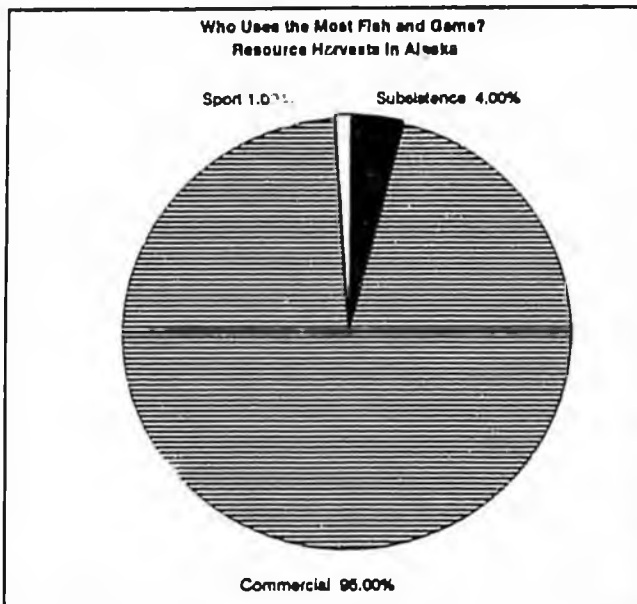


Figure 4. Fish and Game Harvests by Principal User Group

Subsistence and Cash

Our studies indicate that in many rural areas, subsistence is part of a traditional regional economy, termed a "mixed, subsistence-market economy". This type of economy occurs in the Canadian north as well. In mixed, subsistence-market economies, fishing and hunting are central activities conducted by extended family groups. The family invests in small-scale, efficient technologies, such as fishwheels, gill nets, motorized skiffs, and snowmachines, used for producing food. Subsistence production is not oriented toward market sale or accumulated profit, as is commercial market production. Rather, it is directed toward meeting the self-limiting needs of families and small communities.

A family's subsistence production is augmented and supported by cash employment by family members. Depending upon the region, employment commonly is in commercial fishing, commercial trapping, and public sector wage

employment. Typically, but not always, mean annual monetary incomes in the region are modest and intermittent. Families follow an economic strategy of using a portion of the annual monetary earnings to capitalize in subsistence technologies for producing food. This combination of subsistence and commercial-wage activities by extended family groups characterizes the mixed, subsistence-market economy.

This mixed, subsistence-market system underlies the economies of most rural areas of the state. The mixed economic system has existed in various forms since before the Russian period. It is very durable, which indicates its success in providing for rural families.

Traditional Harvest Areas

Our studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. This means that most subsistence harvest areas tend to be relatively accessible from the community, although seasonal camps are used for certain species.



Figure 5. Subsistence Fishing Areas, Hoonah, 1920-1985.

Consequently, subsistence harvest areas for particular groups of people are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (Fig. 5).

Subsistence Values

In addition to its nutritional value, subsistence provides important cultural and social values to rural communities. Our studies indicate that subsistence are central activities unifying extended families and small communities. The traditional wide-scale sharing of subsistence products between families help unify communities.

Subsistence activities bring meaning and purpose to life in many communities. This is especially true for Alaska Native groups. In many places, subsistence still expresses ancient spiritual linkages between humans, wild animals, and the land handed down by oral traditions.

The Importance of Subsistence

In summary, Alaska's rural regions tend to be different from Alaska's urban centers in terms of culture, traditional food use, and economic circumstance, reflecting the state's historic pluralism. Subsistence continues to be an essential part of the economy and culture of many rural areas. Subsistence fishing and hunting produces a substantial portion of the state's food supply in rural areas. Subsistence provides economic stability to many areas which have mixed, subsistence-market economic systems. And subsistence expresses a number of traditional values of importance to Alaska's diverse cultural groups.

Additional Reading

Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Series. This series is the primary source of information on contemporary subsistence uses in Alaska. Write Technical Report Librarian, Division of Subsistence, ADF&G, Box 2-3000, Juneau, AK 99802, for listings and reports.

Wolfe, Robert J. and Robert J. Walker (1987) Subsistence Economies in Alaska: Productivity, Geography, and Development Impacts. Arctic Anthropology 24(2):56-81. This paper describes subsistence harvests in Alaska for the 1980s by geographic region.

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Subsistence in Alaska: A Summary

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February 26, 1990

Introduction

Subsistence is important to the economy and culture of many families and communities in Alaska. This report describes some characteristics of subsistence in Alaska, based on studies by the Division of Subsistence, Alaska Department of Fish and Game.

What is Subsistence?

Subsistence is part of the cultures, traditions, and economies of many families and communities in Alaska. In current state and federal law, subsistence is defined as customary and traditional, non-commercial uses of wild resources, for a variety of purposes. These uses include harvesting and processing wild resources for food, clothing, fuel, transportation, construction, arts, crafts, sharing, and customary trade.

Alaska has a subsistence law because subsistence continues to support a major part of state's rural economy and culture. Alaska is unique in this regard. Alaska is a pluralistic state. A sizable number of traditional cultures and economies exist side-by-side in the state. These traditional cultures and economies coexist with the industrial-capitalism of Alaska's urban centers.

The stated intent of the federal and state subsistence

statutes was to provide the opportunity for these traditional cultures and economies to continue to exist.

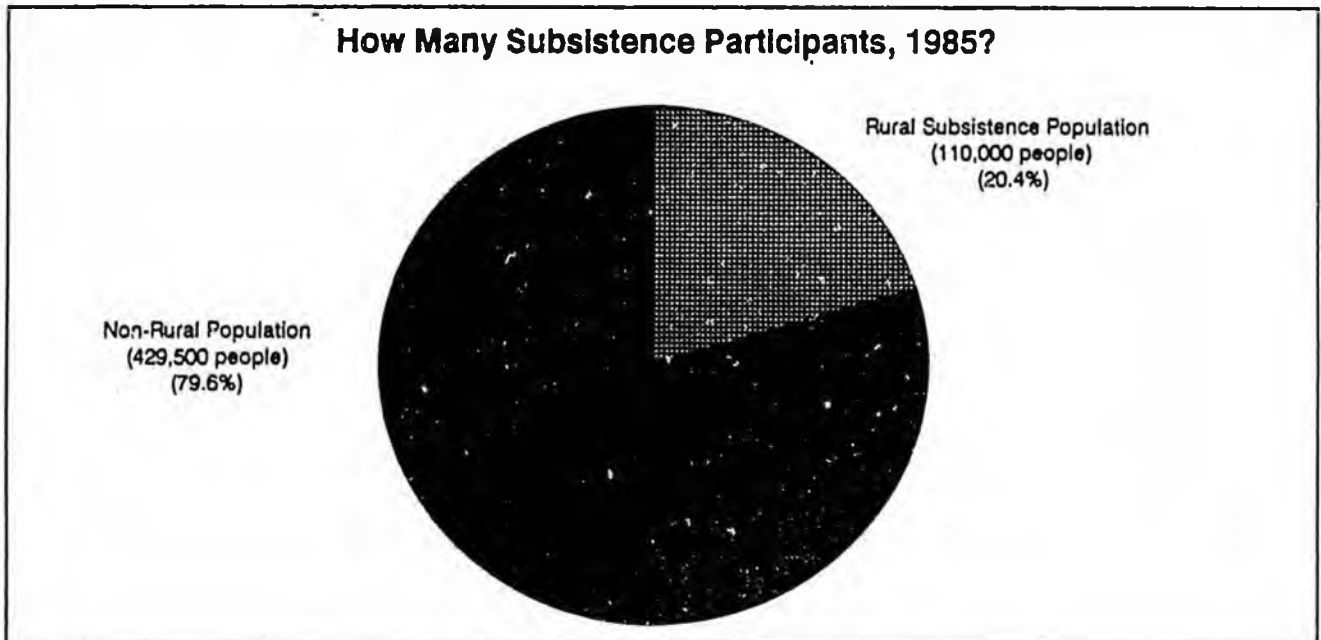
How Many People Participate in Subsistence?

During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

This represents the number of people living in rural areas having subsistence uses, as determined by the Boards of Fisheries and Game under the laws and regulations that existed during the 1980s. By comparison, there were about 429,500 non-rural residents, who could hunt and fish under sport, commercial, and personal use regulations, but not under subsistence regulations (Fig. 1).

Our studies indicate that not all 110,000 rural residents actually harvested wild resources for subsistence. In fact, harvesting fish and game was the responsibility of a minority of people in rural areas. However, subsistence foods are widely distributed through non-market networks in rural communities. Because of non-commercial sharing, most residents in rural communities make use of subsistence foods during the course of a year to some extent. Thus, the best estimate of the number of participants in subsistence is the size of the rural population.

Figure 1. Alaska Rural and Non-Rural Population:



Summary of Recent Decisions and
Active Cases Involving Subsistence

Excerpted from

Alaska Bar Association
1989 Subsistence Update

1. *Akutan v. Hodel*, Nos. A85-701 Civ., J85-037 Civ., and J85-038 Civ. (consolidated) (D. Alaska) (von der Heydt), *appeals pending*, Nos. 88-3610, 88-3703, 88-3703 (9th Cir.)

This case was initially filed in December 1985 and involved the interpretation of Section 810 of ANILCA. Its focus was on when the Secretary of the Interior must follow procedures designed to ensure that use and/or disposition of federal lands does not unnecessarily restrict subsistence uses. Interior's position was that it had only to undertake such procedures when the proposed use or disposition had a probability of significantly restricting subsistence uses. The plaintiffs contended that Interior had to undertake the procedures whenever such use or disposition might significantly restrict subsistence uses.

The district court held that Interior erred when it applied the "probability standard in determining when to undertake the procedures. Its decision was based on the Court of Appeals' earlier decision in *Village of Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985) (*Gambell II*). Both the government and the intervening oil companies appealed and the Ninth Circuit affirmed. *Tribal Village of Akutan v. Hodel*, 792 F.2d 1376 (9th Cir. 1986). The government and the oil companies petitioned for certiorari. Following the Supreme Court's decision in *Amoco Production Co. v. Village of Gambell*, 107 S. Ct. 1396 (1987) (see discussion below), the Supreme Court granted their petitions, reversed, and remanded for reconsideration in light of *Amoco*, 107 S. Ct. 1598 (1987).

On remand to the district court, the tribal villages amended their complaint to allege aboriginal hunting and fishing rights in the lease sale area. The parties then agreed to a stay of all proceedings on the Tribes' aboriginal title claim pending a decision by the Ninth Circuit in *Gambell* on remand. Meanwhile, the State, the tribal villages, and various environmental organizations sought summary judgment on their claims that the lease sale violated the Outer Continental Shelf Lands Act, the National Environmental Policy Act, and the Endangered Species Act. On January 22, 1988, the district court denied the State's claims under the OCSLA and on March 11, 1988 denied the NEPA and ESA claims. The plaintiffs appealed both decisions to the Ninth Circuit and moved the district court for an order enjoining the sale pending the appeal. On March 15, 1988, the district court granted the injunction pending appeal.

On October 5, 1988, the Court upheld the District Court's decision on all counts. It held that the Secretary properly decided not to accept the State's recommendations under OCSLA; that the Secretary could remedy any deficiencies in his Environmental Impact Statement at the exploratory or production stages of development; and that the Secretary's reasons for rejecting recommendations by the National Marine Fisheries Service to implement the ESA were not arbitrary or capricious.

Plaintiffs moved for a rehearing, with a suggestion for rehearing *en banc*, together with a request that the sale be stayed pending rehearing. The motion for stay was denied as moot shortly after the lease sale was held in mid-October; the petition for rehearing was rejected on March 9, 1989, although the Court did modify its opinion in some minor respects on that date. Plaintiffs are now evaluating whether to file an appeal in the Supreme Court.

2. *Alaska Fish and Wildlife Federation and Outdoor Council, Inc. v. Dunkel*, 829 F.2d 933 (9th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3682 (April 4, 1988), *on remand*, No. J84-013 Civ. (D. Alaska) (von der Heydt)

This case was filed in the Spring of 1984 by the Alaska Fish and Wildlife Federation and Outdoor Council and the Alaska Fish and Wildlife Conservation Fund (Conservation Fund). The plaintiffs sought a declaration that two cooperative agreements (the Hooper Bay Agreement and the 1985 Goose Management Plan) entered into by the Fish & Wildlife Service, the ADF&G, AVCP and the California Department of Fish and Game violate the Migratory Bird Treaty Act, 16 U.S.C. § 712, the notice and comment provisions of the federal Administrative Procedure Act, the National Environmental Policy

Act, and provisions of ANILCA, 16 U.S.C. § 668dd, which create the Yukon Delta Wildlife Refuge.

The challenged cooperative agreements grew out of recognition by the federal and state governments that migratory birds represent an important part of the traditional Native diet on the Yukon-Kuskokwim Delta. Even though the Migratory Bird Treaty Act, through the 1978 Fish and Wildlife Improvement Act, 16 U.S.C. § 712, permits the Secretary of the Interior to authorize hunting of migratory birds in the spring and summer, it requires that the hunting be consistent with the four migratory bird treaties to which the United States is a party. The 1916 U.S./Canada treaty prohibits harvest of migratory birds in the spring and summer. Even though the Fish and Wildlife Service had long assumed that all harvesting of migratory birds between March 10 and September 1 is prohibited, it adopted a written policy in 1975 stating that subsistence hunting in Alaska during the closed season would not be punished. This enforcement policy was adopted in part because the service recognized the importance of spring waterfowl to Alaska Natives and in part because of the practical problems of enforcing the game laws in the vast reaches of rural Alaska.

Because of the recent decline of four populations of migratory birds, the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, the California Department of Fish and Game, and the Association of Village Council Presidents entered into a cooperative agreement under which the harvest of those four species would be minimized in the spring and summer. This plan, known as the Hooper Bay Agreement, prohibited sport hunting of cackling Canada geese and reduced the hunting of white-fronted geese and black brants during the 1985 season. Enforcement was to be a joint effort by the various governmental agencies and local village councils. During 1984, the parties complied with the terms of the agreement. In 1985, the Hooper Bay Agreement was replaced with the 1985 Goose Management Plan.

The Conservation Fund initially sought an injunction to prohibit the Fish and Wildlife Service from agreeing to the taking of migratory birds during the 1984 closed season. Shortly thereafter, the intervenors (AVCP) filed a cross-claim against the Fish and Wildlife Service alleging that the 1985 Alaska Game Law rather than the Migratory Bird Treaty Act governed the subsistence hunting of migratory game birds in Alaska and until the agency promulgated regulations under the 1978 Wildlife Improvement Act, Interior had no authority to enforce the Migratory Bird Treaty Act's closed seasons. The district court denied the preliminary injunction for the 1984 season. It subsequently ruled that the 1925 Alaska Game Law repealed the Migratory Bird Treaty Act insofar as it applied to Alaska. The court dismissed all of the other claims as moot. *Memorandum and Order* (Jan. 24, 1985).

On appeal, the Ninth Circuit reversed with respect to the 1925 Game Act, pointing out that the 1916 U.S./Canadian treaty did not provide for spring and summer hunting, and thus it could not be authorized under the 1978 Fish and Wildlife Improvement Act. The court remanded the case to the district court on all of the original challenges to the plan under the Migratory Bird Treaty Act, the migratory bird treaties, the federal Administrative Procedure Act, NEPA and the section of ANILCA creating the Yukon

Delta National Wildlife Refuge. 829 F.2d 933 (9th Cir. 1987). The Supreme Court denied AVCP's petition for certiorari. 56 U.S.L.W. 3682 (April 4, 1988).

On remand, the district court found that by agreeing to language in the Hooper Bay Agreements which indicated that subsistence hunting for certain species was "ok" during parts of the period closed to hunting by treaty, the U.S.F.W.S. adopted a "substantive rule" in violation of the notice and comment procedures mandated by the APA, 5 U.S.C. § 553. The Court also found that U.S.F.W.S. failure to prepare an environmental assessment of its "substantive rule" violated the requirements of NEPA. Finally, the Court found that by adopting a substantive rule authorizing hunting during a period closed to hunting by treaty, the Secretary acted beyond the scope of his authority and thus violated the Migratory Bird Treaty Act. *Memorandum and Order* (June 29, 1988).

Meanwhile, on April 22, 1988, the Regional Director for the Fish and Wildlife Service announced a new policy on migratory bird hunting in Alaska. The policy is intended to prevent hunting of cackling Canada or emperor geese at any time; hunting Pacific white-fronted geese or black brant when they are nesting, raising young, or are flightless; taking eggs from any of the above four species of geese; using private or charter aircraft for purposes of hunting migratory birds during closed seasons; or hunting other waterfowl (ducks, geese, swans) when they are nesting, raising young or are flightless, or taking their eggs. The policy states that *limited harvest of migratory birds for food in unforeseen emergency situations will not be prosecuted* and enforcement of the policy will concentrate on "violations that have the greatest impact on waterfowl resources." As an adjunct to this policy, the Service has announced that it continues to view the Yukon-Kuskokwim Delta Goose Management Plan as an important element in the conservation of the four species.

On April 29, 1988, the Yukon-Kuskokwim Delta Goose Management Plan for 1988, which corresponds with the Service's recently adopted policy on migratory bird hunting in Alaska, was signed by the Service and Native Groups in the Yukon-Kuskokwim Delta. The state fish and game departments from both Alaska and California also signed the plan. The plan lists priorities the signatories will observe to enforce the closed season on migratory birds in spring and summer. It calls for a cooperative effort in monitoring compliance. Reports of violations will be coordinated with local village governments, which will assist in investigations conducted by the Service. The Service also agreed to make a "good faith effort to reach agreement with Canada" on an amendment to the Migratory Bird Treaty. As noted above, that treaty, signed in 1916, makes most hunting for migratory birds, even for subsistence, illegal.

3. *Association of Village Council Presidents, Tanana Chiefs Conference, Paul Philip, and Jonathon Solomon v. Alaska Board of Fish and Commissioner of Fish and Game*, No. 4BE-87-155 Civ. (Alaska Superior Court) (Fraties)

The False Pass commercial fishery occurs near the Alaska Peninsula in June, targeting mainly on sockeye salmon. Along with the sockeye salmon are incidentally harvested chum salmon, five to ten percent of which (at most) may be Yukon fall chum salmon.

In May, 1987, AVCP, Tanana Chiefs Conference, Paul Philip and Jonatho Solomon, on behalf of themselves and all other persons similarly situated, filed suit against the Alaska Board of Fish and Commissioner of Fish and Game. They asserted that the information presented to the Board of Fisheries indicated that not enough fall chum salmon would return to the Yukon in 1987 to provide for both escapement and subsistence fisheries. They argued that the federal and state subsistence laws required that the False Pass commercial fishery be closed.

The State and intervenors (Concerned Area M. Fishermen and Peninsula Marketing Association) argued that the information before the Board of Fisheries justified the board's conclusion that there was no need to close the False Pass fishery. The board did not believe it was likely that there would not be enough fall chum salmon to provide for escapement and subsistence fishing at historical levels in the Yukon. Plaintiff's request for a preliminary injunction was denied. Plaintiffs sought review by the state supreme court via a petition for review, which was also denied.

The State supplied discovery in response to some pending requests by plaintiffs and the Board of Fisheries imposed a chum salmon cap on the False Pass fishery for the 1988 season. The case was subsequently dismissed when ADF&G's estimate of fish returning proved to be inaccurate and more than enough fish returned. (See discussion of *Peninsula Marketing Ass'n v. State*, p. 21, a subsequent and related case).

4. *Bobby v. Alaska*, No. A84-544 Civ. (D. Alaska) (Holland)

This case was filed in November, 1984, by Wasilie Bobby, Sr., individually and on behalf of the people of Lime Village.

Lime Village, a community of about 40 people, alleged that the then-existing state moose and caribou regulations which applied to the Lime Village area did not adequately accommodate subsistence uses. Since that time, the Board of Game modified the regulations in several steps. The regulations ultimately reviewed by the Court imposed two closed seasons on moose (spring through mid-summer, and in the late fall) and one closed season on caribou (spring through mid-summer). The bag limits for residents of Lime Village reviewed by the court were 2 moose and 5 caribou per person.

Plaintiff argued that individual bag limits are not necessary for any conservation or management purpose in the case of Lime Village and are not consistent with the village's historic hunting patterns. Plaintiff asserted that several good hunters may supply the entire community with meat over the course of the year, rather than each household hunting for itself. Plaintiff also argued that the now-existing closed seasons for moose and caribou harvest are not consistent with ANILCA. Plaintiff asserted that under ANILCA, there should not be a closed season at all unless necessary to protect the resource. The State's position was that ANILCA regulations provide a "reasonable opportunity" for subsistence uses, but not necessarily year round seasons.

Another issue raised in this case is whether people can harvest game or fish outside the existing regulations and then successfully defend in a criminal case by asserting that the regulations did not adequately accommodate subsistence uses. This "subsistence

defense" was originally created by the Alaska Court of Appeals in *State v. Eluska*, 698 P.2d 174 (Alaska App. 1985), but was reversed by the Alaska Supreme Court in *State v. Eluska*, 724 P.2d 514 (Alaska 1986). The Supreme Court held that AS 16.05.920(a), which prohibits taking fish and game unless authorized, is controlling and is necessary in order to adhere to the constitutionally mandated sustained yield standard. The court's ruling followed, but did not refer to, the legislature's articulation in May 1986 of that same principle with respect to subsistence fishing and hunting in AS 16.05.261. The State's position was that neither the legislature nor the Alaska Supreme Court prevented people from requesting the Boards of Fish and Game to change regulations or prohibited people from challenging existing regulations in civil cases, based on a perceived lack of reasonable opportunity for subsistence.

Status of the Case: The court ruled on the pending motions for summary judgment of February 14, 1989. The judge held that seasons and bag limits are permissible under the subsistence law, but only when those seasons and bag limits are consistent with customary and traditional uses. He indicated that he would defer to the Board of Game's determinations, but that in this instance, in part because of the (at that time) constantly changing ground rules under which the Board of Game was operating, the analysis required by the state 1986 subsistence law about how much moose and caribou were needed to accommodate subsistence hunting by residents of Lime Village was not done. The judge also held that the existing Board of Game record did not reconcile a specific finding by the board that residents of Lime Village had historically harvested moose and caribou opportunistically throughout the year with the seasons contained in the regulations, nor did the record reconcile the evidence therein that the best hunters from Lime Village did most of the hunting and shared with the other villagers with the bag limits contained in the regulations. The judge also interpreted the state "no subsistence defense" statute in a way which he believed was consistent with fundamental principles which allow a defendant to challenge the validity of regulation he or she is charged with violating, and with the Alaska Supreme Court's ruling in *Eluska*; by concluding that the provision was only intended to preclude a defendant in a criminal proceeding from claiming a subsistence right in gross, outside of and apart from validly enacted subsistence regulations.

Judge Holland declined to issue a preliminary injunction, but ordered the state to submit revised regulations by June 15, 1989. The Game Board met on April 27 to review the regulations. As a result of the meeting, the regulations were amended to lift the individual bag limits, establish a 100 caribou quota, and allow year round season on caribou, except that cows and calves may not be taken in the spring or summer, not impose a moose quota, but retain closed moose seasons.

These regulations will be submitted to the court by June 15, and plaintiff at that time may express any unresolved objections.

5. *Cook v. Secretary of the Interior*, F87-42 Civ (D. Alaska) (Kleinfeld)

This case was filed on August 17, 1987, by a resident of the Yukon-Charley Rivers National Preserve who lives a subsistence lifeway. He alleges that a fly-in trapper from Eagle, Alaska has engaged in trapping activities within the area he claims as his trapline, depleting furbearer resources and negatively affecting his own trapping efforts. The basic

legal issue presented by the case is whether the National Park Service has any legal obligation under Title VIII of ANILCA to provide affirmative protection to subsistence users on Park Service lands.

The plaintiff takes the position that Title VIII of ANILCA imposes upon the Secretary of the Interior the affirmative duty to protect the plaintiff's subsistence uses. Plaintiff contends that subsistence-trapline management implicates land-use and land-management policy with respect to which NPS, as land manager, has jurisdiction and principal responsibility. Even though the Park Service's regulations authorize it to declare plaintiff's subsistence trapline off-limits to all other trappers (36 C.F.R. § 13.40), or to prohibit aircraft from operating on his trapline for the purpose of trapping, § 13.13, the Secretary argues that this is a subsistence-resource "allocation" issue over which jurisdiction has been confided exclusively in the State. Under the Secretary's theory, the federal government has no authority to protect subsistence users in the National Parks.

On October 14, 1987, the plaintiff moved for a preliminary injunction to require the Secretary to take all actions necessary to protect his trapline from encroachment by any other trapper during the marten season or until such time as the merits of the case could be decided. Judge Kleinfeld denied the plaintiff's request for a preliminary injunction on November 20, 1987. The government then moved for summary judgment, which the plaintiff opposed. At the conclusion of arguments on the motion for summary judgment on June 23, 1988, Judge Kleinfeld noted that while the question of whether the Park Service or the State had jurisdiction to protect subsistence traplines was a complex and difficult issue, the case had to be dismissed as moot since the fly-in trapper had promised, under oath, not to trap on plaintiff's line. The dismissal was not appealed.

6. *Didrickson v. United States Department of Interior*, No. A85-336 Civ. (D. Alaska) (Holland)

This case, formerly captioned in the name of the original plaintiff, Katelnikoff, was brought pursuant to the Marine Mammal Protection Act of 1972 (MMPA). Both Marina Katelnikoff and Didrickson sought the return of a number of articles they had fashioned out of sea otter pelts. The articles were confiscated by federal enforcement agents on the ground that they were not "authentic native articles of handicrafts and clothing" within the meaning of the Native handicraft exemption to the MMPA, 16 U.S.C. § 1371(b), as defined by controlling federal regulations.

At stake is the proper interpretation of the Alaska Native exemption to the MMPA and its regulations. The MMPA, enacted in 1972, established a comprehensive moratorium on the taking of marine mammals but created an exception for the taking of marine mammals by Alaska Natives for subsistence purposes and for making "authentic native articles of handicrafts and clothing." 16 U.S.C. § 1371(b). The regulation implementing this exemption defines "authentic native articles of handicrafts and clothing" to include only those items which "were commonly produced on or before December 21, 1972." 50 C.F.R. § 18.3.

Plaintiffs argued that the limitation in the regulation was inconsistent with the MMPA in that it focuses on whether the final craft *item* produced was traditional rather

than whether the production *technique* was traditional. Plaintiffs argued that an item can be "authentic" even if it was not commonly produced prior to 1972.

In July 1986, Judge Holland rejected these arguments and upheld the validity of the regulation largely based on deference to agency interpretation. Ms. Katelnikoff was dismissed from the lawsuit to pursue her administrative remedies.

Judge Holland's decision upholding the regulation as consistent with the MMPA led Didrickson to amend his complaint to allege that the regulation is unconstitutionally vague because no one, not even the enforcement agents, can determine what is permitted by the regulation. Sea otter use by Natives has been limited since the mid-1700's due to bans imposed by the Russians and then by the United States and also due to population declines caused by Russian overhunting, and it is difficult or impossible to determine exactly what use Natives made of sea otter at that time.

Didrickson has moved for summary judgment on his constitutional claim. In denying the government's motion to dismiss, Judge Holland indicated that problems with the regulation and its enforcement call for an administrative resolution. In response, the Fish and Wildlife Service instituted a formal rulemaking proceeding, proposing to change its regulatory definition to totally prohibit Native use of sea otter for handicrafts and clothing. This rule is based upon Fish and Wildlife Service's conclusion that there has been no recent use of sea otter by Natives and no recent sales by Natives of sea otter items. The comment period on the proposed rule will continue until November 30, 1989. Public hearings are planned for October, 1989, in several coastal villages.

Meanwhile, Katelnikoff (now by marriage, Beck) lost her administrative hearing as to all items crafted from sea otter pelts except hats. Having exhausted her administrative remedies, she has moved to intervene in the federal court litigation.

7. *Gambell v. Lujan*, ___ F.2d ___ (9th Cir. 1989), *petition for rehearing pending, on remand*, Nos. 83-3735; 83-3781 (D. Alaska) (von der Heydt)

On March 4, 1983, the tribal villages of Gambell and Stebbins sued the Secretary of the Interior alleging that he had violated either their aboriginal hunting and fishing rights or Section 810 of ANILCA in holding Outer Continental Shelf Lease Sale 57. Oil companies interested in bidding on the sale intervened.

The Tribes' principal claim was that ANCSA and Title VIII of ANILCA had to be consistently interpreted by the Secretary. ANCSA extinguished Native hunting and fishing rights "in Alaska." Title VIII applies to Native hunting and fishing rights "in Alaska." The Tribes argued that the two acts had the same geographic scope. If both acts applied only within the territorial boundaries of the State, then they retained their aboriginal hunting and fishing rights outside the territorial boundaries. Alternatively, if both acts applied outside the territorial boundaries of the State, then the Secretary had violated Section 810 in holding the sale.

Judge von der Heydt granted summary judgment to the government and the intervening oil companies and dismissed the suit. The Ninth Circuit reversed in part and affirmed in part. It held that ANCSA applies to the OCS and operated to extinguish

aboriginal hunting and fishing rights in this area. It also held that ANILCA applied to the OCS and since the Secretary had not complied with Section 810 of ANILCA, the court reversed and remanded for a determination as to whether the sale should be voided. *Gambell v. Clark*, 746 F.2d 572 (9th Cir. 1984) (*Gambell I*).

In April, 1985, a companion case, *Gambell v. Hodel*, was filed challenging OCS Lease Sale 83 in the Navarin Basin, alleging both that the Secretary had failed to comply with Section 810 of ANILCA in holding the sale as well as that the Secretary's decision to lease the area violated his trust responsibilities to protect subsistence uses and resources.

The plaintiffs in both cases moved the district court for a preliminary injunction against exploratory drilling pending the district court's determination on the merits. The motions were consolidated. Although the district court found that the Department of the Interior did not comply with Title VIII of ANILCA in holding the lease sales, it ruled that a preliminary injunction was not warranted. The court reasoned that the nation's quest for new oil and gas resources and energy independence outweighed the harm that might result to subsistence users from continued exploratory activities on the leases.

On appeal the Ninth Circuit reversed the district court, finding that the tribal villages had a certainty of prevailing on the merits and ordered the oil companies to immediately cease all operations in the leased areas. Its ruling rested on the principle that under Section 810 the national interest in the subsistence lifestyle of Alaskan Natives outweighs the competing interest in the rapid development of OCS oil leasing in Alaska. *Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985) (*Gambell II*).

The government and the oil companies petitioned for certiorari. The tribal villages cross-petitioned on the aboriginal title issue decided in *Gambell I*. The Supreme Court granted both the petitions and the Tribes' cross-petition. It reversed the lower court's holding that ANILCA applied to the OCS and vacated the ruling that ANCSA applied to the same area and remanded the case for further proceedings on the aboriginal title claim. *Amoco Production Co. v. Gambell*, 107 S.Ct. 1396 (1987).

On remand, the Court of Appeals reversed the district court's original judgment in *Gambell I*, holding that aboriginal subsistence rights of Alaska Natives in the OCS were not extinguished by ANCSA. It also rejected the Secretary's and the oil companies' arguments that (1) the federal government's paramount interests in the OCS extinguished aboriginal rights; (2) that the United States had not assumed sufficient control over the OCS so as to constitute sovereignty which requires recognition of aboriginal rights; and (3) that recognition of aboriginal rights would be inconsistent with principles of international law. On remand, the district court must decide (1) whether the Villages possess aboriginal rights in the OCS; (2) if so, whether the drilling and other activities by the oil companies will interfere significantly with the Villages' exercise of those rights; and (3) whether the Outer Continental Shelf Lands Act extinguishes aboriginal subsistence rights in the OCS. *Gambell v. Lujan*, ___ F.2d ___ (9th Cir. 1989) (*Gambell III*).

The oil companies and the Secretary have petitioned for rehearing.

8. *Hanton v. Barton*, No. J88-025 Civ. (D. Alaska) (von der Heydt)

This case was filed in July 1988 on behalf of six Native residents of Hoonah and one non-Native resident of Angoon, all of whom hunt near Hoonah. Two of the plaintiffs are chiefs of Hoonah-area Tlingit clans - all depend on the resources, particularly the deer, of the Tongass National Forest. Their suit attacks a Forest Service decision to authorize four years of logging and roadbuilding near Hoonah without first holding the hearings and making the findings required by § 810 of ANILCA, 16 U.S.C. § 3120. That statute requires Federal agencies to consider the effects on subsistence of major land use decisions. If a proposed action may impose significant restrictions on subsistence uses of the public lands, the Federal agency involved must make specific findings about the necessity of the action and the measures which will be taken to minimize its effect on subsistence uses.

Plaintiffs filed a motion for preliminary injunction. The Alaska Pulp Corporation, the principal beneficiary of the logging program, intervened in the case. Plaintiffs argued that the Forest Service applied the wrong standard in determining that its logging program will not significantly restrict subsistence uses in the Hoonah area. They also asserted that the Forest Service failed to consider the impacts of related actions, and based on the information available to it, should have concluded that its logging program would result in significant restrictions to subsistence uses, thus invoking the procedures outlined in §810 (a) (1) - (3). The plaintiffs also alleged violations of the National Environmental Policy Act, the National Historic Preservation Act, and the Administrative Procedure Act.

On November 14, 1988, the district court denied the plaintiffs' request for a preliminary injunction. Although the court found that the plaintiffs had shown a "near certainty" of success on the merits of three of their five claims, the court found insufficient proof of irreparable harm. Instead of granting an evidentiary hearing, the court denied the injunction and suggested that the parties agree on the formulation of the terms of injunctive relief pending compliance by the Forest Service with its obligations under NEPA and ANILCA. Unable to reach agreement, the plaintiffs filed an appeal and moved the district court for an injunction pending appeal. Prior to the hearing on plaintiffs' motion, the parties agreed to the entry of an injunction.

The injunction requires the Forest Service to conduct the hearings mandated by ANILCA § 810 and to prepare a supplemental environmental impact statement. Pending completion of the hearings and supplemental review, logging and roadbuilding are enjoined in the most critical subsistence use areas, including sixteen cutting units in the Hoonah area. The injunction also prohibits creation of a log dump in Whitestone Harbor. The § 810 hearings are scheduled for June, 1989.

9. *John v. Alaska*, No. A85-698 Civ. (D. Alaska) (Holland)

This case was filed in December, 1985, by Katie John, Doris Charles, and the Mentasta Village Council. Since 1964, the State limited subsistence fishing in the Copper River Basin to that portion of the Copper River below its confluence with the Slana River. In 1984, Katie John and Doris Charles, residents of Mentasta and Dot Lake, respectively, requested the Board of Fisheries to open a subsistence fishery at the old village site of

Batzulnetas, where the proponents have pending and patented (respectively) Native allotments. The board rejected the proposal, voicing concerns about fishing on stocks of fish at or near their spawning grounds ("terminal fisheries"). This lawsuit followed.

Plaintiffs claim that the Batzulnetas site is a customary and traditional subsistence salmon fishing site and that closure of this area is not required to protect sustained yield. The case involves a complex river system (the Copper River, in which there are at least 124 separate sockeye salmon stocks).

Questions are raised regarding what constitutes a "reasonable opportunity" to obtain subsistence salmon and whether this is the applicable standard under ANILCA, what steps the State must take to determine whether a fishery can be conducted without jeopardizing sustained yield, and what standard of review the federal court should apply in reviewing State subsistence regulations, among others. There is also a question of whether the State of Alaska has jurisdiction to regulate fish uses on a Native allotment.

After completion of extensive discovery and filing by plaintiffs of a motion for summary judgment, the parties entered into a stipulation in 1987 to stay the case pending the Board of Fisheries' review of a new proposal from plaintiffs for a subsistence fishery. The State agreed to allow plaintiffs a carefully structured interim subsistence fishery for the 1987 season.

In its winter 1987-88 meeting, the board acted on plaintiffs' proposal and found that the existing subsistence fishery for the Copper River provided a "reasonable opportunity" for plaintiffs to meet their subsistence uses; however, the board also found that a subsistence fishery in excess of "reasonable opportunity" could be authorized at Batzulnetas without jeopardizing sustained yield. The board adopted a regulation establishing a subsistence fishery at Batzulnetas and setting the season, methods of take, and scope of this new fishery. Cross motions for summary judgment were filed on whether the new regulations are adequate under ANILCA. Plaintiffs claim that the Board was required to establish a subsistence fishery at Batzulnetas which was not categorized as extra to reasonable opportunity. Those motions are still pending.

Meanwhile, plaintiffs have filed a motion for a preliminary injunction which seeks more fishing opportunities for the summer of 1989 at the site than the 2-3 1/2 days currently provided in the regulations.

10. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1988), petition for cert. filed, 57 U.S.L.W. 3689 (U.S. April 18, 1989) (No. 88-1642), on remand, No. A86-367 Civ. (D. Alaska) (Holland).

This case was filed on July 15, 1986, under §807 of ANILCA by the Kenaitze Indian Tribe. The plaintiff members consist of the descendants of aboriginal inhabitants of the Cook Inlet area. The Tribe alleged that the State's definition of "rural area" in its 1986 subsistence law, Ch. 52, SLA 1986, was inconsistent with the meaning of the term "rural" in Title VIII of ANILCA. Sections 803 and 804 of ANILCA provide an absolute hunting and fishing priority for rural Alaska residents. The State's definition of "rural area" extends the priority only to those who live in "a community or area of the state in which the

noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area. Plaintiff claimed that the term "rural" had to be given its ordinary meaning -- that of a geographic area with a small population -- and that it could not be defined so as to restrict the priority to only those who live in an area where subsistence activities are a principal component of the economy. It was their position that tribal members living on the Kenai Peninsula are rural residents and their customary and traditional harvests of fish and game for subsistence uses are entitled to preference over competing non-subsistence uses.

Plaintiff filed a motion for preliminary injunction in July 1986. On August 14, 1986, the State of Alaska filed a motion to dismiss, arguing that Section 807 of ANILCA does not confer jurisdiction upon the federal court to hear a challenge to the State's "laws of general applicability" (i.e., statutory provisions that comply with Section 805 and allow the State to have management jurisdiction over subsistence uses on federal lands). The State argued that § 807 only grants jurisdiction to challenge the State's implementing regulations. The court denied the State's motion to dismiss. *Memorandum of Decision*, February 13, 1987.

In the meantime, the Tribe filed a motion for partial summary judgment and the State filed a cross motion for summary judgment on the underlying question of whether the state statutory definition of "rural area" complies with ANILCA. On July 9, 1987, Judge Holland denied the Tribe's request for a preliminary injunction and granted the State's motion for partial summary judgment. Essentially deferring to the State's interpretation of the term "rural" (and the Department of the Interior's "approval" of the State's 1986 subsistence law), the court found that the State's definition of "rural area" was not inconsistent with Section 804 of ANILCA.

On October 24, 1988, the Court of Appeals reversed the lower court's denial of the Tribe's request for a preliminary injunction. The court first concluded that it owed no deference to the interpretation adopted by the Department of the Interior or the State of Alaska. Interpreting the statute's meaning *de novo*, it found that Congress used the term "rural" in its plain and ordinary sense to refer to areas of Alaska that are "sparsely populated." It noted that adopting the State's "contorted definition" of rural would "materially change the sweep of the statute . . . and lead to an inconsistency within the statute." The court noted that giving the term rural its conventional meaning avoided an internal inconsistency. Relying on *Amoco Production Co. v. Gambell*, 107 S. Ct. 1396 (1987), the court refused to resort to the legislative history of ANILCA in search of a contrary meaning. Concluding that the State's definition of rural was inconsistent with ANILCA, the court reversed and remanded the case to the district court for entry of a preliminary injunction.

On denial of the State's petition for rehearing, the Court of Appeals amended its decision on January 4, 1989, to specifically address the State's argument that article IV, §4 of the U.S. Constitution and the Tenth Amendment preclude a federal court from ordering a state to amend its laws to make them consistent with ANILCA. The Court noted that this proposition had no application since the court did not purport to be directing the state to amend its laws: "it is free to eschew any further entanglement with the federal government

by advising the Department of the Interior that it is withdrawing from its role in administering ANILCA."

The State has petitioned for certiorari and plaintiff's opposition is due to be filed in late May, 1989. Since neither the Court of Appeals nor the Supreme Court would agree to stay the mandate pending review of the case on certiorari, the case has been remanded to the district court for the entry of a preliminary injunction. At the request of the district court, both parties submitted proposals for a preliminary injunction in late March. The State's proposed preliminary injunction was that it be required by May 15, 1990, to either demonstrate that its laws are consistent with ANILCA, or, advise the Department of the Interior that it is withdrawing from its role in administering ANILCA. The Tribe proposed a detailed plan for establishing a subsistence fishery for its members on the Kenai Peninsula.

On April 26, 1989, Judge Holland rejected both proposals and entered a preliminary injunction ordering the State "to elect, on or before May 15, 1989, whether it will or will not afford plaintiff on an interim basis priority over all other consumptive uses for the subsistence use of hooligan and all species of salmon on the Kenai Peninsula." *Preliminary Injunction* at 10. Assuming the State elects to continue to comply with ANILCA, the court ordered the State to afford members of plaintiff tribe a priority over all other consumptive uses, for the subsistence use of hooligan and all species of salmon. To that end, the Board of Fisheries was directed to, on or before May 30, 1989, adopt emergency regulations to effect such priority. The court also gave the parties the alternative of entering into a consent preliminary injunction to the same general effect.

Following the remand of this case for the entry of a preliminary injunction, the State filed a series of motions: motion to dismiss for lack of jurisdiction under the Eleventh Amendment; renewed motion to reconsider denial of its motion to dismiss for lack of jurisdiction under ANILCA §807; motion to dismiss with respect to salmon fishing for lack of standing; and motion to remand the question of whether the Tribe's uses are customary and traditional to the Board of Fisheries. In the event that the jurisdictional motions were denied, the State also moved to have the issues certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). On May 4, 1989, Judge Holland denied all of the State's motions.

11. *McDowell v. Collinsworth*, No. 3AN-83-1592 Civ. (Alaska Superior Court)
(Serdahely)

This lawsuit was filed in 1983 by Sam McDowell, Dale Bondurant, Harold Eastwood, and Ronald Mahle, challenging the constitutionality of the 1978 State subsistence law. The State's 1978 law had been interpreted by the joint boards of fisheries and game as defining subsistence uses as "customary and traditional uses" by rural residents, although the statutes did not contain the word "rural." AFN intervened on behalf of the State. The State was awarded summary judgment on a number of constitutional allegations, and briefing was about to begin on the remaining equal protection and due process claims when the Alaska Supreme Court decided *Madison v. ADF&G*, 696 P.2d 168 (Alaska 1985).

Madison held that in 1978 the legislature had not limited subsistence uses to rural residents and that the boards had incorrectly interpreted the 1978 law. The *McDowell* lawsuit was put on hold until the legislature enacted a new subsistence law in 1986 (Ch. 56, SLA 1986), because until that occurred, it was not known how or if subsistence uses would be defined in state law or who would constitute the class of people eligible for them.

After the 1986 law was enacted, plaintiffs amended their complaint, again challenging the constitutionality of the new law. (Also, two additional lawsuits, *Bondurant v. State* and *Sims v. State* were filed, raising similar challenges. These two cases were consolidated with *McDowell*). The main issue (from the State's perspective) is whether people who live in rural areas as defined by the law are situated differently (with respect to their use of fish and game) from people in other parts of the state.

On cross motions for summary judgment, Judge Serdahely issued, on January 25, 1988, a 25 page memorandum decision finding for the State on all counts, viz, that the State subsistence statute does not violate: Article VIII, Sections 2 and 3 ("maximum benefit" and "common use"); Article VIII, Section 15 ("exclusive right of fishery"); due process, and equal protection provisions of the State Constitution.

An appeal to the Alaska Supreme Court was filed and oral arguments were heard on April 20, 1989.

12. *Native Village of Tanana v. Cowper*, No. F83-034 Civ., and *Tanana Chiefs Conference, Inc. v. Cowper*, No. F83-402 Civ. (D. Alaska) (Kleinfeld)

These cases were filed in 1983 and present the issue of whether the State's prosecution of five residents of Tanana and two residents of Ruby for taking a moose during closed season violates Section 804 of ANILCA. The cases were consolidated by the court, and both parties filed summary judgment motions. The motions focused on whether the areas involved were Indian country; whether there were exemptions from State authority over fish and game for Native activities sponsored by a Native council; whether P.L. No. 280 precludes State regulation of Native fishing and hunting; and whether there was any interference with subsistence rights under ANILCA or with First Amendment rights.

On November 6, 1987, the court ruled as follows:

1) That ANILCA'S subsistence protections are limited to direct personal or family consumption or barter or customary trade; and plaintiffs presented no evidence that the taking was for one of these reasons. Judge Kleinfeld also found that there was no evidence that the takings took place on the lands to which ANILCA applies.

2) The court declined to rule on whether Tanana or Loudon are Indian country because plaintiff failed to present any evidence about where the takings took place. Also, the court declined to rule on whether State authority may be exercised within Indian country, until the predicate -- a showing of where the events took place -- was made. Judge Kleinfeld noted that based upon the record, he was inclined to think that Tanana was not Indian country and not a dependent Indian community, but it was not necessary for the court to reach that issue.

3) The court found that Tanana Chiefs has standing to assert the rights of individual Natives, citing *UAW v. Brock*, 106 S. Ct. 2523 (1986).

4) As to P.L. 280, Judge Kleinfeld held that the exemption from state criminal laws contained in 18 U.S.C. § 1162(b) for hunting and fishing rights of Natives under "Federal treaty, agreement, or statute" does not apply where there is no treaty or statute. He concluded that the State may exercise jurisdiction over fish and game offenses even in Indian country in the Tanana area. The court based its ruling in part on *Kake v. Egan*, 369 U.S. 60 (1962) which it construed to hold that off-reservation hunting and fishing is subject to state regulation. The court further held that *California v. Cabazon Band of Mission Indians*, 107 S. Ct. 1083 (1987), did not apply because this case involved criminal offenses, unlike the regulatory bingo offenses at issue in *Cabazon*.

5) The judge denied plaintiffs' motion for summary judgment on the freedom of religion issue, finding that proof was lacking of several essential elements of the claim, in particular the religious nature and necessity of memorial potlatches.

In 1989, *Native Village of Tanana* was dismissed by stipulation. The village submitted a proposal to the Board of Game, asking that subsistence regulations be adopted allowing the community to take moose for a traditional festival, Nuchalwoyya. During its March 1989 meeting, the board found that the community had a customary and traditional use of moose for that purpose, and adopted the requested regulation.

In 1988, the state filed a motion for summary judgment in *Tanana Chiefs Conference* on the outstanding equal protection and due process claims. At issue is the lack of regulations allowing memorial potlatches. Tanana Chiefs Conference has never asked the Board of Game to authorize that use as a subsistence use. In response to the state's motion, TCC again raised the freedom of religion issue, basically contending that the equal protection and due process arguments must be viewed with strict scrutiny by the court because of the first amendment. The state's position is that plaintiff still has not demonstrated the religious nature and necessity of memorial (as contrasted to funeral) potlaches. Oral argument is scheduled for June, 1989.

13. *Payton v. State*, 3AN-88-12223 Civil (Ripley)

This case was filed in 1988 and challenged the finding by the Board of Fisheries that residents of the Skwetna area (a rural area across Cook Inlet from Anchorage) did not have customary and traditional uses of salmon, and consequent failure to adopt subsistence regulations for that area.

Plaintiffs alleged a number of violations: (1) that the finding was arbitrary and capricious, because the Board of Game had authorized subsistence moose hunting there, (2) that the finding was not supported by the record; (3) that the action violated ANILCA (though the case was filed in state court); (4) that the board used an impermissible durational residency requirement; (5) that the board applied its criteria in a way that discriminates on the basis of race (in favor of Alaska Natives); and, (6) that the composition of the board violated due process, because of the presence of commercial and sport fishermen.

The court awarded summary judgment to the state on March 15, 1989. A final judgment was entered in early April, and the time for an appeal had not run as of this writing.

14. *Peninsula Marketing Association v. State of Alaska*, 3AN-88-12324 Civil (Hunt)

This case was filed in the late fall of 1988, challenging the False Pass chum salmon cap which the Board of fisheries had imposed, beginning in June 1988. For the facts and background of this case, see *Association of Village Council Presidents*, p. 9. Plaintiffs in this case include the intervenors in that case. The chum cap is challenged on a number of grounds. The Yukon-Kuskokwim Fisheries Task Force and 4 residents of western Alaska have intervened on the State's side to support the cap, and have filed a cross claim against the State, arguing for the same reasons put forward in *Peninsula Marketing Association* that the False Pass fishery should be closed. Cross motions for summary judgment have been filed on plaintiffs' claims (not intervenors), and argument on those motions is scheduled for early June.

15. *Sierra Club v. Penfold*, 857 F.2d 1307 (9th Cir. 1988), on remand, A86-083 Civ. (D. Alaska) (von der Heydt)

This case challenges BLM's approval of placer mining plans. In addition to claims under NEPA and BLM's regulations on the procedure for approving and receiving notice of mining activities on BLM administered lands, plaintiffs asserted claims under Section 810 of ANILCA. The subsistence issues of interest include the following:

a) *Subsistence Reviews Must Evaluate Cumulative Impacts*

In a published decision on May 28, 1987, the federal district court held for the first time that Section 810 of ANILCA, 16 U.S.C. § 3120, requires a federal land management agency to consider cumulative impacts when determining whether a federal action may significantly restrict subsistence uses. *Sierra Club v. Penfold*, 664 F. Supp. 1299, 1307 (D. Alaska 1987). The court drew an analogy to NEPA law and held that the "common-sense principles" of NEPA, which require analysis of cumulative impacts when agencies determine the environmental significance of federal actions, would be applied to subsistence evaluations too.

On the facts of the case, the court then held that the cumulative impacts of multiple placer mines on subsistence uses of Birch Creek were "significant" and triggered the notice and hearing requirements of § 810(a)(1)-(3). The court specifically found that mineral development "severely degrade[d]" Birch Creek Village's subsistence fishery and "interfere[d] with use of river water for drinking by village residents." The court also held that the cumulative impacts of placer mining on Minto had been unlawfully ignored and remanded the case to the BLM for a determination of the significance of these impacts.

b) *Mining Regulations Invalid for Failure to Consider Subsistence Impacts*

In a subsequent unpublished decision of November 6, 1987, the court invalidated 1983 amendments to BLM's mining regulations because, among other reasons, the

amendments were promulgated without a § 810 evaluation. *Memorandum and Order* 31-34 (Nov. 6, 1987). These amendments had the effect of allowing mines on "withdraw lands" (lands closed to new mineral entry) to operate under "notices" without subsistence review if the mines kept their operations under five acres.

On motion for reconsideration, the court also excused the failure of the subsistence plaintiffs to exhaust administrative remedies, relying on the point that the failure to exhaust could be attributed to the agency's failure to provide the notice required by Section 810. *Minute Order* (Nov. 12, 1987) ("the Secretary cannot shield his complete failure to comply with § 810 by arguing that the very groups intended to benefit indirectly from the notice provisions of the statute should have reminded him of his statutory duty").

c) *Village Councils Have Parens Patriae Standing*

A final decision of note is the unpublished decision of November 21, 1986, where the court considered and rejected a BLM argument that the IRA and village council plaintiffs in the case lacked standing to sue on behalf of their residents. *Memorandum and Order* at 24-26 (Nov. 21, 1986). The court held that *parens patriae* standing is appropriate when a sovereign entity sues "to prevent a violation of federal laws by federal agencies." *Id.* at 25. The court then went on to assume that IRA and village councils have sovereign attributes, without deciding the question. *Id.* at 26. Finally, the court ruled that environmental organizations do not have standing to bring Section 810 actions.

On September 21, 1988, the Court of Appeals affirmed the lower court in all respects. Of primary importance was its conclusion that BLM violated NEPA and § 810 of ANILCA by failing to prepare EIS's addressing the cumulative impact and effect on subsistence uses of all placer mines in each of the four watersheds involved in the litigation (Birch Creek, Beaver Creek, Fortymile River and Minto Flats). The Appeals Court left in place the district court's injunctions prohibiting approval of any placer mines in the four watersheds pending completion of the EIS's.

Following the Court of Appeals decision, BLM completed its final Environmental Impact Statements for all four drainages and then moved to lift the injunctions. At plaintiff's request, the district court agreed to delay its ruling on the motion until BLM issued its final decisions. Final decisions have now been issued for all but the Minto Flats drainage, and plaintiff is evaluating the adequacy of the EIS's and the final decisions before deciding whether to oppose the government's motion to lift the injunctions.

16. *Tanana Fish and Game Association v. State of Alaska*, No. F88-04 Civ. (D. Alaska) (Kleinfeld), *on appeal*, No. 88-4112 (9th Circuit).

This case was filed on February 10, 1988 by the Tanana Fish and Game Association, an unincorporated association organized to represent and advance the interests of users of fish and wildlife resources in and around the Village of Tanana. Plaintiff alleges that its members have been selling the roe from their subsistence harvests of Yukon River (fall chum) for at least 20 years. Currently the sale of roe from subsistence taken salmon is illegal under 5 AAC 1.010 (d). Plaintiff asserts that the regulation violates

Section 804 of ANILCA, which mandates that customary and traditional subsistence use including customary trade, be given priority over competing non-subsistence uses. Based on the fact that the definition of "subsistence uses" in both state and federal law contains a "customary trade" component which has been interpreted to mean limited exchanges for cash not amounting to a significant commercial enterprise, plaintiff seeks to have the State recognize the right of the residents of Fishing District 5 of the Yukon River to engage in customary trade of Yukon River salmon roe.

The State moved to dismiss the case, arguing that plaintiff had not exhausted its administrative remedies since it had never asked the Board of Fisheries to authorize the sale of subsistence salmon roe in Fishing District 5 of the Yukon River. On April 29, 1988, the day after the Board had scheduled a special Memorial-Day weekend meeting in Fairbanks to consider changing the management plan for commercial fishing on the Tanana River (District 6), plaintiff petitioned the Board to schedule its subsistence-roe-sale proposal for a hearing at the same meeting. The Board rejected the petition. Subsequently, the Tanana local fish and game advisory committee unanimously endorsed the proposal.

Meanwhile, on June 6, plaintiff filed a motion for a preliminary injunction and summary judgment. Plaintiff sought a preliminary order allowing its roe-sale proposal to take effect for the fall-chum season beginning August 15, and to restrain the State from bringing criminal charges against any of its members. (Plaintiff later withdrew its motion to enjoin criminal prosecutions when it became clear that no such charges were likely to be filed). Plaintiff also moved for expedited consideration of the motion for a preliminary injunction.

The court refused to expedite consideration of plaintiff's request for preliminary relief, and proceeded instead with a hearing on the State's motion to dismiss. Following arguments on August 4, 1988, Judge Kleinfeld granted the State's motion to dismiss on the ground that plaintiff failed to exhaust administrative remedies. The court ruled that exhaustion of the State's rulemaking process -- both the normal proposal process and the local advisory committee/regional council process -- were jurisdictional prerequisites to a suit pursuant to §807 of ANILCA challenging the validity of a previously promulgated regulation. Plaintiff appealed the decision. Briefing was completed in mid-February, but oral argument has yet to be scheduled.

In the meantime, plaintiff presented its customary roe-trade proposal to the Board of Fisheries for consideration at its regular fall meeting. Following hearings in December, 1989 in Anchorage, the Board rejected the proposal.

17. *Tarnai v. Fisher & Patton*, No. F87-68 (D. Alaska) (Kleinfeld)

Alex Tarnai is a trapper who is the sole permanent resident of the Nowitna National Wildlife Refuge. His residency on the Refuge area predates ANILCA and the creation of the Refuge. He holds cabin permits from the Fish and Wildlife Service for one cabin which is his residence and two other "line" cabins for his traplines. In January 1986, Tarnai invited a friend to visit and stay with him at his home. Prior to the friend's arrival, defendants Fisher and Patton (the refuge manager and assistant manager) informed the

friend that she would not be allowed to stay with Tarnai in his home. Fisher went to Tarnai's home in late December and informed Tarnai that the friend would not be allowed to stay with Tarnai in his cabin.

Plaintiff's friend was forced to spend her visit in a wall tent near Tarnai's cabin until she could be moved off the Refuge. Tarnai's subsistence trapping work was disrupted and his friend had to spend the rest of her visit off the Refuge. During her visit, the defendant Fish and Wildlife Service officials conducted and/or caused to be conducted an intensive aerial surveillance of Tarnai's cabins and traplines on the Refuge, and on at least three occasions the Fish and Wildlife Service officials and/or persons acting at their direction conducted warrantless searches of Tarnai's cabins, including his home, without his permission.

The plaintiff is suing for declaratory relief and compensatory and punitive damages. He seeks a declaration that he enjoys the same constitutional rights with respect to his home on the Refuge that apply to any person who does not reside there, including association, privacy, to be secure from unreasonable and warrantless searches and seizures, and procedural and substantive due process of law; that Section 1303 of ANILCA which gives individuals living in the Refuge the right to five year renewable permits to continue to live in the Refuge further protects these rights; and that these rights were violated by the actions of the defendants.

Discovery is virtually complete. The government has filed a motion for summary judgment and the plaintiff has moved for partial summary judgment against the government officials in their official capacity. The judgment would declare that the plaintiff enjoys the same constitutional freedoms of association and privacy in the use and occupancy of his home and trapline cabins as persons who do not live in a National Wildlife Refuge. The court has scheduled a hearing on the motions for July 6, 1989.

18. *Tenakee Springs v. Courtright*, J86-024 Civ (D. Alaska) (von der Heydt)

This case involves a challenge to the Forest Service approval in 1980 of a 5-year timber harvest and road construction plan by Alaska Pulp Corp. on Chichagof, Baranof and Kuiu Islands. The plaintiffs in the case are the Sierra Club, Southeast Alaska Conservation Council, the Wilderness Society, and the City of Tenakee Springs. In addition to claims relating to NEPA compliance, the plaintiffs also claimed that the Forest Service failed to comply with Section 810 when it determined to "withdraw, reserve, lease or otherwise permit the use, occupancy, or disposal" of public lands.

The case raised two issues relative to ANILCA. The first is what entities have standing to bring actions for a violation of Section 810. The other relates to the applicability of Section 810 to the 5-year harvest plan, since it was adopted prior to ANILCA, but implemented afterwards. The government argued that mere implementation of the decision to "withdraw, reserve, lease or otherwise permit the use, occupancy, or disposal" of public lands did not trigger Section 810. It argued that the determination to authorize the roads and harvest units was made prior to the passage of ANILCA in 1980 when the Forest Service approved the 5-year plan.

The federal government argued that state-created municipalities could not *su. parens patriae*, therefore the City of Tenakee Springs had no standing to bring Section 810 actions. The plaintiffs, relying upon cases giving municipalities standing in NEPA cases, claimed they had standing by virtue of Section 802(3) which declares that it shall be a policy of Congress for federal land managing agencies to cooperate with adjacent land owners. They also argued that the City had standing because it performed land planning functions relating to subsistence with which the Forest Service actions conflicted.

Judge von der Heydt (decision June 26, 1987) agreed with the federal government and ruled that the City of Tenakee Springs had no standing to raise a cause of action under § 810. Citing *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973), the court reasoned that the City does not engage in subsistence and its indirect interest in the economic well-being of the taxpayer base was not sufficient to confer standing. The court made no finding as to whether the Forest Service had complied with §810, but cautioned "[s]ince other plaintiffs not now parties to this suit could raise the Section 810 issue at a later time, prudence would dictate that the Forest Service reevaluate whether it has complied with the section."

On the NEPA issues, the court enjoined further roading and harvest beyond the existing roads in a given area pending preparation of a supplemental EIS. Completion of the Supplemental EIS -- originally projected for May, 1989 -- has been delayed because of the *Hanlon* litigation. (See *Hanlon*, p. 15.)

19. *Tukisarnute Native Community Council v. Conquergood*, A85-604 Civ. (D. Alaska) (Holland)

This case involves a challenge to a gold dredging permit and mining plan on the Tuluksak River. Defendants are the Corps of Engineers and the BLM. The Corps of Engineers is the agency responsible for the issuance of dredge and fill permits (commonly known as 404 permits, see 33 U.S.C. § 1344) involving navigable waters. The Bureau of Land Management approves mining plans involving more than five acres of public land.

The plaintiff claims that BLM failed to comply with its statutory responsibilities under both NEPA and Section 810 of ANILCA. Specifically, they claim that the BLM erroneously concluded that it need not prepare a full environmental impact statement in conjunction with its permit authorizing Northland Gold to relocate a 1½ mile stretch of the Tuluksak River across BLM lands in order to dredge the main channel of the river. While BLM did an 810 analysis before approving the mining plans, plaintiffs argue that BLM erroneously found that the dredging activity and channel diversion would not significantly restrict subsistence uses within the meaning of Section 810.

On October 17, 1989, Judge Holland granted in part plaintiffs' motion for partial summary judgment on their NEPA and ANILCA claims. He found that BLM's conclusion not to prepare an EIS or to comply with the full ANILCA section 810 procedures was not reasonable, due to a failure to analyze fully the downstream impacts of the mining operation; but instead of ordering an EIS or compliance with Section 810, he remanded the matter to BLM to analyze those impacts and decide whether to prepare an EIS or comply with the Section 810 procedures. At the same time, he granted defendants' motion for

partial summary judgment as to the remaining counts, which seems to have in effect upheld BLM's permit on the merits. Plaintiffs moved to amend the judgment to vacate the decision in favor of defendants, which the Court denied on January 9, 1989. Plaintiffs have filed an appeal of the grant of summary judgment to defendants in the Ninth Circuit; defendants have moved to dismiss for lack of jurisdiction.

20. *Western Alaska Salmon Coalition v. Baldrige*, A85-536 Civ. (D. Alaska) (Kleinfeld)

This suit was brought by a coalition of Yupik commercial and subsistence salmon fishermen challenging the incidental take of salmon by Japanese and U.S. - Japanese joint venture ground fisheries operations in the American 200 mile Fisheries Conservation zone. Plaintiff argued that the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.*, prohibits salmon take by foreign or joint venture fishermen regardless of whether the take is incidental or targeted. Therefore, plaintiff argued there can be no ground fishery unless it can be done with no incidental take of salmon. The government takes the position that salmon may not be a targeted species and that any incidental take must be returned. However, the government believes that nothing in the Magnuson Act requires the prohibition of the ground fishery because of the incidental take. The government also takes the position that the American component of joint ventures should not be treated as a foreign fisher.

The government moved to dismiss the case on a number of procedural grounds, including estoppel, failure to exhaust administrative remedies, and more significantly, the 30-day statute of limitations in the Magnuson Act. Judge Kleinfeld heard oral arguments on the motions in 1987, and re-arguments on May 31, 1988. The case was dismissed following the re-arguments. The Court found that the Magnuson Act did not require prohibition of the ground fishery because of the incidental take of salmon. The decision was not appealed.

ENCLOSURE 6

Development and Implementation of
Tier II Hunting Regulations
1985

A Report to the Joint Boards of
Fisheries and Game
November 1985

Alaska Department of Fish and Game

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Introduction

At its June, 1985 emergency meeting the Game Board adopted regulations (5 AAC 92.054, 92.056, 92.058, 92.060) for implementing the "Tier II" provisions of the state's subsistence statute. The board requested a report on the effects of the Tier II regulations for this meeting. This report has three parts. The first reviews the factors the board considered in developing the Tier II regulation, and the associated application form. The second part describes the Department of Fish and Game's administration of this fall's Tier II hunts, and offers recommendations for improving the Tier II process if it is to be used in the future. The third part of the report describes the results of the Tier II system in allocation of permits.

Game Board's Development of the Tier II Regulation

Overview

During the June emergency Game Board meeting, a number of hunts were identified as being at "tier II." The board spent several days determining how to apply the three criteria in AS 16.05.251(a) and AS 16.05.255(b) and explored various options for interpreting and weighting the criteria. The board was assisted by a report prepared by the Department of Fish and Game which listed some possible factors which might correlate to the three criteria. Other factors emerged during the board discussion. In determining which factors to use, the board was hampered by lack of public testimony (because of the emergency nature of the meeting), and the short time until the fall hunting seasons.

In evaluating possible factors to employ, the board had to balance several competing values. Because of the short time period, and because of a desire not to unduly burden the public, the board felt that the application should be kept as simple as possible. On the other hand, the factors chosen needed to actually correlate to the criteria being measured, and the board could not make the regulations too simplistic without sacrificing that correlation. For example, the board initially considered income level as a fairly simple measure of alternative non-wild resources. However, because of complexities such as differences in cost of living, and the unknown variables such as an applicant's other financial assets and liabilities, the board determined that this seemingly straight-forward option was not useful.

A similar tension arose between having questions which were verifiable and questions which were meaningful in light of the three criteria. Location of residency, under the local residency criteria, was an objective and verifiable factor. This contrasts with an applicant's own assessment of whether his or her financial circumstances are adequate to purchase non-wild resources as a reasonable alternative to the taking of game. That correlates well with the alternative resources criteria -- as opposed to using income level, but it is not particularly verifiable.

The board also had to decide whether to craft one set of factors to

measure the three criteria which would be used on a statewide basis, or whether instead to have a number of different ways of measuring, tailored to the circumstances of each hunt. Partly because of the time constraints before the fall hunts, the board chose a statewide approach. The board eventually adopted regulations implementing "Tier II". 5 AAC 92.054, 056, 058, and 060; attachment A. An application for "tier II" hunts was developed, based on those regulations. Attachment B.

The following sections outline some of the options the Game Board considered in developing the tier II regulations, and summarize the factors ultimately chosen. The Board of Game recognized that these emergency regulations would not be the final word on the subject, and anticipated that if the statutory framework remains unchanged the regulations governing tier II hunts would be modified over time.

"Customary and direct dependence upon the resource
as the mainstay of one's livelihood."

This criterion appears to relate to the degree to which people have relied on specific fish stocks or game populations in particular geographic areas in the past, and how important this resource has been to their livelihood.

This criterion therefore seems to require at least two sets of standards, one to measure how consistently people have depended on the resource over time, and another to measure how important the resource has been relative to other aspects of their economic situation. Some of the possible indicators considered by the board included:

1. Percentage of diet from wild fish and game, as a general indication of dependence.
2. A history of hunting only in the area where the resource is in short supply as one indication that a person has customary and direct dependence on the resources of that area.
3. Size of the community the applicant resides in, since in larger communities there appears to be relatively less dependency on fish and wildlife than in smaller places.
4. Whether applicant has ever hunted or used the resource in the area.
5. Number of years the applicant has hunted or used the resource, a longer history of use indicating a greater degree of dependence.
6. Amounts of the resource ever harvested or used by the applicant or members of the applicant's household, larger amounts indicating a more consistent customary and direct dependence.

The board ultimately chose two measures, one more verifiable than the

other, for customary and direct dependence. 5 AAC 92.056(a); attachment A. Applicants were given one point for each year they had harvested an animal from the population, up to a maximum of 10 points. Further, applicants could receive up to 20 points for direct dependence on the noncommercial harvest of that population for the principle means of support (primary food source), with the applicant placing himself in the category of great, moderate, slight, or no dependence, and receiving 20, 15, 10, and 0 points respectively.

Because some game populations have only been hunted on a permit drawing system, the board determined that for those hunts no individual could be more dependent than any other individual, and awarded all applicants 30 points for this criterion for those hunts. 5 AAC 92.056(b); attachment A.

One of the problems the board discussed in connection with this criterion was that people could have been directly dependent upon a game population by virtue of harvest accomplished by another member of the individual's family. Thus, the dependent individual would never have actually harvested that population. It proved very difficult to craft an objective, verifiable factor to measure this criterion.

"Local Residency"

Distance greatly affects Alaskans' uses of fish and wildlife. People who live closest to a fish stock or game population are most likely to rely most consistently on that resource. With the criterion of "local residency," the legislature apparently intended that if a resource is in short supply in one area, then all other things being equal, people who live closest to it should have a preference over those who live further away.

The board considered several possible ways of identifying "local residency," including:

1. Distance of each applicant's residence from the resource in miles.
2. Travel costs for the applicant to harvest the resource.
3. Basing the definition on a series of zones defined by increasing distance from the resource; discussed as possibilities were the range of the resource, game management units, and the regions which the joint boards adopted as the basis of the six regional council jurisdictions.

One problem that the board encountered in dealing with the seemingly straight-forward local residency criterion involved how to measure the distance from the resource. Straight line distance was the simplest in some ways, but did not take into account mountain ranges and other physical barriers, nor distance along travel routes, such as rivers and highways. It would also have been very difficult to administer.

The board eventually decided to use a zone approach and to award up to 30 points depending on the applicant's residency zone. 5 AAC 92.058 (a); attachment A. The first zone consisted of the area in which the relevant hunt occurred; the second zone was outside of that area but within the game management unit or units containing the hunting area; the third zone was game management units adjacent to the unit or units containing the hunting area; the fourth zone was any other game management unit. 5 AAC 92.058(b); attachment A.

The board realized that these standardized measures might not always be appropriate, and built into the regulation an ability to modify the boundaries if the standard zones would either treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource. 5 AAC 92.058(c); attachment A. Since public testimony was not taken at the emergency Game Board meeting, the board realized it may not have identified all of the instances where boundary modifications might have been appropriate, but it was anticipated that corrections could be made as problems were discovered in the future.

"Availability of Alternative Resources"

The board discussed two different ways of viewing "availability of alternative resources." The first dealt with whether other fish or game resources are available to offset dependence on the resource in short supply. This could either mean other types of resources available in the same geographic area, or similar resources actually available in other geographic areas. These alternative resources are likely to be differentially available to people, due to differences in transportation, for example.

Timing can also influence availability of alternative resources. If the resource in short supply is customarily harvested in the spring, a resource which can be harvested only in the fall may or may not be an "available alternative."

A second way of viewing "alternative resources" discussed was to consider not just wild resources, but all alternative foods. From this perspective, people with access to fewer stores and foodstuffs, or who must pay higher prices for food, would have fewer alternative resources, and therefore should rank higher on this criterion.

Because of the great range of possible interpretations and approaches to this criterion, it was difficult for the board to develop a simple approach. The following possible indicators were considered:

1. A history of frequent use of fish and wildlife resources in other geographic areas as indicating a greater availability of alternative resources.

2. The use of aircraft to harvest resources as an indicator that a person has other alternatives available, since he or she could choose to hunt in many different areas of the state.
3. Living in a place with relatively few stores and substantially higher relative prices of food as an indicator of fewer alternatives.
4. Whether other fish and game resources are nearby, accessible, and useful as substitutes for the resource in short supply.
5. Whether the applicant's financial circumstances are adequate to allow purchase of alternative resources.

The board ultimately adopted two measures for this criterion. 5 AAC 92.060; attachment A. One was designed to correlate to the availability of fish and game resources and the other to measure the availability of non-wild resources. An applicant could receive up to 15 points depending on the availability of fish and game resources in the hunting area or other area reasonably accessible to the applicant. Additionally, 15 points were awarded to an applicant whose financial circumstance was not adequate to purchase non-wild resources as a reasonable alternative to the taking of game.

The first question is subjective to some extent. The board determined that availability of wild resources was in some degree dependent on an individual's circumstances, such as ownership of a car, an airplane, or a boat. The question on financial circumstances is necessarily subjective, since the board determined that other more objective and seemingly simple factors such as income level alone, or size of community, did not necessarily correlate to the availability of those non-wild resources to the applicant.

Summary

The Board of Game found it very difficult to develop standard measures to apply the three statutory criteria on a statewide basis. Time constraints and lack of public input made the board's task harder, but they were not the only factors. It was difficult to identify measures that would both correlate to fish and wildlife use and be verifiable. Any attempt to distinguish among individuals based on three criteria will involve the same fundamental problem of correlation and verification faced by the board at its June meeting.

Implementation

As occurs with all permit hunt processes adopted by the Board of Game, The Division of Game was responsible for implementing the Tier I and Tier II hunts adopted in the June 1985 emergency board meeting. Prior to the June meeting, the Board of Game held its annual spring (March-April) regulatory meeting and confirmed the 1985-86 hunting regulations, including the normal registration and permit drawing hunts. Immediately after the spring board meeting ended (April 8), Game Division staff produced the drawing hunt supplements and the registration hunt supplements, and began drafting the hunting and trapping regulation booklets. Both the drawing hunt supplements and registration hunt supplements were produced in record time and were made available to the public beginning April 16. The public was given 45 days (until May 31) to apply for fall drawing hunts, with results to be available on July 13 or shortly thereafter. There were 45,366 applicants for the 117 fall drawing hunts; \$275,670 in application fees were received.

The establishment of Tier I and Tier II hunts necessitated major changes in the administrative procedures of permit information and issuance. For the most part, Tier I and II hunts were developed from the previously mentioned permit drawing (lottery) hunts and registration hunts. A total of 54 Tier II hunts were authorized (See Attachment C).

Scheduling

New applications and newsprint supplements had to be quickly designed and produced for public distribution. In view of certain changes and limitations to permit hunts available to nonresidents, it was assumed that fewer hunters would participate in the Tier II permit hunt application process as did under the drawing system. In scheduling events and redirecting staff time to administer the Tier II hunt application process, we assumed a "worst case situation" and planned for receipt of up to 30,000 applications. Also, being aware that sheep seasons must start earlier than other hunts or essentially not at all, a separate schedule of events was designed for sheep which resulted in the creation and distribution of a separate supplement for this species.

For all other species, and based upon the "worst case" assumption, it was apparent that many of the seasons would need to have delayed opening dates. The following schedule of events were developed in late June:

Sheep

Hunt supplement ready for printing	July 5
News release on sheep hunts	July 8
5,000 supplements (4 pages each) ready for mailing	July 10
Mail/deliver to all ADF&G offices and selected vendors	July 20
Available to public - 9 days	July 29
Deadline for receipt by ADF&G	August 5
Additional time to score applications	August 6
Select winners	August 7-8
List of permit winners sent to Fairbanks, Tok, Glennallen, Delta, Palmer, Soldotna	August 8
Mail permits	August 9
Hunters receive permits	August 12-19

Season opens - August 20

All Other Species

Tier I and II newspaper and applications ready for printing	July 9
50,000 papers, 110,000 applications ready for mailing	July 15
Mail/deliver to all vendors and ADF&G offices	July 24
Available to public - 10 days	August 5
Deadline for receipt by ADF&G	August 12
Additional time to sort and process	August 17
Additional time to score	August 22
Select winners	August 26
Print permits and mail	Sept. 5
Hunters should receive permits no later than	Sept. 15

Information and Application Distribution

The original permit hunt supplements were withdrawn and two new supplements produced. One contained information on the "nonsubsistence" drawing hunts for the 1986 spring season. The second subsistence hunt supplement contained three types of hunts: (1) general registration hunts where any hunter including nonresidents could apply; (2) a subsistence registration hunt where only Alaskans (or some hunts where only individuals residing in specific geographic areas) could apply; and (3) a Tier II subsistence application where only those with highest application scores were given permits, or a drawing was held among those with the lowest tie-scores if only a limited number of permits were left.

The new hunt supplements and applications went out to the public on schedule. However, given the requirement of a short deadline for the application period, potential applicants had at best about two weeks to obtain the forms, complete them, and return them to the department or have them postmarked by August 5. Within the limited schedule, distribution of the applications to remote areas was particularly burdensome. In some cases, due to mail flight schedules and delays, applications were available to local residents only a few days before the deadline.

The hunting regulation booklet was significantly modified and reorganized into subsistence and general hunting sections. There were delays in printing and the books were not available at regional offices until September 3; 6-8 weeks later than normal and three weeks after some seasons had already begun.

Processing and Scoring

A total of only 9,382 applications were received. Of these, 595 were deemed invalid and rejected for the following reasons:

<u>Reason</u>	<u>Number</u>
Duplicate or 2 in household	80
Failure to certify that the application was the only one (or two for caribou) for the household	85
Domicile blank or invalid	71
Hunt number blank or invalid	125
Late application or cancelled hunt	5
Failure to submit application fee	195
Failure to certify that applicant was an Alaskan resident 12 years or older	15
Failure to sign application	<u>22</u>
	595

Since the number of applications was substantially less than originally anticipated, the overall processing time was shortened considerably and resulted in the Tier II permits being mailed out earlier than expected. This year it took an average of 4 minutes to score each application by hand. Computer processing (software was not available this year for Tier II applications) could reduce scoring time by 50 to 75% per application. If in future years, we received the same number of Tier II applications as was normally received on permit drawing hunts (approximately 50,000), an estimated 245 person days would be required to process the applications.

As noted above, applications were scored manually using a template score sheet. Scores were assigned in accordance with the point system established by the Board of Game. We have reviewed all applications and determined that we had a scoring error rate of 1.7%.

General Problems

Because of the emergency situation in which Tier II hunts were established and Tier II applications developed, instructions for answering the questionnaires did not precisely match the permit supplement (newspaper) instructions. This caused considerable confusion among staff and the public. For example, Question No. 9 in the permit supplement paper spoke to the degree of availability of alternative resources (including big game and salmon) which are at least as accessible as the Tier II animal for which one applied. It did not specify "in your usual hunt area" as did the application. Therefore, a person could have ignored alternative resources such as salmon and caribou that were readily accessible when applying for a Tok sheep permit, since he/she may have viewed "usual hunt area" as the actual Tok Management Area. If he/she viewed the "usual hunt area" as Zone 1, then all Zone 1 residents should have scored the same, as the same meat resources were available to all.

The application format and many of the questions confused many people and resulted in several thousand inquiries to staff via phone calls, letters, and visits to the various regional and area offices. Although scoring of the "point system" was explained in the regulation book, no explanation of terms in the application was provided to the public (except by staff) when they were completing their applications. The intent of not providing this information was to receive objective answers from the applicants, but the public soon recognized which answers would receive higher scores.

The short application period created significant problems for both the public and the department. Applicants at best had about two weeks to obtain the forms, complete them, and return them to the department or get them postmarked before August 5.

The process was particularly burdensome in remote areas. In some cases, due to mail flight schedules and delays, applications were available in communities for only a few days before the deadline.

Overall there was a tremendous negative reaction by the public to the establishment of Tier II hunts. Departmental staff, particularly Game Division staff in regional and area offices, were targets for verbal and written frustration and anger expressed by a confused and disenchanted hunting public. Hundreds of staff hours were spent trying to explain the reasons for the changes, how to participate in the new system, and generally trying to reestablish credibility with a public that was very unhappy.

Monetary costs to the department were high. About \$265,000 in application fees for the original 1985 permit hunts were refunded. We are currently determining extra costs expended in personnel and operating funds to administer the emergency Tier II hunts.

Recommendations

The permit system established under the emergency regulations worked in that Tier II hunts were held. However, there were numerous administrative difficulties that should be minimized or eliminated if the existing Tier II system is used in future years. It is also important that appropriate revisions be made so that: (1) confusion by the public can be minimized to the greatest extent possible; and (2) the system is not easily abused. Modifications to the present Tier II system would, of course, have to be made in a manner which results in correlation of the measured factors to the 3 statutory criteria. Specific recommendations are listed below.

Tier II Application

1. The current application form should have the following major revisions, if they can be made in a manner which results in correlation of the measured factors with the three statutory criteria:
 - a. all questions should be verifiable and quantified if at all possible (presently questions 8, 9, and 10 are not verifiable but carry large point values);
 - b. all ambiguous terms (e.g., "greatly dependent") should be defined on the form;
 - c. questions should be simplified and reduced to two possible answers (e.g., yes or no) where possible;
 - d. the applications should have a clause which states that the information provided on the application is not confidential and subject to public disclosure;
 - e. question 5 should be deleted (we received numerous erroneous application requests for hunts that did not exist);
 - f. if question 9 remains, the board should predetermine how available alternative resources are in the hunt area;
 - g. questions 11, 12, and 13 should be deleted and replaced with statements of fact (e.g., "to apply for a Tier II hunt, you must be at least 12 years old and a resident of Alaska"); and
 - h. the point value of each question should be shown on the form (this would save hundreds of staff hours answering calls regarding scores).
2. Standard procedures for scoring and rejecting applications for all hunts should be established and reviewed by the board prior to the application process and made available to the public.

3. Unlike lottery permits in the past, the Tier II permits are on the basis of household rather than an individual. The board needs to determine whether or not a permit can be transferred between members of the same household.
4. If at all possible, the application period should be a minimum of one month duration.
5. A more comprehensive public information program should be conducted regarding future Tier II hunts, schedules, and procedures.
6. As harvest returns become available, all hunts and corresponding numbers of permits should be analyzed and adjusted where necessary to meet management objectives.

The Allocation Effects of the Tier II System

The purpose of this section is to describe the performance of the Tier II system in allocating permits. The section has two parts. First, general characteristics of all Tier II hunts statewide are described, including number of hunts, location of hunts, number of applicants, number of winners, cut-off scores for winners, and other characteristics. Second, the allocation of permits among applicants is described by comparing the Tier II system in 1985 with the previous allocation systems in 1984 for particular hunts. Several questions are answered by these comparisons:

1. Who applied for the permits?
2. What were the criteria that mattered for obtaining permits?
3. What changes occurred in allocations compared to previous years?

General Characteristics of the Tier II System

Number of Tier II Hunts

There were 54 authorized Tier II hunts in 1985 (53 hunts were held) offering a total of 4,856 hunting permits for five types of game animals (see Table 1). Moose (26 hunts) and sheep (12 hunts) accounted for the largest number of hunts, while caribou (2,690 permits) and moose (1,611 permits) accounted for the largest number of permit opportunities.

Table 1
Tier II Hunts and Applicants

<u>Species</u>	<u>No. of Tier II Hunts</u>	<u>Available Permits</u>	<u>Valid Applicants</u>	<u>Permits Awarded</u>	<u>Award Rate</u>
Bison	4	107	826	107	13%
Caribou	5	2,690	3,528	2,504	71%
Moose	26	1,611	3,567	1,484	42%
Mt. Goat	6	36	93	36	39%
Sheep	<u>12</u>	<u>412</u>	<u>662</u>	<u>404</u>	61%
Totals	53	4,856	8,676	4,535	52%

Location of Tier II Hunts

Most Tier II hunts were located near the large population centers of Anchorage, the Matanuska Valley, Fairbanks, and Juneau in road-accessible areas (see Figure 1). The three GMUs surrounding Anchorage (GMUs 7, 14, and 15) accounted for 30 of the 53 hunts. The relatively easy access created by roads in these areas accounts for the high levels of participation and demand which resulted in these hunts being designated as Tier II. Only 10 hunts were designated in areas not connected by roads to large population centers.

As discussed below, the location of hunts accounts for the origin of most applicants. The great majority of applicants came from the large population centers.

Applicants and Winners

As shown in Table 1, there were 8,676 valid applicants for the 53 Tier II hunts, of which 4,535 (or 53%) were awarded permits. Award rates varied considerably between species and hunts (Table 1, Appendix Tables 1-6). The lowest award rate was for bison (13%) and the highest for caribou (71%). For certain caribou, moose, and sheep hunts, all applicants received permits (321 permits were not awarded because of undersubscription, see Appendix Tables 1 - 6).

Over 40 percent of permit winners came from the Anchorage-Matsu area due to the location of the hunts and the large population concentrations in these areas. As shown in Table 2, of all permits awarded, Anchorage residents won 24.3 percent and Matsu residents 20.4 percent.

Table 2
Permit Winners by Residency

<u>Residency</u>	<u>Bison</u>	<u>Caribou</u>	<u>Moose</u>	<u>Mt. Goat</u>	<u>Sheep</u>	<u>Total</u>
Anchorage Area	2 (1.9)	573 (22.9)	383 (25.7)	5 (13.9)	138 (34.2)	1,101 (24.3)
Mat-Su Area	0 (0.0)	503 (20.1)	395 (26.5)	1 (2.8)	27 (6.7)	926 (20.4)
Kenai Peninsula	1 (0.9)	171 (6.8)	58 (3.9)	8 (22.2)	4 (1.0)	242 (5.3)
Juneau Area	0 (0.0)	4 (0.2)	53 (3.6)	0 (0.0)	2 (0.5)	59 (1.3)
Fairbanks Area	1 (0.9)	128 (5.1)	20 (1.3)	0 (0.0)	75 (18.6)	224 (4.9)
Other	103 (96.3)	1,124 (44.9)	582 (39.0)	22 (61.1)	158 (39.1)	1,989 (43.8)
Total	107	2,503	1,491	36	404	4,539

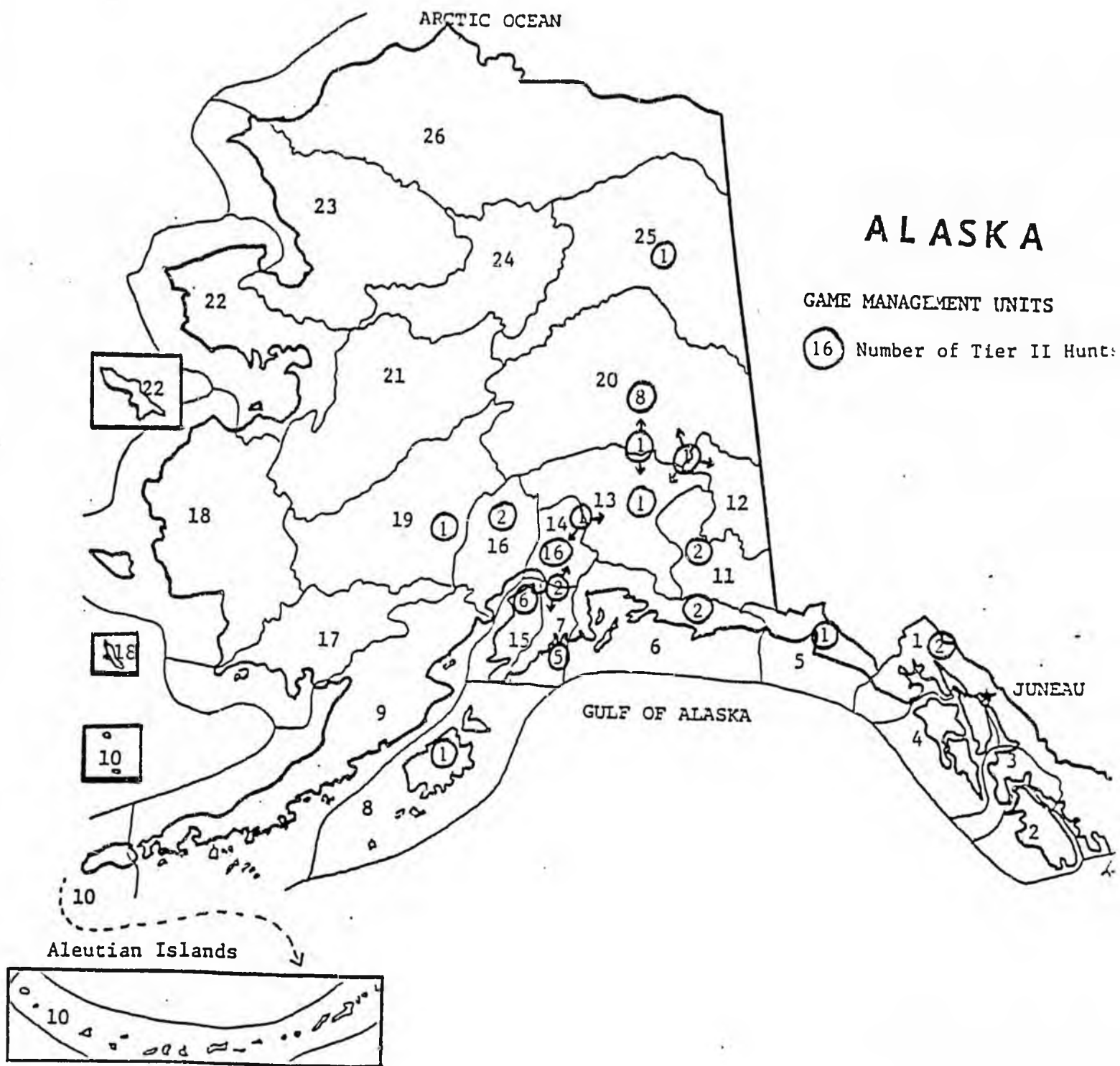


FIGURE 1. Locations of the 53 Tier II hunts in 1985. The greatest numbers occurred around population centers (Anchorage, Matanuska Valley, and Fairbanks).

Cut-off Scores of Winners

The cut-off scores between winners and non-winners varied considerably between hunts (Appendix: Table 2-6). The lowest winning score ranged from only 5 points (Yakutat Forelands Moose Hunt 0961, GMU 5A) up to 90 points, the highest possible (Tanana Bison Hunts 0403, 0404, GMU 20D). In general, the larger the number of applicants relative to available permits, the higher the cut-off score. It can be expected that cut-off scores will increase in the future if the applicant pool size increases.

Performance of the System in Allocating Permits

How did the Tier II system allocate hunting opportunities in comparison with previous years? The answer is that it depended upon the particular hunt. To illustrate the performance of the survey in allocating hunting opportunities, five cases are discussed below. They suggest three major conclusions:

1. Shifts occurred in the allocation of permits between hunters residing in different areas for particular hunts. For the hunts described below, the changes were not large in comparison with the previous year's allocation system.
2. Which questions were most important in determining who received permits varied between hunts. For some hunts, "residency" was the question most highly related to a hunter receiving a permit; for other hunts, "residency" made no difference, or was of secondary influence in comparison with other factors like "income" or "dependency." Similarly, for some hunts, the "income" question was most highly related to a hunter receiving a permit, while it was of no or secondary influence in other hunts. Whether a question mattered in receiving a permit was greatly affected by the size and location of the applicant pool relative to the number of permits and location of the hunt.
3. For hunts which previously were on random draw (see Case 5 below), the Tier II system changed the basis of allocation away from chance to a selection procedure based on the individual characteristics of a hunter in comparison with all other applicants. For hunts which previously were permit registration (see Case 1 below) or permit award based on residency and dependency criteria (see Case 2 below), the Tier II system increased the applicant pool but did not substantially alter the basis of allocation.

Case 1. Hunt 0985: GMU 20B Moose (Minto Flats)

Area

The 20B Minto Flats Management Area is located about 60 miles west of Fairbanks. The community of Minto (population 178 people) is located in the management area. Residents of Minto, Nenana, and Fairbanks have hunted in this area in the recent past.

Former Allocation System

Seasons and bag limits were substantially decreased in the Minto Management area beginning about 1976. In 1984-85, 30 registration permits were available for a 5-day fall moose hunt, and 50 permits for a 45-day January-February moose hunt, issued in Minto. An additional 20 fall permits were available, 10 issued in Anchorage and 10 in Fairbanks (see Table 3). The harvest quotas were seven fall bull moose and eight winter bull moose.

The Tier II Allocation System

The 1985 Tier II system provided for 60 permits issued to the top scoring applicants. In 1985, there were 68 applications received by mail within the deadline. Thus, almost all applicants were awarded permits (60 of 68; 88 percent successful). Of successful applicants, 31 were from Minto, 3 from Nenana, and 20 from Fairbanks-North Pole, with 6 winners from other places. Half the applicants had never killed a moose in this hunt previously; 31 percent had killed a moose 10 or more years.

Performance

The 1985 Tier II system resulted in a reallocation of permits (Table 3). Minto residents' permits decreased from 30 fall and 50 winter permits in 1984 to 31 permits in 1985. Fairbanks residents' permits increased from 10 fall permits to 20 permits. Nenana residents' permits decreased from 10 fall permits to 3 permits. Thus, a greater percentage of permits went to persons outside the hunt zone in 1985 than the previous year. The reallocation resulted primarily from the low number of hunter applicants from Minto and Nenana. There were numerous problems making applications available in the hunt zone: local vendors received permits only 2 days before the mailing deadline, and many residents were dispersed to fishcamps away from the community at that time. These problems resulted in the low application rate.

TABLE 3 MINTO FLATS MANAGEMENT AREA, PERMIT AND HARVEST SUMMARY, 1979-1985.¹

Regulatory Year	Number Permits Allocated			Number Issued			Harvest				
	Fbks.	Minto	Nenana	Fbks.	Minto	Nenana	Fbks.	Minto	Nenana	Non-Res.	Unknown
1979-80	--	--	--	113	65 ²	10	4	2	0		
1980-81	25	50	25	25	28	25	2	0	0		3
1981-82	25	50	25	25	34	25	5	2	0		
1982-83	25	50	25	25	41	25	4	2	0	1	
1983-84	25	50	25	25	50	25	8	7	1		
1984-85	fall	10	30	10	29	10	4	6	1		
	winter		50		30	10		1			
1985-85	60 Total			20	31	3	6 other				

¹ This information is derived from the Big Game Data Index Files, Alaska Department of Fish and Game, 1979-1985.

² 48 listed Minto as their residence.

Case 2. Hunt 515: GMU 13 Caribou (Nelchina herd)

Area

The range of the Nelchina and Mentasta caribou herds lies within the Copper Basin, a 29,520 square mile area about 180 miles east of Anchorage. The area is accessible by road to population centers in Anchorage, the Mat-Su Valley, and Fairbanks. There are about 3,310 people living in the "hunt zone" of the Copper Basin, in 1,057 households, and 22 communities or areas.

Former Allocation System

Hunting permits for the Nelchina caribou herd have been issued by random drawing since 1977. From 1981 through 1984, a separate subsistence permit drawing was held for qualified residents of a specified zone, most recently GMUs 11, 13, and a portion of GMU 12 along the Nabesna Road (see Table 4). Permits not awarded during the subsistence drawing were available by registration beginning December 1. As shown in Table 4, the number of applicants for subsistence permits rose steadily until demand exceeded supply by 218 in 1984.

The Tier II Allocation System

For the 1985 Tier II hunt, there were 2,718 valid applications, 711 (26 percent) from the Copper Basin and 2,007 (74 percent) from outside the basin. Of the 1,800 permits awarded, Copper Basin residents received 677 (38 percent) and non-basin residents received 1,123 (62 percent). Sixty-six percent of all applicants received permits. There were 34 unsuccessful Copper Basin applicants, including 20 from Glennallen and 9 from Copper Center. Fifty-one percent of the Anchorage applicants (351 of 690) and 55 percent of Eagle River applicants (92 of 168) received permits.

Performance

The 1985 Tier II system resulted in a reallocation of permits to residents of the Copper Basin in comparison with 1984. In 1984, 738 Copper Basin applicants received 500 permits, whereas in 1985 711 Copper Basin applicants received 677 permits. Non-basin applicants outside the hunt zone were the majority of winners in 1985 (1,123 permits) as in 1984, so the overall reallocation was small. The survey questions most highly correlated with receiving permits were household income and dependency. Only one percent of persons answering "no" to the income question received a permit; and only 12 percent answering "slight or no" dependence received a permit.

Table 4
Nelchina Caribou (GMU 13) Permit Applications

<u>Year</u>	<u>General Hunt</u>		<u>Subsistence Hunt</u>			<u>Total</u>	
	<u>Permits</u>	<u>Applicants</u>	<u>Permits</u>	<u>Applicants</u>	<u>Registration</u>	<u>Permits</u>	<u>Applicants</u>
1981-82	1,546	6,764	150	55	---	1,696	6,819
1982-83	1,300	8,877	450	233	217	1,750	9,110
1983-84	1,300	9,265	450	438	17	1,750	9,703
1984-85	1,400	11,798	500	718	0	1,900	12,516
1985-86 (Tier II)	---	---	1,800	2,718	---	1,800	2,718

Case 3. 913W: Unit 13 Moose (Copper Basin)

Area

The area of the Copper Basin is described in Case 2 above.

Former Allocation System

Most of GMU 13 has been open to general moose hunting, with a one-bull moose limit with an antler spread of 36 inches. To increase hunting opportunities for subsistence use, since 1983 an additional 100 subsistence permits were available by drawing for GMU residents. In 1983, 230 people applied; in 1984, 372 people applied.

Tier II Allocation System

In 1985, the Tier II system provided 200 antlerless moose permits available to all Alaskan residents. There were 506 valid applications. Of these, 391 (77 percent) were GMU 13 residents. Of the 200 permits awarded in 1985, 182 (91 percent) went to Copper Basin residents.

Performance

The Tier II system resulted in an extra 100 permits being made available for antlerless moose in 1985 over 1984 due to an increase in the allowed harvest. Almost all these additional permits were allocated to hunt zone residents of the Copper Basin by the scoring system, primarily because of the residency question. Because there were more hunt zone applicants than available permits, the questions on income and dependency also were important in determining permit winners.

Case 4. Hunt 510: GMU 11 Caribou (Mentasta Herd)

Area

The Mentasta Caribou herd ranges in the Mentasta and Wrangell Mountains in the eastern part of the Copper River Basin. Unlike the Nelchina Caribou Herd (Case 2), the Mentasta herd is not easily accessible by road from population centers.

Former Allocation System

Hunting permits for the Mentasta caribou herd have been issued by random draw since 1977. Until 1985, there were no subsistence permits issued. As shown in Table 5, the number of applicants has grown since 1977, leveling off in 1983 and 1984.

Tier II Allocation System

The 1985 Tier II hunt offered 350 permits to the top scoring applicants. However, only 170 people applied, leaving 180 permits unissued. Consequently, all applicants received permits. Fifty-five applicants (32%) were from the Copper Basin (Chitina 2; Chistochina 1; Copper Center 10; Gakona 7; Glennallen 14; Nabesna 4; Tazlina 1; Slana 15); while 115 were from outside the basin. Thirty-five applicants were from Anchorage, 36 from Valdez, and 3 from Fairbanks.

Performance

That more people did not apply for this hunt can be explained in part as a response to the announced change in season to September 21- September 30. August 10 - September 30 had been the season in 1984. As evidenced by advisory committee comments, many people felt that caribou taken at the end of September would be in rut and the meat would not be useable. Also, the later season meant that due to herd movements, the caribou would not be in accessible locations. In contrast, the Nelchina caribou GMU 13 hunt is open January - March. The season for Unit 11 caribou was finally altered to September 10 - 30, but this was well after the deadline for submitting permit applications.

Table 5
Number of Applicants, Mentasta Caribou Herd

<u>Year</u>	<u>Applicants</u>	<u>Permits</u>	<u>Residency of Winners</u>	
			<u>Copper Basin</u>	<u>Non-Copper Basin</u>
1977	277	150	---	---
1978	363	350	---	---
1979	408	350	---	---
1980	421	350	---	---
1981	619	350	148 (43%)	202 (57%)
1982	732	350	128 (37%)	220 (63%)
1983	757	350	---	---
1984	731	350	---	---
1985 (Tier II)	170	350	55 (32%)	115 (68%)

Case 5. Hunt 919: Unit 14A (East) Antlerless Moose

Area

This hunt takes place in the eastern Matanuska Valley. The area is road-accessible to large population centers. In 1984, there were 29,836 residents of the Mat-Su Valley area.

Former Allocation System

In 1984, the antlerless moose hunt was based on a random draw system. Anyone was permitted to apply for a drawing permit to take cow moose. There was also a bull moose season in 14A (East) with no permit requirement.

Tier II Allocation System

The Tier II system offered 200 antlerless moose permits in 14A (East). There were 658 applications for the 200 Tier II permits. Of these, 495 applicants (75 percent) lived in the hunt area, GMU 14A, mostly Palmer (300) and Wasilla (151); 163 applicants were from outside GMU 14A, mostly Anchorage (102) and Eagle River (37). Of the 200 permits issued, 194 (97 percent) went to Unit 14A residents. Anchorage residents received 3 permits, Eagle River 2, and Peters Creek 1. Of residents of the hunt area, 320 applicants (61 percent) did not receive a permit. All applicant scores of 71 or better received permits. Ten of 46 applicants with a score of 70 were selected randomly and issued permits.

Performance

The Tier II system appears to have resulted in a different way to allocate a relatively small number of hunting permits among a large number of potential hunters. Instead of random draw, residency of individual applicants was the more important first-cut criteria. Besides place of residence, the question that appears to have had the most effect on applicant success was sufficiency of income. Of the 200 permit winners, 194 responded "no" to whether they had adequate income to purchase substitutes for moose. Of the 458 unsuccessful applicants, 84 (18 percent) reported insufficient income.

Conclusions

As shown by the five cases discussed above, the performance of the Tier II system varied considerably between hunts. Changes did occur in the allocation of permits between hunters residing in different areas for certain hunts. In some instances, relatively more permits were allocated to hunters outside the hunt zone (the Minto Flats moose case); in other instances relatively more permits were allocated to persons in the hunt zone (the Nelchina caribou case); and in other instances some permits were left unallocated (the Mentasta caribou case). Overall, these changes were not large in magnitude in comparison with the 1984 hunts.

A second conclusion is that the relative importance of particular survey questions in awarding permits varied between hunts. For undersubscribed hunts, point scores were irrelevant (the Mentasta caribou case). In hunts with a large number of applicants with equivalent residency scores (the Nelchina caribou, Copper Basin moose, and 14A (East) moose), survey questions other than residency became important, such as income and dependency.

A third conclusion is that for previous random draw hunts (Cases 2, 3, 4, 5), the Tier II system changed the basis of allocation away from chance to selection based on individual characteristics of the applicant in comparison with other applicants. For hunts previously under permit registration (Case 1) or permit award based on residency and dependency criteria (Cases 2, 3), the Tier II system tended to increase the applicant pool with persons residing away from the registration and hunt zones; however, the Tier II system did not substantially alter the basis of allocation.

Finally, it can be expected that the performance of the survey will change in subsequent years if a Tier II system is continued. In particular, changes in the size and location of the applicant pool relative to the hunt can be expected to affect future permit allocations.

STATEWIDE INFORMATION

5 AAC 92.054. PRIORITY FOR SUBSISTENCE HUNTING. (a) When the board has eliminated nonsubsistence uses of game, and the board finds that it must further restrict the taking of game to assure that the game population is maintained and managed on a sustained yield basis, or to assure the continuation of subsistence uses of a game population, tier II hunting permits will be allocated to people who receive the highest number of points according to the following criteria:

(1) customary and direct dependence upon the game resource as the mainstay of the person's livelihood, as indicated by past participation and the extent that the person depends on that game resource;

(2) local residency, as indicated by the location of the person's domicile and distance from there to the hunting area; and

(3) availability of alternative resources, as indicated by the presence of other fish and game resources authorized and available for harvest in the hunting area, or in another area reasonably accessible to the individual, and by the person's financial circumstance.

(b) The board will establish a point system for ranking a tier II hunting permit applicant based on each criterion set out in (a) of this section. A tier II hunting permit will be issued to each highest ranking applicant until all permits authorized for each hunt have been issued. If, at the cutoff point, the number of applicants with equal scores exceeds the remaining permits available, permittees shall be selected by random drawing among those applicants.

(c) Each applicant for a tier II hunting permit must be a resident at least 12 years old.

(d) Only one person in a household may apply for each tier II hunt, except that two people in a household may apply for each tier II caribou hunt.

5 AAC 92.056. POINT SYSTEM FOR CUSTOMARY AND DIRECT DEPENDENCE. (a) Except as provided in (b) of this section, a maximum of 30 points will be given an applicant for past participation in a hunt and degree of dependence based on the following schedule:

(1) 1 point for each year the applicant harvested an animal from the population; a maximum of 10 points will be given;

(2) up to 20 points for degree of direct dependence on the noncommercial harvest of the population for the principal means of support (primary food source) of the applicant:

- (A) great dependence, 20 points;
- (B) moderate dependence, 15 points;
- (C) slight dependence, 10 points;
- (D) no dependence, 0 points.

(b) For a hunt on a game population that has only been hunted under a permit drawing system, each applicant will be given 30 points for customary and direct dependence on the resource as the mainstay of the applicant's livelihood, because the board finds that as a consequence of the random nature of the distribution of hunting opportunity under the system no person has been able to develop customary and direct dependence on that game population that is different in degree from any other person.

STATEWIDE INFORMATION

5 AAC 92.058. POINT SYSTEM FOR LOCAL RESIDENCY. (a) A maximum of 30 points will be given based on the location of an applicant's domicile according to the following schedule:

- (1) residency zone 1: 30 points;
- (2) residency zone 2: 20 points;
- (3) residency zone 3: 10 points;
- (4) residency zone 4: 0 points.

(b) Except as provided in (c) of this section:

(1) residency zone 1 means the hunting area;

(2) residency zone 2 means outside the hunting area, but within the game management unit or units containing the hunting area;

(3) residency zone 3 means in game management units adjacent to the game management unit or units containing the hunting area;

(4) residency zone 4 means in another game management unit.

(c) If the board determines that the zones in (b) would treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource, the board will, by regulation, modify the boundaries of the zones.

5 AAC 92.060. POINT SYSTEM FOR AVAILABILITY OF ALTERNATIVE RESOURCES. A maximum of 30 points will be given to an applicant for availability of alternative resources based on the following schedule:

(1) availability of fish and game resources in the hunting area, or other area reasonably accessible to the applicant:

- (A) greatly available: 0 points;
- (B) moderately available: 5 points;
- (C) slightly available: 10 points;
- (D) not available: 15 points;

(2) 15 points will be given if the applicant's financial circumstance is not adequate to purchase non-wild resources as a reasonable alternative to taking the game.

