
ALASKA BOARD OF GAME
Statewide Regulations Meeting
Fairbanks, AK | March 4 – 12, 2022

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Saturday, March 12, 2022

8:30 a.m. BOARD DELIBERATIONS continued/conclude

MISCELLANEOUS BUSINESS, including petitions, findings and policies, letters, and other business

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Agenda Notes

- A. Meeting materials, including a list of staff reports, a roadmap, and schedule updates, will be available prior to the meeting at: www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo or by contacting ADF&G Boards Support Section in Juneau at 465-4110.
- B. A live audio stream for the meeting is intended to be available at: www.boardofgame.adfg.alaska.gov
- C. The State of Alaska Department of Fish and Game complies with Title II of the Americans with Disabilities Act of 1990 (ADA). Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this hearing and public meeting should contact 465-6098 no later than two weeks prior to start of the meeting to make any necessary arrangements.

**ALASKA BOARD OF GAME
Statewide Regulations Meeting
Fairbanks, Alaska
March 4 – 12, 2022**

Tentative List of Oral Reports

Friday, March 4, 2022 (following opening business)

1. State & Federal Agency Updates/Reports
 - ADF&G Division of Wildlife Conservation - Eddie Grasser & Ryan Scott
 - ADF&G Subsistence Section – Lisa Olson
 - US Fish & Wildlife Service – Ryan Mollnow
2. Intensive Management, Tom Paragi, ADF&G
3. ADF&G Education Program Report, Mike Taras, ADF&G
4. Wood Bison Restoration Update, Tom Seaton, ADF&G

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE ALASKA BOARD OF GAME

Notice is given that the Alaska Board of Game proposes to adopt, amend, or repeal regulation changes in Title 5 of the Alaska Administrative Code dealing with the use or taking of game in the areas designated below, including the following regulations:

1. Regulatory topics scheduled for the Central and Southwest Region meeting, January 21-29, 2022.

For Game Management Units 9, 10, 11, 13, 14A, 14B, 16 & 17:

- A. TRAPPING SEASONS AND BAG LIMITS for furbearers including: Beaver, coyote, marten, muskrat, otter, wolf, and wolverine.
- B. HUNTING SEASONS AND BAG LIMITS for all species including: Moose, muskox, caribou, bison, black bear, brown bear, Dall sheep, goat, wolf, wolverine, and small game including Alaska hare, beaver, Emperor geese, grouse and ptarmigan. In addition, the potential for identifying general, Tier I or Tier II hunting for each population, and the reauthorization of antlerless moose hunts. *(Note: Any changes made to the Mulchatna caribou hunts may also apply to Units 18 and 19.)*
- C. LICENSES, HARVEST TICKETS, HARVEST REPORTS, TAGS, FEES, AND PERMITS including: Discretionary and required permit hunting and trapping conditions and procedures; permits for hunting black and brown bear with the use of bait or scent lures; community subsistence harvest hunt permit conditions and area for harvesting moose and caribou; restrictions for Unit 13 Tier I and Tier II permit holders to hunt moose and caribou in other locations of the state; priority for subsistence hunting under Tier II permits; and brown bear tag fee exemptions. *(Note: Any changes made to the Community Subsistence Harvest Hunt regulations for the Copper Basin Area may also apply to Unit 12.)*
- D. METHODS AND MEANS FOR TAKING BIG GAME, GAME, FUR ANIMALS, AND FURBEARERS, including: Lawful methods of taking big game and game including the use of muzzle-loading and black powder weapons, snowmachines for taking wolf and wolverine, the same day airborne take of bear, and restrictions on the use of motorized vehicles and airboats for taking moose. Lawful methods of taking furbearers and fur animals including requirements for trap identification; restrictions for trapping near trails, trailheads, and dwellings; and taking beaver with the use of firearm, bow and arrow, submerged traps and snares, the same day airborne, and by disturbing dens.
- E. POSSESSION, TRANSPORTATION, AND USE OF GAME including: Salvage and sealing requirements including Alaska and snowshoe hares, sheep, goat, deer, beaver, and moose taken under community subsistence harvest hunt permits;
- F. RESTRICTED AREAS including: Areas closed to hunting including with airboats on the Tokositna River; areas closed to trapping including near dwellings, trails, trailheads, the Hatcher Pass Public Use Area, and the Palmer Hay Flats State Game Refuge; management areas; and controlled use areas including the Upper Mulchatna Controlled Use Area.
- G. INTENSIVE MANAGEMENT AND PREDATOR CONTROL IMPLEMENTATION PLANS including: Big game prey population and harvest objectives including Mulchatna and Unimak caribou herds; and predation control areas implementation plans including reauthorizing existing

programs and establishing new programs including plans for moose in Units 16 and 13, and for the Mulchatna, Northern and Southern Alaska Peninsula caribou herds in units 9, 10, 17, and 19.

H. CUSTOMARY AND TRADITIONAL USES OF GAME POPULATIONS AND AMOUNTS REASONABLY NECESSARY FOR SUBSISTENCE including: Findings and amounts reasonably necessary for subsistence for Nushagak Peninsula and Unimak Island caribou in Units 9, 10, and 17.

2. Regulatory topics scheduled for the Statewide Regulations meeting, March 4 – 12, 2022.

5 AAC Chapter 92, Statewide Provisions:

- A. METHODS AND MEANS FOR TAKING BIG GAME, GAME, FUR ANIMALS, AND FURBEARERS, including: Lawful methods of taking big game and game including restrictions on the use of cellular and satellite devices, bow sights and range finders; aircraft, archery equipment, crossbows, air rifles, muzzleloaders, non-expanding bullets, mechanical powered body suits, deer urine, artificial light, and with the use of dogs; methods and means disability exemptions; and lawful methods of taking furbearers and fur animals including with the use of bird parts as bait, the use of dogs; and with the use of wireless communications and bow and arrow.
- B. PERMITS, PERMIT HUNT CONDITIONS, AND PROCEDURES including: Discretionary and required hunting permit conditions and procedures; special provisions for drawing hunts for sheep, goat, brown bear, and moose; permit allocation for residents and nonresidents including second degree of kindred relatives; permits for hunting bear with the use of bait or scent lures; nonresident guide requirements; restrictions for registration and drawing permit application and permit issuance including the transfer of permits in the event of a death and reissuing permits for military personnel; establishing protocols for issuing “any bull” moose permits in selective harvest hunts; requiring crossbow hunter certification at time of application; permit point system for drawing hunts; party permit hunts; and permits for falconry including the capture of raptors. Also in this section: Permits for possessing live game including emu, feral game, swine, and certain dog breeds; possession of wolf and wild cat hybrids; the release of feral or stray cats to the wild; bag limits for recipients of auction tags; and permits for selling skins, skulls, and trophies.
- C. POSSESSION, TRANSPORTATION, AND USE OF GAME including: Restrictions on feeding of game; using game as animal food or bait; sealing of horns and antlers; sealing and salvage of meat, furs, hides; game taken by domestic pets; and restrictions to bag limit including wounded game and white animals.
- D. LICENSES, HARVEST TICKETS, HARVEST REPORTS, TAGS, AND FEES including: Harvest ticket and license requirements for youth hunters, wounding game, and game taken by domestic dogs and cats; and taking of game by proxy including moose and muskox.
- E. INTENSIVE MANAGEMENT AND PREDATOR CONTROL IMPLEMENTATION PLANS including: Control of predation by wolves.
- F. REGULATORY DEFINITIONS including: “bows,” “crossbows,” “primitive weapons,” “hunting gear,” “deleterious exotic wildlife,” “feral,” “full-curl horn,” and “edible meat.”

- G. GAME MANAGEMENT UNITS AND MANAGEMENT AREAS including changes to boundaries for Units 1C, 4, 19C, and 21; and legal activities and methods of use within the Dalton Highway Corridor Management Area.
- H. GENERAL AND MISCELLANEOUS PROVISIONS including: Requirements for hunter education and orientation including requirements for proxy hunters and possessing or presenting proof of completion.
- I. ADDITIONAL TOPICS: In addition to items described above for the Statewide Regulation Meeting, the Board of Game will address the following topics for other units which were approved through the agenda change request process, or in the case of antlerless moose hunts and brown bear tag fees, must be authorized annually: Annual reauthorization of antlerless moose hunts and brown bear tag fee exemptions for all units statewide excluding Units in the Central & Southwest Region; seasons and bag limits for muskox in Unit 26 (Proposal 193), caribou in Units 10, 20 and 25 (Proposals 196 and 269); moose in Units 20 and 22 (Proposals 265 and 270); and sheep in Unit 19 (Proposal 267). Also, proposals scheduled for the Central & Southwest Region meeting in January 2022, may be deferred by the board to the March 2022 meeting for final action.

The board will also take action on non-regulatory items during each meeting such as resolutions, findings, letters, and delegations. Miscellaneous actions occur typically at the end of the meeting under miscellaneous business, but action may occur earlier in the meeting.

The proposed regulation changes are available on the Board of Game meeting information websites at www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo or from the ADF&G Boards Support Section Office at (907) 465-4110. Additional information will be added to the meeting websites as it becomes available for each meeting.

You may comment on the proposed regulations including the potential costs to private persons of complying with the proposed changes by submitting written comments, limited to no more than 100 single sided or 50 double sided pages. Written comments can be submitted to the Board of Game online at www.boardofgame.adfg.alaska.gov; by fax to (907) 465-6094; or by email to dfg.bog.comments@alaska.gov (PDF format only). Comments can also be mailed to the Alaska Board of Game, ADF&G Boards Support Section at P.O. Box 115526, Juneau, AK 99811-5526.

Comments must include a first and last name, community of residence, and the proposal numbers for which the comments pertain. Comments without this information will not be part of the board meeting workbook, indexed, or cross referenced with proposals, but they will be compiled and posted on the meeting information website. Written comments that are submitted are public records and are subject to public inspection.

The deadlines for receiving comments are January 7, 2022, for the Central and Southwest Region meeting, and February 18, 2022 for the Statewide Regulations meeting. Submission of written comments after the announced deadlines is limited to ten single-sided or five double-sided pages in length from any one individual or group and will be provided to the board members at the beginning of the meeting. During the meeting, written comments may be submitted by hand delivery; via email to dfg.bog.comments@alaska.gov (attachments only); or faxed to 907-465-6094. As a practical matter, comments submitted after the deadlines are likely to receive less consideration than comments submitted earlier.

The Board of Game shall consider all factual, substantive, and relevant comments in accordance with the Administrative Procedure Act, Alaska Statute 44.62.210. Comments having disparaging statements or personal attacks will be withheld or redacted.

The public hearing portion of the meetings is scheduled at the beginning of each meeting following staff reports and will continue until everyone who has signed up and is present when called has been given the opportunity to be heard. However, state advisory committee representatives may elect to provide testimony at a later portion of the meetings. Additional public hearings may be held throughout the meetings just before consideration and adoption of proposed changes in the regulations. The board will take oral testimony only from those who register before the cut-off time announced by the board chair at the meeting. The length of oral statements may be limited to three to five minutes, or less for the public and 10 to 15 minutes or less for fish and game advisory committee and regional advisory council representatives. Everyone interested in, or affected by, the subject matter contained in this legal notice should provide written or oral comments if they wish to have their views considered by the board.

COVID-19 Mitigation Plan. During its 2020/2021 meeting cycle, due to the COVID-19 global pandemic the board postponed its regulatory meetings to 2021/2022. In 2021/2022 meeting cycle, it is the intent to conduct the postponed meetings in-person. Individuals wishing to attend in-person meetings are advised ADF&G will employ a COVID-19 mitigation plan. The plan will allow for a range of mitigation measures depending on the status of COVID-19 in the state and meeting community. The plan involves participant registration and agreement to abide by mitigation measures at the meeting. A registration portal is posted on each board meeting website at www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo.

Please monitor the board meeting websites for additional information, and updated COVID-19 mitigation plans for each meeting. ADF&G Boards Support Section will communicate expectations with interested participants leading up to and during the meetings.

TENTATIVE BOARD OF GAME MEETING DATES & LOCATIONS

Central & Southwest Region Meeting

January 21-29, 2022

**Best Western Lake Lucille Inn
1800 W. Lake Lucille Drive
Wasilla, Alaska**

Statewide Regulations Region Meeting

March 4-12, 2022

**Pike's Waterfront Lodge
1850 Hoselton Drive
Fairbanks, Alaska**

Any changes to meeting location, dates, or times, or rescheduling of topics or subject matter will be announced by news release and posted on the board's website. Please watch for these announcements or call (907) 465-4046. Please carefully review the **PROPOSAL INDEX and the additional proposal listing on the above-mentioned websites** for all specific proposal issues to be addressed by the board.

Anyone interested in or affected by subsistence and general hunting or trapping regulations is hereby informed that, by publishing this legal notice the Board of Game may consider any or all of the subject areas covered by this notice. **THE BOARD IS NOT LIMITED BY THE SPECIFIC LANGUAGE OR CONFINES OF THE ACTUAL PROPOSALS THAT HAVE BEEN SUBMITTED BY THE**

PUBLIC OR STAFF. Pursuant to AS 44.62.200, the board may review the full range of activities appropriate to any of the subjects listed in this notice. The board may make changes to the hunting and trapping regulations as may be required to ensure the subsistence priority in AS 16.05.258 including reexamining customary and traditional use findings and determinations for amounts reasonably necessary for subsistence uses. After the public hearings, the Board of Game may adopt these or other provisions dealing with the same subject, without further notice, or amend, reject, supplement, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU ARE ENCOURAGED TO COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

If you are a person with a disability who may need special accommodations in order to participate in this process, please contact ADF&G, Boards Support Section at (907) 465-4046 no later than two weeks prior to the beginning of each meeting to ensure that any necessary accommodations can be provided.

Statutory Authority: AS 16.05, AS 16.30.

Statutes Being Implemented, Interpreted, or Made Specific: AS 16.05.255; AS 16.05.256; AS 16.05.258; AS 16.05.330; AS 16.05.340; AS 16.05.346; AS 16.05.405; AS 16.05.407; AS 16.05.780; AS 16.05.783, and AS 16.30.010 – .030.

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: December 15, 2021

/S/

Kristy Tibbles, Executive Director
Alaska Board of Game
465-6098

ALASKA BOARD OF GAME
Statewide Regulations Meeting
Pike’s Waterfront Lodge, Fairbanks, Alaska
March 4-12, 2022

Tentative Roadmap

Definitions

- ___ **Proposal 101:** Change the definition for bows to include crossbows.
- ___ **Proposal 102:** Establish a definition for “primitive weapons” to include crossbow, longbow, shotgun, and muzzleloader.
- ___ **Proposal 103:** Clarify whether hay and grain are considered as “hunting gear”.
- ___ **Proposal 230:** Change the definition for "full-curl horn".
- ___ **Proposal 231:** Change the definition of edible meat for cranes, geese, and swans.
- ___ **Proposal 104:** Modify the definition of “deleterious exotic wildlife” with several housekeeping changes.
- ___ **Proposal 105:** Add roof rat (*Rattus rattus*) and house mouse (*Mus musculus*) to the list of “deleterious exotic wildlife”.
- ___ **Proposal 106:** Provide a definition for “feral”.
- ___ **Proposal 107:** Add unconfined and unrestrained domestic cats to the definition of “deleterious exotic wildlife”.
- ___ **Proposal 271:** Establish a definition for “position” as it applies to using a snowmachine to take game.

Falconry

- ___ **Proposal 108:** Increase opportunity for nonresident take for certain eyas raptors for falconry.
- ___ **Proposal 109:** Modify the microchip requirements for live raptors exported from Alaska by nonresidents.
- ___ **Proposal 110:** Extend the nonresident season for acquiring passage raptors.
- ___ **Proposal 111:** Limit nonresident take of raptors to one bird every four years and limit unsuccessful permittees from applying the following year.
- ___ **Proposal 112:** Increase nonresident opportunity for acquiring raptors.
- ___ **Proposal 113:** Modify the regulations for nonresident take of raptors for falconry including increased number of nonresidents permits and expansion of the season to year-around .

___ **Proposal 114:** Change the nonresident season for acquiring a passage raptor.

Hunter Education

___ **Proposal 115:** Remove the hunter education requirement for beneficiaries using proxy hunters.

___ **Proposal 116:** Remove the crossbow certification requirement for people born before January 1, 1986.

___ **Proposal 117:** Require hunters to possess proof of completion of required educational certifications in the field.

___ **Proposal 118:** Add a new paragraph requiring completion of crossbow hunter certification course at time of permit application.

Proxy Hunting

___ **Proposal 119:** Include muskox on the list of species that can be taken under a proxy permit.

___ **Proposal 120:** Allow proxy hunting for moose.

Unlawful Methods

___ **Proposal 121:** Allow the use of dogs to hunt big game.

___ **Proposal 232:** Allow the use of dogs to recover wounded furbearers.

___ **Proposal 166:** Amend the requirement for licenses and tags to include game legally taken with dogs and cats.

___ **Proposal 122:** Lower the minimum draw weight for bows for hunting big game.

___ **Proposal 233:** Eliminate the requirement for peak draw weight of bows or establish peak draw weight for taking species.

___ **Proposal 123:** Allow electronic range finders mounted on bows be used for hunting big game.

___ **Proposal 124:** Allow use of integrated bow sights\laser range finders for hunting big game with bows.

___ **Proposal 125:** Allow the use of crossbows for hunting big game in weapons restricted hunts.

___ **Proposal 126:** Allow the use of muzzleloaders equipped with scopes in the taking of big game.

___ **Proposal 127:** Allow air rifles for hunting big game.

- ___ **Proposal 128:** Prohibit the use of mechanical powered body suit or devices.
- ___ **Proposal 129:** Require the use of expanding (soft point) bullets for big game hunting, excluding wolf and wolverine.
- ___ **Proposal 130:** Prohibit use of urine from any species of the deer family as bait or scent lures.
- ___ **Proposal 131:** Allow the use of game bird wings and backs to be used for trapping bait.
- ___ **Proposal 132:** Allow bird wings and parts to be used for trapping.
- ___ **Proposal 133:** Add bow and arrow as a legal method for taking beaver.
- ___ **Proposal 100:** Remove requirement that traps and snares for beaver be submerged.
- ___ **Proposal 234:** Allow use of stationary game cameras that transmit photos wirelessly.
- ___ **Proposal 134:** Allow the use of cameras or sensory devices to monitor trap locations for trapping.
- ___ **Proposal 235:** Allow the use of artificial light while hunting small game animals that have no closed seasons and no bag limit.
- ___ **Proposal 135:** Repeal the restriction on the use of aircraft for locating Dall sheep for hunting.
- ___ **Proposal 136:** Rescind the restriction on use of aircraft for locating Dall sheep for hunting.
- ___ **Proposal 137:** Repeal the restriction on the use of aircraft for locating Dall sheep for hunting.
- ___ **Proposal 138:** Restrict aircraft use for locating Dall sheep for hunting, for all open seasons.
- ___ **Proposal 139:** Restrict the use of aircraft for making multiple, consecutive approaches near Dall.

Permits for Bear Baiting

- ___ **Proposal 140:** Increase the number of bait station sites temporarily from 10 to 20 per guide use area.
- ___ **Proposal 141:** Require bear baiting sites to be at least one mile apart.
- ___ **Proposal 236:** Require ADF&G to notify bear bait station registrants of other bait stations within a one-mile radius of desired bait station location.
- ___ **Proposal 237:** Clarify that ADF&G will not issue permits to use bait or scent lures near prohibited areas already defined in regulation.

Permits for Possessing Live Game

- ___ **Proposal 142:** Add emu to the to the list of animals allowed to be possessed without a permit.
- ___ **Proposal 143:** Add emu to the to the list of animals allowed to be possessed without a permit.
- ___ **Proposal 144:** Exempt “sterilized community cats” from the list of species prohibited from being released into the wild.
- ___ **Proposal 145:** Classify *F. catus* as deleterious exotic wildlife and prohibit their release into the wild, feeding, and maintaining unconfined populations.
- ___ **Proposal 238:** Modify the regulations to recognize Czechoslovakian Vlcak as a standard dog breed to be possessed in Alaska without a permit.
- ___ **Proposal 268:** Prohibit the possession of swine other than *Sus scrofa domesticus*.

Hunting and Other Permits

- ___ **Proposal 146:** Limit big game registration permits to one per species, per year.
- ___ **Proposal 239:** Require all resident registration permit hunts be available for application online.
- ___ **Proposal 152:** Require all drawing permit hunts available to residents be available for application online. *(The author of Proposal 152 submitted Proposal 239 as a replacement proposal.)*
- ___ **Proposal 147:** Allow the sale of prepared game trophies under a permit.
- ___ **Proposal 148:** Allow persons over the age of 65 to sell trophies and rugs.
- ___ **Proposal 240:** Allow the sale of a game skin or trophy from a revokable trust.
- ___ **Proposal 149:** Create separate Dall sheep permit draw for second-degree-kindred hunters in areas that limit the number of nonresident hunters.
- ___ **Proposal 150:** Increase the number of times a hunter may apply for drawing permit hunts for each species.
- ___ **Proposal 151:** Require all hunters to apply for permit hunts and pay the application fee during the application period.
- ___ **Proposal 241:** Remove allocations between guided and non-guided nonresident hunters.
- ___ **Proposal 153:** Establish a bonus point system for bison and muskox drawing hunts.
- ___ **Proposal 154:** Direct ADF&G to issue an additional permit when a party application is drawn as last permit.

- ___ **Proposal 242:** Allow hunting permits to be reissued for military personnel under "any official military deployment".
- ___ **Proposal 243:** Update 5 AAC 92.050 to recognize changes made by the Alaska Legislature regarding the transfer of drawing permit hunts.
- ___ **Proposal 155:** Establish protocol for ADF&G to issue "any bull" resident moose permit in selective harvest hunts.
- ___ **Proposal 156:** Allow qualified crossbow hunters the ability to apply for Methods and Means Exemption permits for archery only hunts.
- ___ **Proposal 157:** Amend the language in the existing regulation for authorizing methods and means disability exemptions to be more consistent with the statute.
- ___ **Proposal 158:** Allow dog mushers to be eligible to receive game from the state by permit for use as dog food.
- ___ **Proposal 244:** Eliminate all community subsistence harvest hunts.

Salvage and Sealing Requirements

- ___ **Proposal 159:** Change the sealing and reporting requirements to business days instead of calendar days.
- ___ **Proposal 160:** Clarify the wanton waste regulation to specify that game animals taken by domestic pets must be reported and salvaged for human consumption.
- ___ **Proposal 161:** Change the salvage requirement for sheep, goat and deer to all meat on the outside of the ribs.
- ___ **Proposal 245:** Eliminate the requirement to salvage rib meat on the bone for moose, caribou and bison.
- ___ **Proposal 162:** Require the salvage of the meat or hide of snowshoe hare.
- ___ **Proposal 246:** Change the sealing method for Dall sheep to avoid damage to horns.

Bag Limit

- ___ **Proposal 163:** Count wounded big game animals towards the hunter's bag limit for all units and require additional action in the field from hunters that attempt to take game.
- ___ **Proposal 164:** Count wounded big game animals towards nonresident hunter's bag limit for all units, excluding the one sheep and one bear every four years.
- ___ **Proposal 165:** Apply auction permit holder's bag limit to the year the animal is taken.

Miscellaneous Topics and Game Management Unit Boundaries

- ___ **Proposal 167:** Add cats and dogs (and wild birds from April 1 to September 30) to the list of species that may not be intentionally or negligently fed outdoors without a permit.
- ___ **Proposal 168:** Adopt a new regulation that specifies the Board of Game will not require guides for nonresidents hunting moose, caribou or black bear.
- ___ **Proposal 169:** Prohibit the harvest of white animals.
- ___ **Proposal 247:** Discontinue lethal taking of wolves under predation control implementation programs.
- ___ **Proposal 248:** Allow nonresident youth to harvest big game on behalf of an adult permit holder.
- ___ **Proposal 170:** Modify the Unit 1C and Unit 4 boundaries.
- ___ **Proposal 171:** Divide Unit 19A into two subunits.
- ___ **Proposal 266:** Change the boundary for Game Management Units 21C and 21D to match the Koyukuk/Nowitna/Innoko National Wildlife Refuge designated guide use areas.

Region Specific Hunts & Topics

- ___ **Proposal 193:** Establish a hunt for muskox within a portion of Unit 26A.
- ___ **Proposal 265:** Change the Unit 22E registration moose hunt to a drawing hunt with specific application conditions.
- ___ **Proposal 196:** Allow ADF&G to utilize a targeted hunt for registration caribou hunts (RC830 & RC 867) in Units 20 and 25.
- ___ **Proposal 267:** Limit or restrict all nonresident sheep hunting in Unit 19C.
- ___ **Proposal 270:** Open an antlerless moose hunt in a portion of Unit 20E.
- ___ **Proposal 173:** Repeal the Dalton Highway Corridor Management Area.
- ___ **Proposal 172:** Clarify the legal use of highway vehicles, snow machines and off-road vehicles in the Dalton Highway Corridor Management Area (DHCMA) for hunting and trapping. Clarify the use of firearms, and transport of furbearers and trapping bait when trapping in the DHCMA.
- ___ **Proposal 22:** Determine customary and traditional uses of the Nushagak Peninsula caribou herd in Game Management Units 17A and 17C.
- ___ **Proposal 269:** Create a tiered hunt structure and open a hunt for the Unimak Island caribou herd.

- ___ **Proposal 199:** Prohibit trapping within 50 yards of multi-use trails and trailheads in Units 13, 14, and 16.

Reauthorization of Antlerless Moose Hunts and Brown Bear Tag Fee Exemptions for other Regions

- ___ **Proposal 249:** Reauthorize the antlerless moose season in the Twentymile/Portage/Placer hunt area in Units 7 and 14C.
- ___ **Proposal 250:** Reauthorize the antlerless moose seasons in Unit 14C.
- ___ **Proposal 251:** Reauthorize the antlerless moose season on Kalgin Island in Unit 15B.
- ___ **Proposal 252:** Reauthorize the antlerless moose seasons in Unit 15C.
- ___ **Proposal 253:** Reauthorize the resident antlerless moose season in Unit 18.
- ___ **Proposal 254:** Reauthorize a winter antlerless moose season during February in a portion of Unit 19D.
- ___ **Proposal 255:** Reauthorize the antlerless moose seasons in Unit 20A.
- ___ **Proposal 256:** Reauthorize the antlerless moose seasons in Unit 20B.
- ___ **Proposal 257:** Reauthorize the antlerless moose hunting seasons in Unit 20D.
- ___ **Proposal 258:** Reauthorize a winter any-moose season during March in a portion of Unit 21D.
- ___ **Proposal 259:** Reauthorize a winter any-moose season during part of February and March in Unit 21E.
- ___ **Proposal 260:** Reauthorize the antlerless moose season in the western portion of Unit 26A
- ___ **Proposal 261:** Reauthorize resident grizzly/brown bear tag fee exemptions throughout Interior and Northeast Alaska.
- ___ **Proposal 262:** Reauthorize the current resident tag fee exemptions for brown bear in Units 18, 22, 23 and 26A.

Proposals Outside the Board of Game's Authority

- ___ **Proposal 191:** Establish nonresident fees for taking raptors.
- ___ **Proposal 192:** Reimburse trappers for damage to furs caused by radio collars.
- ___ **Proposal 263:** Allow the harvest of sea otter.
- ___ **Proposal 264:** Allow hunters to dispatch wounded waterfowl from motorized boats under power.



Alaska Board of Game

P.O. Box 115526

Juneau, AK 99811-5526

(907) 465-4110

www.boardofgame.adfg.alaska.gov

ALASKA BOARD OF GAME

2021/2022 Meeting Cycle

Tentative Meeting Dates

Meeting Dates	Topic	Location	Comment Deadline
January 20, 2022 (1 day)	Work Session	Wasilla Best Western Lake Lucille Inn	January 14, 2022
January 21 - 29, 2022 (8 days)	Central & Southwest Region Game Management Units 9, 10, 11, 13, 14A, 14B, 16 & 17	Wasilla Best Western Lake Lucille Inn	January 7, 2022
March 4 - 12, 2022 (8 days)	Statewide Regulations 5 AAC Chapters 92 and 98	Fairbanks Pike's Waterfront Lodge	February 18, 2022

Total Meeting Days: 17

Proposal Deadline: Friday, May 28, 2021

Agenda Change Request Deadline: Monday, November 1, 2021

(The Board of Game will meet via teleconference to consider Agenda Change Requests following the November 1 deadline.)



Alaska Board of Game

P.O. Box 115526

Juneau, AK 99811-5526

(907) 465-4110

www.boardofgame.adfg.alaska.gov

Alaska Board of Game Members

<u>NAME AND ADDRESS</u>	<u>TERM EXPIRES</u>
Stosh (Stanley) Hoffman, Bethel, Chairman Stosh.hoffman@alaska.gov	6/30/2023
Orville Huntington, Huslia, Acting Vice Chairman Orville.huntington@alaska.gov	6/30/2022
Jerry Burnett, Juneau Jerry.burnett@alaska.gov	6/30/2024
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MEMORANDUM

State of Alaska Department of Law

TO: Kristy Tibbles
Executive Director
Alaska Board of Game

DATE: February 22, 2022

FILE NO.: 2021200296

TEL. NO.: 269-5232

FROM: Cheryl Rawls Brooking
Senior Assistant Attorney General
Natural Resources Section
Department of Law

SUBJECT: March 2022
Statewide
Board of Game meeting

GENERAL COMMENTS

In general, ethics disclosures: Before staff reports begin on any new agenda item, or, if preferred, at the very beginning of the meeting, Ethics Act disclosures and determinations must be made under AS 39.52.

In general, record-making: It is very important that Board members carefully explain and clearly summarize on the record the reasons for their actions and the grounds upon which the actions are based. The Alaska Supreme Court has stressed the importance of a clear record to facilitate the courts in determining that the Board's actions are within its authority and are reasonable. A clear record also assists the public in understanding the Board's rationale. If Board members summarize the reasons for their actions before they vote, it will help establish the necessary record.

In considering each proposal, and the specific requirements that apply in some cases, such as with the subsistence law, it is important that the Board thoroughly discuss and summarize on the record the basis and reasons for its actions. Consistency with past approaches is another important point for discussion. If a particular action does not appear to be consistent, Board members should discuss their reasons for a different approach.

The Alaska Administrative Procedure Act requires that State agencies, including the Board of Game, "[w]hen considering the factual, substantive, and other relevant matter, ... pay special attention to the cost to private persons of the proposed regulatory action." AS 44.62.210(a). This requirement to pay special attention to costs means, at a minimum, that the Board should address any information presented about costs, or explicitly state that no such information was presented, during deliberation of any proposal likely to be adopted. In our view, this requirement does not go so far as to mandate that the Board conduct an independent investigation of potential costs, nor does it require that cost factor into the Board's decision more than, for example, conservation concerns might. However,

it does require the Board to address and “pay special attention to” costs relevant to each regulation adopted.

In general, written findings: If any issue is already in court, or is controversial enough that you believe it might result in litigation, or if it is complex enough that findings may be useful to the public, the Department, or the Board in the future, it is important that the Board draft and adopt written findings explaining its decisions. From time to time, the Department of Law will recommend that written findings be adopted, in order to better defend the Board’s action. Such recommendations should be carefully considered, as a refusal to adopt findings, in these circumstances, could mean that the Board gets subjected to judicial oversight and second-guessing which might have been avoided. The Alaska Supreme Court has stressed the importance of an adequate decisional document, or written finding, to a determination that the Board has acted within its authority and rationally in adopting regulations, and has deferred to such findings in the past.

In general, subsistence: For each proposal the Board should consider whether it involves or affects identified subsistence uses of the game population or sub-population in question. If action on a proposal would affect a subsistence use, the Board must be sure that the regulations provide a reasonable opportunity for the subsistence uses, unless sustained yield would be jeopardized. If the Board has not previously done so, it should first determine whether the game population is subject to customary and traditional uses for subsistence and what amount of the harvestable portion, if any, is reasonably necessary for those uses. *See* 5 AAC 99.025 for current findings on customary and traditional uses and amounts reasonably necessary for subsistence uses. The current law requires that the Board have considered at least four issues in implementing the preference:

- (1) Identify game populations or portions of populations customarily and traditionally taken or used for subsistence; *see* 8 criteria at 5 AAC 99.010(b);
- (2) determine whether a portion of the game population may be harvested consistent with sustained yield;
- (3) determine the amount of the harvestable portion reasonably necessary for subsistence uses; and
- (4) adopt regulations to provide a reasonable opportunity for subsistence uses.

Reasonable opportunity is defined to mean “an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.” AS 16.05.258(f). It is not to be construed as a guarantee of success.

The amount of the harvestable portion of the game population that is reasonably necessary for subsistence uses will depend largely on the amount of the game population used for subsistence historically and the number of subsistence users expected to participate. This may require the Board to determine which users have been taking game for subsistence purposes, and which ones have not. Once the Board has determined the amount reasonably necessary for subsistence uses, the Board should by regulation provide an opportunity that allows the predicted number of normally diligent participants a reasonable expectation of success in taking the subject game. The Board may base its determination of reasonable opportunity on all relevant information including past subsistence harvest levels of the game population in the specific area and the bag limits, seasons, access provisions, and means and methods necessary to achieve those harvests, or on comparable information from similar areas.

If the harvestable portion of the game population is not sufficient to provide for subsistence uses and any other consumptive uses, the Board is required to eliminate non-subsistence uses in order to provide a reasonable opportunity for subsistence uses. If the harvestable portion of the game population is still not sufficient to provide a reasonable opportunity for all subsistence uses, the Board is required to eliminate non-subsistence consumptive uses and distinguish among the subsistence users based on the following Tier II criteria:

- (1) The customary and direct dependence on the game population by the subsistence user for human consumption as a mainstay of livelihood; and
- (2) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated. AS 16.05.258.

In general, intensive management: Under AS 16.05.255 (e), (f) and (g), the Board should assure itself that the steps outlined below have been followed when acting on proposals dealing with ungulate populations.

First - Determine whether the **ungulate** population is **important for high levels of human consumptive use**. The Board has already made many of these determinations. *See* 5 AAC 92.108. However, these past findings do not preclude new findings, especially if based on new information.

– If so, then subsequent intensive management analysis may be required.

– If not, then no further intensive management analysis is required.

Second - Is the ungulate population **depleted** or will the Board be **significantly reducing the taking** of the population? *See* 5AAC 92.106(5) for the Board’s current definition of “significant” as it relates to intensive management.

The Board must determine whether depletion or reduction of productivity, or Board action, is likely to cause a significant reduction in harvest.

- If either is true, then subsequent intensive management analysis is required.
- If not, then further intensive management analysis is not required.

Third - Is intensive management appropriate?

(a) If the population is depleted, has the Board found that consumptive use of the population is a preferred use? Note that the Legislature has already found that “providing for high levels of harvest for human consumption in accordance with the sustained yield principle is the highest and best use of identified big game prey populations in most areas of the State ...” In the rare cases where consumptive use is not a preferred use, then the Board need not adopt intensive management regulations.

(b) If consumptive uses are preferred, and the population is depleted or reduced in productivity so that the result may be a significant reduction in harvest, the Board must consider whether enhancement of abundance or productivity is feasibly achievable using recognized and prudent active management techniques. At this point, the Board will need information from the Department about available recognized management techniques, including feasibility. If enhancement is feasibly achievable, then the Board must adopt intensive management regulations.

(c) If the Board will be significantly reducing the taking of the population, then it must adopt, or schedule for adoption at its next meeting, regulations that provide for intensive management *unless*:

1. Intensive management would be:
 - A. Ineffective based on scientific information;
 - B. Inappropriate due to land ownership patterns; or
 - C. Against the best interests of subsistence users;

Or

2. The Board declares that a biological emergency exists and takes immediate action to protect and maintain the population and also schedules for adoption those regulations necessary to restore the population.

Comments on Individual Proposals

Proposal 104 would amend the definition of “deleterious exotic wildlife” in 5 AAC 92.990(a)(21). Although this is suggested as a change in words that is not intended to change the meaning, the amendment would substantively delete all Muridae rodents except the brown rat from the definition.

Proposal 107 would amend 5 AAC 92.990(21) to add unconfined domestic cat to deleterious exotic wildlife. The Board may regulate *feral* animals as game, but the Board is not otherwise authorized to regulate domestic birds and mammals.

Methods and Means

Proposal 166 would amend 5 AAC 92.012 to restrict use of dogs and cats to take game. If adopted, this would more appropriately be a methods and means restriction on taking of game under 5 AAC 92.080 rather than a licensing regulation.

Proposal 128 would amend 5 AAC 92.080 to prohibit mechanical body suit or device (powered or passive exoskeletons) unless it restores function of a limb as in the case of a paraplegic.

A person with physical or developmental disabilities, as defined in AS 16.05.940(25) and (26), may be entitled to a methods and means exemption to provide reasonable accommodation for the individual under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* Federal ADA Title II regulations require the state to provide reasonable modifications to programs to provide access for persons with disabilities, if the modifications do not alter the fundamental nature of the program. (28 CFR 35.130(b)(7), 28 CFR 35.150).

Requests for methods and means exemptions for persons with disabilities are handled on a case by case basis by the department. The regulation providing guidance to the department when issuing an exemption is found in 5 AAC 92.104.

Permits for possessing live game

Proposal 144 would amend 5 AAC 92.029 to exempt sterilized “community cats” from species prohibited from being released into the wild. The proposal explains that “community cats are unowned, free-roaming cats who live outdoors.” Under current regulations, domestic cats may not be released into the wild and “nuisance wildlife” includes “a feral domestic bird or animal.” 5 AAC 92.029 and 92.990(a)(53). The Board may regulate *feral* animals as game, but the Board is not otherwise authorized to regulate domestic birds and mammals.

Proposal 145 would amend 5 AAC 92.029, 230, and 990 to classify cats as deleterious exotic wildlife; prohibit releasing into the wild, feeding, and maintaining unconfined populations. Under current regulations, domestic cats may not be released into the wild and “nuisance wildlife” includes “a feral domestic bird or animal.” 5 AAC 92.029 and 92.990(a)(53). The Board may regulate *feral* animals as game, but the Board is not otherwise authorized to regulate domestic birds and mammals.

Hunting and other permits

Proposal 148 would amend 5 AAC 92.031 to allow persons over age 65 to sell trophies and rugs with a permit from the department.

Under State law, there is no statutory authority to provide a distinction on selling trophies based on age 65+. (Statutes provide authority to distinguish based on age for certain specific purposes: A permanent license for hunting, trapping, and sport fishing may be issued to a resident age 60 or older. AS 16.05.400. There are laws allowing methods and means exemptions for persons with disabilities, and proxy hunting is authorized under AS 16.05.405 for residents who are blind, physically or mentally disabled, or over age 65. Youth hunts are expressly authorized in AS 16.05.255.)

Under Federal law, the Age Discrimination Act generally prohibits discrimination based on age unless

- (A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any *statutory* objective of such program or activity; or
- (B) the differentiation made by such action is based upon reasonable factors other than age. (42 USC 6103)

Proposal 240 would amend 5 AAC 92.031(b) to allow the sale of game skins or trophies from a revocable trust. This proposal would allow game skins or trophies to be sold during the settlor’s lifetime. It would not authorize a trust beneficiary to sell skins or trophies received from distribution of trust property following death of the settlor. If the intent is to allow the beneficiary to sell skins and trophies following death of the settlor of a revocable trust, the Board would need to amend this proposal.

Once property is placed in a trust, which is a separate legal entity from an individual, the trust becomes the owner. Trust property does not have to pass through probate upon the death of the settlor. Under current regulations, if a trophy is distributed to the beneficiary of a trust, the beneficiary may retain or gift the trophy but cannot sell it.

Generally speaking, a revocable trust can be changed or terminated by the settlor during the settlor’s lifetime and the settlor retains control over the property held in trust. The trust owns the property at the time of the settlor’s death and the property will be distributed according to the trust documents.

Miscellaneous

Proposal 167 would amend 5 AAC 92.230 to prohibit feeding cats and dogs outdoors, and wild birds from April 1 to September 30, without a permit. The Board may regulate *feral* animals as game, but the Board is not otherwise authorized to regulate domestic birds and mammals.

Proposal 169 would add a regulation prohibiting harvest of white animals. The Board should clarify whether *any* white fur or feathers on the game would prohibit harvest and whether this would be broadly applied to *all* white game.

Region Specific Hunts and Topics

Proposal 172 would amend 5 AAC 92.530(a)(7) Dalton Highway Corridor Management Area in some manner with regard to restrictions on the use of vehicles in the Dalton Highway Corridor, deferred P64 from March 2020. **Proposal 173** would repeal the management area, deferred P63 from March 2020.

This note is an attempt to respond to questions, including those raised in 2020 regarding prior proposals that were deferred from the Board’s March 2020 meeting. Since then, the Department of Public Safety adopted new regulations, effective January 1, 2022, allowing “all-purpose vehicles” on highways with a speed limit of 45 mph or less, for licensed drivers with registered and insured vehicles. The new regulation applies to most of the Dalton Highway.

Question: Why does 5 AAC 92.530(7)(B) address hunting but not trapping?

Answer: Subsection (B) addresses the statute, AS 16.05.789, that prohibits *hunting with a firearm* within the corridor.

Question: Do hunting restrictions in 5 AAC 92.530(7) allow travelers who exit the DHCMA (e.g. to travel by licensed highway vehicle or other motorized means to Nuiqsut, Anaktuvuk Pass, Bettles, Wiseman, Coldfoot airport, or by snow machine to a homestead outside the corridor) to hunt once they exit the DHCMA?

Answer: If authorized under AS 19.40.210, a transportation statute governing the James Dalton Highway Corridor, travelers can travel by licensed highway vehicles on established roads. However, the regulation does not allow transport of hunters, hunting gear, or game by motorized vehicle unless one of the four exceptions in subsection (C) is met. Hunting is allowed outside the corridor. Use of vehicles for hunting is restricted by regulation. Use of off road vehicles, including snow machines, is restricted by statute.*

Question: Does the definition of “off-road vehicle,” in AS 19.40.210 affect use of a “licensed highway vehicle” and “snow machine” in 5 AAC 92.530(7)?

Answer: “Off-road vehicle” is not defined in AS 19.40.210, but we know it includes snow machine because of the language in subsection (a)(3) that provides an exception from the proscription of off-road vehicles for the use of snow machines in certain circumstances.

Question: When it is operated off the highway, is a “licensed highway vehicle” in 5 AAC 92.530(7) an “off-road vehicle,” as defined by 19.40.210?

Answer: If not on an established road, it should be considered as being “off-road.”

Question: Is the prohibition in 5 AAC 92.530(7) on use of motorized vehicles, with exceptions for use of licensed highway vehicles, snow machines, aircraft and boats consistent with restrictions placed on off-road vehicles and snow machines in AS 19.40.210?

Answer: Yes.

Question: Does the prohibition on hunting in 5 AAC 92.530(7)(B) also prohibit trapping?

Answer: No. This subsection addresses the statute, AS 16.05.789, that prohibits hunting with a firearm within the corridor. Trapping is not prohibited, but trappers are subject to restrictions on the use of off-road vehicles (including snowmachines) in AS 19.40.210.* The current version of 5 AAC 92.530(7)(C)(iv) allows game to be transported by motorized vehicles unless prohibited by statute. The Board cannot amend AS 19.40.210, but it can adopt regulations for taking game consistent with statutes. Trapping (and archery hunts) can occur on foot in the corridor. Or if someone is outside of the corridor and traveling completely across the corridor, or going to/from a homestead located outside of the corridor, then a snowmachine can be used to carry game or parts of game within the corridor.

Question: If 5 AAC 92.530(7)(B) allows use of firearms for trapping in 5 AAC 92.530(7), is this consistent with the prohibition of hunting with firearms in AS 16.05.789?

Answer: Yes. Trapping is not hunting, so trapping with a firearm is allowed.

Question: May a trapper or hunter crossing the DHCMA with a snow machine, stop to hunt or trap within the DHCMA, or become “parallel to the right-of-way of the highway” without violation of AS 19.40.210?

Answer: Generally, no.* AS 19.40.210(a)(3) provides “this paragraph does not permit the use of a snow machine for any purpose within the corridor if the use begins or ends within the corridor or within the right-of-way of the highway or if the use is for travel within the corridor that is parallel to the right-of-way of the highway.” The exception for the use of a snow machine to access a homestead outside of the corridor is limited only to gaining access to that private property. A snow machine cannot be used for hunting and trapping within the corridor on state or private land. A snow machine can be used to transport game if a person is otherwise traveling under the authority in AS 19.40.210.

A rule of reason should apply here, so it is not prohibited for someone accessing a homestead to travel a short distance parallel to the highway before continuing perpendicular. Travel is not always in a straight line.

Question: May a trapper or hunter use a snow machine to enter the DHCMA from outside the area and trap or hunt within the DHCMA if the trapper does not travel all the way across the DHCMA?

Answer: -No.*

Question: Can a resident of Wiseman or Coldfoot, more than ¼ mile from the Dalton Highway, drive a snow machine all around, then go walk out and trap or hunt the next day?

Answer: A resident of Wiseman or Coldfoot would be in violation of AS 19.40.210 by using a snow machine unless it is only to access a property that was a homestead and is outside of the corridor.*

Question: Could AS 19.40.210(a)(1) and (2), allowing off-road vehicles for oil and gas related travel or mining, or AS 19.40.100, allowing use of the Dalton Highway for industrial or commercial traffic throughout the year, be interpreted to allow trapping as a commercial activity?

Answer: No. AS 19.40.210(a)(1) and (2) are expressly limited to oil and gas and mining. Under AS 19.40.100, the Dalton Highway, but not the entire corridor, is to be maintained throughout the year for industrial and commercial traffic.

*ANILCA expressly provides that a federally qualified subsistence user may use a snow machine while engaged in federal subsistence activities on federal public lands. Federal law preempts state law in this instance. Public lands do not include waters where the state owns the submerged lands.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Public Safety

DIVISION OF ALASKA WILDLIFE TROOPERS
Office of the Director

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February 28, 2022

Chairman Jerry Burnett
Alaska Board of Game
P.O. Box 115526
Juneau Ak, 99811-5526

Dear Chairman Burnett:

The following comments give a brief description of the positions that the Department of Public Safety, Division of Alaska Wildlife Troopers have on the proposals that are up for consideration at the march 2022 statewide meeting in Fairbanks.

In general, when the board considers seasons and or bag limit changes, the Alaska Wildlife Troopers request that every effort possible be made to align the season dates and bag limits with adjacent game management units and/or subunits. This is mainly due to enforceability of multiple seasons in multiple locations as well as consistency of the regulations for the public. When the board considers proposals having to do with allocation or biological concerns, AWT is generally neutral in position.

AWT recognizes that regulations are developed by the Alaska Boards of Fish and Game through the public process to support management plans. Further, all management plans rely upon public compliance with regulations to achieve success. Enforcement is a crucial element needed to ensure long-term compliance with regulations by the public. The Alaska Wildlife Troopers request the board recognize that the division has limited resources and manpower and any new regulation scheme or area restrictions may place an additional burden on AWT.

Comments on specific proposals are included in this letter.

Thank you for your time,

A handwritten signature in blue ink, appearing to read "Derek DeGraaf".

Captain Derek DeGraaf
Alaska Wildlife Troopers

Proposal 101

5 AAC 92.990(11). Definitions. Change the definition for bows to include crossbows as follows:

AWT is neutral, however the terms “bow” and crossbow” are defined in 5AAC92.990 under separate definitions and combining them would cause confusion. Use of bows are currently allowed in restricted weapon hunts, however in many cases crossbows are not. Adding “crossbow” to the “bow” definition would result in changes needed in 5AAC 92.085. Crossbows are already allowed in certain applications for hunting as provided in 5AAC92.085(15).

Proposal 102

5 AAC 92.990. Definitions. Establish a definition for “primitive weapons” to include crossbow, longbow, shotgun, and muzzleloader as follows:

AWT is neutral, however crossbow, longbow, shotgun, and muzzle loader are already defined in regulation. Combining them into one category would cause confusion, make it difficult to enforce. Some restricted weapon hunts only allow for the use of one of these four weapons and combining them under one “primitive weapons” definition would put multiple method and means regulation in conflict making it difficult to enforce.

Proposal 103

Clarify whether hay and grain are considered as “hunting gear” and align the Wood River CUA closure dates.

AWT is neutral in respect to changes of the closure dates for the Yanert CUA, however we think it would clean things up if they were the same, as there would be less confusion among resource users. But we can enforce it either way. In a perfect world they’d be the same.

AWT supports creating a definition of what “hunting gear” is. The term is used multiple times in 5AAC 92 and AWT receives calls every year regarding what “hunting gear” is. For example, horse feed or hay has come up several times and AWT’s stance has been if it is for the purpose to feed horses that are used for hunting, then it is gear. The direction has been items that are mobile in nature and used for hunting, which includes, but is not limited to the pursuit and retrieval of game, is hunting gear. A freezer hauled into a temporary moose camp would be hunting gear since it is brought to an area to support the pursuit and retrieval of game. When making a definition or clarifying what hunting gear is, it is encouraged to not think only about when the term is used in reference to one regulation, but all regulations that it is referenced in. For example, when hunting gear is used in the helicopter prohibition. The use of a helicopter is unlawful in any manner, including transportation to, or from, the field of any unprocessed game or parts of game, any hunter or hunting gear, or any equipment used in the pursuit or retrieval of game. The use of helicopter prohibition is broader than just hunting gear as it includes any equipment, but again equipment is not defined. If a cabin is not hunting gear, then one might consider the tools, lumber and other items used to create the cabin is equipment, and therefore cannot be transported to the field with a helicopter if the cabin is going to be used in the pursuit and retrieval of game. AWT encourages clearly defining what hunting gear is and creating a letter of intent regarding the use of

helicopters prohibition. For years AWT has been asked if a person can hunt out of a cabin that they know was hauled in by a helicopter and the answer has been no. More recently with the increase in both commercial and privately owned helicopters AWT is being asked can a helicopter be used out of hunting season to land in a remote area with tools to create a fixed wing landing strip. When answering this AWT asks is the landing strip going to be built with tools (equipment) and is the strip going to be used in the pursuit or retrieval of game? If they then know the helicopter is being used for that, then it is unlawful.

Proposal 104

AWT is neutral, but agrees anytime we can clean up definitions, normalize nomenclature, provide clarity, and reduce confusion, the less likely there will be mistakes or enforcement issues.

Proposal 109

AWT supports this proposal by requiring microchipped raptors to be entered into a registry, this would assist law enforcement with investigative efforts in Alaska, or after a raptor is removed from the state.

Proposal 120

AWT supports this and considers it a house cleaning proposal to clarify intent.

Proposal 121

5 AAC 92.085. Unlawful methods of taking big game; exceptions. Allow the use of dogs to hunt big game as follows: The use of dogs is permitted to hunt, track, and retrieve large game.

AWT is neutral. The use of dogs is currently allowed for tracking wounded game, and to take black bears by permit per 5AAC92.085(5). It may also be difficult for AWT to determine if dogs were chasing big game for legal hunting purposes, or whether it is a group of domestic dogs harassing big game illegally as they are likely to be some distance away from the hunter. AWT currently routinely investigates domestic dogs harassing and chasing game. This would also likely increase reports from the community of such activity and require more AWT time to investigate to determine if it's a legal or illegal activity. Dogs may also take non-target game and game that may be illegal to take.

Proposal 127

AWT is neutral, however if passed, the BOG should clarify what caliber projectiles can be use, what PSI/FPS must be used. AWT would have difficulty enforcing an appropriate caliber size requirement because there is no regulation defining a the "appropriate caliber size for the game" pertaining to air rifles. Without clarification it would be difficult to enforce.

Proposal 129

Use of soft-point bullets only for big game.

AWT is neutral, however we would have some difficulty enforcing this. We would certainly want the

regulation to state something along the lines of “in one’s possession while in the field taking game.” We wouldn’t want to be tasked with enforcing “shooting” game and having to do a necropsy on every animal. Therefore, if a hunter simply had that ammo in their possession, we “could” cite. The other part of that is being able to identify a round by looking at the bullet. That may be a tough task as not all bullets are easily identified. Simply having a manufacturers box for identification means nothing. AWT may have difficulty determining nonexpanding from an expanding bullet while in the field checking hunters. There are numerous expanding ballistic tip bullets that look similar to non-expanding full metal jacket bullets. There are also all copper bullets that look very similar to full metal jacketed bullets that would be difficult to determine legality. Caliber size, lead or steel shot is easy to determine because it is listed on the shell casing. However nowadays bullet composition is not as easily determine without seeing the box in which the bullet type band is listed. We would want to make sure the board addresses using reasonable verbiage to allow us to be as successful in enforcing it as we can.

Proposal 131

5 AAC 92.210. Game as animal food or bait.

Allow the use of game bird wings and backs to be used for trapping bait as follows:

AWT is neutral if it is applied to all game birds. If only certain game birds were allowed then it may be difficult to determine if the bird wing or backbone was from swan, crane or goose, and not from a prohibited game bird while at a trap site. AWT strives to check traps site in a manner that is the least distributive to the trap site so having bait that is easily to identify as being legal helps that effort.

Prop 132

AWT is neutral but has the same concerns as the previous proposal.

Proposal 134

Allow cellular trail cameras for trapping

AWT is neutral on this, however if passed, we think this could create enforceability issues because currently wireless game cameras are not allowed for use in hunting. The proposal seems to request that it be legal to only send wireless messages once an animal is in the trap and not prior to being caught. AWT would have difficulty determining if the communication device was sending messages prior to an animal being caught in the trap without undo manipulation of the device. Or having to access a person’s cell phone or computer to see when messages were sent. It would be easier to enforce if the proposed regulation would allow for the use of wireless communication devices to “take” only furbearers at the trapping site. The term “take” is a defined term in regulation and would allow for the communication device to be active during the whole trapping process, and not just after the animal was caught in the trap. This would also prevent an individual from accidentally violating the regulation if his communication device inadvertently sent communications prior to an animal being caught

in their trap. It will be very difficult for AWT to determine how the camera is being used, therefore making such a regulation challenging to enforce. If a hunter with a hunting/trapping license has a trap line set, and is using a wireless game camera, he/she could not go out hunting with such a wireless camera deployed, as they would be in violation. How would we enforce this?

Prop 135, 136, 137, 138, 139

5 AAC 92.085. Unlawful methods of taking big game; exceptions.

Repeal the restriction on the use of aircraft for locating Dall sheep for hunting as follows:

AWT is neutral. In 2017 AWT submitted this comment during the statewide meeting when an attempt was made to change this regulation. *“The board should avoid creating regulations that are extremely difficult to enforce. While some in the public will choose to follow these regulations, the others that choose to not follow the regulations will not be held accountable. This creates a scenario where law abiding citizens are held to a different standard than law breakers. The long-term outcome will be that the regulation will be ineffective. The Alaska Wildlife Troopers ask that the board carefully review the benefit of the current regulation and compare that to enforceability.”* Since then, AWT has made some observations about this regulation. While it may have initially been created to take the ease out of spot-and-land-and-camp one-night hunts, it has provided the benefit of improving the quality of the hunt for sheep hunters as reported by hunters to AWT. In the days of everyone carrying a high-resolution video camera with their phone, the mountain bowls have become quieter, and the quality of the hunt has improved, in regard to airplane traffic/noise. If this was intent of this regulation, it has worked. However, with regards to the enforceability of the regulation this is without question, a difficult regulation to enforce, we have not made any cases with this regulation. If repealed, it has been suggested that a potential regulation to mimic the intent of 5AAC 92.085(8) could be 5AAC 92.080 (5) Unlawful methods for taking game by the use of a motorized vehicle to harass game or for the purpose of driving, herding, or molesting game.

Proposal 141, & later 236, 237

5 AAC 92.044. Permit for hunting bear with the use of bait or scent lures. Require bear baiting sites to be at least one mile apart as follows:

AWT is neutral. AWT could enforce this proposal as we do other distance requirements for bear baiting stations. However, it may be difficult for the public to know if they are within 1 mile of another hunter’s bear bait station. AWT is provided the bear bait registration permit information which provides a general location to the site, and sometimes even with this information, the site is difficult to locate. Without this information the public would have a much harder time abiding by this regulation.

Proposal 148

5 AAC 92.031. Permit for selling skins, skulls, and trophies. Allow persons over the age of 65 to sell trophies

and rugs:

AWT is neutral, there are no enforcement concerns if a permit was required. However, a lot of extra investigation would be required by AWT to determine eligibility if no permit was required.

Proposal 158

5AAC 92.210 Game as animal food or bait

AWT is neutral, however it is imperative the regulation is worded properly. Imagine you're one of the hunters who didn't get a moose to feed his family this year, and yet, someone is feeding moose meat to dogs. The optics on this situation are poor. We suggest looking at the language in 5 AAC 92.040 which governs the use of roadkill as trapping bait. There needs to be a two pronged approach to this; 1.) for the meat to be used as dog food, the game MUST be furnished by the State, and 2.) a permit MUST be required. This provides accountability for this meat. It would be very hard to enforce if we simply allowed "meat not edible for human consumption" to be used as dog food. A solution could be to model this after 5 AAC 92.040, the trapping bait provision. *"The department may issue a permit to use game meat furnished by the State, as dog food. A person using game meat as dog food shall post a notice at the site indicating the permit number."*

Proposal 160

5 AAC 92.220. Salvage of game meat, furs, and hides. Clarify the wanton waste regulation to specify that game animals taken by domestic pets must be reported and salvaged for human consumption, as follows:

AWT is neutral. However, this proposal would have enforcement conflict with 5AAC92.085 (5) which prohibits someone from using a dog for taking big game with few exceptions. 5AAC92.140(a)(d) prohibits someone from possessing game taken illegally or without permits. Game taken and possessed must be salvaged and immediately surrendered to state. This proposal would allow a person one year to report or surrender the animal to the state. It would be difficult for AWT to enforce this regulation as proposed, and there are regulations on the books that can be used to address this issue.

Proposal 161

5 AAC 92.220. Salvage of game meat, furs, and hides. Change the salvage requirement for sheep, goat and deer to all meat on the outside of the ribs:

AWT is opposed. AWT would have a difficult time enforcing this proposed regulation because the term "outside of the ribs" would be difficult to determine. What meat would be considered outside the ribs, versus the meat between the ribs. Enforcing this regulation with consistency would be challenging in real world application. The current definition of "edible meat" in regulation states, "meat of the ribs" and is much easier to identify and more enforceable. We do not need more excuses to waste game meat.

Proposal 163

Count wounded big game towards hunter's bag limit, and one in every four years.

AWT is neutral but supports this proposal as we think it clears up an area left open to interpretation and subjective application. AWT would likely struggle to enforce this somewhat, as we would need to prove elements from the scene, which is often unknown. Counting a wounded animal, you know is wounded is certainly the ethical thing to do.

Proposal 166

5 AAC 92.012. Licenses and tags. Amend the requirement for licenses and tags to include game legally taken with dogs and cats:

AWT is neutral. However, 5AAC92.085 already prohibits the use of dog to take big game with a few exceptions. Adding another regulation for the same offence would cause confusion and would likely be hard to enforce.

Proposal 167

5 AAC 92.230. Feeding of game.

AWT disagrees. AWT has successfully used the current feeding game regulation to prevent, deter, and prosecute persons who negligently feed game. This proposal would only complicate enforcement of the issue by providing an affirmative defense for feeding game. For example, there are many feeders that may be designed to keep bears out but still fail and the bear gets the food. Providing the affirmative defense would only make it more difficult to instruct a person to change their animal feeding practices. Currently, if a game animal is being negligently feed by any means we can advise the person to change practices with the warning of being cited if they don't comply. Most people comply and the problem is solved. AWT doesn't need this proposed regulation change to enforce person negligently feeding game.

Proposal 169

5 AAC 92.XXX. New regulation. Prohibit the harvest of white animals as follows: No white animals should be harvested for any reason as it violates Native American religion.

AWT is neutral, however AWT would require further definition of "white animals" to be able to enforce proposed regulations.

Proposal 171

AWT is neutral and has no enforcement concerns of the proposed boundaries. ADF&G can have hunt boundaries within a GMU or subunit already and there is no real enforcement need that we can find to create a new subunit for only one species (moose). It appears this proposal could create user conflict, that is it will pit one resource

user against another, an “up-river vs down-river” conflict when there is potentially no enforcement or biological concern to split the GMU.

Proposal 172

Clarify the legal use of highway vehicles, snow machines and off-road vehicle in the DHCMA for hunting /trapping.

AWT is neutral. Dalton Highway regulations are out of date and have many enforcement sections. The regulation itself is a bit of a mess and problematic to enforce both from a legal standpoint and a practical one. You are not allowed to transport game with a motorized vehicle farther than ¼ mile from the highway. Technically the Coldfoot Airport is farther than that from the Dalton Highway, AWT isn’t issuing citations to people who drive their vehicle to Coyote Air then fly out and bring game back. The identified allowable boat launches are unusable, the rivers have moved away from them and now boaters drive out along the gravel bars to get to the river to launch, AWT isn’t issuing them citations. There are more winter roads now than in the original plan to villages like Anaktuvuk Pass. There is no mention of the road to Wiseman, which is further than ¼ off the Dalton, so the residents there would be breaking the law by transporting game to their house. The statutes: Alaska Statute Sec. 16.05.789. Prohibition on hunting adjacent to the highway between Yukon River and the Arctic Ocean, and Alaska Statute Sec. 19.40.210. Prohibition of off-road vehicles governs hunting with firearms and off-road motorized use within the five-mile corridor. 5 AAC 92.530(7) DHCMA just muddies the water. If you don’t repeal it, AS16.05.789 and AS19.40.210 would still be in effect but there would be no management area in conjunction with it. It would reduce some of the regulation of the corridor and make it somewhat simpler but not by much. Off highway vehicles would still be prohibited within the corridor as would hunting with a firearm. It would however allow for the use of highway vehicles on all the roads currently inside the corridor.

Proposal 173

Repeal the Dalton Highway Corridor management area

AWT is neutral, if the corridor went away tomorrow, we would not have enforcement concerns. But this would only remove the regulation, not the statute.

Proposal 196

Allow ADFG to utilize a targeted hunt for registration caribou hunts in unit 20, 25.

AWT is neutral to this concept as long as it’s clear who should be hunting, and when. If the plan is, to issue X permits 8/1-10, 8/10-20 and so on, and only the dated permittees can be up there, we could endeavor to enforce that. Outside of 2020, the overcrowding hasn’t been a big issue. Last winter and this winter hunts have been quite the opposite.

Proposal 232

5 AAC 92.095. Unlawful methods of taking furbearers; exceptions. Allow the use of dogs to recover wounded furbearers as follows:

AWT is neutral, however we have the same concerns as the other proposals regarding the use of dogs.

Proposal 234

5 AAC 92.080. Unlawful methods of taking game; exceptions. Allow use of stationary game cameras that transmit photos wirelessly as follows.

AWT is neutral. Solution #1 in the proposal would not pose any foreseeable enforcement concerns because AWT would not have to determine if camera was sending communications, but only that it was within 100' of a registered bear baiting site. Solution#2 would be more difficult to enforce because AWT would have to determine when the camera had sent the communications and when the hunter entered the field to comply with the 0300 time allowance. Solution #2 would require AWT to access the cameras functions, and likely the hunters cell phone or computer to see when communications were sent, which causes enforcement concerns.

Proposal 235

Allow artificial light while hunting small game that have no closed seasons or no bag limit

AWT would have enforcement concerns and safety concerns for this proposed regulation. There are multiple other regulations on the books that prohibit the use of artificial light to take game, and big game. Spotlighting deer, moose, and other game animals with artificial light is a very common violation and reported problem throughout the state. Many cases are made by AWT especially in Southeast. There are only a few exceptions to using artificial light to take game and it is a very limited practice. Also, with no closed season for many small game animals, the spotlighting could occur during deer and moose seasons, and it be hard to distinguish between legal small game hunting and illegal big game spotlighting activity. If this regulation was adopted, AWT would expect to see many more spot lighting complaints that needed to be investigated. This would also give a good excuse and possible defense to poachers who are out spotlighting big game during night-time hours. Finally discharging firearms at night in the field increased the likely hood of someone being injured or killed by accident. This would mean more shots down range in dark and increase the chance of an accident. If this proposal were passed, we would ask GMU's 1-5 to remain prohibited.

Proposal 230

5 AAC 92.990(a)(30). Definitions. Change the definition for "full-curl horn" as follows:

AWT is neutral. A "full-curl horn" is defined as having at least one of three qualifying features for it to be a legal full curl horn. One qualifying feature is that the ram must be 8 years of age as defined by age rings on the horns. This requirement has been successfully enforced by AWT for many years without problem. Changing the age requirement from 8 to 7 years would not likely cause any enforcement issues but could certainly muddy the waters. Most sublegal sheep are shot because the hunter misjudged the degree of curl the horn has, and not

the age rings. AWT would not have any concerns enforcing this regulation change, however it may not have much effect on sublegal take since AWT uses discretion on sub-legal rams already.

Proposal 236 & 237:

AWT is neutral. This proposal would help address problems from the previous proposal but would not always work in real field settings. At times, the maps and location data that AWT and ADF&G use are not up to date with the most accurate data. Often, the data they receive from bear baiters is not the most specific or accurate, nor is the data currently required to be submitted by bear baiters accurate enough to allow ADFG to map this out well to meet this proposed regulation. ADF&G may, in good faith approve two sites that happen to be within one mile of each other, and in violation of the previous proposal (236). AWT would have to decide who was at fault if ADF&G registered site in illegal locations. It has always been the hunter's responsibility for making sure they are following the rules, not ADF&G or AWT.

Proposal 244

AWT is neutral, however in regard to the mention in the proposal of Unit 13 moose and caribou, AWT does have enforcement concerns with the current regulations. For enforcement purposes, at a minimum the season for Community Subsistence Harvest Moose should be aligned with the general season, just like the community harvest caribou does with the drawing and Tier caribou permit seasons. We do have a concern with CSH moose "any bull tags" overlapping into the general season Unit 13 moose antler restricted hunt. Hunters have complained about seeing sublegal bull moose being harvested but aren't as apt to report it knowing that the hunter could possess an any bull tag under CSH.

Proposal 245

5AAC 92.220 Salvage of game meat, furs, and hides. Rib meat on moose and caribou

AWT is opposed to this. AWT does not support anything that runs contrary to best practices for the salvage of game meat. It makes enforcement much more difficult, those allowing wanton waste of game meat.

Proposal 246

Change the sealing method for Dall sheep

AWT is neutral, and we see no enforcement concerns.

5 AAC 96.625. JOINT BOARD PETITION POLICY

(effective September 19, 2019)

(a) Under AS 44.62.220, an interested person may petition an agency, including the Boards of Fisheries and Game, for the adoption, amendment, or repeal of a regulation. The petition must clearly and concisely state the substance or nature of the regulation, amendment, or repeal requested, the reason for the request, and must reference the agency's authority to take the requested action. Within 30 days after receiving a petition, a board will deny the petition in writing, or schedule the matter for public hearing under AS 44.62.190--44.62.210, which require that any agency publish legal notice describing the proposed change and solicit comment for 30 days before taking action. AS 44.62.230 also provides that if the petition is for an emergency regulation, and the agency finds that an emergency exists, the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

(b) Fish and game regulations are adopted by the Alaska Board of Fisheries and the Alaska Board of Game. Annually, the boards solicit regulation changes through regulatory proposals described in 5 AAC 96.610(a). Several hundred proposed changes are usually submitted to each board annually. The Department of Fish and Game compiles the proposals and mails them to all fish and game advisory committees, and to other interested individuals.

(c) Copies of all proposals are available at local Department of Fish and Game offices and on the boards support section's website. When the proposal books are available, the advisory committees and hold public meetings in the communities and regions they represent, to gather local comment on the proposed changes. Finally, the boards convene public meetings, which have lasted as long as six weeks, taking department staff reports, public comment, and advisory committee reports before voting in public session on the proposed changes.

(d) The public has come to rely on this regularly scheduled participatory process as the basis for changing fish and game regulations. Commercial fishermen, processors, guides, trappers, hunters, sport fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

(e) The Boards of Fisheries and Game recognize the importance of public participation in developing management regulations, and recognize that public reliance on the predictability of the normal board process is a critical element in regulatory changes. The boards find that petitions received under (a) of this section can detrimentally circumvent this process and that an adequate and more reasonable opportunity for public participation is provided by regularly scheduled meetings.

(f) The Boards of Fisheries and Game recognize that in rare instances circumstances may require regulatory changes outside the process described in (b) - (d) of this section. It is the policy of the boards that a petition will be denied and not scheduled for hearing unless the problem outlined in the petition justifies a finding of emergency under AS 44.62.250(a). In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. Except for petitions dealing with subsistence hunting or subsistence fishing, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future. Petitions dealing with subsistence hunting or subsistence fishing will be evaluated under these criteria:

- (1) the petition must address a fish or game population that has not previously been considered by the board for identification as a population customarily and traditionally used for subsistence under AS 16.05.258; or
- (2) the circumstances of the petition otherwise must require expedited consideration by the board, such as where the proposal is the result of a court decision or is the subject of federal administrative action that might impact state game management authority.

(Eff. 9/22/85, Register 95; am 8/17/91, Register 119; readopt 5/15/93, Register 126; am 2/23/2014, Register 209; am 9/19/2019, Register 231)

Authority: AS 16.05.251, AS 16.05.255, AS 16.05.258

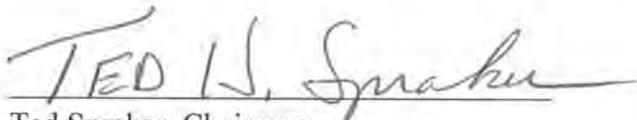
ALASKA JOINT BOARDS OF FISHERIES AND GAME

CRITERIA FOR DEVELOPMENT OF BOARD-GENERATED PROPOSAL

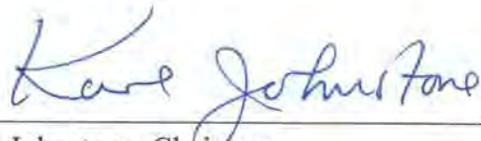
It has been suggested that criteria need to be established to guide the Alaska Joint Boards of Fisheries and Game, Board of Fisheries, and Board of Game (boards) members when deliberating on whether or not to develop a board-generated proposal. The boards will consider the following criteria when deliberating the proposed development and scheduling of a board-generated proposal:

1. Is it in the public's best interest (e.g., access to resource, consistent intent, public process)?
2. Is there urgency in considering the issue (e.g., potential for fish and wildlife objectives not being met or sustainability in question)?
3. Are current processes insufficient to bring the subject to the board's attention (e.g., reconsideration policy, normal cycle proposal submittal, ACRs, petitions)?
4. Will there be reasonable and adequate opportunity for public comment (e.g., how far do affected users have to travel to participate, amount of time for affected users to respond)?

Findings adopted this 16th day of October 2013.



Ted Spraker, Chairman
Alaska Board of Game
Vote: 6-0



Karl Johnstone, Chairman
Alaska Board of Fisheries
Vote: 7-0

Findings of the Alaska Board of Game
2017-222-BOG
Alaska Board of Game Nonresident Hunter Allocation Policy
(This policy supersedes BOG policy #2007-173-BOG)

In consideration that Article 8 of the Alaska Constitution states that:

§ 2. General Authority — The legislature shall provide for the utilization, development, and conservation of all-natural resources belonging to the state, including land and waters, for the maximum benefit of the people.

§ 3. Common Use — Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

§ 4. Sustained Yield — Fish, forests, wildlife, grasslands, and all other replenishable resources belong to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

And, Alaska Statute 16.05.020 states that one of the primary functions of the commissioner of the Department of Fish and Game is to:

(2) manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state in the interest of the economy and general well-being of the state.

And further, that; AS16.05.255 directs that the Board of Game, among other duties, may adopt regulations for:

(10) regulating sport hunting and subsistence hunting as needed for the conservation, development, and utilization of game.

(13) promoting hunting and trapping and preserving the heritage of hunting and trapping in the state.

The Alaska Board of Game establishes this document as a general statement of its views related to nonresident hunter participation in the State of Alaska.

The Alaska Board of Game finds that:

1. Carefully controlled hunting and trapping have been used since statehood to assure that Alaska's wildlife populations are healthy and sustainably managed. Alaska's wildlife populations are minimally impacted by the hunting pressure experienced today, and most hunted populations are either stable or growing. There are few remaining opportunities in North America where a hunter can experience both the quality of largely uninhabited and undeveloped environment, minimal private land ownership boundaries, or the type of hunting opportunities that Alaska has to offer. Alaska is the

only place in the United States where coastal brown bears, caribou and Dall sheep can be hunted, for instance, and there has been great demand for hunting opportunities of these species by U.S. and foreign citizens for many generations.

2. Alaska is one of the last remaining places in the United States where there are large segments of public lands open for general season hunting opportunities. The State of Alaska maintains authority for wildlife management across multiple land ownership designations yet the board recognizes that approximately 60% of the state remains in Federal ownership and is managed for the benefit of all U.S. citizens equally. In recognition of our state's constitutional mandate to manage the state's wildlife for the "common use" and "maximum benefit" of the people, the board has maintained a resident priority for hunting opportunities through management actions such as longer seasons, less restrictive antler requirements, resident tag fee exemptions, and lower licensing fees. The board has also maintained general season opportunity to the greatest degree possible for the benefit of all hunters, resident and visitor alike.
3. Under the Common Use Clause of the Alaska Constitution, access to natural resources by any person's preferred method or means is not guaranteed, and protecting public access to those resources requires an adaptive and informed balancing of demands and needs consistent with the public interest. As such, the state has considerable latitude to responsibly, equitably, and sustainably establish priorities among competing uses for the maximum benefit of the public.
4. From region to region, Alaska often has differing patterns of use, values, and traditions related to the harvest of game. Some areas welcome nonlocal hunters more readily than others, and other areas have little concern regarding who else is hunting the area, so long as local needs are met. The board has recognized that there is no single simple allocation formula that adequately covers the needs, desires, and historical use patterns of the diverse regions of our state.
5. Nonresident hunters have played a crucial and often undervalued role in support of Alaska's wildlife conservation efforts since Territorial times. Early in the last century, nonresident hunters partnered with Alaskan sportsmen to advocate for the conservation of brown bear and grizzly populations, perhaps most notably on Kodiak Island, which reversed territorial, and later state policy that was at one point directed toward the complete elimination of some segments of these populations by any means available. Nonresident hunting groups and resident hunters successfully advocated for the creation of McKinley National Park to address market hunting depletions of Dall sheep populations in that region, and later played an important role in advocating that National Park Preserves and National Wildlife Refuges in Alaska would not only allow for hunting, in the Alaska National Interest Lands Conservation Act, but that hunting and fishing would be recognized in law as priority uses under the National Wildlife Refuge System Improvement Act of 1997. These cooperative actions substantially protected continued hunting opportunities across large areas of federally managed lands in Alaska. More recently, nonresident hunters have contributed meaningfully in the

effort to prevent disease introduction in Alaska, and continue to be knowledgeable allies in safeguarding both our resources and our access to these resources in the face of external pressures.

6. Nonresident hunters typically harvest wildlife at low levels across the state, with few known exceptions. While most big game animal populations are typically harvested at a rate of less than 10 percent by nonresidents, there are some areas where it can be higher (e.g. nonresident sheep harvests averages between 35 and 40% annually and brown/grizzly bear harvests typically exceed resident harvest in much of the state.
 - The board recognizes that, in recent years, there has been a renewed effort to restrict or eliminate nonresident hunter opportunity, especially in relation to Dall sheep harvest. The board conducted an extensive survey of sheep hunter perceptions and experiences; requested that the Alaska Department of Fish and Game gather all known data regarding hunter participation and harvest rates statewide; and, convened a Dall sheep working group made up of Alaskan residents to discuss the known data, survey results, and issues more broadly in an open setting.
 - Nonresident hunter numbers are restrained due to many factors, such as the guide requirement for Dall sheep, mountain goat and brown bear/grizzly, a law primarily addressing hunter safety issues. This requirement also results in higher success rates due to the greater experience and area familiarity of hunting guides. Nonresident sheep hunters have also been limited by federal guide concessions, which have capped the number of guides in large portions of sheep ranges and held them to predetermined numbers on 10-year cycles. The competitive bidding nature for obtaining rights in these areas requires that guides hold to the number of clients they have proposed during their tenure, allowing for predictable participation and anticipated harvest rates.
7. Despite comparatively low participation and harvest rates for most species due to restricted opportunity, nonresident hunters provide the majority of direct funding into Alaskan wildlife management programs through relatively expensive license and big game tag fees. This level of funding has allowed for stable wildlife management and educational activities for decades. The additional benefit to wildlife management from receiving Pittman-Robertson matching funds, which come primarily from nationwide weapon purchases, cannot be overstated. The level of funding that nonresident license sales have provided for department survey and inventory programs, among other programs, has allowed the board to have increased confidence in providing for higher levels of harvest opportunities under sustained yield principles. Alaskan hunters have benefited most from these management programs through generally avoiding harvest quotas, draw permits, antler restrictions, and shortened seasons for the majority of hunt opportunities in Alaska. This enhances our ability to satisfy our legal mandate to manage, preserve and promote hunting and trapping throughout the state, while

providing the maximum benefit for all the people as Alaskans take home an estimated 90% of the big game animals harvested for their meat value in the state each year.

8. Nonresident hunters contribute substantially directly to the Alaskan economy through contracting with service providers, equipment rentals, supply purchases from local vendors, hotel and tourism related expenses, and meat processing and trophy expediting services. Visiting nonresident hunters are typically comprised of 80% of unguided hunters, 20% guided nonresident hunters, or hunters accompanied by second degree of kindred relatives.

- Unguided nonresident hunters often contract with air-taxis or transporters for transportation services to remote hunting locations and primarily focus their efforts on moose, caribou, deer, and black bear. Nonresident hunter dispersal through transportation services provides benefit to both resident hunters who find the more accessible hunting areas less crowded, and nonresident hunters who often have access to more remote areas that provide unique hunting settings or access to migratory resources. Unguided nonresident hunters often donate meat through their service providers to remote villages, especially portions of their moose and caribou, due to prohibitive transportation costs. There have been numerous complaints over the years related to donated meat quality, hunter crowding, overbooked services, and competition with local hunters related to air-taxi and transporter operations – resulting in the creation of controlled use areas to limit hunting-related aircraft use in several areas of the state and most recently both modified state and new federal controlled use areas in northwest Alaska. The board recognizes that these issues are not typically driven by lack of resource availability, but at times due to variance in wildlife migrations or weather and at other times unchecked competition for limited access points by multiple service providers. The board believes that these conflicts can be best addressed through greater oversight of transportation related services in our state rather than strictly limiting general hunting opportunity where resources are in many cases stable or abundant.
- Approximately 86% of registered or master guides in Alaska are Alaskan residents and upwards of 66% of assistant guides are Alaskan residents. Guided hunt opportunity is generally disbursed across the state on both state and federal lands, and to a lesser degree on private lands. A recent economic analysis of the economic impact of the guide industry notes that 3,242 guided nonresident hunters contributed approximately 87.2 million dollars to Alaska’s economy in 2015, and supported 2,120 Alaskan jobs. A significant amount of game meat was donated by guided hunters in communities across the state during this same period, providing both economic relief and direct dietary benefit to mostly rural Alaskans. The benefit this brings to Alaskan communities is supported by testimony from across Alaska. There has been complaint regarding hunter crowding or competition for Dall sheep resources on state owned lands in several regions for a number of years and the board

has recently taken a very detailed look at these and other issues with the aid of a resident-comprised Dall sheep working group, as noted above. The board has advocated for the restoration of guide-concessions on state lands to both provide a comprehensive program to address quality of hunt issues such as these, and to assure that stewardship-based guided-hunt opportunities are provided in these areas.

- Recent data and testimony indicate that the trend of nonresident hunters accompanied by second degree kindred resident relatives for Dall sheep, brown bear, and mountain goat appear to be increasing. The board recognizes the high value of continued opportunity for Alaskans to share unique hunting opportunities with nonresident family members. The board has heard complaints that, in portions of the state, strictly limited permit opportunities for nonresident guide-required hunts have at times been taken to a large degree by second degree kindred hunters accompanied by resident relatives, an effect unanticipated when allocations were established. The board desires to address these issues in a manner that both protects the careful allocation frameworks that the board has already anticipated and determined as appropriate, and provide continued or expanded opportunity for Alaskans to maintain family centered hunting traditions with nonresident relatives where possible.

The primary goals and efforts of the Alaska Board of Game are directed toward the management of stable and healthy wildlife populations capable of producing harvestable surpluses to provide for a variety of uses and, at times, differing values of the public. While many uses of wildlife do not directly conflict with one another, such as wildlife viewing and hunting, with some notable exceptions, some consumptive uses do require thoughtful allocation decisions. Historically, the board has viewed meeting the subsistence needs of the Alaskan populace as its primary goal, as directed by state law.

Preferences have been granted by the state in the following order:

- 1) Alaskan Resident subsistence hunting - for all species with a customary or traditional use classification
- 2) Alaskan Resident general season hunting – for moose, deer, caribou, elk
 - Residents have longer seasons, more liberal bag limit and antler restrictions, and lower license and tag fees
- 3) Resident and Nonresident general season hunting – for Dall sheep, brown/grizzly bear, and mountain goat. Typically managed for trophy-related values.
 - Guide-required species for nonresidents can be a limiting (financial) factor for many nonresident hunters, in addition to license and tag fees
- 4) Nonresident Alien hunting – same as nonresident hunting
 - Guide-required for all big game species and with higher license and tag fees

The Alaska Board of Game has recognized the above inherent preferences and general practices that benefit Alaskan hunters and will continue to do so. In addition, the board will address allocation issues in the following circumstances, if season and/or method and means adjustments are deemed insufficient:

- 1) When there is suitable harvestable surplus - it is the board's policy to allow maximum opportunity for all hunters, within the bounds of sustained yield management practices, regardless of residency.
- 2) In times of non-hunting-related population decline - it will be the board's policy to restrict all non-subsistence hunting if it is predicted to contribute to the decline or have the potential to slow the recovery of these populations appreciably. Nonresident hunters will be restricted first in these circumstances, unless their portion of the overall harvest is deemed insignificant.
- 3) In times of hunting-related population decline – it will be the board's policy to identify the potential causes and address each case individually. Nonresident hunters will be restricted first in these circumstances, unless their portion of the overall harvest is deemed insignificant or the restriction of nonresident hunters does not address the primary cause of decline.
- 4) Nonresident hunting will not be authorized for any moose, caribou or deer population under a current intensive management predator control program until the minimum intensive management population or harvest objectives are met unless the board determines that such hunting will not adversely impact resident opportunity, will not adversely impact the recovery of the target population, and is determined to provide for the maximum benefit of the people of Alaska.
- 5) The board may choose to address areas of conservation, hunter overcrowding, or conflict issues by placing limitations on or between commercial service-dependent hunts, or request that the appropriate regulatory body address the service provider issue if it is beyond the board's authority. This may be accomplished by guided-only or non-guided-only permit stipulations for any species, as the board has done in several places in the past. Sustained yield will be the first test in these circumstances, then subsistence obligations, historical use patterns, and quality of hunt experience will be considered.
- 6) When a draw hunt is deemed necessary, allocation will be determined on a case by case basis and will be based upon the historical data of nonresident and resident permit, harvest or participation allocation over the past ten or more years. When a guided nonresident hunter applies for a drawing permit, proof of having a signed guide-client contract is required and contracting guides shall be registered in the area prior to the drawing. When a guide signs a guide-client contract, the guide is providing guiding services and therefore must be registered for the use area at that time.

- 7) The board has supported the reestablishment of state-managed guide concessions to address user conflicts and hunt quality issues for more than a decade. The board continues to support this avenue to address known conflict areas. It will be the board's policy to address nonresident allocations under state or federal concessions that have overlaying draw requirements in a manner that cooperates with land management efforts and goals, as deemed appropriate by the board.

Vote: 5-1-1
Adopted: November 17, 2017
Anchorage, Alaska


Ted Spraker, Chairman
Alaska Board of Game

**Findings of the Alaska Board of Game
2016-215-BOG
BOARD OF GAME WOLF MANAGEMENT POLICY
(Policy duration: Date of finding through June 30, 2021.
This policy supersedes BOG policy 185-2011-BOG)**

Background and Purpose

Alaskans are proud that wolves occur throughout their historic range in Alaska. Wolves are important to people for a variety of reasons, including as furbearers, big game animals, competitors for ungulate prey animals, and as subjects of enjoyment, curiosity, and study. Wolves are important components in the natural functioning of northern ecosystems. Over time, many people have come to appreciate wolves as exciting large carnivores that contribute significantly to the quality and enjoyment of life in Alaska.

The primary purpose of this policy is to provide guidance to the public, the Department, and the Board of Game on wolf management issues as the Board and the Department implement constitutional and statutory direction and respond to public demands and expectations. The Board recognizes the need for ongoing responsible wolf management to maintain sustainable wolf populations and harvests, and to help maintain sustainable ungulate populations upon which wolves are largely dependent. The Board also recognizes that when conflicts arise between humans and wolves over the use of prey, wolf populations may have to be managed more intensively to minimize such conflicts and comply with existing statutes (e.g. AS 16.05.255). Under some conditions, it may be necessary to greatly reduce wolf numbers to aid recovery of low prey populations or to arrest undesirable reductions in prey populations. In some other areas, including national park lands, the Board also recognizes that non-consumptive uses of wolves may be considered a priority use. With proper management, non-consumptive and consumptive uses are in most cases compatible but the Board may occasionally have to restrict consumptive uses where conflicts among uses are frequent.

Wolf/Human Use Conflicts

Conflicts may exist between wolves and humans when priority human uses of prey animals cannot be reasonably satisfied. In such situations, wolf population control will be considered. Specific circumstances where conflicts arise include the following:

1. Prey populations or recruitment of calves into populations are not sufficient to support existing levels of existing wolf predation and human harvest;
2. Prey populations are declining because of predation by wolves or predation by wolves in combination with other predators;
3. Prey population objectives are not being attained; and
4. Human harvest objectives are not being attained.

Wolf Management and Wolf Control

The Board and the Department have always distinguished between wolf management and wolf control. Wolf management involves managing seasons and bag limits to provide for general public hunting and

trapping opportunities. These seasons provide for both subsistence and other traditional economic harvest opportunities and, as a side benefit, allow for participants to directly aid in mitigating conflicts between wolves and humans or improving ungulate harvest levels. In most cases trapping seasons will be kept to times when wolf hides are prime. However, some hunters are satisfied to take wolves during off-prime months including August, September, April, and May. Opportunity may be allowed for such harvest.

Wolf control is the planned, systematic regulation of wolf numbers to achieve a temporarily lowered population level using aerial shooting, hiring trappers, denning, helicopter support, or other methods which may not normally be allowed in conventional public hunting and trapping. The purpose of wolf control is not to eradicate wolf populations. Under no circumstances will wolf populations be eliminated or reduced to a level where they will not be able to recover when control efforts are terminated, and wolves will always be managed to provide for sustained yield.

In some circumstances it may be necessary to temporarily remove a high percentage (>70%) of wolf populations to allow recovery of prey populations. In other situations, it may be necessary to temporarily remove a smaller percentage of wolf populations (40-70%) to allow prey populations to increase or meet human harvest objectives. Once prey population objectives have been met, wolf populations will generally be allowed to increase to or above pre-control levels.

During the 1997 review of predator control in Alaska by the National Research Council of the National Academy of Sciences (National Research Council 1997), only two clearly successful cases were found where increased harvests of ungulates resulted from control in the Yukon and Alaska. In the last 13 years since that review, several other programs have been successful, including programs in GMUs 9, 13, 16 and 19. In addition, there is now a thirty year history of intensive wolf and moose management and research, including 2 periods of wolf control in GMU 20A. It is clear, and well documented, that periodic wolf control has resulted in much higher harvests of moose than could be realized without control (Boertje et al., 2009). Biologists now have considerable experience successfully managing moose at relatively high density (Boertje et al., 2007). The GMU 20A case history has provided a great deal of information on what biologists can expect from intensive management programs and these programs are scientifically well founded. However, GMUs are different ecologically and new information on which areas are best suited to intensive management programs will continue to be gathered.

Decisions by the Board to Undertake Wolf Control

Generally, there are two situations under which the Board will consider undertaking wolf control (implementing extraordinary measures outside normal hunting and trapping). In rare cases, control may be implemented where sustained yield harvests of ungulates cannot be maintained or where extirpation of ungulate populations may be expected. More commonly, the Board may implement wolf control to comply with Alaska Statutes (AS 16.05.255) where ungulate populations are declared “depleted” or where ungulate harvests must be significantly reduced and these populations have been found by the Board to be important for “high levels of human harvest”. In most cases when wolf control is implemented, the Board will favor and promote an effective control effort by the public. Experience has shown that often a joint effort by the public and the Department has been most effective. However, the Board recognizes that there are areas and situations where the public cannot effectively or efficiently control predation and that the Department may, under its own authority and responsibilities, conduct the necessary wolf population control activities. Such situations arise in part because public effort to take wolves tends to diminish

before an adequate level of population control is achieved. In areas where wolf reduction is being conducted, ungulate and wolf surveys should be conducted as frequently as necessary to ensure that adequate data are available to make management decisions and to ensure that wolf numbers remain sufficient to maintain long-term sustained yield harvests.

Methods the Board Will Consider When Implementing Wolf Control Programs

- 1) Expanding public hunting and trapping into seasons when wolf hides are not prime.
- 2) Use of baiting for hunting wolves.
- 3) Allowing same-day-airborne hunting of wolves when 300 ft from aircraft.
- 4) Allowing land-and-shoot by the public.
- 5) Allowing aerial shooting by the public.
- 6) Allowing use of Department staff and helicopters for aerial shooting.
- 7) Encouraging the Department to hire or contract with wolf trappers and other agents who may use one or more of the methods listed here.
- 8) Allowing denning by Department staff and use of gas for euthanasia of sub-adults in dens.

Terminating Wolf Control

Depending on the response to wolf control and ungulate population and harvest objectives, control may either be of short or long duration. In some cases, control may last less than five years. In other cases it may be an ongoing effort lasting many years. As ungulate harvest objectives are met, the Board will transition from a wolf control program to a wolf management program, relying to a greater extent on public hunting and trapping. In cases where ungulates respond very well and hunting is ineffective at controlling ungulate numbers for practical reasons, it may be necessary for the Board to restrict the taking of predators.

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Vote: 7-0
March 17, 2016
Fairbanks, Alaska


Ted Spraker, Chairman
Alaska Board of Game

**Findings of the Alaska Board of Game
2016-214-BOG
BOARD OF GAME BEAR CONSERVATION, HARVEST,
AND MANAGEMENT POLICY
Expiration Date: June 30, 2021**

Purposes of Policy

1. To clarify the intent of the Board and provide guidelines for Board members and the Department of Fish and Game to consider when developing regulation proposals for the conservation and harvest of bears in Alaska, consistent with the Alaska Constitution and applicable statutes.
2. To encourage review, comment, and interagency coordination for bear management activities.

Goals

1. To ensure the conservation of bears throughout their historic range in Alaska.
2. To recognize the ecological and economic importance of bears while providing for their management as trophy, food, predatory, and furbearer species.
3. To recognize the importance of bears for viewing, photography, research, and non-consumptive uses in Alaska.

Background

The wild character of Alaska's landscapes is one of our most important natural resources and the presence of naturally abundant populations of brown/grizzly bears (*Ursus arctos*) and black bears (*Ursus americanus*) throughout their historic range in Alaska is important to that wild character. Bears are important to Alaskans in many ways, including as food animals, predators of moose, caribou, deer and muskox, trophy species for nonresident and resident hunters, furbearers, problem animals in rural and urban settings, and as objects of curiosity, study, awe, and enjoyment. Bears are also important components of naturally functioning Alaskan ecosystems.

Bear viewing is a rapidly growing industry in selected areas of the state. The interest exceeds the opportunities provided now by such established and controlled sites as McNeil River, Pack Creek, Anan Creek, Wolverine Creek and Brooks Camp. In most areas, hunting and viewing are compatible uses but the Board may consider bear viewing as a priority use in some small areas, especially where access for people is good and bears are particularly concentrated. The Board and the Department will continue to discourage people from feeding bears to provide viewing opportunities.

Bears are frequently attracted to garbage or to fish and hunting camps, and can be a nuisance where they become habituated to humans and human food sources. Dealing with problem bears has been especially difficult in Anchorage, Juneau, and the Kenai Peninsula. The department has worked hard, and successfully, with municipalities to educate people and solve waste management

problems. The department's policy on human food and solid waste management (<http://www.wc.adfg.state.ak.us/index.cfm?adfg=bears.bearpolicy>) provides guidance on reducing threats to humans and the resulting need to kill problem bears.

Bears can pose a threat to humans in certain situations. Statewide, an average of about six bear encounters a year result in injuries to people. Most attacks now occur in suburban areas and do not involve hunters. About every two or three years, one of the attacks results in a human fatality. The Department and the Board will continue to educate people about ways to minimize threats to humans and the resulting need to kill problem bears.

Alaska is world-renowned as a place to hunt brown bears, grizzly bears and black bears. Alaska is the only place in the United States where brown and grizzly bears are hunted in large numbers. An average of about 1,500 brown and grizzly bears is harvested each year. The trend has been increasing, probably because of both increased demand for bear hunting and increasing bear numbers. Many of the hunters are nonresidents and their economic impact is significant to Alaska. Hunters have traditionally been the strongest advocates for bears and their habitat, providing consistent financial and political support for research and management programs.

Because bears can be both prey and predator, their relationship with people is complex. Throughout much of Interior Alaska and in some areas of Southcentral Alaska, the combined predation by bears and wolves keeps moose at relatively low levels. Bear predation on young calves has been shown to contribute significantly to keeping moose populations depressed, delayed population recovery, and low harvest by humans. People in parts of rural Alaska (e.g. Yukon Flats) have expressed considerable frustration with low moose numbers and high predation rates on moose calves in hunting areas around villages. The Board and the Department have begun to take a more active role in addressing bear management issues. Because the Constitution of the State of Alaska requires all wildlife (including predators) to be managed on a sustained yield basis, the Board of Game and the Department will manage all bear populations to maintain a sustained yield, but the Board recognizes its broad latitude to manage predators including bears to provide for higher yields of ungulates (*West vs State of Alaska*, Alaska Supreme Court, 6 August 2010).

Brown and grizzly bears

Although there is no clear taxonomic difference between brown and grizzly bears, there are ecological and economic differences that are recognized by the Board and Department. In the area south of a line following the crest of the Alaska Range from the Canadian border westward to the 62nd parallel of latitude to the Bering Sea, where salmon are important in the diet of *Ursus arctos*, these bears are commonly referred to as brown bears. Brown bears grow relatively large, tend to be less predatory on ungulates, usually occur at high densities, and are highly sought after as trophy species and for viewing and photography. Bears found north of this line in Interior and Arctic Alaska; where densities are lower and which are smaller in size, more predatory on ungulates, and have fewer opportunities to feed on salmon; are referred to as grizzly bears. Brown and grizzly bears are found throughout their historic range in Alaska and may have expanded their recent historic range in the last few decades into places like the Yukon Flats and lower Koyukuk River.

Although determining precise population size is not possible with techniques currently available, most bear populations are estimated to be stable or increasing based on aerial counts, Capture-Mark-Resight techniques (including DNA), harvest data, traditional knowledge, and evidence of expansion of historic ranges. Throughout most coastal habitats where salmon are abundant, brown bears are abundant and typically exceed 175 bears/1,000 km² (450 bears/1,000 mi²). A population in Katmai National Park on the Alaska Peninsula was measured at 550 bears/1,000 km² (1,420 bears/1,000 mi²). In most interior and northern coastal areas, densities do not exceed 40 bears/1,000 km² (100 bears/1,000 mi²). Mean densities as low as 4 grizzly bears/1,000 km² (12 bears/1,000 mi²) have been measured in the eastern Brooks Range but these density estimates may be biased low and the confidence intervals around the estimates are unknown. Extrapolations from existing density estimates yielded statewide estimate of 31,700 brown bears in 1993, but the estimate is likely to be low.

Although some northern grizzly bear populations have relatively low reproductive rates, most grizzly bear and brown bear populations are capable of sustaining relatively high harvest rates comparable to moose, caribou, sheep, goats, and other big game animals that exist in the presence of natural numbers of large predators in most areas of Alaska. In addition, grizzly bears and brown bears have shown their ability to recover relatively quickly (<15 years) from federal poisoning campaigns during the 1950s and overharvest on the Alaska Peninsula during the 1960s. Biologists were previously concerned about the conservation of brown bears on the Kenai Peninsula and brown bears there were listed by the state as a “species of special concern”. The Department implemented a conservation strategy there through a stakeholder process. In recent years it has become apparent that brown bears remain healthy on the Kenai and the Board and the Department no longer believes there is a conservation concern.

In some areas of the state (e.g. Unit 13) where the Board has tried to reduce grizzly bear numbers with liberal seasons and bag limits for over 15 years, there is no evidence that current increased harvests have affected bear numbers, age structure, or population composition. In areas of Interior Alaska, where access is relatively poor, long conventional hunting seasons and bag limits of up to 2 bears per year have not been effective at reducing numbers of grizzly bears. In these areas, most biologists believe that as long as sows and cubs are protected from harvest it will not be possible to reduce populations enough to achieve increases in recruitment of moose.

Black bears

American black bears (*Ursus americanus*) are generally found in forested habitats throughout the state. Like brown and grizzly bears, black bears also occupy all of their historic ranges in Alaska and are frequently sympatric with grizzly and brown bears. Because they live in forested habitats it is difficult to estimate population size or density. Where estimates have been conducted in interior Alaska, densities ranged from 67 bears/1,000 km² (175 bears/1,000 mi²) on the Yukon Flats to 289 bears/1,000 km² (750 bears/1,000 mi²) on the Kenai Peninsula. In coastal forest habitats of Southeast Alaska’s Alexander Archipelago black bear densities are considered high. A 2000 estimate for Kuiu Island was 1,560 black bears/1,000 km² (4,000 black bears/1,000 mi²).

In most areas of the state, black bears are viewed primarily as food animals, but they are also important as trophy animals, predators of moose calves, and for their fur. The Board recently classified black bears as furbearers, recognizing the desire of people to use black bear fur as trim

on clothing, to enhance the value of black bears, and to enable the Board and the Department to use foot-snares in bear management programs. The classification of black bears as a furbearer has legalized the sale of some black bear hides and parts (except gall bladders), and has thus made regulations in Alaska similar to those in northern Canada in this regard.

Black bears exhibit higher reproductive rates than brown and grizzly bears. In all areas of the state black bear populations are healthy and can sustain current or increased harvest levels. However, hunting pressure on black bears in some coastal areas like Game Management Unit (GMU) 6 (Prince William Sound), GMU 2 (Prince of Wales Island) and parts of GMU 3 (Kuiu Island) may be approaching or have exceeded maximum desired levels if trophy quality of bears is to be preserved, and are the subjects of frequent regulatory adjustments.

In some other parts of the state, deliberately reducing black bear numbers to improve moose calf survival has proven to be difficult or impossible with conventional harvest programs. The Board has had to resort to more innovative regulations promoting baiting and trapping with foot snares. The Department has also tried an experimental solution of translocating bears away from an important moose population near McGrath (GMU 19D) to determine if reduced bear numbers could result in significant increases in moose numbers and harvests. The success of the McGrath program has made it a potential model for other small areas around villages in Interior Alaska, if acceptable relocation sites are available.

Guiding Principles

The Board of Game and the Department will promote regulations and policies that will strive to:

1. Manage bear populations to provide for continuing sustained yield, while allowing a wide range of human uses in all areas of the state.
2. Continue and, if appropriate, increase research on the management of bears and on predator/prey relationships and methods to mitigate the high predation rates of bears on moose calves in areas designated for intensive management.
3. Continue to provide for and encourage non-consumptive use of bears without causing bears to become habituated to human food.
4. Favor conventional hunting seasons and bag limits to manage bear numbers.
5. Encourage the human use of bear meat as food.
6. Employ more efficient harvest strategies, if necessary, when bear populations need to be substantially reduced to mitigate conflicts between bears and people.
7. Primarily manage most brown bear populations to maintain trophy quality, especially in Game Managements 1 through 6, and 8 through 10.
8. Work with the Department to develop innovative ways of increasing bear harvests if conventional hunting seasons and bag limits are not effective at reducing bear numbers to mitigate predation on ungulates or to deal with problem bears.
9. Simplify hunting regulations for bears, and increase opportunity for incidental harvest of grizzly bears in Interior Alaska by eliminating resident tag fees.

10. Recognize the increasing value of brown bears as a trophy species and generate increased revenue from sales of brown bear tags.
11. Review and recommend revision to this policy as needed.

Conservation and Management Policy

The Board and the Department will manage bears differently in different areas of the state, in accordance with ecological differences and the needs and desires of humans. Bears will always be managed on a sustained yield basis. In some areas, such as the Kodiak Archipelago, portions of Southeast Alaska and the Alaska Peninsula, brown bears will generally be managed for trophy-hunting and viewing opportunities. In Southeast Alaska and Prince William Sound, black bears will generally be managed as a trophy species, food animals, or for viewing opportunities. In Interior and Arctic Alaska, black bears and grizzly bears will be managed primarily as trophy animals, food animals, and predators of moose and caribou. However in some parts of Interior Alaska, the Board may elect to manage populations of black bears primarily as furbearers.

Monitoring Harvest and Population Size

The Board and the Department recognize the importance of monitoring the size and health of bear populations on all lands in Alaska to determine if bear population management and conservation goals are being met. In areas where monitoring bear numbers, population composition, and trophy quality is a high priority, sealing of all bear hides and skulls will be required. At the present time, all brown and grizzly bears harvested under the general hunting regulations must be inspected and sealed by a Department representative. Where monitoring bear numbers and harvests is a lower priority, harvest may be monitored using harvest tickets or subsistence harvest surveys.

Harvest of black bears will generally be monitored either with harvest tickets or sealing requirements. Where harvests are near maximum sustainable levels or where the Department and the Board need detailed harvest data, sealing will be required.

Large areas of the state have subsistence brown/grizzly bear hunts with liberal seasons and bag limits, mandatory meat salvage, and relaxed sealing requirements. The Department will continue to accommodate subsistence needs.

Bear viewing also is an important aspect of bear management in Alaska. Increasing interest in watching bears at concentrated feeding areas such as salmon streams and sedge flats, and clam flats is challenging managers to find appropriate levels and types of human and bear interactions without jeopardizing human safety. Bear hunting and viewing are compatible in most situations.

Nothing in this policy affects the authority under state or federal laws for an individual to protect human life or property from bears (5 AAC 92.410). All reasonable steps must be taken to protect life and property by non-lethal means before a bear is killed.

Managing Predation by Bears

In order to comply with the AS 16.05.255 the Board and Department may implement management actions to reduce bear predation on ungulate populations. The Board may elect to work with the

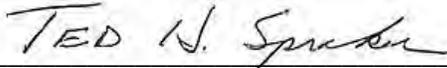
Department to remove individual problem bears or temporarily reduce bear populations in Game Management Units, Subunits, or management areas. The Board and the Department may also need to reduce bear predation on ungulates to provide for continued sustained yield management or conservation of ungulates. In addition, it may be necessary for the Department to kill problem bears to protect the safety of the public under AS 16.05.050 (a) (5). In some cases the Board may direct the Department to prepare a Predation Control Areas Implementation Plan (5 AAC 92.125 or 92.126) or in other cases the Board may authorize extensions of conventional hunting seasons, or implement trapping seasons to aid in managing predation on ungulates.

To comply with AS 16.05.255 to maintain sustained yield management of wildlife populations, or to prevent populations of ungulates from declining to low levels, the Board may selectively consider changes to regulations allowing the public to take bears, including allowing the following:

- Baiting of bears
- Trapping, using foot-snares, for bears under bear management or predator control programs.
- Incidental takes of brown or grizzly bears during black bear management or predator control programs.
- Use of communications equipment between hunters or trappers.
- Sale of hides and skulls as incentives for taking bears.
- Diversionary feeding of bears during ungulate calving seasons.
- Use of black bears for handicraft items for sale, except gall bladders.
- Use of grizzly bears for handicraft items for sale, except gall bladders.
- Taking of sows accompanied by cubs and cubs.
- Same-day-airborne taking.
- Aerial shooting of bears by department staff
- Suspension or repeal of bear tag fees.
- Use of helicopters.

The Board intends that with the exception of baiting, the above-listed methods and means will be authorized primarily in situations that require active control of bear populations, and only for the minimum amount of time necessary to accomplish management objectives. The Board allows baiting of black bears as a normal method of take in broad areas of the state, and will consider allowing brown bear baiting as a normal method of take in select areas.

Vote: 7-0
March 17, 2016
Anchorage, Alaska



Ted Spraker, Chairman
Alaska Board of Game

**Findings of the Alaska Board of Game
Nonresident Capture, Possession, and Export of Certain Raptors
2014-206-BOG**

At its Statewide Regulations meeting in March 2014, the Alaska Board of Game adopted regulations to allow nonresident falconers to capture raptors and export them to the falconer's state of residence.

The board had deliberated the issue in 2012 but did not take action due to unknowns associated with fee structures, administrative complexities, and controversial public testimony regarding several aspects of the proposal. The board requested the proposal (Proposal 174) be deferred until 2014 to provide for further review and consideration for allowing nonresident opportunity.

The board received written and oral testimony from numerous falconers at the March 2014 meeting and questioned testifiers regarding concerns and/or support for nonresident capture. Concerns included take of eyas birds from nests in easily accessible areas, which some felt would result in disturbance of some nests, competition and conflicts with resident falconers, and local depletion of resources in particular areas. Numerous ideas were suggested to alleviate these concerns including closing of road corridors and certain well-known nest sites, and a possible requirement that nonresidents be accompanied by resident falconers. Some testifiers noted that eyas birds of some species are highly prized (e.g., gyrfalcon), which could potentially lead to an unpredictable level of demand, pressure on the resource and other users, and abuse through known illegal trafficking activities. The board heard concerns from the Department of Fish and Game (department) that the nonresident program would be relatively costly to administer under the existing state falconry regulations that operate under a federal falconry framework. There is no fee structure in place to recoup some of these costs. In 2012 the board requested that the department develop a small scale nonresident harvest program in the simplest form possible so that administrative issues can be solved and appropriate fee structures can be established if expansion is warranted or desired. It was noted that while administrative fees can be established once costs can be accurately estimated, license and tag fees are under legislative purview and may or may not be established in the future, which could impact further development of a nonresident capture program. The department stated that a modest take of raptors by nonresident falconers posed no population concerns for any of the species that would be harvested.

The board agreed nonresident opportunity should be allowed, and concluded there are currently no biological concerns with allowing nonresident capture.

The board adopted regulations allowing for a limited nonresident take of passage (flighted/migrant) birds, thus providing nonresident opportunity while not inundating the department with a disproportionate administrative program management burden. The board has credible information on the historical levels of resident use, but is not comfortable allowing unlimited nonresident take until the impacts of small scale nonresident capture for a few years can be evaluated. The board expressly contemplated that changes, including the possible expansion of nonresident opportunity, will be considered when the topic is again open for proposals and board consideration at future statewide regulation board meetings, the next of

which will be in 2016. At that time the board will have the benefit of feedback on the new nonresident harvest opportunity from the department and users.

These findings reflect the intent of the board's decision during the Statewide Regulations meeting held in March 2014.

Approved: January 13, 2015

Vote: 7-0

Handwritten signature of Ted Spraker in black ink, written in a cursive style.

Ted Spraker, Chairman
Alaska Board of Game

**Alaska Board of Game
2016-213-BOG
Findings Related to Proposal 207: Restrictions on the
Use of Aircraft Associated with Sheep Hunting**

To address complaints concerning misuse of aircraft, particularly during sheep hunting season, the Board of Game drafted a proposal to limit aircraft use associated with sheep hunting, later identified as proposal 207. This proposal was deliberated on during the January 8, 2015 Work Session Meeting held in Juneau, where the Board agreed to schedule the proposal to be addressed at the February 2015, Central/SW Regional meeting in Wasilla. The Board also held an evening “town hall” style meeting in February where approximately 165 people participated in a discussion concerning the use of aircraft during sheep season.

Recognizing there was opposition from those using aircraft and support from hunters that did not use aircraft, the Board deferred the proposal to the March 2015, Southcentral Region Meeting held in Anchorage to facilitate additional public comment. Proposal 207 was approved at this meeting with six members in support and one opposed, following a lengthy public testimony process.

A special meeting was then held on April 24, 2015 for the purpose of scheduling a future meeting to rescind the action taken by the Board on proposal 207, at the request of two Board members. A special meeting was held on May 28, 2015 to discuss the merits of retaining proposal 207. The request to rescind failed; with a vote of two supporting rescinding and five supporting the proposal.

The adopted language now reads: 5 AAC 92.085. **Unlawful methods of taking big game; exceptions....(8) a person who has been airborne may not take or assist in taking a big game animal until after 3:00 a.m. following the day in which the flying occurred, and from August 10 through September 20 aircraft may not be used by or for any person to locate Dall sheep for hunting or direct hunters to Dall sheep during the open sheep hunting season, however, aircraft other than helicopters may be used by and for sheep hunters to place and remove hunters and camps, maintain existing camps, and salvage harvested sheep.**

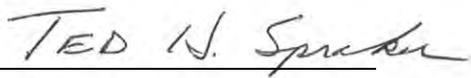
The purpose of this finding is to clarify the Board’s intent when adopting this restriction and address some of the commonly heard misinterpretations brought to Board members’ attention since the regulation became effective July 1, 2015.

Passage of proposal 207 is intended to:

1. Specifically address public complaint that the Board of Game has heard for many decades regarding the controversial practice of hunting for wildlife from aircraft.
 - Since at least the 1970’s the Board of game has heard testimony regarding how hunting from an aircraft has both disrupted the efforts of other hunters through displacement of animals and also lowered the quality of experience for other hunters who do not use aircraft as a hunting tool.

- The Board recognizes that there has been increased complaint especially during the last decade regarding perceived crowding issues and increased competition among Dall sheep hunters in their efforts, despite less hunter participation than in previous decades, and that the practice of aircraft hunting may be contributing to these problems by disturbing both hunters and sheep populations themselves.
 - Technological advances in small aircraft capability and the increasing popularity of short field performance educational videos have combined in recent decades, resulting both in increased aircraft dependent hunting methods and decreased number of areas where foot based hunters are able to go without competition from those who primarily hunt from the air and then land nearby in marginal conditions to pursue the sheep.
2. Prohibit the deliberate use of an aircraft for locating any Dall sheep for hunting purposes between August 10 and September 20. This precludes flying with the intention to generally locate Dall sheep and also making single or repeated passes to evaluate the location, type, or quality of specific animals. This prohibition is intended to apply to both the pilot and anyone that this information is communicated to during the open season, who has the intent to harvest a Dall sheep anywhere in the state.
- The prohibition is not meant to prevent the hunting of animals that were incidentally spotted while under the allowed provisions of this regulation (... **“to place and remove hunters and camps, maintain existing camps, and salvage harvested sheep”**.) so long as the aircraft is not being used for the purpose of locating Dall sheep for hunting purposes. **“From August 10 through September 20 aircraft may not be used by or for any person to locate Dall sheep for hunting or direct hunters to Dall sheep during the open sheep hunting season.**
 - This prohibition was not intended to prohibit the hunting of Dall sheep in the present season, or following seasons, if the sheep were incidentally spotted by a pilot or passenger who are directly in route to or from a proposed camp or hunter drop-off or pick-up location, an existing camp or cache, or Dall sheep harvest location between the August 10 and September 20 hunting season.
 - This prohibition does not preclude someone from legally harvesting any Dall sheep if it were incidentally spotted while directly in route to or from a proposed landing location.
 - This prohibition does not intend to prevent any flight maneuvers that are necessary to make an informed and safe landing in the field.

Adopted: March 17, 2016
Vote: 4-2-1
Fairbanks, Alaska


Ted Spraker, Chairman
Alaska Board of Game

**Alaska Board of Game
Policy for the
Annual Reauthorization of Antlerless Moose**

#2007-172-BOG

Background

Alaska Statute **AS 16.05.780** requires the Board of Game to reauthorize the Antlerless moose seasons in each Game Management Unit, subunit or any other authorized antlerless moose season on a yearly basis.

In order for the Board to comply with AS 16.05.780, it must consider that antlerless moose seasons require approval by a majority of the active advisory committees located in, or the majority of whose members reside in, the affected unit or subunit. For the purpose of this section, an “active advisory committee” is a committee that holds a meeting and acts on the proposal.

Because of the requirement for yearly reauthorization, the Board of Game approves of the proposals in order to insure they remain in regulation. In the case of the antlerless moose seasons, the Board of Game has delegated authority to the Department which allows them to administer a hunt if there is an allowable harvest of antlerless moose. The Board of Game has provided language to allow the Department to issue an “up to” number of permits so that we do not have to try and set a hard number each year. In most years it would be very difficult for a decision on allowable harvest to be made prior to the surveys the Department makes of the moose population.

This requirement for yearly authorization takes a lot of valuable Board time as well as requiring the Department to bring in area biologists or regional supervisors to present to the Board information on the proposed regulation. The attendance of many of these area biologists or regional supervisors is not required for any other proposed regulatory changes that the Board will consider in the normal Board cycle of proposals.

Because this requirement increases the cost to the Department and the Board, and because the annual reauthorization for some of the antlerless moose seasons may be considered a house keeping requirement in order to comply with AS 16.05.780, the Board has determined that a more efficient way to handle the annual reauthorization should be adopted and has established the following policy in agreement with the Department.

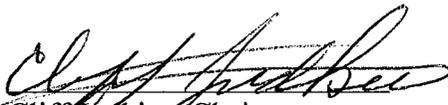
Policy for yearly authorization of Antlerless Moose Hunts by the Board of Game

Each year, the Department will present as a package for approval all of the antlerless moose proposals. During that presentation, if there are any changes that will be required to be considered, they will be noted for later discussion.

Because the Board had delegated the authority to the Department to hold antlerless moose hunts, there are many hunts that do not occur based on biology. The Department and the Board finds that it is important to keep these regulations on the books so that when opportunity exists, the Department will have the ability to provide additional opportunity for the use of antlerless moose.

The Board agrees that it will minimize debate during the presentation and only consider extensive discussion on any reauthorization that will be associated with a pending proposal submitted during the normal cycle to be considered. This discussion will be limited to any proposal submitted to the Board and not during the approval fo the packaged proposals for reauthorization of antlerless moose seasons.

The Board is aware of the time and expense required to comply with AS 16.05.780; it feels that by adopting this policy both the Department and Board will be better served.



Cliff Ludkins, Chairman
Alaska Board of Game

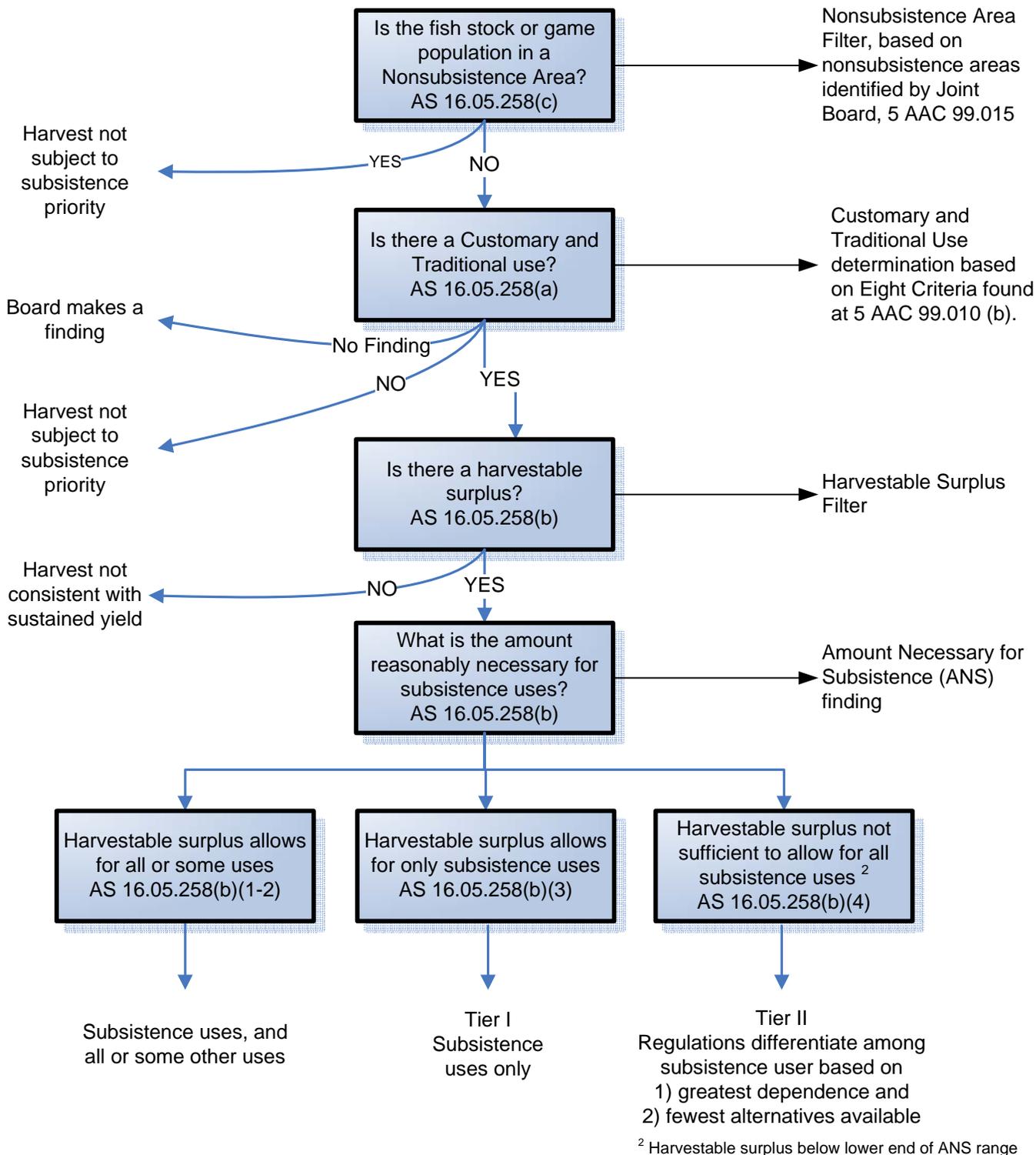
Vote: 7-0
March 12, 2007
Anchorage, Alaska

State subsistence materials

1. Alaska Board of Fisheries and Game steps when considering regulations that affect subsistence uses (flowchart)
2. Board of Game subsistence regulatory process in six steps
3. Tier II or Not? Steps to analyze hunting opportunity, Board of Game
4. State subsistence statutes, with notes (AS 16.05.258, 16.05.259, 16.05.940)
5. State subsistence regulations (5 AAC 99)
6. Maps of the five current state nonsubsistence areas (Ketchikan, Juneau, Valdez, Anchorage-Matsu-Kenai Peninsula, Fairbanks)

Alaska Board of Fisheries and Game Steps When Considering Regulations that Affect Subsistence Uses

Alaska Statute 16.05.258 Subsistence Use and Allocation of Fish and Game



² Harvestable surplus below lower end of ANS range

Alaska Department of Fish and Game
**Steps When the Board of Game is Considering Subsistence Uses and
Regulatory Proposals**

Note: these steps are based on those described in the state subsistence statute -- AS 16.05.258

1. Nonsubsistence Area Filter

Is the game population in the proposal in a nonsubsistence area? (*See* descriptions of these areas at 5 AAC 99.015; see also maps of these areas in board notebooks.) If all of the game population is in a nonsubsistence area, there is no need for the board to address subsistence uses: subsistence harvests are not allowed in a nonsubsistence area. To address game populations outside a nonsubsistence area, then the board goes to Step 2.

2. Customary and Traditional Use Determination

The board determines if there is a customary and traditional use of the game population by considering information about the use pattern or pattern(s) and applying the eight criteria found at 5 AAC 99.010. If there has been a previous positive finding, then this step is unnecessary, and the board goes to Step 3. If there has been a previous negative finding, there is no need to address subsistence uses further, unless the proposal is for reconsidering a negative finding. The board may periodically reconsider previous customary and traditional use findings.

3. Harvestable Surplus Filter

The board determines if a portion of the game population be harvested consistent with sustained yield, by considering biological information. If there is no harvestable surplus, then the board authorizes no harvest of the game under the sustained yield mandate, and there is no need to address subsistence uses further. If there is a harvestable surplus, then the board goes to Step 4.

4. Amount Reasonably Necessary for Subsistence

The board determines the amount reasonably necessary for subsistence uses, considering information about the subsistence use pattern(s). If there has been a previous determination on the amount, then the board goes to Step 5. The board may periodically reconsider and update amounts reasonably necessary for subsistence.

5. Subsistence Regulations and Reasonable Opportunity Finding

The board determines and adopts subsistence regulations that provide a reasonable opportunity for subsistence uses, which is defined as an opportunity that allows a normally diligent participant with a reasonable opportunity for success in harvesting the game [AS 16.05.258(f)].

When the harvestable surplus meets or exceeds the amount determined by the board to provide a reasonable opportunity for success in harvesting, then further harvest restrictions are not necessary. Harvest regulations for other uses may be adopted by the board after subsistence regulations are adopted that provide a reasonable opportunity for success in harvesting.

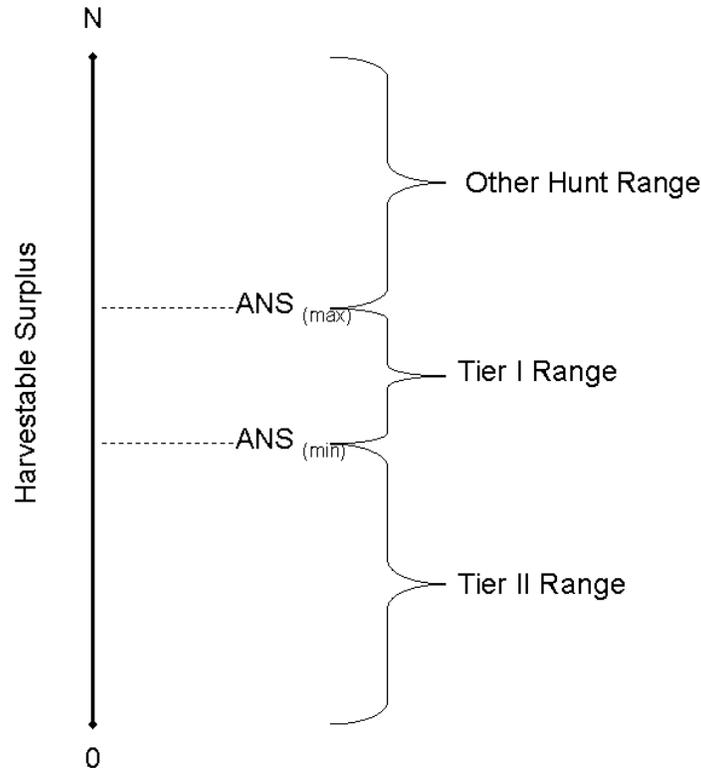
If a proposal is for a reduction in subsistence harvest opportunity, regulations allowing harvest of the game population for other uses must be restricted first before restricting a reasonable opportunity for subsistence uses.

If the harvestable surplus is below the level determined by the board to provide a reasonable opportunity for subsistence uses after eliminating all other uses, then the board goes to Step 6.

6. Tier II Subsistence Regulations

If the harvestable surplus is below the minimum level established by the board to provide a reasonable opportunity for success in harvesting an animal for subsistence uses, the board adopts regulations that reduce or eliminate harvest of the game population for other consumptive uses and may distinguish among subsistence users (*See* 5 AAC 92.062).

Potential Regulatory Approach for Management of Species With C&T Use and a Variable Harvestable Surplus



Steps:

1. Board of Game reviews the C&T use pattern or patterns and uses the criteria in 5 AAC 99.010(b) to specify which game populations are taken or used for subsistence.
2. The board then determines the amount necessary to provide a reasonable opportunity for subsistence use.
3. The board then adopts regulations, or the department implements discretionary permit conditions, that provide a reasonable opportunity to participate in the pattern or patterns of use (i.e., no use of aircraft, no trophy uses, etc.)
4. The Division of Wildlife Conservation estimates the harvestable surplus level on an annual basis.

Management Guidelines / Board Direction to the Department:

1. If the harvestable surplus is between $ANS_{(min)}$ and $ANS_{(max)}$, the department may issue subsistence registration permits and apply discretionary conditions so that the hunt is consistent with the C&T use pattern(s).
2. If the harvestable surplus is less than $ANS_{(min)}$ the department may issue Tier II subsistence permits and apply discretionary conditions so that the hunt is consistent with the C&T use pattern(s).
3. If harvestable surplus is greater than $ANS_{(max)}$ the department may issue subsistence registration permits and apply discretionary conditions so that the hunt is consistent with the C&T use pattern, and issue harvest tickets and/or drawing permits to take additional animals.

Structure of Regulations

<i>Units and Bag Limits</i>	<i>Resident Season (Subsistence and General Hunt)</i>	<i>Nonresident Open Season</i>
Unit A, Resident Hunters:		
X animal(s) by registration permit only if the harvestable surplus is greater than ANS _(min) , or by Tier II permit only if the harvestable surplus is less than ANS _(min)	Start date – End date (Subsistence Hunt Only)	
Y animal(s) by drawing permit only, provided that the harvestable surplus is greater than ANS _(max)	Start date – End date	
Nonresident Hunters:		
Y animal(s) by drawing permit only, provided that the harvestable surplus is greater than ANS _(max)		Start date – End date

Rationale:

This regulatory structure would enable the department to issue the proper type and number of permits for both subsistence and non-subsistence hunting based on the estimated harvestable surplus from year to year. The total annual quota for any/all permits issued will be set each year by the department.

ANS_(max) is not set as the upper limit for subsistence take because total subsistence take should be allowed to exceed ANS_(max) if other hunters do not take these animals. Hence there is no “up to...” language in the regulation. Similarly, there is no upper limit on the number of drawing permits because we cannot predict what the proper total would be. The number of drawing permits does not have to be limited strictly to the number of animals in the harvestable surplus over and above ANS_(max) as long as the number of animals taken by drawing permittees does not reduce the allowable take under registration permits below ANS_(max).

AS 16.05.258. Subsistence use and allocation of fish and game.

(a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required under this subsection after receipt of the commissioner's recommendations.

(b) The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) of this section can be harvested consistent with sustained yield. If a portion of a stock or population can be harvested consistent with sustained yield, the board shall determine the amount of the harvestable portion that is reasonably necessary for subsistence uses and

(1) if the harvestable portion of the stock or population is sufficient to provide for all consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) shall adopt regulations that provide for other uses of those stocks or populations, subject to preferences among beneficial uses; and

(C) may adopt regulations to differentiate among uses;

(2) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses and some, but not all, other consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) may adopt regulations that provide for other consumptive uses of those stocks or populations; and

(C) shall adopt regulations to differentiate among consumptive uses that provide for a preference for the subsistence uses, if regulations are adopted under (B) of this paragraph;

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses; and

(4) if the harvestable portion of the stock or population is not sufficient to provide a reasonable opportunity for subsistence uses, the appropriate board shall

(A) adopt regulations eliminating consumptive uses, other than subsistence uses;

(B) distinguish among subsistence users, through limitations based on

(i) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;

(ii) the proximity of the domicile of the subsistence user to the stock or population; and

(iii) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

(1) the social and economic structure;

(2) the stability of the economy;

(3) the extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;

(4) the amount and distribution of cash income among those domiciled in the area or community;
(5) the cost and availability of goods and services to those domiciled in the area or community;
(6) the variety of fish and game species used by those domiciled in the area or community;
(7) the seasonal cycle of economic activity;
(8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;
(9) the harvest levels of fish and game by those domiciled in the area or community;
(10) the cultural, social, and economic values associated with the taking and use of fish and game;
(11) the geographic locations where those domiciled in the area or community hunt and fish;
(12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;
(13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.

(d) Fish stocks and game populations, or portions of fish stocks and game populations not identified under (a) of this section may be taken only under nonsubsistence regulations.

(e) Takings and uses of fish and game authorized under this section are subject to regulations regarding open and closed areas, seasons, methods and means, marking and identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(f) For purposes of this section, “reasonable opportunity” means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game. (§ 6 ch 52 SLA 1986; am § 2 ch 1 SSSLA 1992)

Administrative Code. — For subsistence uses, see 5 AAC 99.

Editor’s notes. — Sections 3 and 12, ch. 1, SSSLA 1992, which provided for a delayed amendment of this section, were repealed by §§ 1 and 2, ch. 1, FSSLA 1998 before the delayed amendment took effect.

NOTES TO DECISIONS

Rural residency requirement unconstitutional. — The requirement contained in the 1986 subsistence statute (ch. 52, SLA 1986), that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates Alaska Const., art. VIII, §§ 3, 15, and 17. *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

Prohibition of subsistence permits for residents in nonsubsistence areas invalid. — The requirements of the equal access clauses apply to both tiers of subsistence users. Just as eligibility to participate in all subsistence hunting and fishing cannot be made dependent on whether one lives in an urban or rural area, eligibility to participate in Tier II subsistence hunting and fishing cannot be based on how close one lives to a given fish or game population. Subsection (b)(4)(B)(ii), which uses the proximity of the domicile of the Tier II subsistence permit applicant to the fish or game population which the applicant wishes to harvest as a basis for the applicant’s eligibility, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution. *State v. Kenaitze Indian Tribe*, 894 P.2d 632 (Alaska 1995).

Creation of nonsubsistence areas not unconstitutional. — The statutory provision in subsection (c) mandating the creation of nonsubsistence areas does not violate sections 3, 15, and 17 of article VIII of the Alaska Constitution because the provision by itself without the proximity of domicile provisions does absolutely bar subsistence uses for certain residents. *State v. Kenaitze Indian Tribe*, 894 P.2d 632 (Alaska 1995).

Authority of Board of Game. — Section 1605.258(b)(2) not only grants the Alaska Board of Game the authority to differentiate between subsistence uses, it requires the Board to adopt regulations that provide a reasonable opportunity for subsistence uses of those game populations that are customarily and traditionally taken or used for subsistence. *Alaska Fish & Wildlife Conservation Fund v. State*, 347 P.3d 97 (Alaska 2015).

Regulations adopted under former AS 16.05.257 had to be in accordance with the Administrative Procedure Act (AS 44.62). *State v. Tanana Valley Sportsmen’s Ass’n*, 583 P.2d 854 (Alaska 1978). While former AS 16.05.257, which authorized the Board of Game to adopt regulations providing for subsistence hunting, did not specifically refer to the Administrative Procedure Act (AS 44.62), it appeared clear that it merely set forth an additional purpose for which regulations might be promulgated. *State v. Tanana Valley Sportsmen’s Ass’n*, 583 P.2d 854 (Alaska 1978).

Considerations in adopting regulations. — The boards of fisheries and game have the discretion to adopt regulations that recognize the needs, customs, and traditions of Alaska residents, but they are not mandated to do so when formulating their subsistence regulations. *State v. Morry*, 836 P.2d 358 (Alaska 1992).

Decision of the Alaska Joint Boards of Fisheries and Game to use the non-rural boundaries as starting points for their nonsubsistence determinations was not inconsistent with subsection (c) of this section. *State v. Kenaitze Indian Tribe*, 83 P.3d 1060 (Alaska 2004).

Decision of the Alaska Joint Boards of Fisheries and Game to use large nonsubsistence starting areas or even to combine two proposed areas did not exceed their discretion; although the boundaries encompassed relatively large areas, an “area or community” as the words are used in subsection (c) of this section may encompass several subdistricts grouped together. *State v. Kenaitze Indian Tribe*, 83 P.3d 1060 (Alaska 2004).

“Sustained yield”. — The term “sustained yield” in subsection (b) is potentially broad enough to include authority in the game board to restrict even subsistence hunting in order to rebuild a damaged game population. However, the board does not have absolute discretion in this area. There must be a balance of minimum adverse impact upon rural residents who depend upon subsistence use of resources and recognized scientific principles of game management. *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990).

The state has a compelling interest in maintaining a healthy and sustainable king salmon population in the Kuskokwim River, and the population would be harmed if the court granted a religious exemption to allow all Yup’ik subsistence fishers to fish for king salmon according to their sincerely held religious beliefs without regard to emergency closures or gear restrictions. *Phillip v. State*, 347 P.3d 128 (Alaska 2015).

“Area or community.” — The term “area or community” is broad enough to encompass several subdistricts grouped together. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

The subsistence law leaves the determination of which geographic boundaries constitute a subsistence area or community to the discretion of the fisheries board. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

Familial relationship not required. — In evaluating a subsistence fishery proposal, the Board of Fisheries erroneously required users of salmon in an area to have a familial relationship with prior generations of subsistence users in the area; such interpretation of 5 AAC 99.010(b) was inconsistent with subsection (a)

and the definition of “customary and traditional” in AS 16.05.940. *Payton v. State*, 938 P.2d 1036 (Alaska 1997).

Invalid regulations severable. — Invalid portions of regulations established pursuant to the mandate of this section are severable from the remaining regulations if, standing alone, the regulation can be given legal effect and the legislature intended the provision to stand. *State v. Palmer*, 882 P.2d 386 (Alaska 1994).

Issuance of permits based on verbal instructions to agents held improper. — Nothing in the Administrative Procedure Act (AS 44.62) authorizes the Board of Game to impose requirements not contained in written regulations by means of oral instructions to agents. Such verbal additions to regulations involving requirements of substance are unauthorized and unenforceable. *State v. Tanana Valley Sportsmen’s Ass’n*, 583 P.2d 854 (Alaska 1978).

Adoption of eligibility criteria. — All Alaskans are eligible to participate in subsistence hunting and fishing, and the board of game lacks the authority to adopt eligibility criteria when the resource is sufficiently abundant to satisfy all subsistence users. *State v. Morry*, 836 P.2d 358 (Alaska 1992).

The least intrusive standard applied by the superior court to board of game regulations for subsistence uses is not explicitly mentioned in the text of the subsistence preference laws nor can such a standard be reasonably implied from the fact that the subsistence law in this section accords a “preference” to subsistence users. The subsistence law provides a preference only by giving subsistence users “reasonable opportunity” to harvest the resource, and the superior court erred in its decision that the least intrusive standard was implied as a rule of construction for the term “reasonable opportunity.” *State v. Morry*, 836 P.2d 358 (Alaska 1992).

Grouping of stock. — Since manageability is the key element in the classification of a category of fish as a “stock,” it was not unreasonable for the fisheries board to group salmon stocks together where it determined that subsistence users themselves “customarily and traditionally” took the species interchangeably. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

Reasonable basis for Board of Game’s quota of caribou to be killed under former AS 16.05.257. — See *State v. Tanana Valley Sportsmen’s Ass’n*, 583 P.2d 854 (Alaska 1978).

Emergency caribou hunt allowed. — Native Alaskan villagers were granted injunctive relief permitting an emergency caribou hunt allowing the taking of 50 to 70 animals where the hunt was justified by economic conditions and would not adversely affect the herd. *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990).

In affirming the grant of summary judgment to the state in a management team’s challenge to 5 AAC 85.045, the court determined that the regulation violated neither the sustained yield principle of Alaska Const. art. VIII, § 4, nor AS 16.05.255 and this section; the Board of Game acted within its discretion in adopting the regulation that allowed for the issuance of “up to” 400 hunting permits in a controlled use area because creating a controlled use area did not necessarily amount to designating a relevant animal population for management purposes, and it was reasonable not to manage moose in the region as a distinct game population. *Koyukuk River Basin Moose Co-Management v. Bd. of Game*, 76 P.3d 383 (Alaska 2003).

Regulations held valid. — 5 AAC 99.010(b) is constitutional, consistent with its enabling statute, and reasonably necessary to carry out the purposes of the subsistence state. AS 16.05.251(a)(6) and 16.05.258(a) allow the Board of Fisheries, to create regulations for classifying fish, and for identifying the

particular fish stocks that align with subsistence use patterns; the subsistence statute provides a general definition of the requirements for subsistence use, but 5 AAC 99.010(b) provides definitions of each specific component, and guidelines for how they should be applied. *Alaska Fish & Wildlife Conservation Fund v. State, Dep't of Fish & Game*, 289 P.3d 903 (Alaska 2012).

Department of Fish and Game regulations promulgated by the Alaska Board of Game managing caribou hunting, were upheld because the Board's "amount reasonably necessary for subsistence" calculation did not implicate, or violate, the equal access, uniform application, or equal protection clauses of the Alaska Constitution; the Board included a broad variety of subsistence uses, and its definition applied equally to all citizens. *Manning v. State*, 355 P.3d 530 (Alaska 2015), cert. denied.

Summary judgment in favor of the Department of Fish and Game, upholding regulations promulgated by the Alaska Board of Game managing caribou hunting, was proper because considerable evidence justified the Board's "amount reasonably necessary for subsistence" calculation; the Board reasonably concluded that there was a reasonable opportunity for subsistence uses, and managing the Nelchina caribou hunt was consistent with the statute and was reasonable and not arbitrary. *Manning v. State*, 355 P.3d 530 (Alaska 2015), cert. denied.

Regulations held invalid. — Board of game regulations establishing seasons and bag limits on the taking of moose and caribou were arbitrary and invalid, where the board did not follow or articulate its use of the statutory analytical process for adopting bag limits as to subsistence hunting, and the regulations imposed seasons not consistent with the board's findings as to established village customs and thereby unacceptably restricted the statutory preference for subsistence uses. *Bobby v. Alaska*, 718 F. Supp. 764 (D. Alaska 1989).

Trophy hunting regulations adopted by the board of game do not constitute compliance with the requirement of subsection (c) that the board adopt subsistence hunting regulations for game. *State v. Morry*, 836 P.2d 358 (Alaska 1992).

Where no hearing was ever held regarding whether regulations of the board of game were consistent with the subsistence law prior to their adoption as subsistence regulations, the challenged tag/fee and sealing regulations, as subsistence regulations applicable to the taking and use of brown/grizzly bears in the affected game management units, were invalid. *State v. Morry*, 836 P.2d 358 (Alaska 1992).

Board of Fisheries regulations that allowed the Department of Fish and Game to establish harvest limits through the permitting process held invalid; annual subsistence fishing harvest limit on sockeye salmon constitutes a "regulation" that was to be adopted by the Board of Fisheries in compliance with the Administrative Procedure Act. *Estrada v. State*, 362 P.3d 1021 (Alaska 2015).

Remand. — Where defendant was erroneously barred from challenging regulations prohibiting hunting with the aid of an artificial light and applying the prohibition against subsistence hunters, the case was remanded to allow defendant to demonstrate that the regulations were adopted without compliance with the Administrative Procedure Act, AS 44.62. *Totemoff v. State*, 905 P.2d 954 (Alaska 1995), cert. denied, 517 U.S. 1244, 116 S. Ct. 2499, 135 L. Ed. 2d 290 (1996).

Cited in *Krohn v. State, Dep't of Fish & Game*, 938 P.2d 1019 (Alaska 1997).

AS 16.05.259. No subsistence defense.

In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense that the taking was done for subsistence uses. (§ 7 ch 52 SLA 1986)

Revisor's notes. — Formerly AS 16.05.261. Renumbered in 1987.

NOTES TO DECISIONS

Power to challenge regulation. — A person charged with a subsistence hunting violation is not precluded by this section or by the federal Alaska National Interest Lands Conservation Act from challenging the regulation he is alleged to have violated. *Bobby v. Alaska*, 718 F. Supp. 764 (D. Alaska 1989).

Since *State v. Eluska*, 724 P.2d 514 (Alaska 1986) and this section prevent hunters who took game in the absence of any regulation authorizing them to do so from claiming a subsistence defense, a defendant was not prohibited from contesting the validity of a regulation which prohibits hunting with the aid of an artificial light. *Totemoff v. State*, 905 P.2d 954 (Alaska 1995), cert. denied, 517 U.S. 1244, 116 S. Ct. 2499, 135 L. Ed. 2d 290 (1996).

AS 16.05.940. Definitions. In AS 16.05 — AS 16.40,

- (1) "aquatic plant" means any species of plant, excluding the rushes, sedges, and true grasses, growing in a marine aquatic or intertidal habitat;
- (2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses
 - (A) for other fish or game or their parts; or
 - (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;
- (3) "a board" means either the Board of Fisheries or the Board of Game;
- (4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish, but does not include processing workers on floating fish processing vessels who do not operate fishing gear or engage in activities related to navigation or operation of the vessel; in this paragraph "operate fishing gear" means to deploy or remove gear from state water, remove fish from gear during an open fishing season or period, or possess a gill net containing fish during an open fishing period;
- (5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;
- (6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;
- (7) "customary and traditional" means the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of the fish or game;
- (8) "customary trade" means the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph do not restrict money sales of furs and furbearers;
- (9) "department" means the Department of Fish and Game unless specifically provided otherwise;
- (10) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;
- (11) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game;

- (12) “fish” means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;
- (13) “fish derby” means a contest in which prizes are awarded for catching fish;
- (14) “fish or game farming” means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and “captivity” means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, “fish” does not include shellfish, as defined in AS 16.40.199;
- (15) “fish stock” means a species, subspecies, geographic grouping, or other category of fish manageable as a unit;
- (16) “fish transporter” means a natural person who holds a fish transporter permit issued under AS 16.05.671;
- (17) “fishery” means a specific administrative area in which a specific fishery resource is taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, type of gear, or fishery resource; in this paragraph
- (A) “gear” means the specific apparatus used in the harvest of a fishery resource; and
- (B) “type of gear” means an identifiable classification of gear and may include
- (i) classifications for which separate regulations are adopted by the Board of Fisheries or for which separate gear licenses were required by former AS 16.05.550 — 16.05.630; and
- (ii) distinct subclassifications of gear such as “power” troll gear and “hand” troll gear or sport gear and guided sport gear;
- (18) “fur dealing” means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person’s own use;
- (19) “game” means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 — AS 16.40;
- (20) “game population” means a group of game animals of a single species or subgroup manageable as a unit;
- (21) “hunting” means the taking of game under AS 16.05 — AS 16.40 and the regulations adopted under those chapters;
- (22) “nonresident” means a person who is not a resident of the state;
- (23) “nonresident alien” means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;
- (24) “operator” means the individual by law made responsible for the operation of the vessel;
- (25) “person with physical disabilities” means a person who presents to the department either written proof that the person receives at least 70 percent disability compensation from a government agency for a physical disability or an affidavit signed by a physician licensed to practice medicine in the state stating that the person is at least 70 percent physically disabled;
- (26) “personal use fishing” means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;
- (27) “resident” means
- (A) a person who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person’s domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;
- (B) a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state; a natural person who does not otherwise qualify as a resident under this

paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;

(C) a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made;

(D) a person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; or

(E) an alien who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(28) "rural area" means 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;

(29) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 — AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(30) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(31) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(32) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game;

(33) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

(34) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(35) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(36) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(37) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft. (§ 2 art I ch 95 SLA 1959; § 9 art III ch 94 SLA 1959; am §§ 1 — 4 ch 131 SLA 1960; am § 23 ch 131 SLA 1960; am § 1 ch 21 SLA 1961; am §§ 1, 2 ch 102 SLA 1961; am § 1 ch 160 SLA 1962; am §§ 13, 14 ch 31 SLA 1963; am § 2 ch 32 SLA 1968; am § 3 ch 73 SLA 1970; am § 1 ch 91 SLA 1970; am § 4 ch 110 SLA 1970; am § 1 ch 90 SLA 1972; am § 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 206 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982; am § 24 ch 132 SLA 1984; am §§ 9 — 11 ch 52 SLA 1986; am § 5 ch 76 SLA 1986; am § 1 ch 114 SLA 1988; am § 9 ch 145 SLA 1988; am § 3 ch 6 SLA 1989; am § 15 ch 211 SLA 1990; am § 18 ch 30 SLA 1992; am § 2 ch 49 SLA 1992; am § 3 ch 90 SLA 1992; am § 4 ch 1 SSSLA 1992; am § 4 ch 9 SLA 1994; am § 3 ch 38 SLA 1997; am § 4 ch 112 SLA 2003)

Revisor's notes. — Reorganized in 1983, 1986, 1989, 1992, 2003, and 2012 to alphabetize the defined terms and to maintain alphabetical order. Former paragraph (13) was renumbered as AS 16.05.662(b) in 1992.

Both § 2, ch. 49, SLA 1992, and § 3, ch. 90, SLA 1992 amended former paragraph (12), now paragraph (17) of this section, defining “fishery”. Because the latter amendment took effect first and included the former amendment, paragraph (17) is set out as amended by § 3, ch. 90, SLA 1992.

Editor's notes. — Sections 5 and 12, ch. 1, SSSLA 1992, which provided for a delayed repeal of former paragraphs (36) and (37), now paragraphs (7) and (8) of this section, defining “customary and traditional” and “customary trade” respectively, were themselves repealed by §§ 1 and 2, ch. 1, FSSLA 1998 before the delayed repeal took effect.

Legislative history reports. — For report on ch. 32, SLA 1968 (HCSCSSB 50 am), see 1968 House Journal, p. 169. For report on the 1974 amendment of former paragraph (2), now paragraph (4) of this section, defining “commercial fisherman,” ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

For legislative letter of intent in connection with the amendment to (4) of this section, defining “commercial fisherman,” by § 1, ch. 114, SLA 1988 (CSSB 309 (Res)), see 1988 Senate Journal 2027. For an explanation of the 1994 amendment of (10) of this section, defining “domestic mammals,” see 1994 House Journal Supplement No. 12, February 22, 1994, page 2.

Opinions of attorney general. — The paragraph defining “resident” did not grant special resident privileges to military personnel. 1964 Op. Att’y Gen. No. 2.

Term “customary trade” as used in the definition of “subsistence uses” allows for limited exchanges for cash other than for purely personal or family consumption. 1981 Op. Att’y Gen. No. 11.

Definition of “subsistence uses” in terms of “customary and traditional uses of wild, renewable resources” reflects the equating of “subsistence use” with use by rural residents. 1981 Op. Att’y Gen. No. 11.

A domestic or nondomestic animal becomes feral when it returns to a wild state. In the case of a partially domesticated or captive wild animal such as a fox that escapes, this generally means when the animal is no longer under the control of its owner or the owner is not in direct pursuit. In the case of a domestic animal such as a cow or pig that escapes, it is “feral” when it is living as a wild creature, and this may take more or less time depending on the circumstances. In the case of a domestic animal trespassing upon public lands, it could be declared “feral” under statute or regulation. July 30, 1987 Op. Att’y Gen.

The statutory term “feral domestic animal” found in the definition of “game” now (19) is a contradiction in terms; any regulatory clarification should focus on what is a “feral animal” and explain that the term “feral domestic animal” is interpreted to mean a domestic or domesticated animal that has become feral. July 30, 1987 Op. Att’y Gen.

If factual information supported the proposition that it is “customary and traditional” to make handicraft articles from sea otter skins, and if sea otters are or have been taken customarily and traditionally for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, then skins of sea otters could be used for making handicrafts, even if the meat were not eaten. If sea otters were not customarily and traditionally taken for food, shelter, fuel, clothing, tools, or transportation, it would arguably not be permissible to harvest the animals only for handicraft purposes under subsistence regulations. Mar. 14, 1988 Op. Att’y Gen.

A member of the military who claims Alaska residency, and who is transferred to another state, may be allowed to obtain a “resident” rather than a “nonresident” hunting or fishing license in that state, based upon the service member’s military status. Alaska statutes allow for such a limited availability of resident licenses for military personnel who are stationed in Alaska but claim residency elsewhere. Determination of each service member’s status must be made on a case by case basis, but where the licensing and

residency laws of other jurisdictions mirror Alaska's, a service member may obtain a "resident" license in the other jurisdiction without forfeiting Alaska residency. 2003 Op. Att'y Gen. 14.

NOTES TO DECISIONS

Rural residency requirement unconstitutional. — The requirement contained in the 1986 subsistence statute (ch. 52, SLA 1986), that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates Alaska Const., art. VIII, §§ 3, 15, and 17. *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

Intent. — 5 AAC 99.010(b) is consistent with AS 16.05.940 because AS 16.05.940 is not intended to grant subsistence rights to any long-term users of an area, and it was proper to consider the cultural, social, and economic context in which a harvest takes place; even if personal use fisheries met the subsistence statute's consistency and duration requirements, they might not have carried the cultural, social, spiritual, and nutritional importance that the subsistence statute protects. *Alaska Fish & Wildlife Conservation Fund v. State, Dep't of Fish & Game*, 289 P.3d 903 (Alaska 2012).

"Customary and traditional." — In evaluating a subsistence fishery proposal, the Board of Fisheries erroneously required users of salmon in an area to have a familial relationship with prior generations of subsistence users in the area; such interpretation of 5 AAC 99.010(b) was inconsistent with AS 16.05.258(a) and the definition of "customary and traditional" in this section. *Payton v. State*, 938 P.2d 1036 (Alaska 1997).

Since manageability is the key element in the classification of a category of fish as a "stock," it was not unreasonable for the fisheries board to group salmon stocks together where it determined that subsistence users themselves "customarily and traditionally" took the species interchangeably. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

Movement of bison. — In an appeal that challenged the efforts of the Board of Game to control, by regulation, the movement of bison that strayed outside the boundaries of two game ranches on Kodiak Island, the Board's failure to consider AS 16.05.940(10) fell short of what was required under the Supreme Court's standard, which examines whether the regulation conflicts with other statutes. *Ellingson v. Lloyd*, 342 P.3d 825 (Alaska 2014).

Single and multiple fisheries distinguished. — Alaska fisheries board erred in finding that the differences in equipment the board authorized for open and cooperative fishers did not create two distinct fisheries under the definition of "fishery" in this section; the fishery at issue was a single fishery within the statutory definition, and the board did not alter that fact by making detail changes to the type of equipment used by the cooperative fishers. *Alaska Bd. of Fisheries v. Grunert*, 139 P.3d 1226 (Alaska 2006).

Regulation held invalid because inconsistent with statutory law. — See *Madison v. Alaska Dep't of Fish & Game*, 696 P.2d 168 (Alaska 1985).

Quoted in *United States v. Skinna*, 915 F.2d 1250 (9th Cir. 1990); *Peninsula Mktg. Ass'n v. State*, 817 P.2d 917 (Alaska 1991); *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191 (Alaska 1995); *Koyukuk River Basin Moose Co-Management v. Bd. of Game*, 76 P.3d 383 (Alaska 2003). Stated in *State v. Carlson*, 65 P.3d 851 (Alaska 2003).

Cited in *Starry v. Horace Mann Ins. Co.*, 649 P.2d 937 (Alaska 1982); *State v. Eluska*, 698 P.2d 174 (Alaska Ct. App. 1985); *Arkanakyak v. State, Com. Fisheries Entry Comm'n*, 759 P.2d 513 (Alaska 1988); *Jurco v. State*, 816 P.2d 913 (Alaska Ct. App. 1991); *West v. State*, 248 P.3d 689 (Alaska 2010).

5 AAC 99.010. Boards of fisheries and game subsistence procedures

(a) In applying a subsistence law, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to sustained yield principles.

(b) Each board will identify fish stocks or game populations, or portions of stocks or populations, that are customarily and traditionally taken or used by Alaska residents for subsistence uses by considering the following criteria:

(1) a long-term consistent pattern of noncommercial taking, use, and reliance on the fish stock or game population that has been established over a reasonable period of time of not less than one generation, excluding interruption by circumstances beyond the user's control, such as unavailability of the fish or game caused by migratory patterns;

(2) a pattern of taking or use recurring in specific seasons of each year;

(3) a pattern of taking or use consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost;

(4) the area in which the noncommercial, long-term, and consistent pattern of taking, use, and reliance upon the fish stock or game population has been established;

(5) a means of handling, preparing, preserving, and storing fish or game that has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a pattern of taking or use that includes the handing down of knowledge of fishing or hunting skills, values, and lore from generation to generation;

(7) a pattern of taking, use, and reliance where the harvest effort or products of that harvest are distributed or shared, including customary trade, barter, and gift-giving; and

(8) a pattern that includes taking, use, and reliance for subsistence purposes upon a wide diversity of fish and game resources and that provides substantial economic, cultural, social, and nutritional elements of the subsistence way of life.

(c) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting nonsubsistence harvest of the stock or population and may address other limiting factors before subsistence uses are restricted below the level the board has determined to provide a reasonable opportunity. If all available restrictions for nonsubsistence harvests have been implemented and further restrictions are needed, the board will eliminate nonsubsistence consumptive uses, and reduce the take for subsistence uses in a series of graduated steps under [AS 16.05.258](#) (b)(4)(B) - the "Tier II" distinction - by distinguishing among subsistence users through limitations based on

(1) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood; and

(2) repealed 2/23/2014;

(3) the ability of the subsistence user to obtain food if subsistence use of the stock or population is restricted or eliminated.

History: Eff. 5/30/82, Register 82; am 1/17/91, Register 117; am 5/15/93, Register 126; am 2/23/2014, Register 209

Authority: [AS 16.05.251](#)

[AS 16.05.255](#)

[AS 16.05.258](#)

5 AAC 99.015. Joint Board nonsubsistence areas

(a) The following areas are found by the Joint Board of Fisheries and Game to be nonsubsistence use areas:

(1) The Ketchikan Nonsubsistence Area is comprised of the following: within Unit 1(A), as defined in 5 AAC [92.450\(1\)](#) (A), all drainages of the Cleveland Peninsula between Niblack Point and Bluff Point, Revillagigedo, Gravina, Pennock, Smeaton, Bold, Betton, and Hassler Islands; all marine waters of Sections 1-C, as defined by 5 AAC [33.200\(a\)](#) (3), 1-D, as defined by 5 AAC [33.200\(a\)](#) (4), 1-E, as defined by 5 AAC [33.200\(a\)](#) (5), that portion of Section 1-F, as defined by 5 AAC [33.200\(a\)](#) (6), north of the latitude of the southernmost tip of Mary Island and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines; and that portion of District 2, as defined by 5 AAC [33.200\(b\)](#) , within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point.

(2) The Juneau Nonsubsistence Area is comprised of the following: within Unit 1(C), as defined by 5 AAC [92.450\(1\)](#) (C), all drainages on the mainland east of Lynn Canal and Stephens Passage from the latitude of Eldred Rock to Point Coke, and on Lincoln, Shelter, and Douglas islands; within Unit 4, as defined by 5 AAC [92.450\(4\)](#) , that portion of Admiralty Island that includes the Glass Peninsula, all drainages into Seymour Canal north of and including Pleasant Bay, all drainages into Stephens Passage west of Point Arden, the Mansfield Peninsula, all drainages into Chatham Strait north of Point Marsden; all marine waters of Sections 11-A and 11-B, as defined in 5 AAC [33.200\(k\)](#) (1) and (k)(2), Section 12-B, as defined in 5 AAC [33.200\(l\)](#) (2), and that portion of Section 12-A, as defined in 5 AAC [33.200\(l\)](#) (1), north of the latitude of Point Marsden and that portion of District 15, as defined in 5 AAC [33.200\(o\)](#) , south of the latitude of the northern entrance to Berners Bay, and including Berners Bay.

(3) The Anchorage-Matsu-Kenai Nonsubsistence Area is comprised of the following: Units 7, as defined by 5 AAC [92.450\(7\)](#) (except the Kenai Fjords National Park lands), 14, as defined by 5 AAC [92.450\(14\)](#) , 15, as defined by 5 AAC [92.450\(15\)](#) (except Kalgin Island and that portion south and west of a line beginning at the mouth of Rocky River up the Rocky and Windy Rivers across the Windy River/Jakolof Creek divide and down Jakolof Creek to its mouth, including the islands between the eastern most point of Jakolof Bay and the eastern most point of Rocky Bay), 16(A), as defined by 5 AAC [92.450\(16\)](#) (A); all waters of Alaska in the Cook Inlet Area, as defined by 5 AAC [21.100](#) (except those waters north of Point Bede which are west of a line from the eastern most point of Jakolof Bay north to the western most point of Hesketh Island including

Jakolof Bay and south of a line west from Hesketh Island; the waters south of Point Bede which are west of the eastern most point of Rocky Bay; and those waters described in 5 AAC [01.555\(b\)](#) , known as the Tyonek subdistrict).

(4) The Fairbanks Nonsubsistence Area is comprised of the following: within Unit 20(A), as defined by 5 AAC [92.450\(20\)](#) (A), east of the Wood River drainage and south of the Rex Trail but including the upper Wood River drainage south of its confluence with Chicken Creek; within Unit 20(B), as defined by 5 AAC [92.450\(20\)](#) (B), the North Star Borough and that portion of the Washington Creek drainage east of the Elliot Highway; within Unit 20(D) as defined by 5 AAC [92.450\(20\)](#) (D), west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volkmar drainage, including the Goodpaster River drainage; and within Unit 25(C), as defined by 5 AAC [92.450\(25\)](#) (C), the Preacher and Beaver Creek drainages.

(5) The Valdez Nonsubsistence Area is comprised of the following: within Unit 6(D), as defined by 5 AAC [92.450\(6\)](#) (D), and all waters of Alaska in the Prince William Sound Area as defined by 5 AAC [24.100](#), within the March 1993 Valdez City limits.

(b) Repealed 2/23/2014.

History: Eff. 5/15/93, Register 126; am 4/28/94, Register 130; am 2/23/2014, Register 209; am 7/1/2016, Register 218

Authority: [AS 16.05.251](#)

[AS 16.05.255](#)

[AS 16.05.258](#)

5 AAC 99.016. Activities permitted in a nonsubsistence area

(a) A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area of community. In a nonsubsistence area, the following activities will be permitted if so provided by the appropriate board by regulation:

- (1) general hunting, including drawing and registration permit hunts;
- (2) personal use, sport, guided sport, commercial fishing, and other fishing authorized by permit.

(b) Subsistence hunting and subsistence fishing regulations will not be adopted by a board for a nonsubsistence area and the subsistence priority does not apply in a nonsubsistence area.

History: Eff. 5/15/93, Register 126; am 2/23/2014, Register 209

Authority: [AS 16.05.251](#)

[AS 16.05.255](#)

[AS 16.05.258](#)

5 AAC 99.021. Definitions

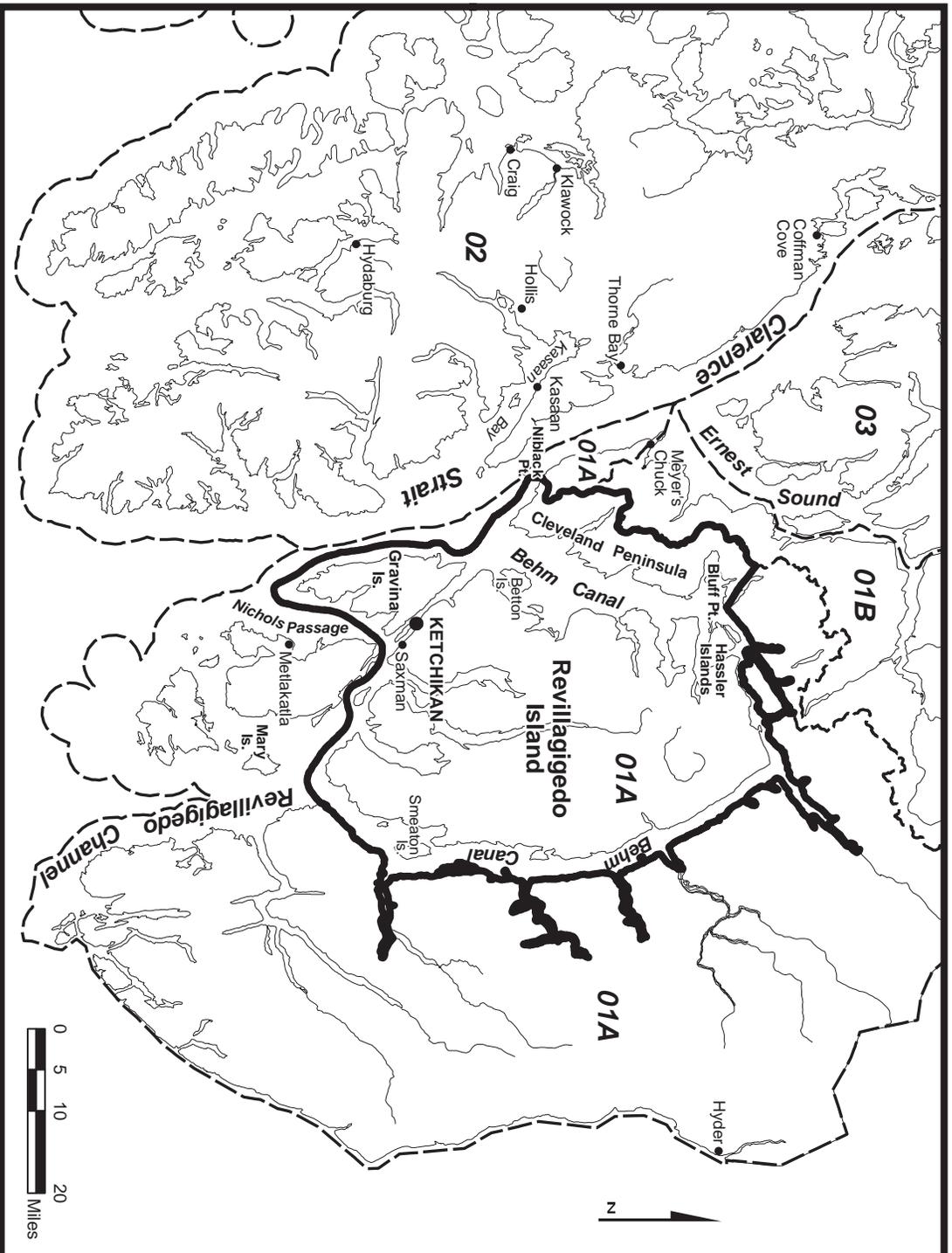
In addition to the definitions in [AS 16.05.940](#) , in this chapter,

- (1) "road-connected area" means the location of domiciles that are normally accessed by motorized highway vehicles operating on constructed roads that connect to the main highway system in the relevant area, including roads that can be negotiated during all portions of the year; in this paragraph, "normally accessed" means that it is reasonably feasible to transport persons, food, and other supplies to domiciles by motorized highway vehicles;
- (2) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident of the state for subsistence uses with a gillnet, seine, fish wheel, longline, or other means defined by the Board of Fisheries;
- (3) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident of the state for subsistence uses by means defined by the Board of Game;
- (4) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis.

History: Eff. 7/31/87, Register 103; am 2/23/2014, Register 209

Authority: [AS 16.05.258](#)

Ketchikan Nonsubsistence Area



The Ketchikan Nonsubsistence Area is comprised of the following: within Unit 1(A), as defined in 5 AAC 92.450(1) (A), all drainages of the Cleveland Peninsula between Niblack Point and Bluff Point, Revillagigedo, Gravina, Pennock, Smeaton, Bold, Betton, and Hassler Islands; all marine waters of Sections 1-C, as defined by 5 AAC 33.200(a) (3), 1-D, as defined by 5 AAC 33.200(a) (4), 1-E, as defined by 5 AAC 33.200(a) (5), that portion of Section 1-F, as defined by 5 AAC 33.200(a) (6), north of the latitude of the southernmost tip of Mary Island and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines; and that portion of District 2, as defined by 5 AAC 33.200(b), within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point.

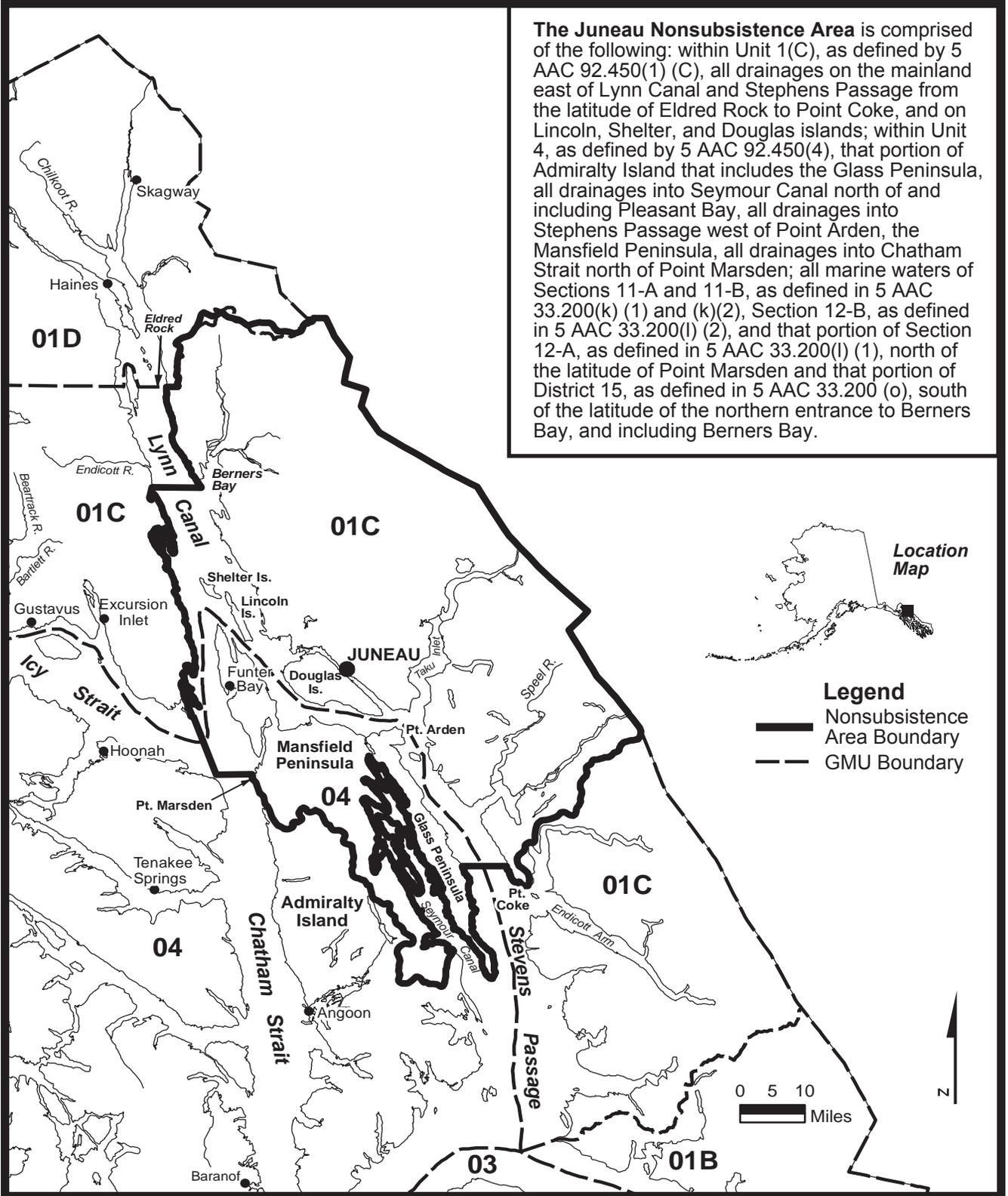


- Legend**
- Nonsubsistence Area Boundary
 - - - GMU Boundary



Juneau Nonsubsistence Area

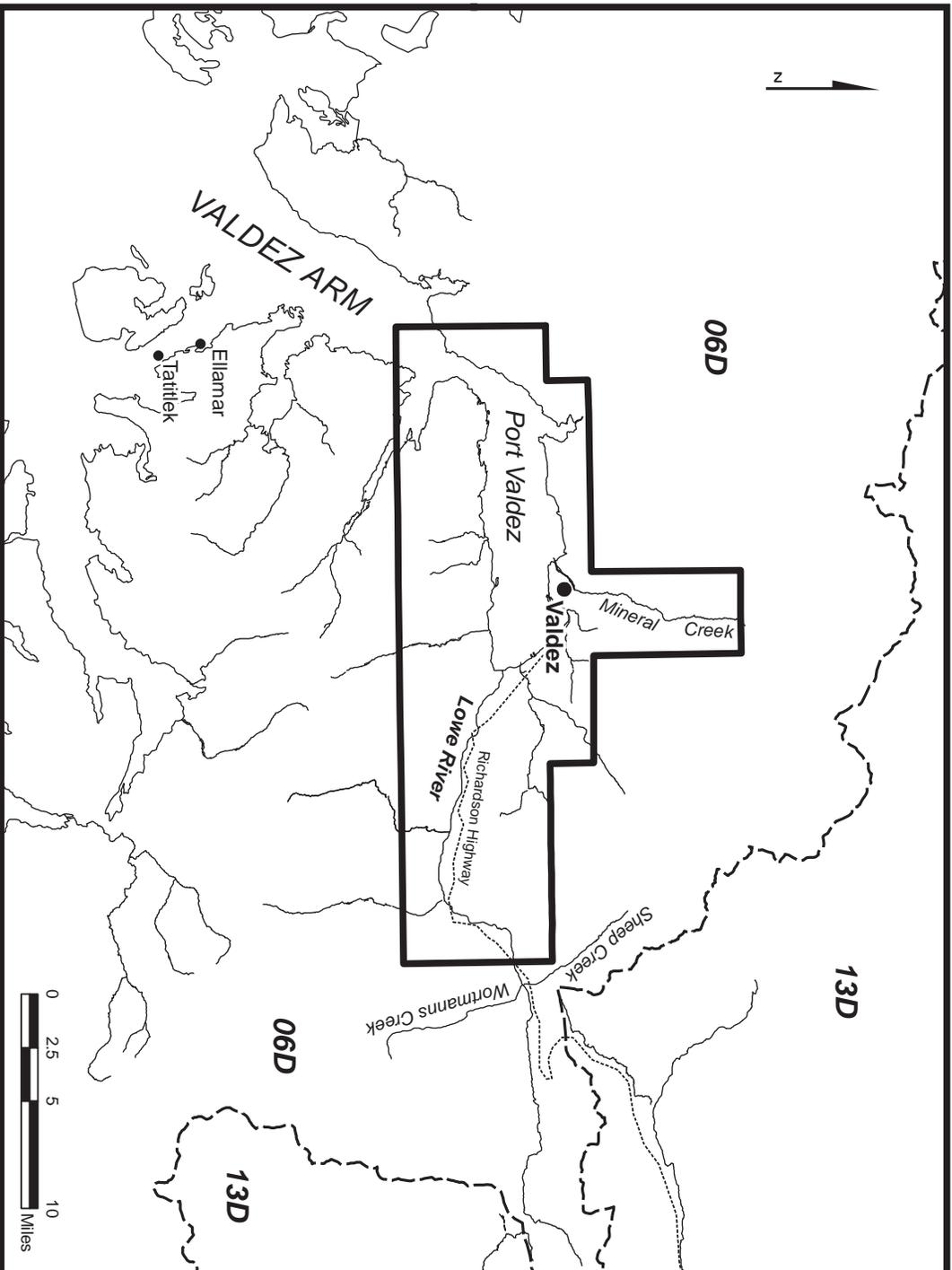
The Juneau Nonsubsistence Area is comprised of the following: within Unit 1(C), as defined by 5 AAC 92.450(1) (C), all drainages on the mainland east of Lynn Canal and Stephens Passage from the latitude of Eldred Rock to Point Coke, and on Lincoln, Shelter, and Douglas islands; within Unit 4, as defined by 5 AAC 92.450(4), that portion of Admiralty Island that includes the Glass Peninsula, all drainages into Seymour Canal north of and including Pleasant Bay, all drainages into Stephens Passage west of Point Arden, the Mansfield Peninsula, all drainages into Chatham Strait north of Point Marsden; all marine waters of Sections 11-A and 11-B, as defined in 5 AAC 33.200(k) (1) and (k)(2), Section 12-B, as defined in 5 AAC 33.200(l) (2), and that portion of Section 12-A, as defined in 5 AAC 33.200(l) (1), north of the latitude of Point Marsden and that portion of District 15, as defined in 5 AAC 33.200 (o), south of the latitude of the northern entrance to Berners Bay, and including Berners Bay.



Alaska Department of Fish and Game
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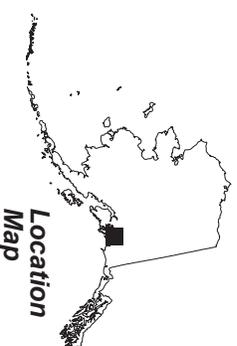
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Valdez Nonsubsistence Area



The Valdez Nonsubsistence Area

is comprised of the following:
 within Unit 6(D), as defined by 5 AAC 92.450(6) (D), and all waters of Alaska in the Prince William Sound Area as defined by 5 AAC 24.100, within the March 1993 Valdez City limits.

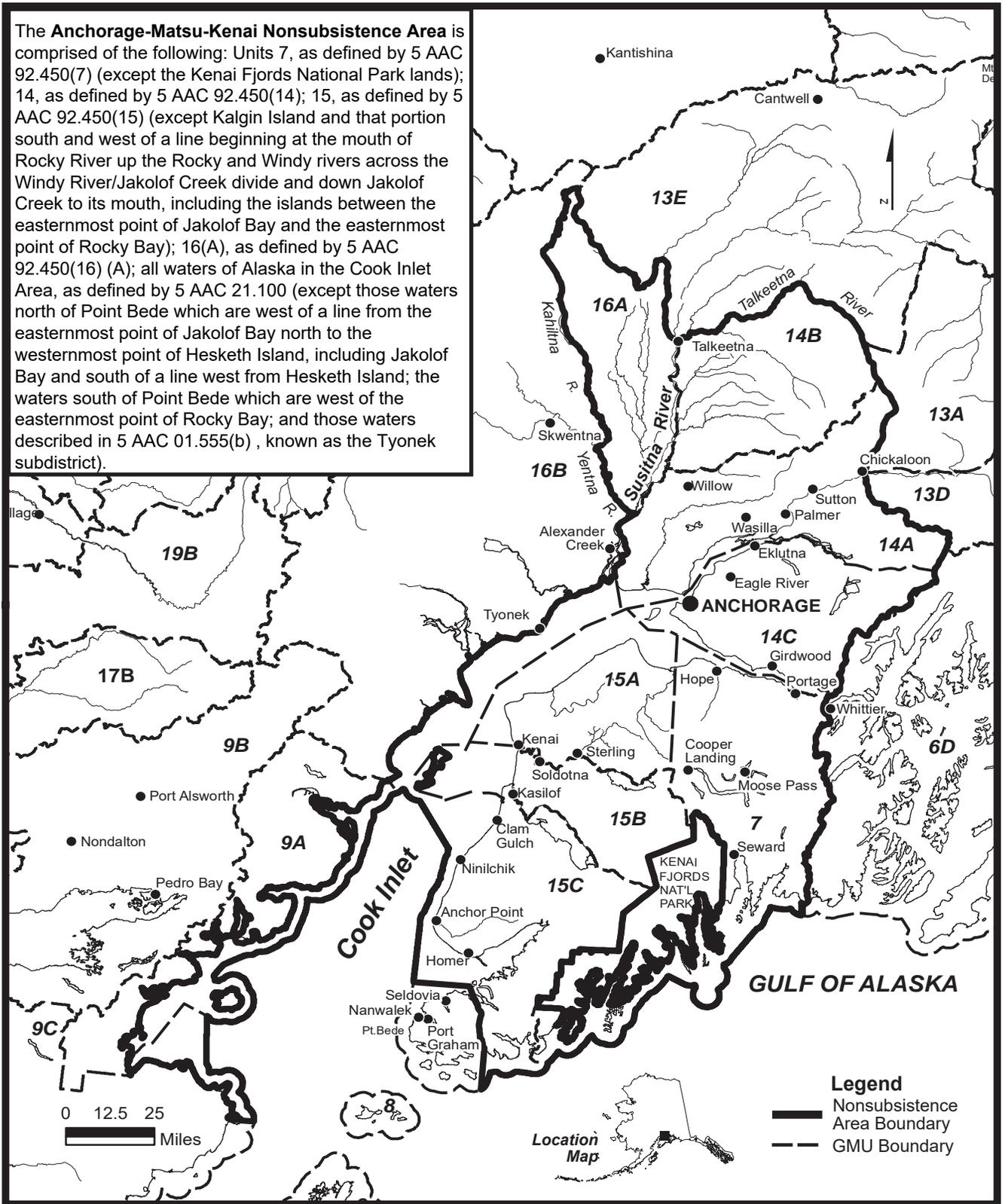


- Legend**
- Nonsubsistence Area Boundary
 - - - GMU Boundary
 - Roads



Anchorage Nonsubsistence Area

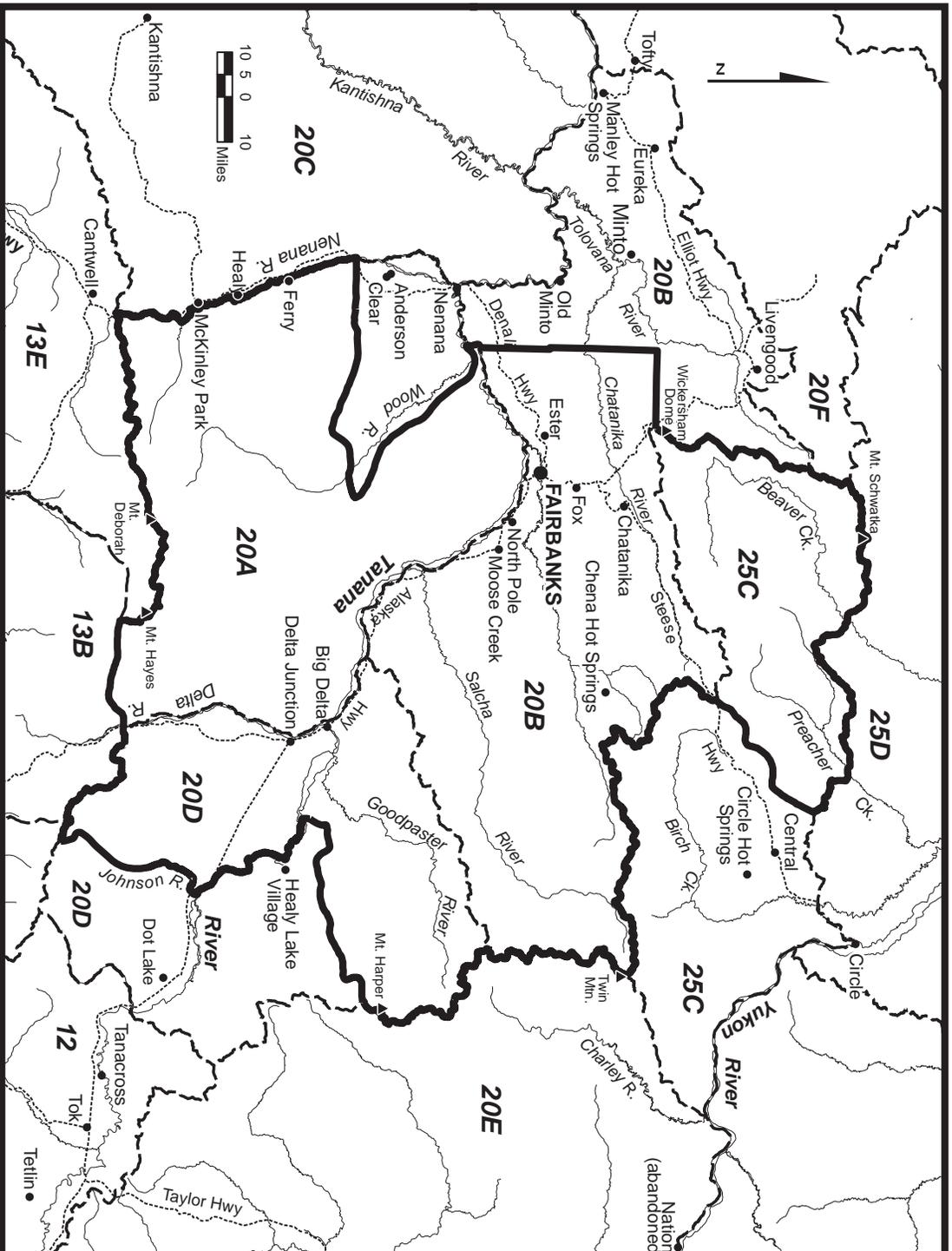
The **Anchorage-Matsu-Kenai Nonsubsistence Area** is comprised of the following: Units 7, as defined by 5 AAC 92.450(7) (except the Kenai Fjords National Park lands); 14, as defined by 5 AAC 92.450(14); 15, as defined by 5 AAC 92.450(15) (except Kalgin Island and that portion south and west of a line beginning at the mouth of Rocky River up the Rocky and Windy rivers across the Windy River/Jakolof Creek divide and down Jakolof Creek to its mouth, including the islands between the easternmost point of Jakolof Bay and the easternmost point of Rocky Bay); 16(A), as defined by 5 AAC 92.450(16) (A); all waters of Alaska in the Cook Inlet Area, as defined by 5 AAC 21.100 (except those waters north of Point Bede which are west of a line from the easternmost point of Jakolof Bay north to the westernmost point of Hesketh Island, including Jakolof Bay and south of a line west from Hesketh Island; the waters south of Point Bede which are west of the easternmost point of Rocky Bay; and those waters described in 5 AAC 01.555(b), known as the Tyonek subdistrict).



Alaska Department of Fish and Game
Division of Subsistence and Boards

December 2016

Fairbanks Nonsubsistence Area



The Fairbanks Nonsubsistence Area is comprised of the following: within Unit 20(A), as defined by 5 AAC 92.450(20) (A), east of the Wood River drainage and south of the Rex Trail but including the upper Wood River drainage south of its confluence with Chicken Creek; within Unit 20(B), as defined by 5 AAC 92.450(20) (B), the North Star Borough and that portion of the Washington Creek drainage east of the Elliott Highway; within Unit 20(D) as defined by 5 AAC 92.450(20) (D), west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volkmar drainage, including the Goodpastor River drainage; and within Unit 25(C), as defined by 5 AAC 92.450(25) (C), the Preacher and Beaver Creek drainages.

