

A close-up photograph of a brown beaver gnawing on a piece of wood in a snowy environment. The beaver's head is in profile, facing right, with its mouth open and teeth visible on the wood. Its fur is dark brown and textured. The background is a bright, snowy landscape.

ALASKA BOARD OF GAME

Meeting Workbook

RC1

Southeast Region Meeting
January 20-24, 2023
Ketchikan, AK

ALASKA BOARD OF GAME
Southeast Region Meeting
Ketchikan, AK | January 20 – 24, 2023

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ALASKA BOARD OF GAME
Southeast Region Meeting
The Landing Hotel, Ketchikan, Alaska
January 20-24, 2023

TENTATIVE AGENDA

Note: This Tentative Agenda is subject to change throughout the course of the meeting. It is provided to give a general idea of the board's anticipated schedule. The board will attempt to hold to this schedule; however, the board is not constrained by this Tentative Agenda.

Friday, January 20, 8:30 a.m.

OPENING BUSINESS

Call to Order / Purpose of Meeting
Introductions of Board Members and Staff
Board Member Ethics Disclosures

AGENCY AND OTHER REPORTS (See List of Oral Reports)

PUBLIC & ADVISORY COMMITTEE TESTIMONY upon conclusion staff reports

THE DEADLINE TO SIGN UP TO TESTIFY will be 2:00 p.m. Saturday, January 21.
Public testimony will continue until persons who have signed up before the deadline, and who are present when called by the Chair to testify, are heard.

Saturday, January 21, 8:30 a.m.

PUBLIC AND ADVISORY COMMITTEE ORAL TESTIMONY continued

BOARD DELIBERATIONS upon conclusion of public testimony

Sunday, January 22, 9:00 a.m.

BOARD DELIBERATIONS upon conclusion of public testimony

Monday, January 23 8:30 a.m.

BOARD DELIBERATIONS continued

Tuesday, January 24, 8:30 a.m.

BOARD DELIBERATIONS conclude

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

ADJOURN

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

P.O. Box 115526

Juneau, AK 99811-5526

(907) 465-4110

www.boardofgame.adfg.alaska.gov

**ALASKA BOARD OF GAME
Southeast Region Meeting
January 20-24, 2023
The Landing Hotel, Ketchikan, Alaska**

Tentative List of Oral Reports

Friday, January 20, 2023

1. Agency Updates/Reports
2. Southeast Region Overview for the Division of Wildlife Conservation, Tom Schumacher, ADF&G
3. Sitka Black-Tailed Deer Research by the Division of Wildlife Conservation, Dan Eacker, ADF&G
4. Brown Bear Research in Southeast Alaska by the Division of Wildlife Conservation, Anthony Crupi, ADF&G
5. Wolf Research in Southeast Alaska by the Division of Wildlife Conservation, Gretchen Roffler, ADF&G

Reports to be Provided during Deliberations

Sitka Area – Unit 4

- Management Area Overview (Unit 4) – Steve Bethune, ADF&G

Petersburg & Wrangell Area – Units 1B & 3

- Management Area Overview – Frank Robbins, ADF&G

Juneau, Haines, Skagway & Yakutat Areas – Units 1C, 1D and 5

- Management Area Overview – Roy Churchwell and Carl Koch, ADF&G

Ketchikan Area and Prince of Wales Island – Units 1A & 2

- Management Area Overview– Ross Dorendorf and Tessa Hasbrouck, ADF&G
- A History of Wolf Management in Unit 2 – Tom Schumacher and Tessa Hasbrouck

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

The Alaska Board of Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code, dealing with the use and taking of game. Regulations subject to board action are in 5 AAC 84, 85, 92, 98, and 99 for the Southeast and Southcentral Regions. The board will also address additional topics for other Game Management Units and statewide provisions including statewide reauthorization of antlerless moose hunts and brown bear tag fee exemptions as described below:

The following subject matter areas to be addressed for the Southeast and Southcentral Region, Game Management Units 1, 2, 3, 4, 5, 6, 7, 8, 14C, and 15 are:

- A. TRAPPING SEASONS AND BAG LIMITS for furbearers, including: Marten, beaver, coyote, otter, wolverine, wolf, and lynx.
- B. HUNTING SEASONS AND BAG LIMITS for all species, including: Moose, caribou, deer, black bear, brown bear, elk, goat, Dall sheep, wolf, small game including waterfowl, migratory game birds, ptarmigan, and grouse. In addition, the potential Tier I or Tier II subsistence hunting for each population; and the reauthorization of antlerless moose hunts.
- C. LICENSES, HARVEST TICKETS, HARVEST REPORTS, TAGS, FEES, AND PERMITS, including: Discretionary and required permit hunting and trapping conditions and procedures including limits on registration permits; permits for hunting black bear with the use of bait or scent lures; and special provisions for Dall sheep, mountain goat, moose, and brown bear drawing permit hunts.
- D. METHODS AND MEANS FOR TAKING BIG GAME, GAME, FUR ANIMALS, AND FURBEARERS, including: Lawful methods of taking big game and game including restrictions for taking big game from boats, with the use of motorized vehicles, and with the use of dogs to retrieve dead or wounded game; lawful methods of taking furbearers and fur animals including requirements for trap identification, signage, breakaway mechanisms, minimum size for jaw spread; and restrictions for trapping near trails, trailheads, roads, and dwellings.
- E. POSSESSION, TRANSPORTATION AND THE USE OF GAME, including: Salvage requirements for deer; sealing requirements for moose, bear, and wolf; and evidence of sex and identity including moose antlers in Units 1 and 3.
- F. GENERAL PROVISIONS, including: Harvest guideline levels for wolves, and requirements for hunter safety education.
- G. RESTRICTED AREAS, including: Areas closed to hunting and trapping including Mitchell Bay, Petersburg Creek Drainage on Kupreanof Island, and the Petersburg Road System; proposed areas closed for trapping in the Chugach State Park, Glacier Creek drainage, near roads, trails, beaches, structures, and campgrounds; controlled use areas including the Lower Kenai Controlled Use Area; management areas including Douglas Island, Anchorage, Chugach State Park, Eagle River,

and Joint Base Elmendorf-Richardson Management Areas; and state game refuges including the Mendenhall Wetlands State Game Refuge.

- H. INTENSIVE MANAGEMENT AND PREDATOR CONTROL IMPLEMENTATION PLANS including: Prey populations and populations having a positive finding as identified big game prey populations, and the Unit 15C Intensive Management Plan.
- I. ADDITIONAL TOPICS: The board will address the following topics, as a result from action during the November 17, 2022 board meeting, or in the case of antlerless moose hunts and brown bear tag fees, must be authorized annually. For the Southeast Region meeting, January 20 – 24, 2023: Seasons and bag limits for wolf in Unit 2 (Proposal 202). For the Southcentral Region meeting, March 17-22, 2023: Annual reauthorization of antlerless moose hunts and brown bear tag fee exemptions; seasons and bag limits for sheep in Units 19C (Proposal 204) and 14C (Proposal 208); seasons and bag limits for moose including Units 14C and 19C (Proposals 200, 203, 205, 209 and 210); reauthorization of the Unit 21E Intensive Management Plan (Proposal 206); and establishing a Tier II hunt in regulation for the Nelchina caribou herd in Unit 13 (Proposal 207).

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 use.

The board will also consider non-regulatory items during this meeting such as 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 websites at www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo or by contacting the ADF&G Boards Support Section Office at (907) 465-4110. Additional meeting information such as the roadmap, agency reports, and advisory committee and public comments will be added to the website as they become available.

Anyone interested in, or affected by, the subject matter contained in this legal notice should make written or oral comments to have their views considered by the board. You may comment on the proposed regulation changes, including the potential costs to the private persons of complying with the proposed changes, by submitting written comments by the announced deadlines listed below, limited to no more than 100 single-sided or 50 double-sided pages.

New this cycle, Boards Support will utilize an online form at www.boardofgame.adfg.alaska.gov, that will allow comments to be uploaded as a file or entered manually. With the new online form in place, **Boards Support will no longer accept comments via email.** Written comments are encouraged to be submitted online. Additionally, comments will be accepted if sent by mail to ADF&G, Boards Support Section, at P.O. Box 115526, Juneau, AK 99811-5526 or by fax to (907) 465-6094

Comments must include a first and last name, community of residence, and the proposal number/s 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 6, 2023 for the Southeast Region meeting, and March 3, 2023 for the Southcentral Region meeting. Once the meetings begin, comments will be accepted online as record copies, by hand delivery at the meeting, or via fax to (907) 465-6094. Comments submitted during the meetings are limited to ten single-sided or five double-sided pages in length from any one individual or group.

As a practical matter, comments submitted after the board begins deliberations on relevant proposals are likely to receive less consideration than comments submitted earlier. Additionally, groups of people submitting numerous, form-like comments containing similar language during the meeting is not advisable, and Boards staff will be unable to process and distribute the comments to the board during the meeting. These types of comments will be grouped together or summarized for the board in a single submission.

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 or information, will be withheld or redacted.

The public hearing portion of the meetings is scheduled for 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 and federal regional advisory council representatives may elect to provide testimony at a later portion of the meeting. Additional public hearings may be held throughout the meeting 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 which will be announced by the board chair prior to the meeting. The length of oral testimony may be limited to three to five minutes or less for members of the public and 10 to 15 minutes or less for fish and game advisory committee and federal regional advisory council representatives. Everyone interested in, or affected by, the subject matter contained in this legal notice should make written or oral comments if they wish to have their views considered by the board.

Tentative Board of Game Meeting Dates & Locations

Southeast Region Meeting

January 20-24, 2023

The Landing Hotel

3434 Tongass Avenue

Ketchikan, AK 99901

Southcentral Region Meeting

March 17-22, 2023

The Soldotna Sports Center

538 Arena Drive

Soldotna, AK 99669

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) 465-4110. Please carefully review the **PROPOSAL INDEX and the additional proposal listing on the above-mentioned website** 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. After the public hearing, 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) 465-4110 no later than two weeks prior to the beginning of the 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 16.05.270; AS 16.05.315; 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, 2022

/ S /

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

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(g))

1. Adopting agency: Alaska Board of Game
2. General subject of regulation: Hunting and trapping regulations and other miscellaneous provisions for the Southeast and Southcentral Regions, statewide reauthorizations for antlerless moose hunts and brown tag fees, and miscellaneous topics for other game management units.
3. Citation of regulations: 5 AAC 84, 85, 92, 98, and 99
4. Department of Law file numbers: 2022200297 and 2022200301
5. Reason for the proposed action:
 - ☐ compliance with federal law
 - ☐ compliance with new or changed state statute
 - ☐ compliance with court order
 - ☐ development of program standards
 - ☒ Other: Regularly scheduled topics and other miscellaneous provisions for the Board of Game Southeast and Southcentral Region meetings. Implement, interpret, or make specific the provisions of AS 16.05-16.30.
6. Appropriation/Allocation: Natural Resources and all RDUs
7. Cost of implementation to the state agency and available funding: It is not possible to estimate costs. However, this action is not expected to require an increased appropriation.
8. The name of the contact person for the regulations:

Name:	Kristy Tibbles
Title:	Executive Director, Board of Game
Address:	Boards Support Section Alaska Dept. of Fish and Game PO Box 115526 Juneau, AK 99811-5526
Telephone:	(907) 465-4110
E-mail:	kristy.tibbles@alaska.gov
9. The origin of the proposed action:

<input checked="" type="checkbox"/>	staff of state agency
<input checked="" type="checkbox"/>	federal government
<input checked="" type="checkbox"/>	general public

10. Date: December 15, 2022

Prepared by: / S /
Kristy Tibbles, Executive Director
Alaska Board of Game
(907) 465-6098

ALASKA BOARD OF GAME
Southeast Region Meeting
The Landing Hotel, Ketchikan, Alaska
January 20-24, 2023

Tentative Roadmap

Regionwide & Multiple Units

- _____ **Proposal 1:** Require certified hunter safety education to hunt in Units 1 – 5.
- _____ **Proposal 2:** Require hunter orientation for hunting goat in Southeast Region units.
- _____ **Proposal 3:** Remove the requirement for residents to seal black bear skulls harvested in Units 1 – 4.
- _____ **Proposal 4:** Change the resident bag limit for brown bear in Unit 1 to one bear every two years.
- _____ **Proposal 5:** Change the waterfowl season in Units 1 - 4 by creating a split season.
- _____ **Proposal 6:** Lengthen river otter trapping seasons in Units 1 - 4 to align with Unit 5.
- _____ **Proposal 7:** Extend marten trapping seasons to align with wolverine seasons in portions of Units 1 - 4 and 5.
- _____ **Proposal 8:** Extend the marten trapping season in Units 1 and 2.
- _____ **Proposal 9:** Extend the wolverine trapping season to March 15 in Units 1 – 5.

Sitka Area – Unit 4

- _____ **Proposal 10:** Decrease the bag limit to four deer in Unit 4, Remainder.
- _____ **Proposal 11:** Decrease the bag limit to four deer in Unit 4, Remainder.
- _____ **Proposal 12:** Open the Mitchell Bay Closed Area in Unit 4 to brown bear hunting.
- _____ **Proposal 13:** Change the RB088 hunt boundary in Unit 4 to include Northeast Chichagof, and increase the allowable harvest for brown bear.
- _____ **Proposal 14:** Change the brown bear hunt area for RB088 in Unit 4 to include all of Lisianski Inlet drainage.

Petersburg & Wrangell Area – Units 1B & 3

- _____ **Proposal 15:** Change the description of the Petersburg Road System Closed Area.
- _____ **Proposal 16:** Lengthen the deer season in Unit 3, that portion of Mitkof Island within the Petersburg Management Area.
- _____ **Proposal 17:** Establish a fall drawing permit hunt for elk on Zarembo Island in Unit 3.
- _____ **Proposal 18:** Establish a fall, drawing permit hunt for elk on Zarembo, Bushy, Shrubby and Kashevarof Islands in Unit 3.
- _____ **Proposal 19:** Change the hunt structure for elk on Etolin Island in Unit 3.
- _____ **Proposal 20:** Split Etolin Island in Unit 3 into two hunt areas for elk.

- _____ **Proposal 21:** Eliminate the regulation that excludes broken, damaged, or altered antlers from the definition of spike-fork antlers for Units 1B, 1C and 3.
- _____ **Proposal 22:** Eliminate the restriction for using motorized vehicles for the RM038 moose hunt in Unit 1B.
- _____ **Proposal 23:** Allow the use of electric bikes for the RM038 moose hunt in Unit 1B
- _____ **Proposal 24:** Open the Petersburg Creek drainage of Kupreanof Island in Unit 3 to black bear hunting.
- _____ **Proposal 25:** Allow black bear hunting in the Petersburg Creek Drainage area, with season dates to align with Unit 3.
- _____ **Proposal 26:** Reduce the permit allocation and bag limit for nonresident, nonguided black bear hunters on Kuiu and Kupreanof Islands in Unit 3.
- _____ **Proposal 27:** Require 100-yard trapping setbacks along hiking trails and drivable surfaces on Wrangell Island in Unit 3.

Juneau, Haines, Skagway & Yakutat Areas – Units 1C, 1D & 5

- _____ **Proposal 28:** Change the hunt boundary from Little Sheep Creek to Sheep Creek, for the RG014 goat hunt in Unit 1C.
- _____ **Proposal 29:** Expand the hunt area of the RG014 archery goat hunt in Unit 1C.
- _____ **Proposal 30:** Open a fall archery goat hunt in Unit 1C, the southern end of the Chilkat Peninsula.
- _____ **Proposal 31:** Lengthen the resident, registration goat hunt in Unit 1C, the Southern end of the Chilkat Range.
- _____ **Proposal 32:** Restrict hunters who take nanny goat in Unit 1D from hunting goat the following regulatory year in Unit 1D.
- _____ **Proposal 33:** Increase the brown bear bag limit in that portion of Unit 1C of the Chilkat Peninsula mainland north of Point Couverden and south of Sullivan Island for resident hunters, from one bear every four regulatory years to one bear every regulatory year.
- _____ **Proposal 34:** Increase the brown bear bag limit in that portion of Unit 1C of the Chilkat Peninsula mainland north of Point Couverden and south of Sullivan Island for resident hunters, from one bear every four regulatory years to one bear every regulatory year.
- _____ **Proposal 35:** Extend the bear baiting season for Unit 1D.
- _____ **Proposal 36:** Reduce the bag limit for grouse for drainages that cross the Juneau-Douglas Road system in Unit 1C.
- _____ **Proposal 37:** Reduce the bag limit for ptarmigan for drainages that cross the Juneau Douglas Road system in Unit 1C.
- _____ **Proposal 38:** Amend the youth hunt for Unit 1C Mendenhall Wetland State Game Refuge.
- _____ **Proposal 39:** Amend the hunter education requirement for the Unit 1C Mendenhall Wetland State Game Refuge.

_____ **Proposal 40:** Allow the take of deleterious exotic wildlife in the Mendenhall Wetlands State Game Refuge.

_____ **Proposal 41:** Eliminate the Douglas Island Management Area in Unit 1C.

Ketchikan Area & Prince of Wales Island – Units 1A & 2

_____ **Proposal 42:** Extend the deer season to December 31, in Unit 1A Remainder.

_____ **Proposal 44:** Extend the goat season in Unit 1A Remainder.

_____ **Proposal 43:** Increase the resident bag limit to two goats in Unit 1A.

_____ **Proposal 45:** Raise the population objective from 150-200 wolves to 250-350 wolves in Unit 2, and raise the threshold for closing the season from 100 to 200 wolves.

_____ **Proposal 46:** Lengthen the hunting season for wolves in Unit 2, to open September 1.

_____ **Proposal 47:** Require wolf harvest information be reported within 48 hours of recovery and sealing within 14 days in Unit 2.

_____ **Proposal 48:** Change the methodology for setting the population objective for wolves in Unit 2.

_____ **Proposal 49:** Utilize the lower confidence interval of the wolf population for estimating the population in Unit 2.

_____ **Proposal 50:** Establish a population estimate and harvest limit based on Prince of Wales Island wolf population that excludes extrapolation from outer islands in Unit 2.

_____ **Proposal 51:** Establish a percentage of the Unit 2 wolf population that can be harvested on a sustainable basis, develop a harvest quota each season, require in-season reporting, provide the harvest to the public in real time, and allow three days' notice before closing the season by emergency order.

_____ **Proposal 52:** Establish a harvest quota for wolves, between 20% and 35% of the estimated wolf population in Unit 2.

_____ **Proposal 53:** Establish an estimated unreported mortality rate for Unit 2 wolves to be used for establishing the harvest quota.

_____ **Proposal 54:** Identify an area in Unit 2 for protected status for wolves.

_____ **Proposal 202:** Set the season length for taking wolves in Unit 2, without closing it early due to emergency order.

Proposals Outside the Board of Game's Authority

_____ **Proposal 201:** Create a sea otter management plan to begin the process of creating a state hunting season for sea otters.

**Alaska Board of Game**

P.O. Box 115526

Juneau, AK 99811-5526

(907) 465-4110

www.boardofgame.adfg.alaska.gov**ALASKA BOARD OF GAME****2022/2023 Meeting Cycle****Tentative Meeting Dates**

Meeting Dates	Topic	Location	Comment Deadline
January 19, 2023 (1 day)	Work Session	Ketchikan The Landing Hotel	January 13, 2023
January 20 - 24, 2023 (5 days)	Southeast Region Game Management Units 1, 2, 3, 4 & 5	Ketchikan The Landing Hotel	January 6, 2023
March 17 - 22, 2023 (5 days)	Southcentral Region Game Management Units 6, 7, 8, 14C and 15	Soldotna Soldotna Sports Complex	March 3, 2023

Total Meeting Days: 11

Agenda Change Request Deadline: Monday, November 1, 2022*(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

NAME AND ADDRESS	TERM EXPIRES
Jerry Burnett, Juneau, Chair Jerry.burnett@alaska.gov	6/30/2024
Stosh (Stanley) Hoffman, Bethel, Vice- Stosh.hoffman@alaska.gov	6/30/2023
Al Barrette, Fairbanks Allen.barrette@alaska.gov	6/30/2025
Lynn Keogh, Wasilla Lynn.keogh@alaska.gov	6/30/2023
Jake Fletcher, Talkeetna Jacob.fletcher@alaska.gov	6/30/2023
James Cooney, Eagle River James.Cooney@alaska.gov	6/30/2024
Ruth Cusack, Chugiak Ruth.Cusack@alaska.gov	6/30/2025

Alaska Board of Game members may also be reached by contacting

Kristy Tibbles, Executive Director, Alaska Board of Game

Email: kristy.tibbles@alaska.gov | Phone: (907) 465-6098

www.boardofgame.adfg.alaska.gov

ALASKA JOINT BOARD OF FISHERIES AND GAME
85-16-JB

JOINT BOARD PETITION POLICY

Under AS 44.62.220 an interested person may petition an agency for the adoption or repeal of a regulation. The petition must clearly and concisely state the substance or nature of the regulation, amendment, or repeal requested, the reasons for the request, and the reference to the authority of the agency to take the action requested. Upon receipt of a petition, the agency must within 30 days deny the petition in writing or schedule the matter for public hearing under AS 44.62.190 -- AS 44.62.210, which basically require that the agency publish legal notice describing the proposed change and solicit written comment for 30 days before taking action. Alaska Statute 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.

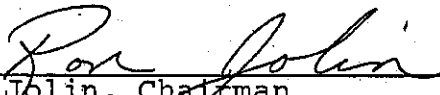
Fish and game regulations are promulgated by the seven member Alaska Board of Fisheries and the seven member Alaska Board of Game. At least twice annually, the boards solicit changes to the regulations governing Alaska's fish and game resources. As many as 600 proposed changes per meeting have been submitted to each board. These proposals are bound and mailed to the 74 Fish and Game Advisory Committees, 6 Regional Fish and Game Councils, and more than 500 other interested individuals. Additionally, copies of the proposals are available at local Department of Fish and Game offices. When the proposal booklets are available, the advisory committees and regional councils then schedule 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 6 weeks, taking department staff reports, public comment, and advisory committee and regional council reports before voting in public session on the proposed changes.

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, sports fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

The Joint Board of Fisheries and Game recognizes the importance of public participation in developing management regulations, and recognizes that public reliance on the predictability of the normal board process is a critical element in regulatory changes. The board finds that in most cases petitions

detrimentally circumvent this process and that an adequate and more reasonable opportunity for public participation is provided by regularly scheduled meetings.

However, the Joint Board recognizes that in rare instances extraordinary circumstances may require regulatory changes outside this process. Therefore, it is the policy of the Board of Fisheries and the Board of Game that petitions will only be accepted if the problem outlined in the petition results in a finding of emergency. In accordance with state policy (AS 44.62.270) emergencies will be held to a minimum and rarely found to exist. Alaska Statute 44.62.250 specifies that in order to adopt emergency regulations, the agency must find that it is necessary for the immediate preservation of the public peace, health, safety, or general welfare. For fish and game regulations, the boards determined that 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 since the resource would be unavailable in the future.


Ron Jolin, Chairman
Alaska Board of Fisheries and Game

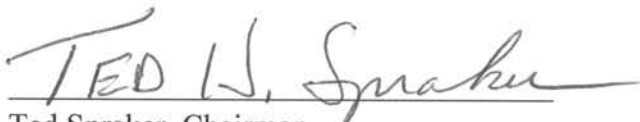
Adopted March 19, 1985
Anchorage, AK
VOTE: 12/0/2 absent

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

**Alaska Board of Game
2013-200-BOG
Board Direction Concerning the Unit 4 Brown Bear Management Strategy
January 15, 2013**

The Board of Game finds as follows, based on information provided by Department of Fish and Game staff, Alaska residents and other wildlife users:

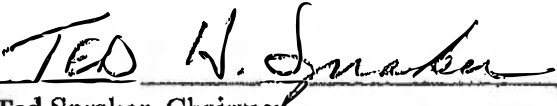
The Board directed the department to clarify the strategy with the following changes during the January 2013 meeting in Sitka:

- Base the bear population estimate on NE Chichagof Island on the most recent research data.
- Obtain a population estimate on South Admiralty Island.
- Wounding loss will not be included in the harvest mortality guidelines or calculations.
- Defense of Life and Property kills will be included in the estimate of total mortality and an effort to minimize these losses will be maintained.
- The department will develop minimum skull size for harvested females for use as a future tool to restrict guided hunter harvest of female brown bears, if and when necessary. The board intends for the department to inform the board of the department's intent to implement skull size guidelines before implementing them.

The Board acknowledges that the direction provided concerning these changes is the purview of the department under its discretionary and fiscal authority. The department will attempt to make the changes as directed, but may choose to exercise its authority in the future and make changes necessary to provide additional opportunity and cost savings.

The Board recognizes the need to have full cooperation by the USFS and private land owners in order for skull minimums to be successfully implemented. The Board will therefore send a letter to the USFS and private land owner leadership describing its intent and desire for the agency and NGOs to cooperate and work with the department.

Vote: 6-1
January 15, 2013
Sitka, Alaska



Ted Spraker, Chairman
Alaska Board of Game

ALASKA BOARD OF GAME
2005-156-BOG

WHEREAS deer management and use in GMU 2 has generated a great deal of controversy and concern; and

WHEREAS a multi-interest subcommittee of the Southeast Regional Advisory Council was established to review and offer recommendations on Unit 2 deer issues; and

WHEREAS improved harvest reporting for deer was among the needs identified by the subcommittee and council; and

WHEREAS the subcommittee and council have developed a joint federal state deer harvest reporting protocol; and

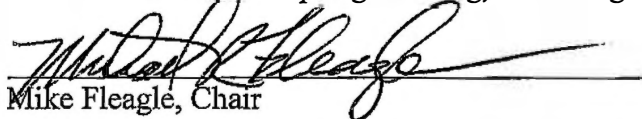
WHEREAS the U.S Forest Service has agreed to provide funding to assist with the implementation of a joint federal and state deer harvest reporting protocol;

NOW THEREFORE BE IT RESOLVED by the Alaska Board of Game that the board fully supports this joint deer harvest reporting protocol and strongly urges the Division of Wildlife Conservation to implement the joint deer harvest reporting protocol for GMU 2.

PASSED AND ADOPTED by the Alaska Board of Game on this 4th day of March, 2005.

Vote: 6 - 0 - 1 member absent

Board of Game 2005 Spring Meeting, Anchorage


Mike Fleagle, Chair

**Alaska Board of Game
2002-136A-BOG
Unit 1D Brown Bear Drawing Hunt Finding**

The Board of Game (Board) took public and advisory committee testimony on (Unit 1D) brown bears, received biological information from the Department of Fish and Game, and deliberated a proposal (Proposal 7) dealing with a drawing permit hunt for brown bears. As a result, the Board finds the following:

1. Harvest of brown bears in Unit 1D has met or exceeded harvest goals during the 1991-2001 period. This is due to an increase in Defense of Life and Property (DLP) by expanding human populations into brown bear habitat and to increasing nonresident harvest.
2. Specific details of over harvest of brown bears are noted: harvest of brown bears exceeds the harvest goal in Unit 1D during 1991-2001. The harvest goal for brown bears in Unit 1D is 16 bears (4% of the estimated population of 396) with the female portion of the harvest not to exceed 1.5% of the estimated population. Mean annual harvest during 1991-2001 is 17 bears/year.
3. Harvest of female brown bears exceeds the goal of 1.5% including a harvest of 5 sows in one season by the nonresident clients of one big game commercial service provider.
4. A greater number of guides are operating in Unit 1D due to recent restrictions that the U.S. Forest Service (USFS) imposed on brown bear guiding on federal lands in Unit 4 and in the remainder of Unit 1. Because of restrictions on federal land, guiding on state land in Unit 1D has become very attractive to guides not permitted to hunt brown bears on federal lands in southeast Alaska. The Department of Natural Resources (DNR) does not have an effective means in which to limit or distribute the intensity of big game commercial service provider effort.
5. The Board finds that a lack of a Big Game Commercial Services Board and the inability to limit the scope of operation pertaining to individual big game commercial service providers has detrimentally affected guided hunter allocation. The state has no way to restrict the number of guides who can operate in a particular area since the Owsichuk decision in 1988. If additional guides begin targeting Unit 1D this will put additional hunting pressure on the brown bear population.
6. The Alaska Department of Fish & Game (ADFG) and DNR hope to work together with brown bear guides to address big game commercial guiding in the Haines State Forest (HSF) Plan. A permitting system enacted by DNR would allow them to potentially limit the number of

guides operating on HSF land if ADFG believed this would help solve the resource concern with brown bears or other wildlife species.

7. Regulatory options available to ADFG included managing the hunt through Emergency closures. However, because of the low reproductive potential of brown bears, the Board realized that this strategy would likely result in continued over harvest.
8. In order to address conservation concerns, ADFG proposed the option of establishing a drawing permit hunt for nonresidents for brown bears in Unit 1D (Proposal 7) similar to the hunt established for brown bears in 26B (5AAC 85.025).
9. Alaskan residents and advisory committees were divided on the drawing permit issue. The Juneau Advisory Committee supported the department proposal with the amendment that the Board approve 20 permits for the drawing permit hunt. The Upper Lynn Canal AC opposed the idea of a drawing permit hunt. All respondents agreed that harvest has met or exceeded ADFG harvest goals and that there is an increasing trend in harvest of brown bears in Unit 1D.
10. Given that the human population continues to grow and expand in Unit 1D and given that there is no way to allocate hunting opportunity for brown bears among a continually growing population of guides, it is evident that the brown bear population would continue to be threatened as the annual harvest exceeds harvest goals.
11. Given that harvest of brown bear sows has been increasing during the previous decade and that sows comprised 50% of the harvest in some years, it is evident that the brown bear population would continue to be threatened as the annual harvest exceeds harvest goals.
12. The Board adopted a nonresident drawing permit hunt for brown bears in Unit 1D to be held each year between the dates of Sept. 15 through Dec. 31 and March 15 through May 31. Up to 20 permits are authorized.
13. By this action, the Board's intent is to provide desired sustained hunting opportunities for resident and nonresident hunters and to support a viable guiding industry in Unit 1D.

Vote: _____
November 7, 2002
Juneau, Alaska

Ben Grussendorf, Chair
Alaska Board of Game

**Alaska Board of Game
2002-137-BOG
Unit 1C Douglas Island Management Area Findings**

The Board of Game (Board) took public and advisory committee testimony on Douglas Island (Unit 1C) wolves, received biological information from the Department of Fish and Game, and deliberated a proposal (Proposal 3) dealing with management of wolves and deer on the island. As a result, the Board finds the following:

1. There have been occasional sightings of wolves and wolf tracks on Douglas Island over the past 20 years, and especially over the past 3-4 years. The only confirmed records of wolves being harvested on Douglas Island are seven (7) animals taken in January 2002. A single juvenile wolf was found dead near Eagle Crest ski area in September 2001.
2. The pack removed in January 2002 likely represented all the wolves present at that time.
3. Wolves may re-colonize the island but when this will occur is unpredictable.
4. Douglas Island and its wildlife are in close proximity to the third largest human population center in Alaska, and many residents have an interest in viewing, hunting, and otherwise experiencing wildlife, including wolves, on the island.
5. Sitka black-tailed deer occur on the island and provide a large fraction of the deer harvest in Unit 1C. In recent years (1995-2001) deer harvests have ranged between about 200 and 350 annually.
6. Under 5 AAC 92.106 (the intensive management regulation) the deer population in Unit 1C is identified as being important for high levels of human consumption. The harvest objective is 450 deer per year.
7. If wolves re-colonize Douglas Island and increase to high densities, there is potential for wolf predation on deer to decrease deer numbers and deer harvests.
8. It is likely that low to moderate numbers of wolves on Douglas Island can coexist with a deer population that can continue to provide a reasonable number of deer for human consumption.
9. In order to provide for sustained numbers of both wolves and deer on Douglas Island after wolves re-colonize, a management area (the Douglas Island Management Area) shall be created. This area will consist of Douglas Island in its entirety.
10. Within the management area, hunting and trapping of wolves is prohibited until at least seven (7) wolves are present. Subsequently, annual harvests may not exceed 30 percent of fall wolf numbers.

11. When wolves are present, if the island deer harvest declines more than 35 percent below the average harvest over the preceding 10 years (with approximately equal hunting effort), wolf hunting and trapping will be reopened as necessary to maintain both wolf and deer populations.
12. In order to more closely monitor the harvest, trappers shall register with the department and receive a permit prior to entering the field. Specific conditions of the permit will include attending a trapper orientation course, obtaining a trapper registration number, and providing information on trapping locations. Restrictions on methods and means and registration requirements, and other aspects shall occur as needed.
13. By this action, the Board's intent is to provide desired sustained opportunities for a broad diversity of user groups concerned with wolves and deer on Douglas Island. This is compatible with the desires of virtually all those who expressed their views to the Board.

Vote: _____
November 7, 2002
Juneau, Alaska

Ben Grussendorf, Chair
Alaska Board of Game

Alaska Board of Game
Findings 2000 -134 BOG
Unit 4 Brown Bear Management Strategy

At its meeting in Juneau, Alaska, November 1-7, 2000, the Board of Game (Board) received the Unit 4 Brown Bear Management Strategy (Strategy), heard a summary of the Strategy presented by the Unit 4 Brown Bear Planning Team (Team), and considered public testimony on the subject. Based on this information, and in consideration of the Board's statutory authorities and requirements, the Board supports the Strategy as indicated by the endorsement of these Findings.

The Board reached the following conclusions:

1. The planning process used by the Team involved a wide range of public and agency interests in formulating comprehensive management recommendations for Unit 4 brown bears.
2. The recommendations in the Strategy are a comprehensive compromise package. To maintain the integrity of the compromise embodied in the Strategy, all essential elements must be implemented in a timely and reasonable manner.
3. Recommendations in the Strategy are both within and outside the jurisdiction of the Board. Recommendations within the jurisdiction of the Board include setting mortality guidelines, prioritizing options for hunting regulation changes should the mortality guidelines be exceeded, and adjusting regulations as needed to assist management of bear hunting/viewing areas.
4. As previously determined by the Board, brown bears in Unit 4 are customarily and traditionally used for subsistence and the amount necessary for subsistence uses is 5-10 bears. Recently, the Federal Subsistence Board, in response to a proposal by the Southeast Regional Federal Subsistence Council, authorized five federal registration permits annually for educational purposes of teaching customary and traditional subsistence harvest and use practices. The Board supports this action as long as the risk of overharvest is minimized.
5. The existing codified regulations governing the taking of Unit 4 brown bears (5 AAC 85.020) provide a framework within which the Alaska Department of Fish & Game (Department) can administer hunts consistent with the harvest recommendations in the Strategy through exercise of discretionary authority vested in the Department under 5 AAC 92.052. Therefore, no changes are necessary in the codified regulations to implement the recommendations of the Strategy with respect to harvest.

Based on these findings, the Board:

1. Supports the package of recommendations from the Team and urges other agencies and entities with the power to implement these recommendations to do so.

2. Requests the Department to manage hunting of Unit 4 brown bears to maintain a total 3-year average human-caused mortality guideline that does not exceed 4% of each island (Admiralty, Baranof, Chichagof, Northeast Chichagof) population, and a total 3-year average human-caused female mortality guideline that does not exceed 1.5% of each island population.
3. Requests that the Department follow the recommended priority for hunting regulation changes should the mortality guidelines be exceeded. They are:
 - In the event that human-caused mortality guidelines are exceeded for one season or year, the Department will attempt to change the next year's outcome by obtaining voluntary harvest adjustment from guides and hunters.
 - In the event that documented human-caused mortality calculated on a 3-year average is exceeded, the following options will be evaluated and implemented if appropriate.
 - 1) Mandatory adjustment of number of guided hunters by US Forest Service (USFS).
 - 2) Season adjustments.
 - 3) Establish drawing permits for nonresidents on a Guide Use Area basis.
 - 4) Establish drawing permits for residents only after above management alternatives have been employed.
 - All non-subsistence hunting by residents will, when necessary, be by registration permit, until the resident harvest exceeds 70% of the harvest guideline for a given population. If resident harvest exceeds 70% of the harvest guideline, institute a resident drawing permit hunt.
 - Consider all proposed regulatory actions or steps in the context of their effect on bear harvest in the entire Southeast Alaska region, not just Unit 4.
 - Cooperate with the USFS in management of habitat and access.
4. Will strive to bring State regulations into harmony with Federal subsistence regulations that provide additional opportunity to take brown bears under an educational permit for the purposes of teaching customary and traditional subsistence harvest and use practices.
5. Supports the concept of Brown Bear Special Use Zone (SUZ) management that accommodates both hunting and viewing and will consider seasons, methods and means, limited area closures and other regulations as necessary on a case-by-case basis to implement SUZ's in appropriate areas in Unit 4. Will consider use of this model for viewing area proposals elsewhere in Alaska.
6. Supports the concept of Human/Bear High Use Zone management that aims to keep key riparian and shore habitat available to bears and requests the Department cooperate with the USFS in the identification of such zones, and will consider regulations as necessary on a case-by-case basis to implement appropriate management in these zones.

7. Encourages the USFS to incorporate the team's recommendations in its Saltwater Shoreline-based Outfitter/Guide Analysis and Environmental Impact Statement for the northern Tongass National Forest.
6. Supports the USFS moratoria on guides and hunts in Units 1 and 4, pending the outcome of the ongoing USFS planning process.
7. Requests the Department to Prepare and distribute educational materials on hunter ethics and other information to help minimize wounding loss and the harvest of females.

Vote: 7 - 0

November 9, 2000

Lori Quakenbush

Lori Quakenbush, Chair
Alaska Board of Game

Alaska Board of Game
98-128-BOG
Findings on Elk Management in Region 1

At its October 1998 meeting in Ketchikan, the Board of Game reviewed information on the history of elk in Southeast Alaska, their present status, and their prognosis. The board reached the following conclusions:

- Elk, an introduced, exotic species to Alaska, are now thriving at the transplant site on Etolin Island and have established a population on nearby Zarembo Island in Southeast Alaska.
- Scientific literature from elk research conducted elsewhere, supported by the Alaska Department of Fish and Game's own research on Etolin Island, indicates that the diet of elk broadly overlaps that of deer, and that this overlap includes forage critical to the winter survival of deer.
- Elk are larger than deer, with a greater rumen capacity. Elk can reach higher for forage and can subsist on coarser forage than deer. Where the two species coexist, especially in restricted areas (i.e. islands) elk may out-compete deer.
- Introduced populations of elk with few predators can severely trample and overbrowse their range. In Southeast Alaska, this potential may be great, especially on islands without wolves and in localities difficult for hunters to access. Severe reduction in browse has broad implications for other species dependent on the understory for food, shelter or cover.
- Elk are presently emigrating to locations other than Etolin and Zarembo Islands, and once established on an island in Southeast Alaska, elk will be very difficult to eradicate if it becomes desirable to do so.
- Deer are the most important ungulate for human consumption in Southeast Alaska, and are a designated subsistence species. The board determined most deer populations in Southeast Alaska as important for high levels of human consumptive use as required by the Intensive Management Law. On the other hand, elk do not qualify for customary and traditional use or intensive management.
- Ungulate experts from within and outside the department predict declines in deer populations that are in competition with elk.
- Elk are not likely to become a preferred subsistence replacement for deer, because elk are likely to lower the region's overall carrying capacity for meat production, and elk are more difficult to pack out of areas without vehicular access.

Therefore, given the potential for elk to negatively affect deer populations and the general carrying capacity of Region 1, the board recommends that the department take the following actions:

1. Inform the public of the problems that may occur where elk and deer overlap, and that the overall capacity of the region to support deer may decrease.

2. Reaffirm the initial post-transplant policy of restricting elk to islands where populations are now established until:
 - the effects of elk in Southeast Alaska have been fully evaluated, and
 - the public has been fully informed and has provided guidance to the board and the department.
3. In one year, report to the board the options for containing the elk population on the islands where populations have become established.

Resolution 93-67-BOG indicates that the board had similar concerns several years ago, and came to the same conclusion regarding confinement of the elk population to Etolin and Zarembo Islands.

DATE: October 26, 1998
Ketchikan, Alaska

Lori Quakenbush
Lori Quakenbush, Chairman

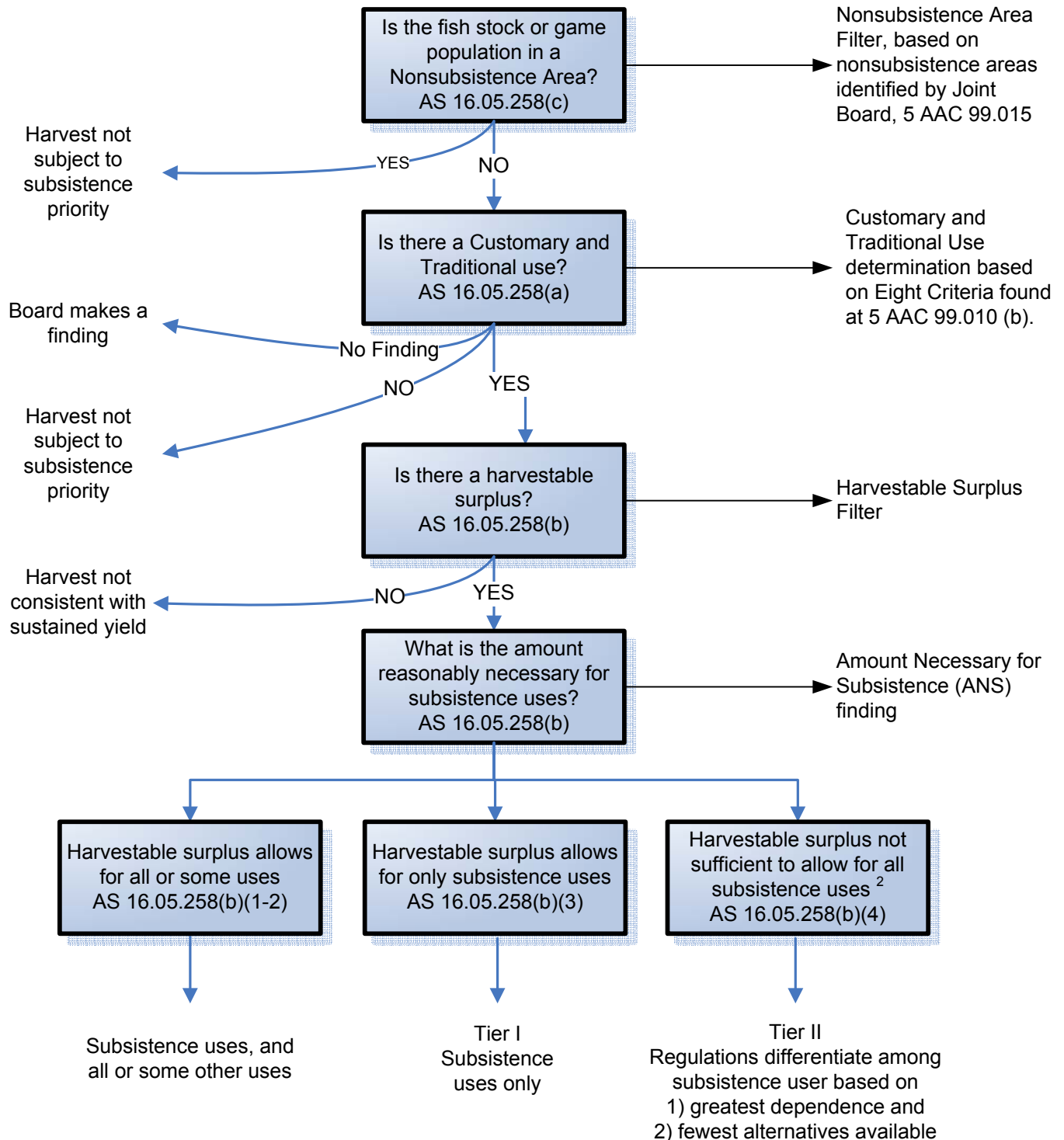
VOTE: 7-0

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.

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

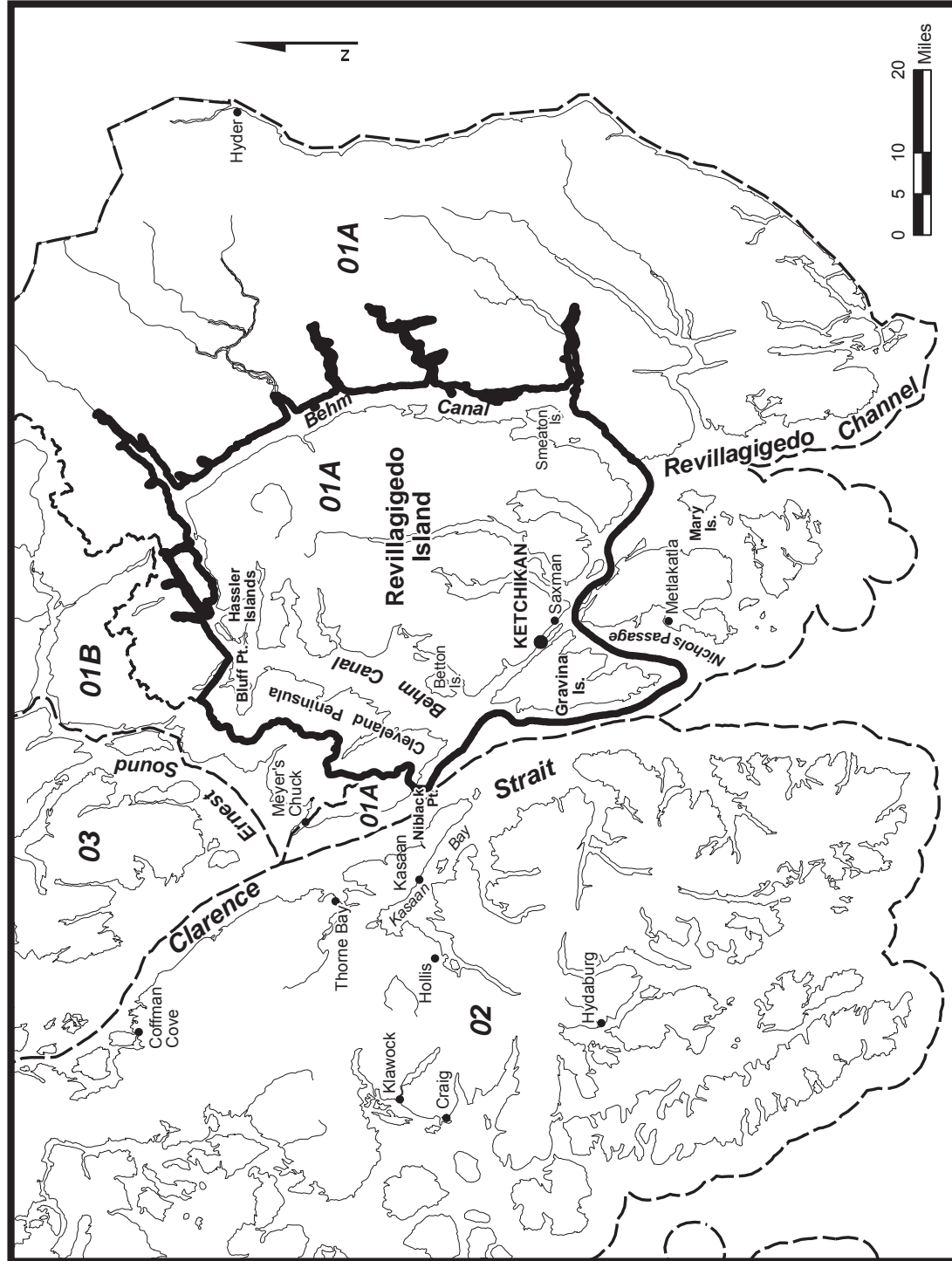
In addition to the definitions in [AS 16.05.940](#) , in this chapter,

- (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



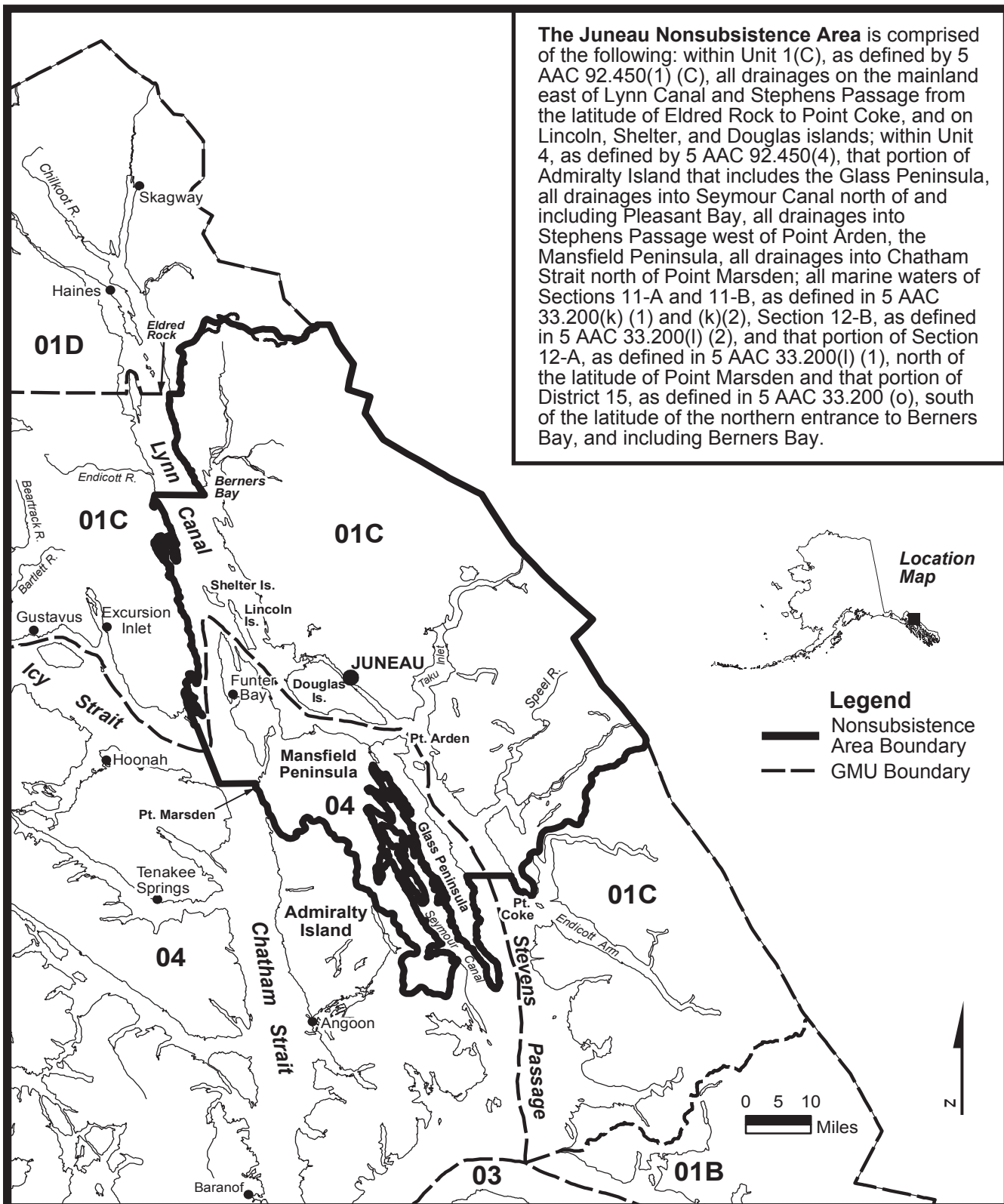
The Ketchikan Nonsubsistence Area is comprised of the following: within Unit 1(A), as defined in 5 AAC 92.450(1) (A), all drainages of the Cleveland Peninsula between Niblack Point and Bluff Point, Revillagigedo, Gravina, Pennock, Smeaton, Bold, Betton, and Hassler Islands; all marine waters of Sections 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



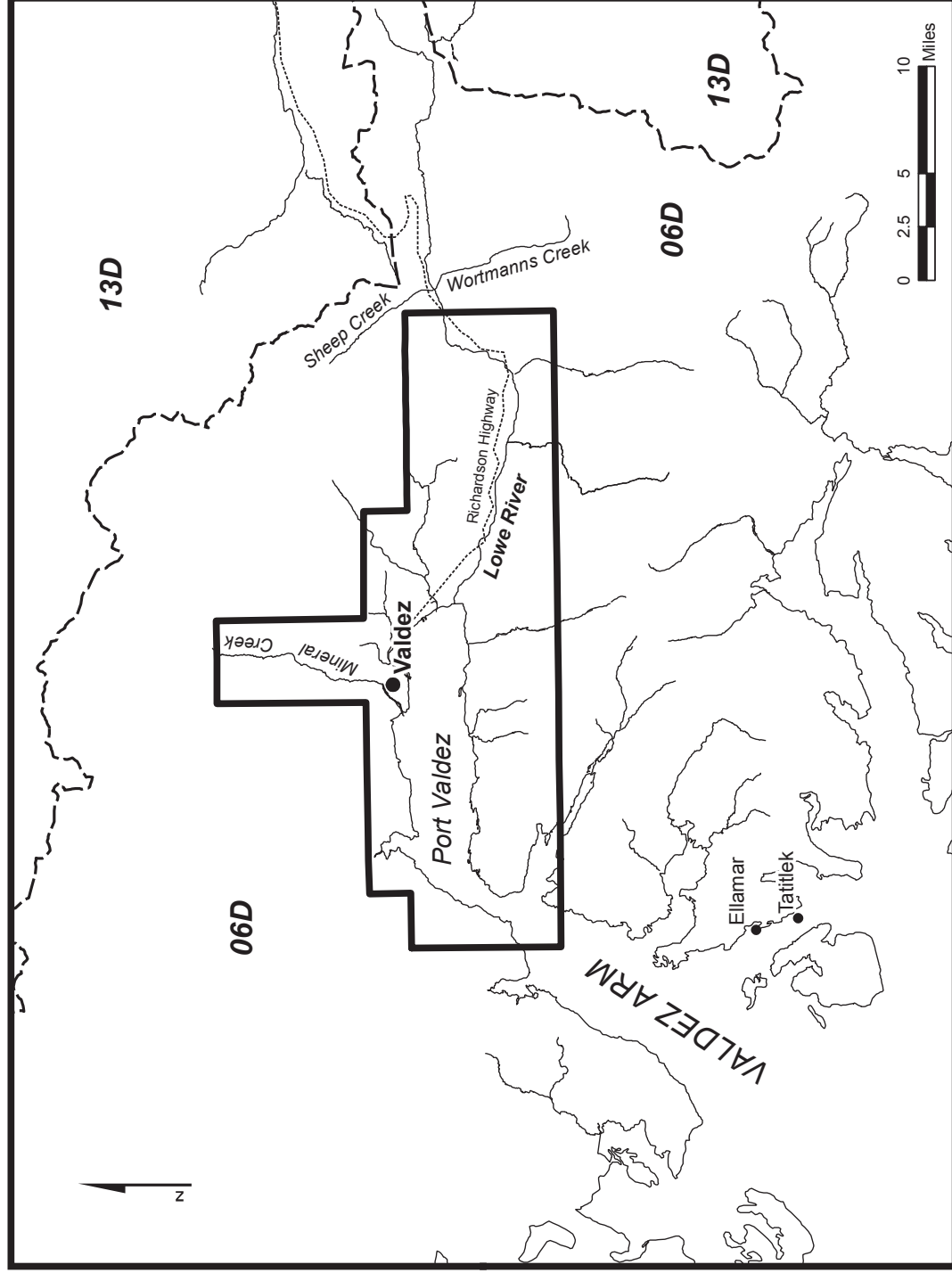
Juneau Nonsubsistence Area



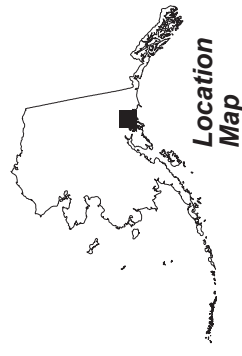
Alaska Department of Fish and Game
Division of Subsistence and Boards

September 2007

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.



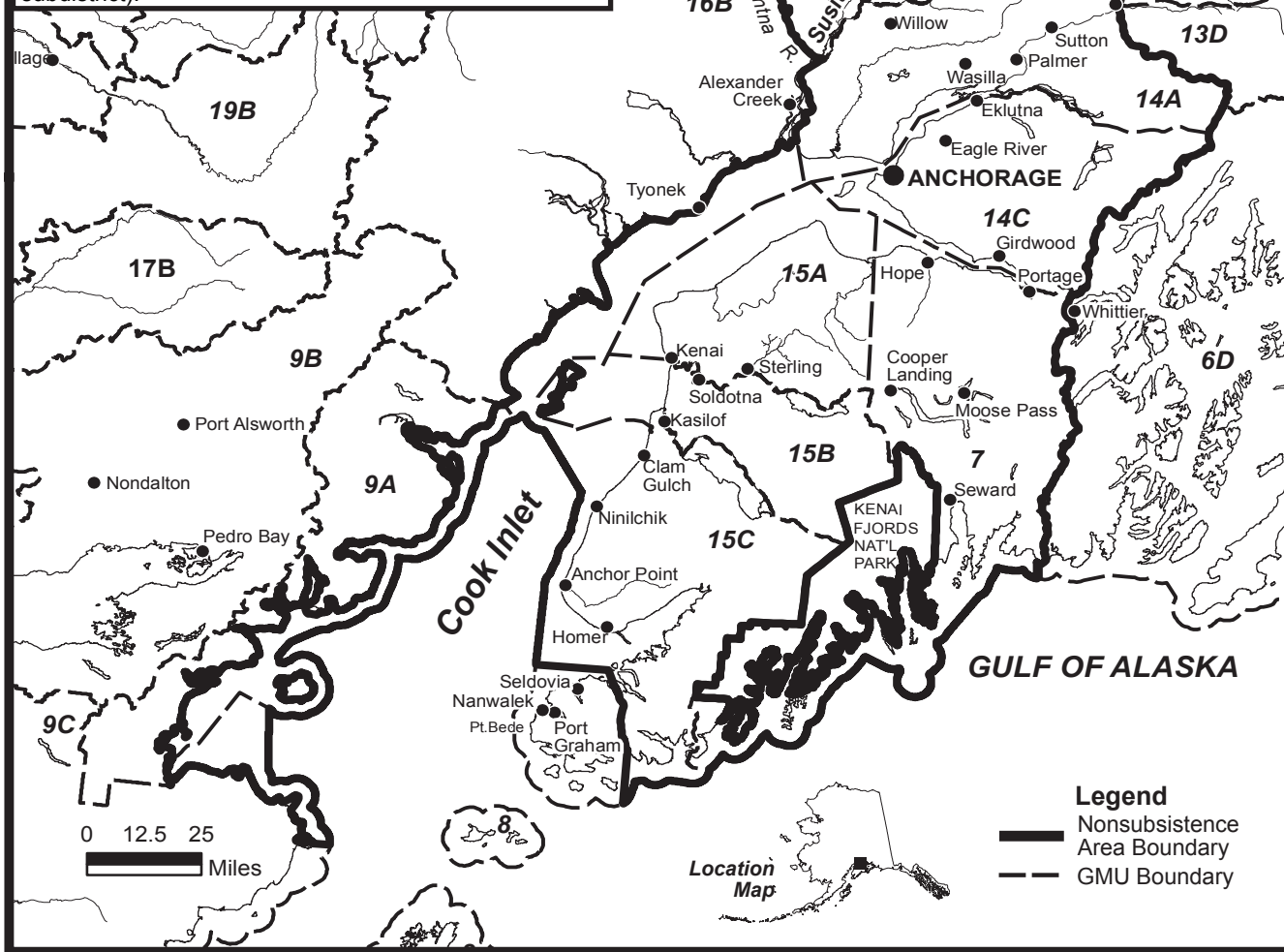
Legend

- Nonsubsistence Area Boundary
- - - GMU Boundary
- Roads



Anchorage Nonsubsistence Area

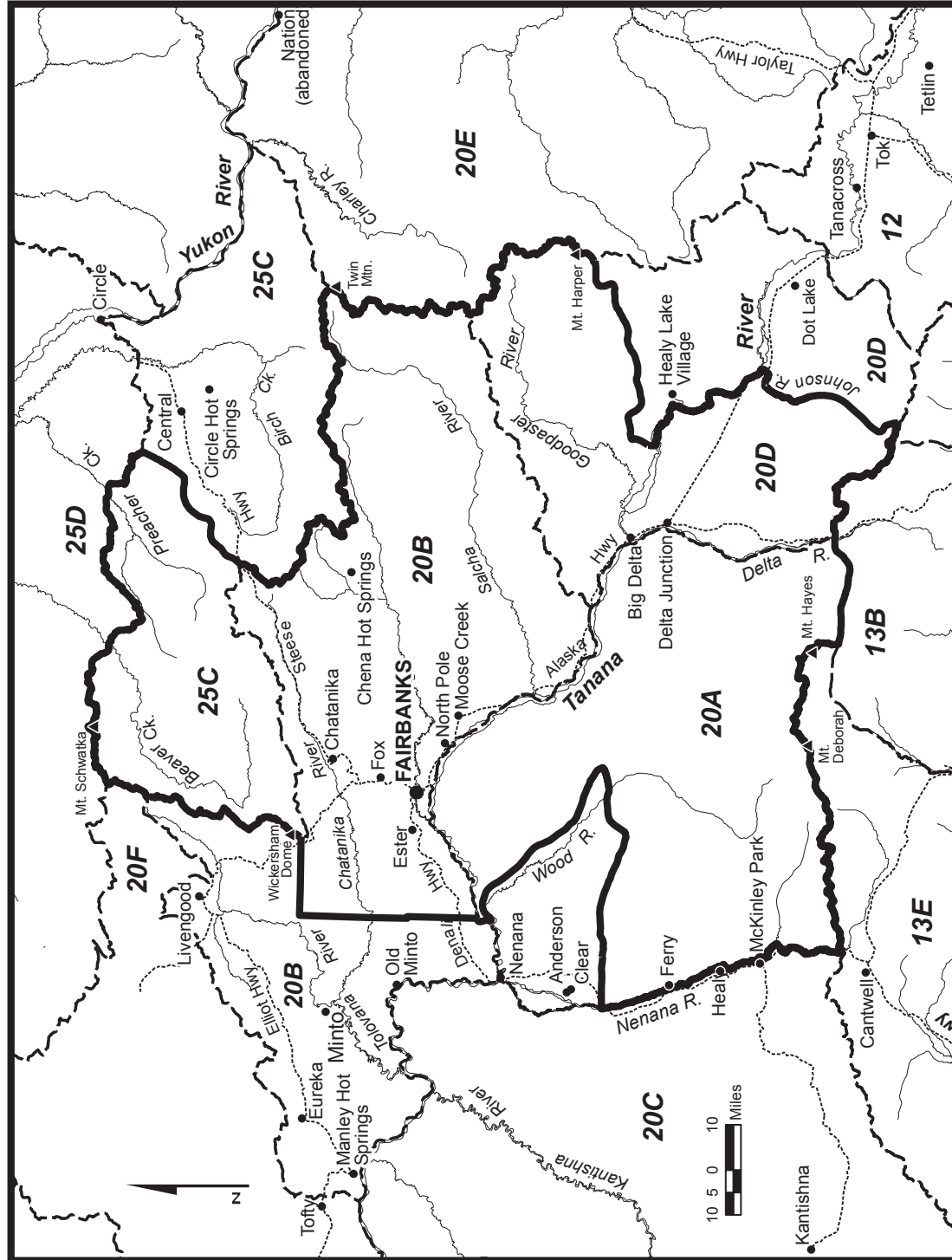
The **Anchorage-Matsu-Kenai Nonsubsistence Area** is comprised of the following: Units 7, as defined by 5 AAC 92.450(7) (except the Kenai Fjords National Park lands); 14, as defined by 5 AAC 92.450(14); 15, as defined by 5 AAC 92.450(15) (except Kalgin Island and that portion south and west of a line 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).



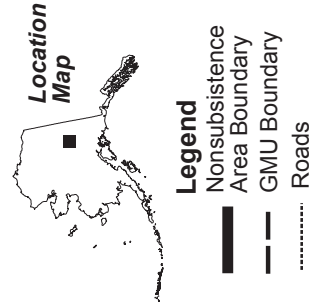
Alaska Department of Fish and Game
Division of Subsistence and Boards

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 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 Goodpasture River drainage; and within Unit 25(C), as defined by 5 AAC 92.450(25) (C), the Preacher and Beaver Creek drainages.



Legend
 Nonsubsistence Area Boundary
 GMU Boundary
 Roads





THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Public Safety

DIVISION OF ALASKA WILDLIFE TROOPERS
Office of the Director

5700 East Tudor Road
Anchorage, Alaska 99507-1225
Main: 907.269.5509
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January 6, 2023

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

Chairman Burnett and Board of Game Members,

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 January 2022 Southeast Region meeting in Ketchikan.

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,

Aaron Frenzel

Captain Aaron Frenzel
Alaska Wildlife Troopers

Proposal 1

This proposal seeks to add hunter education requirement in GMU's 1-5.

AWT opposes this proposal as written due to the increased regulatory complexity it would create for GMU's 1-5. The proposal is not clear on the intent of hunter education requirements for those under the age of 18. As written, it would be lawful for two 17-year-old resident hunters to hunt together, and neither would be required to have hunter education if they purchased a resident license. Even though a 17-year-old resident is not required to have a license, nothing says they may not obtain one, thus creating a gray area in the proposal. Further confusion may arise between resident and non-resident requirements.

If the board chooses to adopt hunter education in the Southeast Region, AWT supports the recommendations brought forth by ADF&G in their staff comments.

Proposal 15

This proposal seeks to correct the description of the Petersburg Road System Closed Area.

AWT supports this proposal, having clear and identifiable locations of closed areas makes it easier for the public and enforcement.

Proposal 20

This proposal seeks to divide Etolin Island into two hunt areas for the October elk hunts.

AWT is neutral on the allocative aspect of this proposal but recommends the board clearly define where the line between Anita Bay and Burnett Inlet will be if passed. Elk hunters at times will use the road system out of Anita Bay to access hunting areas. The proposed language is broad as written and could lead to confusion on where the line is that separates the two areas.

Proposal 21

This proposal seeks to eliminate the regulation that a damaged, broken, or altered antler is not considered a spike-fork antler in parts of the Southeast region.

AWT opposes this proposal, this regulation was passed by the Board in 2006 after a growing concern of antlers being intentionally altered into a spike-fork configuration after an animal had been harvested. The original proposal was a joint proposal by AWT and ADF&G. Determining if an antler was damaged or broken before being harvested or altered after is difficult to prove for enforcement. The current regulation as written makes it so that if the antler is naturally broken/damaged or intentionally altered, it would not be considered a spike-fork. AWT sees on average very few antlers a year that are broken, damaged, or altered into a spike-fork configuration and are not lawful to take due to this regulation.

Proposal 23

This proposal seeks to allow the use of electric bikes that are below 750 watts in the GMU 1B portion of the RM038 moose hunt.

AWT is neutral on this proposal but after consideration of proposal 22 and if this proposal is taken up AWT would recommend the board consider clearly defining electric bikes.

Proposal 27

This proposal seeks to require a 100-yard no trapping setback around hiking trails and drivable surfaces of Wrangell Island in GMU 3.

AWT is neutral on this proposal, but without identifying specifically which trails and drivable surfaces, or creating additional definitions this proposal as written can create confusion. If passed and the intent is to prevent trapping around all constructed roads, then using a term like “highway” that is already defined in 5AAC 92.990 would be preferred, this would include logging roads that are no longer in use. On the other hand, if it is to be around currently maintained trails or roads, then mirroring the language used for bear baiting in 5AAC 92.044 and stating a “publicly maintained road or trail” would be preferred.

MEMORANDUM

State of Alaska Department of Law

TO:	Kristy Tibbles Executive Director Alaska Board of Game	DATE:	January 17, 2023
		FILE NO.:	2022200297
		TEL. NO.:	269-5232
FROM:	Cheryl Rawls Brooking Senior Assistant Attorney General Natural Resources Section Department of Law	SUBJECT:	January 2023 Southeast Region Regulations 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

Petersburg and Wrangell Area – Units 1B and 3

Proposal 22 would amend 5 AAC 92.052 to eliminate restrictions on use of motorized vehicles for the RM038 moose hunt in GMU 1B. Much of Unit 1 is Forest Service land subject to restrictions on motorized vehicles.

Proposal 23 would amend 5 AAC 92.085 to allow ebikes for the RM038 moose hunt in GMU 1B. Much of Unit 1 is Forest Service land subject to restrictions on ebikes.

Ketchikan Area and Prince of Wales Island – Units 1A and 2

Proposal 202 would amend wolf hunting and trapping seasons and prevent the Commissioner from implementing closures under statutory emergency order authority (AS 16.05.060). The Board is not authorized to restrict the Commissioner's statutory authority.