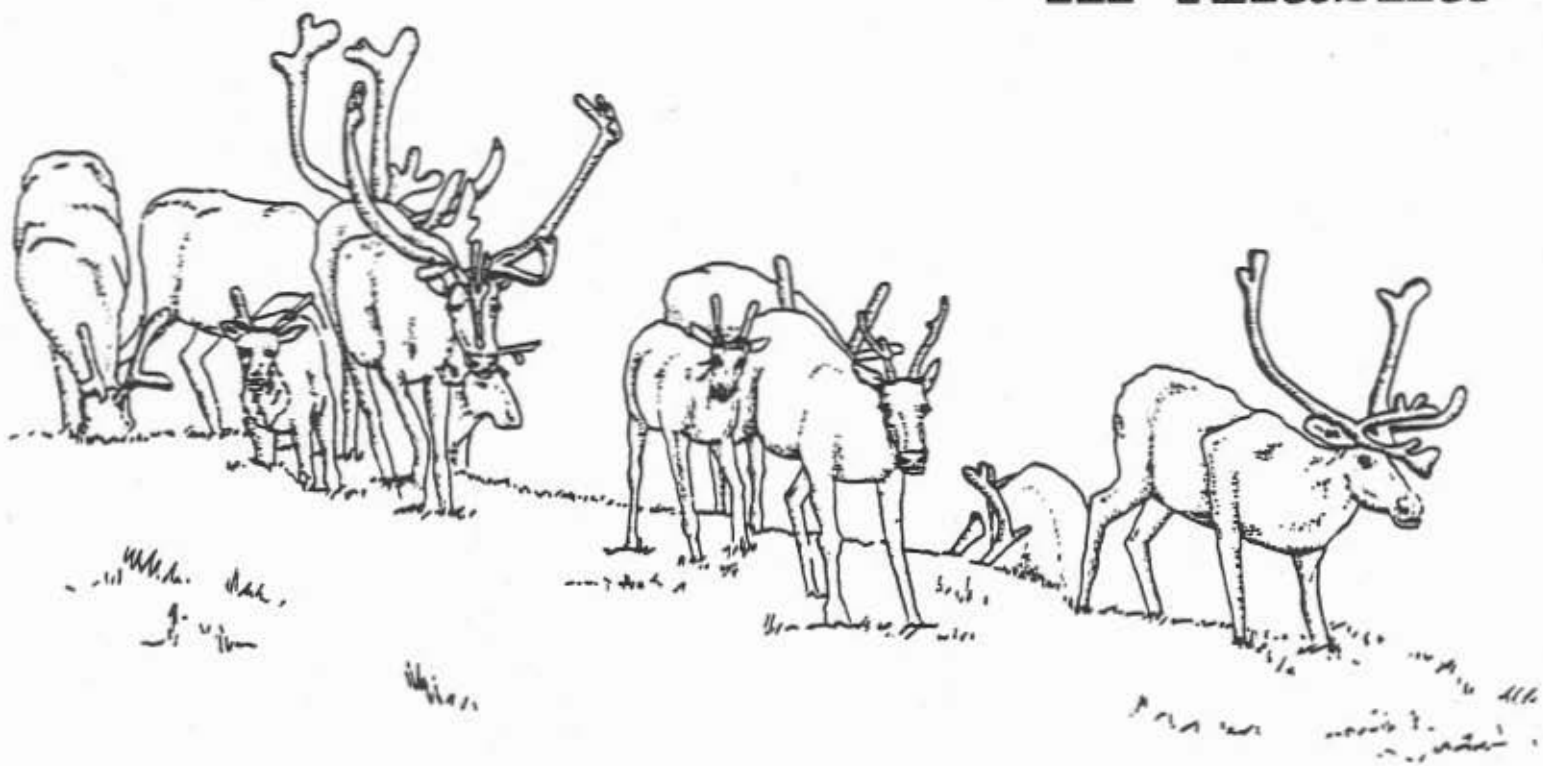


Subsistence Management

for
Federal Public Lands
in Alaska



Record of
Decision



Federal Subsistence Board

1011 East Tudor Road
Anchorage, Alaska 99503



FISH and WILDLIFE SERVICE
BUREAU of LAND MANAGEMENT
NATIONAL PARK SERVICE
BUREAU of INDIAN AFFAIRS

FOREST SERVICE

Dear Reader:

Enclosed is the Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska. The decision by Secretary of the Interior, Manuel Lujan, Jr., and concurred in by the USDA-Forest Service, is to implement Alternative IV as identified in the Final Environmental Impact Statement (EIS) with modifications.

This ROD documents that decision and presents reasons for selecting this course of action and what alternatives were considered. Prior to this decision, a final EIS was prepared pursuant to Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and Section 102(2)(c) of the National Environmental Policy Act of 1969.

This decision is based on public comment received, the analysis contained in the EIS, and the recommendations of the Federal Subsistence Board (Board) and the Department of the Interior's Subsistence Policy Group.

The first modification to Alternative IV is to increase the number of regions and regional advisory councils from eight, as set forth in the proposed action in the EIS, to ten. These regions and councils would more closely recognize the fish and wildlife and cultural differences within the existing State regions, while at the same time balancing population and community representation better than in the original Alternative IV. This change would also increase the number of regional liaisons to the Board to ten.

The second modification is to the rural determination process in Alternative IV. The change consists of including a five-year waiting or grace period as described and analyzed under Alternative II of the EIS. The impacts to a community or area in the transition from rural to non-rural would be reduced.

The final EIS and a summary were distributed to the public in late February, 1992. An Environmental Protection Agency notice of the filing of the final EIS was published in the Federal Register on February 28, 1992.

The final EIS describes four alternatives for developing a Federal subsistence management program in Alaska and examines the

environmental consequences of these alternatives. It also describes the major issues associated with Federal subsistence management that were identified through public meetings, hearings, and staff analysis.

A summary of public comment on the draft EIS and the responses to those comments is included in the final EIS, Volume I, Chapter V. Comments received on the range of alternatives that were presented in the draft were taken into account during the development of the final EIS.

In addition to presenting alternatives for Federal subsistence management, the final EIS contains an evaluation on subsistence uses and needs, as specifically required by Section 810 of ANILCA.

Proposed regulations (Subparts A, B, and C) that will implement the preferred alternative were included in the final EIS and the summary as appendices. They were also published as a separate document in the Federal Register on January 30, 1992. After the incorporation of public comment, all subparts of the Federal subsistence management regulations will be published as a final rulemaking in June, 1992.

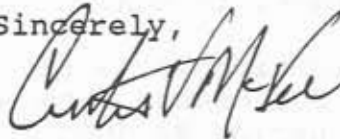
For additional copies of this ROD, the final EIS, or additional information, please write to:

Federal Subsistence Board
c/o U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503

Information is also available by calling the Office of Subsistence Management, U.S. Fish and Wildlife Service, at 800-478-1456 or in Anchorage 271-2326. Hearing impaired may call 786-3487.

Thank you for your interest and involvement in the Federal subsistence management program.

Sincerely,



Chair, Federal Subsistence Board

Enclosure

RECORD OF DECISION
SUBSISTENCE MANAGEMENT
FOR FEDERAL PUBLIC LANDS IN ALASKA

1992



Record of Decision

Subsistence Management for Federal Public Lands in Alaska

I. INTRODUCTION

The Department of the Interior with the Department of Agriculture prepared an Environmental Impact Statement (EIS) for Subsistence Management for Federal public lands in Alaska pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The EIS (1) describes four alternatives for developing a Federal Subsistence Management Program (FSMP) in Alaska and examines the environmental consequences of these alternatives, (2) describes the major issues associated with Federal subsistence management that were identified through public meetings and staff analysis, (3) addresses comments made during the public-review process, and (4) includes in the appendices the proposed programmatic regulations that will implement the proposed action.

This Record of Decision (ROD) documents the decision by the Secretary of the Interior, and concurred in by the Secretary of Agriculture, regarding the subsistence management program for Federal public lands in Alaska. It presents reasons for selecting the course of action and the alternatives that were considered. The record briefly discusses elements considered in reaching a final decision and supporting rationale. It summarizes the views expressed by government agencies, organizations, special interest groups, and the general public. The format was selected to provide a concise summary of the decision, identify principal program components, options considered, and to present any divergent points of view. The ROD consists of this introduction, a summary decision sheet, and extensive background material. The decision and the EIS consider the estimated environmental consequences to biological resources, economic and sociocultural systems, subsistence use patterns, and sport hunting.

The Federal Government is required by Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (Public Law 96-487, 16 U.S.C. 3111-3126) to provide a preference for the subsistence taking of fish and wildlife over other consumptive uses of fish and wildlife on Federal public lands in Alaska. The State of Alaska operated a subsistence management program on all lands in Alaska that met the Federal requirements until July, 1990, when the Alaska Supreme Court decision in McDowell v. Alaska became effective. In the McDowell decision, the court ruled that the statutes used by the State to provide a subsistence priority for rural Alaskans violated the Alaska Constitution. The court allowed the State government six months to remedy the situation before the decision became effective. The State was unsuccessful in amending its laws to comply with ANILCA Title VIII. On July 1, 1990, the Federal Government was forced to assume the management of subsistence activities on Federal public lands in the State of Alaska.

DECISION

The Federal Government's temporary subsistence management regulations for Federal public lands in Alaska were published in the Federal Register on June 29, 1990. The introductory part of these regulations was included as Appendix C in the EIS. These regulations created the Federal Subsistence Board (Board) and charged it with the responsibility for subsistence activities on Federal public lands in Alaska. The Board is composed of the Alaska Regional Directors of the U.S. Fish and Wildlife Service (FWS) and National Park Service (NPS); the Alaska Regional Forester, U.S. Forest Service (USFS); the Alaska State Director, Bureau of Land Management (BLM), and the Alaska Area Director, Bureau of Indian Affairs (BIA). The Chairman of the Board is appointed by the Secretary of the Interior with concurrence by the Secretary of Agriculture. Currently, a Special Assistant to the Secretary of the Interior serves as chairman. The Fish and Wildlife Service has been designated as the lead Federal agency for the Federal Subsistence Management Program.

The proposed FSMP and implementing regulations comply with the requirements of Title VIII of ANILCA. The ANILCA provides that rural residents of Alaska shall have a priority for non-wasteful subsistence use of fish and wildlife and other wild renewable resources on Federal public lands in Alaska.

The FSMP would most affect the rural residents participating in subsistence activities on the approximately 200 million acres of Federal public lands in Alaska. These lands are managed by one of the five Federal agencies: the Fish and Wildlife Service, the Forest Service, the National Park Service, the Bureau of Land Management, and the Bureau of Indian Affairs.

Public lands are specifically defined in ANILCA in Section 102(3). Because the U.S. usually does not hold title to navigable waters within a State, they generally are not included within the definition of public lands in this instance. Within the EIS and the final regulations, the scope and extent of Federal public lands in Alaska available for subsistence uses is further defined and clarified.

DECISION

II. DECISION SHEET

Based on a consideration of the analysis contained in the final environmental impact statement (EIS) and the attached decision information, the following is my decision regarding the Federal Subsistence Management Program (FSMP) for public lands in Alaska. In Sections B-F below the decision options numbered 1-4 correspond to elements within Alternatives in the EIS (e.g., B-1 is the board structure from Alternative I in the EIS).

A. Alternative Plans

- A-1. Alternative I Minimal change from the State program
- A-2. Alternative II Independent agency management
- A-3. Alternative III Local involvement
- A-4. Alternative IV Flexible program to meet user needs

B. Board Structure

- B-1. The Board would consist of 6 members: 5 Federal managers and a chair.
- B-2. No Board would be established, each agency would operate independently with key elements of mutual agreement.
- B-3. The Board would have 16 members: a chair, one State representative, 12 subsistence users and 2 "at large" members.
- B-4. The Board would have 6 members: 5 Federal managers and a chair. Eight regional liaisons and a liaison from the State of Alaska would be consultants to the Board.
- B-5. The Board would have 6 members: 5 Federal managers and a chair. Ten regional liaisons and a liaison from the State of Alaska would be consultants to the Board.
- B-6. Other _____

DECISION

C. Regional Councils

- C-1. The 6 State Regional Advisory Councils would be used and the existing geographical boundaries would be recognized.
- C-2. Each agency would have its own regional structure based on conservation system units (total up to 36) and its own Regional Councils.
- C-3. There would be 12 Federal Regional Councils established by subsistence use area.
- C-4. There would be 8 Federal Regional Councils.
- C-5. There would be 10 Federal Regional Councils.
- C-6. Other _____

D. Local Advisory Committees

- D-1. State advisory committees would be used.
- D-2. State advisory committees would be used and/or Federal local advisory committees formed as needed.
- D-3. Many Federal Committees would be formed as needed, potentially one per community or group of communities.
- D-4. State and/or Federal advisory committees would be used. Federal local advisory committees could be formed as needed.
- D-5. Other _____

DECISION

E. Rural Determinations

- E-1. Communities would be aggregated then population and community characteristic tests would be applied to determine the status of a particular community or area. Generally a community or area with fewer than 2,500 people would be presumed rural and a community or area with more than 7,000 would be presumed non-rural. No presumption of status would exist for communities or areas between 2,500 and 7,000 in population.
- E-2. Determinations would be based only on population. Communities with greater than 7,000 residents would be non-rural. A 5-year waiting period would be required before any community would lose rural status.
- E-3. Anchorage, Fairbanks, Juneau, and Ketchikan would be the only non-rural communities.
- E-4. Rural determinations would be made based on aggregated population and community characteristics steps described in the EIS. Generally a community or area with fewer than 2,500 people would be presumed rural and a community or area with more than 7,000 would be presumed non-rural. No presumption of rural status would be made for communities or areas between 2,500 and 7,000 in population (as in Alternative I).
- E-5. Rural determinations would be made based on aggregated population and community characteristics steps described in the EIS (as in Alternatives I and IV). Generally a community or area with fewer than 2,500 people would be presumed rural and a community or area with more than 7,000 would be presumed non-rural. No presumption of rural status would be made for communities or areas between 2,500 and 7,000 in population. A 5-year grace or transition period would be required before any community would lose rural status.
- E-6. Other _____

F. Customary and Traditional Uses

- F-1. On July 1, 1990, the Board adopted the State of Alaska's customary and traditional use determinations as they appeared in their 1989 regulations. These determinations would be maintained unless changed by the Board.
- F-2. Information on subsistence uses would be made available to the Regional Councils in order for the Councils to make recommendations on customary and traditional uses to the agencies.

DECISION

III. PROGRAM ELEMENTS CONSIDERED AMONG ALTERNATIVES AND FEDERAL SUBSISTENCE BOARD RECOMMENDATIONS

A. Introduction

This section includes a brief description of the four alternatives in the EIS and the six program elements contained in each of the alternatives. The six program elements are: 1) the composition of the Federal Subsistence Board, 2) the structure of the Regional Advisory Council system, 3) the structure of local advisory committees, 4) the rural determination process, 5) the process for determining customary and traditional uses, and 6) the regulation adoption process. Following the description of each program element is a recommendation from the Federal Subsistence Board. These recommendations are based on the analysis contained in the EIS and comments received on the document. These recommendations were finalized at the March 9, 1992, meeting of the Federal Subsistence Board.

1. ALTERNATIVES

The EIS analyzed four alternatives for Federal Subsistence Management Program (FSMP). They are as follows:

a. **Alternative I:** The focus of this alternative—minimal change from the State subsistence program while fulfilling the requirements of ANILCA Title VIII—constitutes the "status quo" or No Action alternative required under Council on Environmental Quality (CEQ) regulations. This alternative would utilize the Temporary Subsistence Management Regulations (36 CFR 242 and 50 CFR 100) originally issued on June 29, 1990, and amended on June 26, 1991. The existing State system of Regional Councils and Local Advisory Committees would serve as the mechanism to provide public participation for the Federal subsistence regulation process.

b. **Alternative II: Independent agency management of subsistence on Federal lands** is the focus of this alternative. Temporary regulations would expire and the Federal program as it exists today would dissolve. Each agency would independently develop regulations necessary to meet the requirements of ANILCA. The basic structure would be agreed upon and established to guide the agencies in their management.

c. **Alternative III: Local involvement**, the focus of this alternative, would provide a subsistence management structure that emphasizes the role of Local Advisory Committees and incorporation of subsistence users on the Board. The committees would provide the public forum in which local subsistence users could play a meaningful role in Federal subsistence management. Up to 283 committees would be formed (one per rural community) within 12 Regional Councils.

DECISION

d. **Alternative IV:** The goal of Federal management under this alternative would be to provide a flexible program to meet subsistence user needs and provide regulations responsive to regional requirements. The Regional Councils would interact directly with the Board with the aid of Federal coordinators. Coordinators would work as the primary liaison between the Federal agencies and the Regional Councils. The existing State Local Advisory Committees could be used and/or new Federal Advisory Committees could be established if needed.

2. RECOMMENDATION

The Federal Subsistence Board (by unanimous vote) recommends that the program structure described under Alternative IV (A-4) be selected. The specific elements which follow below contain some modifications from the specific elements of Alternative IV as described in the EIS. These modifications are all within the range of the elements analyzed in the EIS.

B. Board Structure

1. ALTERNATIVES

a. **Alternatives I:** The Federal Subsistence Board would consist of the following members:

- the Alaska Regional Director, FWS;
- the Alaska Regional Director, NPS;
- the Alaska Regional Forester, USFS;
- the Alaska State Director, BLM;
- the Alaska Area Director, BIA; and,
- a chairman appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

b. **Alternative II:** No Board would be established. Regional and State directors within the Department of the Interior and the Regional Forester within the Department of Agriculture would be delegated the authority to implement the subsistence program within their own agencies. Interagency coordination would continue between Federal and State agencies for subsistence uses.

c. **Alternative III:** The Board would consist of the following 16 members:

- a chairman appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture;
- a State representative;
- 12 subsistence users (1 from each Regional Council as described in B.1.c below); and

DECISION

- 2 "at large" members.

d. **Alternative IV:** The Federal Subsistence Board would consist of the following members:

- the Alaska Regional Director, FWS;
- the Alaska Regional Director, NPS;
- the Alaska Regional Forester, USFS;
- the Alaska State Director, BLM;
- the Alaska Area Director, BIA; and,
- a chairman appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
- 8 regional liaisons and a liaison from the State of Alaska would serve as consultants to the Board.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Board structure described under Alternative IV (B-5) be selected with the modification for 10 regional liaisons consistent with the recommendation on Regional Advisory Councils below.

C. Regional Advisory Councils

1. ALTERNATIVES

a. **Alternative I:** The existing six State Regional Advisory Councils would be used to provide local and regional participation in the Federal subsistence program as required by Section 805 of ANILCA. Regional boundaries would remain the same as presently used in the State system.

b. **Alternative II:** Up to 36 Regional Advisory Councils with boundaries based on Federal conservation system unit boundaries would be established to provide local interaction between the users and the Federal managers. This would assist the councils in the development of a strategy for the management of fish and wildlife that recognizes the subsistence use patterns of the people and that corresponds with Federal land management ownership and objectives.

c. **Alternative III:** Twelve Regional Advisory Councils with boundaries based on subsistence use areas would be established. Regional Council boundaries would be similar to or coincident with those of the twelve (12) Native Regional Corporations established by the Alaska Native Claims Settlement Act (ANCSA). The Regional Councils would coordinate the recommendations of the Local Advisory Committees and assure consistency within the Region.

DECISION

d. **Alternative IV:** Eight Regional Advisory Councils would be established using the existing six State regional boundaries, except that the Arctic and the Southwest Regions would each be divided into two regions to reflect the subsistence use patterns of each region. Federal Regional Advisory Councils will then be established in each region.

Federal Regional Coordinators would be assigned to serve as Federal Advisory Committee Act (FACA) representative and provide liaison between the Regional Councils and the Federal program managers, facilitating communication between the two groups. Federal coordinators also would coordinate the preparation and review of regulatory proposals and annual subsistence reports.

In addition to the Board members, a State liaison to the Board would be nominated by the Governor and appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. The chairperson of each Federal Regional Advisory Council also would serve as liaison to the Board. The State and Council representatives would attend Board meetings and be actively involved as consultants to the Board.

e. **Common to all Alternatives:** Each council will be authorized to hold public meetings on subsistence matters and to prepare an annual report on subsistence uses and needs, recommendations on fish and wildlife management, and implementation strategies to the Secretary in accordance with ANILCA Section 805. The councils will develop, review, evaluate, and make recommendations on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within or affecting the regions they represent. Council membership will be structured to provide subsistence users the maximum possible opportunity to participate in the Federal program. The number of members on each council will be based in part on needs and desires for representation expressed by residents of each region. While the Federal Advisory Committee Act requires that members to these councils be appointed, it is expected that appointments will be preceded by nomination from the local residents.

2. RECOMMENDATION

The dominant concern expressed by subsistence users during the public comment period was their desire to be involved in decisions affecting their subsistence lifestyle. They wish to participate in the decision making process at the highest level possible. The Regional Advisory Council system required by ANILCA Section 805 was created to provide subsistence users the opportunity to participate effectively in the management and regulation of subsistence resources on Federal public lands. The Board in its recommendations to the Secretary, places great emphasis on developing an advisory system that enables people with personal knowledge of local conditions and requirements to have a meaningful role in managing subsistence. The Board recommends that the Secretary adopt the Regional Advisory Council System structure under Alternative IV, but modify the number of councils from eight to ten as shown in the attached map of Alternative IV (modified) (C-5). This recommendation, while different from the alternatives in the EIS, is within the range of the alternatives considered and analyzed.

DECISION

The Federal Subsistence Board recommends increasing the number of Regional Advisory Councils to provide for more participation by rural residents in subsistence management. The increase allows the regional boundaries to reflect more closely the differences in social and cultural patterns of the affected subsistence users. Substantial input from the Native subsistence user groups urged creation of 12 Regions using the same boundaries as those adopted in the ANCSA for the 12 Native Regional Corporations. The Board recognizes that those regions were formed in part based on social, cultural, and resource use patterns. However, the ANCSA regional boundaries do not precisely meet all the requirements of Federal Regional Advisory Councils. The Regional Council boundaries also must balance other considerations such as: the amount and distribution of Federal public lands, the distribution of wildlife populations regulated by the Federal Subsistence Management Program, the number of eligible subsistence users residing in the region, the size of the regions, travel distances within the regions, and the cost of operating the Councils. The fact that subsistence use in Alaska is not restricted to Native members of the population alone must also be considered.

Alternative III contains some regions with relatively small amounts of Federal public lands, disproportionately few eligible substance users, and restricted numbers and distribution of wildlife species regulated by the Federal program. By increasing the number of regions to ten, the Board feels it can effectively respond to sociocultural concerns, allow for increased participation by rural residents, and at the same time administer a more cost effective program. The Board recommends the regional boundaries follow the boundaries of the existing Game Management Units established by the Alaska Department of Fish and Game. Use of these boundaries will facilitate wildlife management efforts and reduce the potential for conflicts between State and Federal regulations.

D. Local Advisory Committees

1. ALTERNATIVES

a. **Alternative I:** Existing State operated Fish and Game Advisory Committees would provide a public forum for individuals to express their views on subsistence uses of fish and wildlife within the regions. The committees could make recommendations on regulations to the Regional Councils.

b. **Alternative II:** Existing State Local Fish and Game Advisory Committees and State Regional Advisory Councils would submit proposals through the Federal Regional Council to the agencies for any items that concern subsistence management on Federal public lands. Federal Local Advisory Committees and their membership would be formed based on the recommendation of the Regional Advisory Councils to the agencies. Federal committees would be formed if an agency determined that existing State committees were not fulfilling the requirements of Section 805 of ANILCA. Federal Regional Advisory Councils would define specific duties and needs for Local Advisory Committees at the time they were formed.

c. **Alternative III:** Local Advisory Committees would be

DECISION

created in response to a direct request from users or by recommendation from the Regional Advisory Councils. Committees could be established for each rural community (up to 283).

d. **Alternative IV:** Consistent with a Memorandum of Understanding to be negotiated with the State, existing State Fish and Game Advisory Committees and Regional Councils could submit proposals through the Federal Regional Council to the Board for any items that concern subsistence management on Federal public lands. Federal committees would be formed if, after notice and hearing, the Board determined that existing State committees were not fulfilling the requirements of ANILCA Section 805. Federal Local Advisory Committees and their membership would be formed based on the recommendations of the Regional Advisory Councils to the Board.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the Local Advisory Committee structure under Alternative IV (D-4).

E. Rural Determination Process

1. ALTERNATIVES

a. **Alternative I:** Acting under authority of the temporary regulations, the Board published final rural and non-rural determinations in the Federal Register on January 3, 1991. The rural determination process used aggregated communities that are socially and economically integrated. The Board then applied population and community characteristic tests. The Board presumed an aggregated community or area of less than 2,500 people to be rural unless it exhibited non-rural characteristics. There was no presumption about the status of a community or area with a population of 2,500 to 7,000, while communities or areas 7,000 or greater in population were presumed to be non-rural unless the characteristics of the community or area were rural in nature. The Board evaluated community characteristics including use of fish and game, development and diversity of the economy, community infrastructure, transportation, and educational institutions, as the basis for these decisions.

The Federal subsistence staff made recommendations to the Board with respect to those communities or areas that have a population greater than 2,500, comparing these community characteristics to those of non-rural communities, i.e., Anchorage, Fairbanks, Juneau, and Ketchikan and the rural communities of Dillingham, Bethel, Nome, Kotzebue, and Barrow. This rural determination process would be adopted under Alternative I.

b. **Alternative II:** Rural eligibility would be determined strictly by population within a community or area. A rural community would be defined as one with a population of 7,000 or less. Rural determinations would be re-evaluated as necessary by the appropriate agency.

DECISION

When, through increase in population, a community or area exceeds 7,000, the agencies would make a preliminary determination that the community has become non-rural. However, a waiting or "grace" period of 5 years would occur before a non-rural determination would become final in these instances. This delay in reclassification would mitigate the effect of a sudden loss of subsistence uses on those who previously were dependent on subsistence resources.

c. **Alternative III:** Under this alternative only the communities of Ketchikan, Juneau, Anchorage, and Fairbanks are identified as non-rural. All other communities and areas would be considered rural and thus would have the subsistence priority. This alternative relies on language in the ANILCA legislative history (Senate Report No. 96-413, p. 233) that cited these cities as examples of communities within the State that are non-rural.

d. **Alternative IV:** The rural determination process would aggregate communities and areas which are socially and economically integrated. The Board would then apply population and community characteristic tests. The Board would presume an aggregated community or area of less than 2,500 people to be rural. There would be no presumption about the status of a community or area with a population of 2,500 to 7,000, while communities or areas 7,000 or greater in population would be presumed to be non-rural unless the characteristics of the community or area were rural in nature.

The Board would evaluate community characteristics including use of fish and game, development and diversity of the economy, community infrastructure, transportation, and educational institutions as a basis for determining whether a community or area is rural or non-rural.

Recommendations would be made on the communities or areas that have a population greater than 2,500 by comparing their community characteristics to the non-rural communities of Anchorage, Fairbanks, Juneau, and Ketchikan and the rural communities of Dillingham, Bethel, Nome, Kotzebue, and Barrow. This recommendation and the rationale for the recommendation would be forwarded by Federal program staff to the Board for review, rejection, modification, or approval. The rural determinations resulting from applying the process described above are not expected to differ from those existing under Alternative I, but these determinations have not and will not be made until such time as this alternative is implemented. Over time these determinations would change as the status of some communities or areas as the population and other community characteristics change.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the rural determination process set forth in Alternative IV, with the addition of the 5-year waiting or "grace" period included in Alternative II (E-5). Those who commented on the EIS were very concerned with the prospect of overnight loss of access to subsistence resources because of changes in population of their community or area. The legislative history of ANILCA recognizes that the rural nature of some Alaskan communities may not be a static condition. It recognizes that through economic maturation and community development, the rural nature of some communities may change over time. The loss of rural status by a community or area would

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not prohibit the taking of fish and wildlife on Federal public lands by residents of the community or area. Uses could continue according to existing State regulations, but residents would not be afforded any preference on Federal public lands, and could be restricted when necessary to ensure that the subsistence needs of rural residents were met. If the Board determines that a community or area is no longer rural, a five-year waiting or "grace" period would occur before the community or area would lose the subsistence priority provided by Title VIII. This would allow residents reasonable opportunity to make adjustments to minimize and potential adverse impacts of such a change.

F. Customary and Traditional Uses

1. ALTERNATIVES

a. **Alternative I:** On July 1, 1990 the Board adopted the State of Alaska's customary and traditional use determinations as they appeared in the State's 1989 subsistence regulations. The State had made customary and traditional use determinations for most wildlife resources for most of the State. These determinations would be maintained under Alternative I, unless changed by the Board on recommendation of the Local Advisory Committee or based on information obtained through State or Federal agency research. Additional determinations also would be made, as needed, following this same procedure.

b. **Alternative II:** The State customary and traditional use determinations that were adopted by the Board on July 1, 1990 would be utilized in Alternative II. These determinations would be maintained unless changed through the regulatory process established by each agency.

Federal agencies would collect information on subsistence uses to determine a community or area's customary and traditional use of a particular fish or wildlife resource. This information would be made available to the Regional Councils in order for the councils to make recommendations on customary and traditional uses to the agencies.

c. **Alternative III:** The State customary and traditional use determinations that were adopted by the Board on July 1, 1990 would be utilized in Alternative III. These determinations would be maintained unless changed by the Federal Subsistence Board on recommendation of the Local Advisory Committees.

Federal agencies would collect and synthesize subsistence use information for determining a community's customary and traditional use of a particular fish or wildlife resource. The Local Advisory Committees would consider this information in making recommendations through the Regional Councils to the Board regarding a community's customary and traditional use of such resources.

d. **Alternative IV:** The State customary and traditional use determinations that were adopted by the Board on July 1, 1990 would be utilized. These determinations would be maintained unless changed by the Federal Subsistence Board.

DECISION

Determinations of customary and traditional use of subsistence resources would be made by the Board on recommendation of the Regional Councils. Appropriate professional staff would be assigned to advise the Regional Councils in making customary and traditional use recommendations and assist in the interpretation of Federal and State subsistence use reports and information.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the customary and traditional determination process under Alternative IV (F-4).

G. Regulation Process

1. ALTERNATIVES

a. **Alternative I:** Proposals from all sources—State Local Advisory Committees and Regional Councils, and individuals—would be submitted to the Board, which would compile and distribute them to the public, Regional Councils, and Local Advisory Committees for comment. Recommendations by the Regional Councils would be used to facilitate deliberations during the Board's review of proposals.

When necessary to restrict the taking of subsistence resources, Regional Councils would assess who would qualify under Section 804 to participate in a limited subsistence harvest; and these recommendations would be sent to the Board.

b. **Alternative II:** The Regional Councils would develop proposals and review and evaluate proposals from other sources. Recommendations from the Regional Councils would be forwarded to the appropriate agency for action.

When it is necessary to restrict the taking of subsistence resources, Regional Councils would assess who would qualify under Section 804 to participate in a limited subsistence harvest; and these recommendations would be sent to the appropriate agency for action.

c. **Alternative III:** Local Advisory Committees would develop proposals and review and evaluate regulatory proposals from other sources. Proposals and other recommendations originating from other than Local Advisory Committees would be referred to the appropriate Local Advisory Committees for review and comment prior to Regional Council review and Board action. Proposals recommended by the committees would be presented to the Regional Councils for review, evaluation, and recommendation to the Board.

When it is necessary to restrict the taking of subsistence resources, Local Advisory Committees would assess who would qualify under Section 804 to participate in a limited subsistence harvest; and these recommendations would be sent to the Board through the Regional Councils.

DECISION

d. **Alternative IV:** The Regional Councils would develop proposals and review and evaluate proposals from other sources. Recommendations from the Regional Council would be forwarded to the Board for action. Proposals from individuals, Federal or State agencies, or other groups would be sent to the appropriate Regional Councils for their review and evaluation before being forwarded to the Board for consideration.

When it is necessary to restrict the taking of subsistence resources, Regional Councils would assess who would qualify under Section 804 to participate in a limited subsistence hunt; and these recommendations would be sent to the Board for action.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the regulation process under Alternative IV (G-4).

DECISION

IV. DECISION

Based on the analysis contained in the EIS, the recommendations of the Federal Subsistence Board, and the Department's Subsistence Policy Group, it is my decision to implement Alternative IV as identified in the Final EIS with modifications.

The first modification is to increase the number of Regional Advisory Councils from eight, as set forth in the proposed action in the EIS, to ten Councils. These Councils and Regions would more closely recognize the cultural differences within the existing State regions, while at the same time balancing population and community representation more carefully than in the original Alternative IV. This change would also increase the number of regional liaisons to the Board.

The second modification is to the Alternative IV rural determination process. By including a 5-year waiting or grace period as described and analyzed under Alternative II, the impacts to a community or area from the transition from rural to non-rural would be reduced.

The alternative I am selecting includes:

A. Federal Subsistence Board

The Federal Subsistence Board would consist of the following members:

- the Alaska Regional Director, FWS;
- the Alaska Regional Director, NPS;
- the Alaska Regional Forester, USFS;
- the Alaska State Director, BLM;
- the Alaska Area Director, BIA; and,
- a chairman appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
- 10 regional liaisons and a liaison from the State of Alaska would serve as consultants to the Board.

In addition to the Board members, a State liaison to the Board would be nominated by the Governor and appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. The chairperson of each Federal Regional Advisory Council described herein also would serve as a liaison to the Board. The State and Council representatives would attend Board meetings and be actively involved as consultants to the Board, but would have no vote in Board decisions, and would not be present during executive sessions of the Board.

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B. Advisory System

To satisfy the requirements of Section 805 of ANILCA Title VIII, I will establish ten (10) Federal Subsistence Management Regions and ten (10) Federal Regional Advisory Councils as shown in the attached map of Alternative IV (modified).

1. REGIONAL ADVISORY COUNCILS

There will be 10 Federal Subsistence Management Regions and 10 Federal Regional Councils instead of the eight recommended in the proposed action in the EIS. The number of Councils selected is not a major change and is within the range considered in various alternatives in the EIS. The regional boundaries are generally consistent with the existing six regions, except that some will be divided to reflect subsistence use patterns. The Arctic Region will be divided into three regions, the Interior and Southwest Regions will each be divided into two regions a Federal Regional Council will then be established in each region.

Each Council will be authorized to hold public meetings on subsistence matters. Each will be authorized to prepare an annual report on subsistence uses and needs, including recommendations on fish and wildlife management and implementation strategies to the Secretary in accordance with ANILCA Section 805. The Councils will review, evaluate, and make recommendations on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence taking of fish and wildlife within or affecting the regions they represent. The Councils will be established in accordance with the FACA. Members will be appointed by the Secretary of the Interior with concurrence by the Secretary of Agriculture, based upon recommendations by the Board. The number of members on a Council will be determined by the Board and will vary from Region to Region, depending on the number and distribution of subsistence users in the region, the variety of subsistence resources used, and the nature and extent of management issues. To the extent possible, the size of the Council and distribution of the membership within the region will be designed to ensure the maximum participation in the Federal program by local subsistence users.

Federal Regional Coordinators will be assigned to serve as a Federal Advisory Committee Act representative and liaison between the Regional Councils and the Federal program managers, facilitating communication between the two groups. Federal coordinators also will coordinate the preparation and review of regulatory proposals and annual subsistence reports.

2. LOCAL ADVISORY COMMITTEES

Consistent with a Memorandum of Understanding to be negotiated with the State, existing State Fish and Game Advisory Committees could submit proposals through Federal Regional Councils to the Board for any matters that concern subsistence management on Federal public lands. Federal Committees would be formed if, after notice and hearing, the Board determined that existing State committees were not fulfilling the requirements of ANILCA

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Section 805 or, if in the judgment of the Board, a Federal Advisory Committee is needed or warranted in a specific geographic area. In that case, Federal Local Advisory Committees and their membership would be formed based on the recommendations to the Board by the Regional Councils.

C. Rural Determination Process

The rural determination process will provide for consideration of the following community or area characteristics:

- A community or area with a population of 2,500 or less will be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.
- Communities or areas with populations between 2,500 and 7,000 will be determined to be rural or non-rural based on characteristics considered by the Board.
- A community with a population of 7,000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.
- Population data from the most recent Federal census of population conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.
- Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:
 - (i) use of fish and game;
 - (ii) development and diversity of the economy;
 - (iii) community infrastructure;
 - (iv) transportation; and,
 - (v) educational institutions.
- Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

Recommendations would be made on the communities or areas that have a population greater than 2,500 by comparing their community characteristics to the non-rural communities of Anchorage, Fairbanks, Juneau, and Ketchikan with the rural communities of Dillingham, Bethel, Nome, Kotzebue, and Barrow. This recommendation and the rationale for the recommendation will be forwarded by Federal program staff to the Board for review, rejection, modification, or approval.

When the character of a community or area has changed from rural to non-rural, the agencies would make a preliminary determination that the community had become non-rural.

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Once the Board, acting on the recommendation by one of the managing agencies makes a determination that a community has indeed changed from rural to non-rural, a waiting period of 5 years would be required before the non-rural determination would become effective. This would mitigate the effect of sudden loss of subsistence uses on those who previously were dependent on them.

Based on the criteria above the non-rural communities and areas described below are presently considered to be socially and economically integrated. All communities or areas not listed would be assumed to be rural.

- Municipality of Anchorage
- Kenai Area (including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifonsky, Kasilof and Clam Gulch)
- Wasilla Area (including Palmer, Wasilla, Sutton, Big Lake, Houston and Bodenberg Butte)
- Fairbanks North Star Borough
- Juneau Area (including Juneau, West Juneau and Douglas)
- Ketchikan Area (including Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island)
- Homer Area (including Homer, Anchor Point, Kachemak City and Fritz Creek)
- Seward Area (including Seward and Moose Pass)
- Valdez
- Adak

D. Customary and Traditional Uses

The State customary and traditional use determinations that were contained in the State of Alaska's 1989 regulations were adopted by the Federal Subsistence Board on July 1, 1990. These would be utilized by the Board in implementing the subsistence program. These determinations will remain in place until they are modified as a result of reevaluation by the Board. The current customary and traditional use determinations were illustrated in Appendix D of the EIS. The determinations are anticipated to change due to the addition of several communities classified as rural, or as a result of public comment on the draft EIS and in response to specific requests made to the Board.

The Board will determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations will identify the specific community's or area's use of specific fish stocks and wildlife populations. For National Parks and Monuments where subsistence uses are allowed, the determinations may be made on an individual basis. A community or area must possess the following specific characteristics, which exemplify customary and traditional use and the Board shall make customary and traditional use determinations based on application of these factors:

- (1) A long-term consistent pattern of use, excluding interruptions beyond the users' control;

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- (2) A pattern of use recurring in specific seasons for many years;
- (3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;
- (4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking near, or reasonably accessible from the users' residence;
- (5) A means of handling, preparing, preserving, and storing fish or wildlife which have been traditionally used by past generations, without excluding consideration of alteration of past practices due to recent technological advances, where appropriate;
- (6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;
- (7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and
- (8) A pattern of use related to the users' reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements of the users' lives.

Determinations of customary and traditional use of subsistence resources would be made by the Board after reviewing recommendations of the Regional Councils. Appropriate professional staff would advise the Regional Councils in making customary and traditional use recommendations and assist in the interpretation of technical information.

E. Regulation Process

The Regional Councils may develop proposals, and will review and evaluate proposals from other sources. Recommendations from a Regional Council will be forwarded to the Board for action. Proposals from individuals, Federal or State agencies, or other groups would be sent to the appropriate Regional Councils for their review and evaluation before being acted upon by the Board.

When it is necessary to restrict the taking of subsistence resources, Regional Councils would assess who would qualify under Section 804 of ANILCA to participate in a limited subsistence hunt and these recommendations would be sent to the Board for action.

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V. REASONS FOR THE DECISION

A. ANILCA

The ANILCA requires the Secretaries of the Interior and of Agriculture to provide the opportunity for rural residents engaged in a subsistence way of life to do so consistent with sound management principles, and the conservation of healthy populations (or natural and healthy for National Parks and Monuments) of fish and wildlife. Nonwasteful subsistence uses of fish and wildlife and other renewable resources are to be the priority consumptive uses of all such resources on the public lands (as defined in Section 102(3) of ANILCA) of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population.

B. Environmental Considerations

I am fully aware of the environmental consequences of the alternatives as described in the EIS. While there would be no physical impacts, there would be differing projected impacts on the biological, sociocultural systems, economic, subsistence use patterns, and sport hunting aspects of Alaska.

1. BIOLOGICAL

Alternative III would have the greatest impact on all subsistence species. The impacts of Alternative II would be less than Alternative III, but still greater than those of either Alternatives I or IV.

2. SOCIOCULTURAL SYSTEMS

a. **Alternative I:** In the three communities (Sitka, Kodiak, and Unalaska) whose status could change in the next 10 years from rural to non-rural, a proportion of the population that depends on a subsistence lifestyle could experience long-term (more than 2 years), reduced access to subsistence resources. As a result of this reduced access, there would be increased stress. The social health in these communities would be impacted, and sociocultural systems—including social organization and cultural values—would be disrupted, with tendencies toward displacement of sociocultural systems. Impacts would be expected to be the same as those under Alternative IV.

b. **Alternative II:** In the three communities whose status would change under this alternative (Sitka) or in the next 10 years (Kodiak and Unalaska) from rural to non-rural, a proportion of the population that depends on a subsistence lifestyle could experience long-term, reduced access to subsistence resources. In addition, rural communities would be designated under Alternative II, which would increase the number of subsistence users. Such a situation is expected to force increased application of Section 804 of ANILCA, allowing only those with customary and direct dependence on subsistence

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resources to subsistence hunt. For those residents who could not demonstrate customary and direct dependence, this alternative would alter subsistence harvest areas and decrease subsistence harvests. As a result, there could be increased stress. The social health in these communities would be impacted and sociocultural systems—including social organization and cultural values—would be disrupted with tendencies toward displacement of the sociocultural systems. Impacts would be expected to be long term (more than 2 years) and greater than those expected under Alternative IV.

c. **Alternative III:** More rural communities would be designated under Alternative III, which would increase the number of subsistence users. Such a situation is expected to force increased application of Section 804 of ANILCA, allowing only those with customary and direct dependence on subsistence resources to subsistence hunt. For those residents who could not demonstrate customary and direct dependence, this alternative would alter subsistence harvest areas and decrease subsistence harvests, resulting in increased stress. The social health in these communities would be impacted and sociocultural systems—including social organization and cultural values—would be disrupted, with tendencies toward displacement of the sociocultural systems. Impacts would be long term (more than 2 years) and greater than those in Alternative IV.

d. **Alternative IV:** In the three communities (Sitka, Kodiak, and Unalaska) whose status could change in the next 10 years from rural to non-rural, a proportion of the population that depends on a subsistence lifestyle could experience long-term (more than 2 years), reduced access to subsistence resources. As a result, there would be increased stress. The social health in these communities would be affected and sociocultural systems—including social organization and cultural values—would be disrupted with tendencies toward displacement of sociocultural systems.

3. ECONOMY

There would be greater Federal expenditures under Alternatives II and III than under either Alternative I or IV. This difference is not significant and is only a projection. Actual spending associated with the FSMP would vary according to the Federal budgetary processes.

4. SUBSISTENCE USE PATTERNS

a. **Alternative I:** Impacts on subsistence use patterns could occur in Sitka, Kodiak, and Unalaska because their status could change in the next 10 years from rural to non-rural. For these communities, a small proportion of the population depends on a subsistence lifestyle. While impacts could occur in Unalaska and Kodiak, impacts to subsistence harvest patterns are most likely to occur in Sitka. Impacts are expected to be long term (more than 2 years), resulting in reduced harvests of subsistence resources and a shift in subsistence use patterns. Impacts would be expected to be the same as those under Alternative IV.

b. **Alternative II:** In Sitka, where the status would change under this alternative, and in Kodiak, Unalaska, and Moose Creek, where the status could change from rural to non-rural within the next 10 years, a small proportion of the population

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depends on a subsistence lifestyle. While impacts could occur in Unalaska, Kodiak, and Moose Creek, subsistence harvest patterns are most likely to occur in Sitka. Impacts are expected to be long term (more than 2 years), resulting in a reduced harvests of subsistence resources and a shift in subsistence use patterns. In addition, more rural communities would be designated under Alternative II, increasing the number of subsistence users. Such a situation is expected to force increased application of Section 804 of ANILCA, allowing only those with customary and direct dependence on subsistence resources to subsistence hunt. For those residents who could not demonstrate customary and direct dependence, this alternative would alter subsistence harvest areas and decrease subsistence harvests. Impacts would be expected to be long term (more than 2 years) and greater than those expected under Alternative IV.

c. **Alternative III:** Under Alternative III there would be more rural communities designated, increasing the number of subsistence users. Such a situation is expected to force increased application of Section 804 of ANILCA allowing only those with customary and direct dependence on subsistence resources to subsistence hunt. For those residents who could not demonstrate customary and direct dependence, this alternative would alter subsistence harvest areas and decrease subsistence harvests. Impacts would be expected to be long term (more than 2 years) and greater than those expected under Alternative IV.

d. **Alternative IV:** Impacts on subsistence use patterns could occur in Sitka, Kodiak, and Unalaska whose status could change in the next 10 years from rural to non-rural. A small proportion of the population in these communities depends on a subsistence lifestyle. While impacts could occur in Unalaska and Kodiak, impacts to subsistence harvest patterns are most likely to occur in Sitka. Impacts are expected to be long term (more than 2 years), resulting in reduced harvests of subsistence resources.

5. SPORT HUNTING

a. **Alternative I:** This alternative has approximately 142,000 eligible subsistence users (the same number as Alternative IV) and would place less subsistence harvest demand on wildlife resources than Alternatives II or III. This would result in less need to restrict sport hunting opportunities than under Alternatives II or III. There would be no immediate change from the present condition. While the growth in rural population would increase harvest demand on wildlife, it is generally expected that subsistence demand from this alternative could be met by present wildlife populations, with some exceptions. Presently, there are few situations where sport hunting is severely restricted because of the need to provide a priority for subsistence use.

b. **Alternative II:** There would be significant changes in the distribution of residents with subsistence eligibility as a result of this alternative. This alternative has the second highest number of subsistence users and would place an increased subsistence harvest demand on wildlife resources. This would result in an increased likelihood of additional restrictions on sport hunting opportunities. There would be significant changes in the distribution of residents with subsistence eligibility because of this alternative. While the growth in rural population would increase harvest demand on

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wildlife, it is generally expected that subsistence demand from this alternative could be met by present wildlife populations without additional restrictions on sport hunting. There are, however, some localized exceptions. These exceptions generally are found in areas where there is a large increase in rural populations or where wildlife populations can support only small harvest levels. Presently, there are few situations where sport hunting is restricted because of the need to provide a priority for subsistence use. The large increase in rural residents under this Alternative increases the likelihood of further restrictions; however, much of the increased demand from subsistence users probably can be accommodated by wildlife populations. This is in part true because a significant number of eligible subsistence hunters currently are harvesting animals by hunting under sport regulations.

c. **Alternative III:** There would be significant changes in the distribution of residents with subsistence eligibility as a result of this alternative. This alternative has the highest number of subsistence users and would place the greatest increase in subsistence harvest demand on wildlife resources. This would result in an increased likelihood of additional restrictions on sport hunting opportunities. The growth in rural population would increase harvest demand on wildlife. It is expected that subsistence demand from this alternative would exceed the allowable harvest levels of present wildlife populations in many areas without additional restrictions on sport hunting. The need for restrictions would be moderated somewhat as the number of sport hunters in this alternative decreases. There presently are few situations where sport hunting is severely restricted because of the need to provide a priority for subsistence use. The large increase in rural residents under this alternative increases the likelihood of further restrictions; however, a significant number of newly eligible subsistence hunters currently are harvesting animals by hunting under sport hunting regulations, and this would serve to moderate the impact of a large increase in subsistence users.

d. **Alternative IV:** This alternative has 142,410 eligible subsistence users (the same number as Alternative I) and would place less subsistence harvest demand on wildlife resources than Alternatives II or III. This would result in less need to restrict sport hunting opportunities under Alternative IV than under Alternatives II or III. While the growth in rural population would increase harvest demand on wildlife, it is generally expected that subsistence demand from this alternative could be met by present wildlife populations, with some exceptions. Presently, there are few situations where sport hunting is severely restricted because of the need to provide a priority for subsistence use.

C. FACTORS WHICH WERE BALANCED

1. ENVIRONMENTAL

The EIS analyzed four alternatives each of which would fulfill the responsibilities of the Secretaries. The impacts to the biological, sociocultural systems, subsistence use patterns, and sport hunting considerations were all balanced in arriving at this decision.

In consideration of the biological resources, Alternatives I and IV are virtually identical in their respective impacts on all fish and wildlife species analyzed. These impacts were less

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than under either Alternatives II or III, both immediately and over the long term. Although there may be some local impacts were this is not true, overall the statewide impacts are less under this alternative.

The sociocultural systems are impacted mostly by the gain or loss of eligibility for a subsistence priority. While Alternative III would result in the greatest number of subsistence users, most of these additional users currently are not subsistence users nor have they been throughout the history of ANILCA. This is also somewhat true of Alternative II which would have fewer users than Alternative III, but more than either Alternatives I or IV. While Alternative IV does not give eligibility to as many users as some other alternatives, it does provide for the continuation of use by those who have been eligible in the past.

Relative to subsistence use patterns, Alternative IV as modified in this decision, would result in less restriction upon those who have been dependent on subsistence uses of the resources than would be required under Alternatives II or III. Alternative IV provides an advisory system which is not as encumbered by commercial and sport uses as under Alternative I, and as modified would also be responsive to cultural differences. More than any other alternative, Alternative IV has the flexibility needed to respond to both assuring that customary and traditional activities can continue, while protecting the health of the fish and wildlife populations.

Sport hunting would be severely restricted if Alternative III were selected due to the large numbers of subsistence users who would have a priority use of the resources. Alternative II would have this same restriction but to a lesser extent. Alternatives IV and Alternative I would create the least need to further restrict sport hunting statewide.

Alternative IV as modified is the "environmentally preferable alternative." "Environmentally preferable alternative" is defined in the Council on Environmental Quality Forty Most Asked Questions as the alternative that causes the least damage to the biological and physical environments or best protects, preserves, and enhances historic, cultural, and natural resources. While Alternative IV as modified would establish Federal Regional Advisory Councils, it would most clearly provide the flexibility needed to respond to the variety of customary and traditional uses. The historic and cultural practices of rural Alaskans would thus be protected and preserved to a greater extent than with either Alternatives II and III. Alternative IV as modified would also provide the opportunity for subsistence uses by rural Alaskans required under Title VIII of ANILCA with lower biological impacts than Alternatives II or III by maintaining the eligibility of those who have been subsistence users and not expanding this to a much larger group of users who currently are not eligible.

2. REGIONAL ADVISORY COUNCILS

On further review of the public comments to the EIS, and in consideration of the Board's recommendation, two specific changes from Alternative IV as displayed in the final EIS were selected. Ten Regional Advisory Councils would be formed instead of eight as described in the proposed action in the EIS. The Federal Subsistence Board recommended an increase to 10 in the number of Regional Advisory Councils to provide for increased participation of rural residents in subsistence management. Such an increase would allow

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the regional boundaries to reflect more closely the differences in social and cultural patterns of subsistence users. The Board proposed the increase in number of Regional Advisory Councils to respond to a strong preference expressed by subsistence users favoring the Council structure described in Alternative III, where twelve regions would have boundaries similar or identical to the Regional Corporations formed by ANCSA. It is recognized that those regions were formed in part based on social, cultural, and resource use patterns. The ANCSA regional boundaries do not precisely meet all the requirements for Federal Regional Advisory Regions. However, subsistence regional boundaries also must balance other considerations such as: the amount and distribution of Federal public lands; the distribution of wildlife populations regulated by the Federal Subsistence Management Program; the number of eligible subsistence users residing in the region; the geographic size of and the travel distances within the regions; and the cost of operating the Councils. The 12 ANCSA regions and their boundaries are socio-political oriented, designed to reflect the ethnic distribution and cultural differences of the shareholders of the ANCSA Corporations. Subsistence in Alaska is not an exclusive Alaska Native activity. It is not racially based. Rural residents relying on the subsistence preference in ANILCA Title VIII comprise 30.4% (167,397) of the total Alaska population according to the 1990 Census. Of that rural population, 28.7% (48,048) are Native, and 71.3% (119,355) are non-Native. Utilizing the 12 ANCSA Regional Corporation boundaries to establish the Federal Regional Council system for subsistence would ignore this aspect of the demographics of Alaska and those non-Native rural residents who rely on subsistence.

Alternative III contains some regions with relatively small amounts of Federal public lands, disproportionately small numbers of eligible subsistence users, and restricted numbers and distribution of wildlife species regulated by the Federal program, rendering this alternative undesirable. By increasing the number of regions in the preferred alternative to ten, I feel the Federal Government will effectively respond to sociocultural concerns, allow for increased participation by rural residents, and provide for a cost effective program.

3. RURAL DETERMINATIONS

The second modification is to the Alternative IV rural determination process. The Federal Subsistence Board recommended the addition of the 5-year waiting period from Alternative II. Those who commented on the EIS were very concerned about the prospect of losing access to subsistence resources in what could conceivably be an almost overnight event because of changes in the population of their community. I recognize that the rural nature of some Alaskan communities is not a static condition and the rate of economic development and the rural nature of some communities may change over time. The loss of rural status by a community would not necessarily prohibit the taking of fish and wildlife on Federal public lands by residents of these communities. Subsistence uses could continue in accordance with State regulations, but the users would not receive any preference on Federal public lands, and could be restricted when necessary to ensure the subsistence needs of rural residents are met. If the Board determines that a community is no longer rural, a five-year grace period would be required before the community would lose the subsistence priority provided by Title VIII. This would allow residents considerable opportunity to make adjustments and to minimize any potential adverse impacts of such a change.

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D. Mitigation Measures

All practicable means have been adopted in the selected alternative to avoid or minimize environmental harm. In this alternative, "...the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands..." is still provided for those who have been eligible. It also does not increase the competition for the limited resources by previously non-rural residents.

Alternative IV as modified has an enlarged advisory system focused on subsistence uses and would have greater participation by subsistence users at all levels to assure that all reasonable measures were taken to minimize or avoid adverse impacts. Existing impacts to customary and traditional practices of subsistence users are reduced or eliminated through the use of such mechanisms as permitting the use of designated hunters and community harvest allocations. The 5-year waiting period in the rural determination process will reduce the impacts to a community or area that could result from suddenly losing its rural status.

Monitoring or "feedback" mechanisms are a part of the formulation of all the alternatives discussed in the EIS. Under the ANILCA, the Secretary of Interior, through delegation to the Federal Subsistence Board, will be responsible for ascertaining the status of the subsistence resources and determining the nature and extent of the subsistence use.

The method for gathering this information under Alternative IV provides for the Regional Councils to lead in the development, review, evaluation, and recommendations pertinent to Section 805 of ANILCA. The Regional Council, with assistance from Federal coordinators and staff, would evaluate the impact of the Federal regulations promulgated by the Board and provide feedback before the development of the current years regulations regarding the take of fish and wildlife for subsistence purposes.

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VI. PUBLIC INVOLVEMENT AND RESPONSE TO PUBLIC COMMENT

The development of a subsistence management program for Federal public lands in Alaska is considered a "major Federal action having a significant impact on the quality of the human environment" under the National Environmental Policy Act (NEPA). For this reason, the Board concluded that an EIS on Federal subsistence management should be published. A Notice of Intent to prepare an EIS was published in the Federal Register on October 25, 1990. Interagency teams from the Fish and Wildlife Service, Forest Service, National Park Service, and Bureau of Land Management conducted 58 public scoping meetings during October and November, 1991.

Based on the information gathered in the scoping process, the major issues to be addressed in the EIS were identified and are analyzed in the draft EIS published in October 1991. A 60 day public comment period followed the release of the EIS (this was later extended through December 31, 1991). During this period, 42 public hearings were held, and oral and written comments were requested from the public. Specific dates and locations for the public hearings were announced in the Federal Register. The final EIS incorporated public comments and revisions and modifications made to the EIS. Specific comments and their responses were included in Chapter V of the final EIS. The draft programmatic regulations were included as Appendix A of the EIS.

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VII. SPECIAL CONCERNS OF ORGANIZATIONS

A. State of Alaska

The circumstances under which the Federal government assumed major responsibility for management of subsistence uses of fish and wildlife on Federal public lands is unique in the United States. Federal assumption in Alaska of responsibility to carry out the activities in Title VIII of ANILCA is an issue of major concern to residents of the State of Alaska and their government. The people of Alaska and its government have provided extensive comment relative to the extent of Federal jurisdiction, scope of Federal authorities, and proposed implementation of the Federal program. They question especially, the Federal interpretation of management authority over fish, shellfish and wildlife as it relates to jurisdiction in tidal, marine, and navigable waters included in the definition of Federal public lands. The State is of the view that the role of the Federal government in assuring that the requirements of Title VIII are met, are much more narrow than considered in the Federal EIS. The State of Alaska asserts that the Federal Subsistence Management Program should be restricted to the question of eligibility and not contain broad wildlife management program elements.

With regard to the major program elements contained in the various alternatives, the State government favors those identified in Alternative IV for Board structure, rural determination process. They support the process for determining customary and traditional uses common to all alternatives. The overall approach for an advisory system and regulations process described in Alternative I was favored by State government.

The issue of navigable waters is of major significance to the State. As discussed in Chapter I of the EIS, this issue is outside the scope of the EIS and this decision. Ownership of tidal and submerged lands and of navigable waters is outside the subject of this EIS. This question is currently the subject of litigation between the State and Federal governments and the outcome of that litigation could change or confirm the direction taken in the Federal Subsistence Management Program.

B. Native Organizations

Alaska Native organizations favored Alternative III in the EIS over the other alternative. Alternative IV was also supported, but by fewer groups and usually as a secondary preference to Alternative III. Generally, Alaska Native interests seek the formulation of a Federal program favorable to Native interests and expressed strong desires to be directly involved in the decision making and active control and management of subsistence use and subsistence resources. Native interests consistently recommended that the Board have subsistence users as members. Many organizations asked that Federal jurisdiction be extended to include anadromous fish in navigable waters. They supported a Native preference, and would like to have a mechanism to allow those people with a long-standing customary use to continue that use even if they physically relocate to a non-rural area.

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The views of the Native organizations are generally supported by the BIA as reflected in the memoranda of the Assistant Secretary for Indian Affairs. The BIA specifically favors 12 subsistence management regions using ANCSA Regional Corporation boundaries and the rural process in Alternative III.

Navigable waters is also an issue of significance to many in the Native community. In general, as stated above, they want the Federal Subsistence Management Program to greatly expand its management role and jurisdiction over these waters and the resources they contain. Their concerns are also before the court at this time, depending upon the decision of the court, the direction and authority of the Federal program could change or be confirmed.

C. Local Governments

Comments from most local governments supported maintaining or acquiring rural status for their communities. Since most comments were from rural Alaskan villages they also expressed almost unanimous support for Alternative III. Other comments by local governments focused on regulations such as specific seasons, bag limits, methods and means of harvest that will be considered later in the implementation part following the formal rulemaking process.

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VIII. IMPLEMENTATION

Implementation of this decision will take place with the publication of the final rulemaking in the Federal Register. Those rules will regulate the taking of fish and wildlife resources on Federal public lands beginning with the 1992-1993 season. These regulations would remain in effect unless or until the State:

*... enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference and participation specified in, sections 803, 804, and 805, such laws unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses... [ANILCA 805(d)]

As a part of the implementation of this decision, the Federal government will set seasons and bag limits annually within the framework of the formal rules. The Board will also make determinations of rural status and customary and traditional uses periodically as needed.

Prior to reaching the decision documented in this ROD, the Department of the Interior and the Department of Agriculture (Departments) have evaluated and considered all public comments which were timely submitted in response to the proposed Subsistence Management Regulations for Federal Public Lands in Alaska, Subparts A, B, and C, published in 57 Federal Register 3676-3687 (January 30, 1992), as well as the public comments submitted in response to the draft EIS for the Subsistence Program. When completing the text of the final Subsistence Regulations, the Departments will further address all public comments submitted in response to the proposed Subsistence Regulations.

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IX. DETERMINATIONS

A. Threatened and Endangered Species

Appendix J of the FEIS contains the consultation and determination that the program will not affect listed species, critical habitat, or essential habitat. It also states that it will not affect or is not likely to affect proposed species or proposed critical habitat.

B. Coastal Zone Management Act

The Federal Coastal Zone Management Act (CZMA) and the Alaska Coastal Management Act were enacted in 1972 and 1977 respectively. Through these acts, development and land use in coastal areas are managed to provide a balance between the use of coastal resources and the protection of valuable coastal resources. The ACMP requires that coastal districts and State agencies recognize and assure opportunities for subsistence use of coastal areas and resources (6 AAC 80.120).

The proposed action is consistent to the maximum extent practicable with approved State management programs. No action of the FSMP presently will directly impact the coastal zone; the FSMP is limited to Federal public lands, which are excluded from the coastal zone under the CZMA.

C. ANILCA 810 Evaluation and Finding

This evaluation concludes that the FSMP under this alternative would have some local impacts on subsistence use, but would not constitute a significant restriction of subsistence uses, under the "may significantly restrict" standard.

Impacts on subsistence use patterns could occur in communities whose rural determination status could change in the next 10 years from rural to non-rural. A small proportion of the population of these communities depends on a subsistence lifestyle. Impacts are expected to be long term (more than 2 years), resulting in reduced harvests of subsistence resources and a shift in subsistence use patterns.

Determinations have been made in accordance with Section 810(a)(3) that:

- (1) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands;
- (2) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition; and
- (3) reasonable steps will be taken to minimize adverse impacts on subsistence uses and resources resulting from such actions

DECISION

1. NECESSITY, CONSISTENT WITH SOUND MANAGEMENT OF PUBLIC LANDS

ANILCA Title VIII requires the Secretary to manage subsistence uses on public lands if the State fails to implement a subsistence management program that satisfies the requirements of Title VIII. The State no longer manages subsistence in a manner consistent with Title VIII, therefore this action is necessary.

2. AMOUNT OF PUBLIC LAND NECESSARY TO ACCOMPLISH THE PROPOSED ACTION

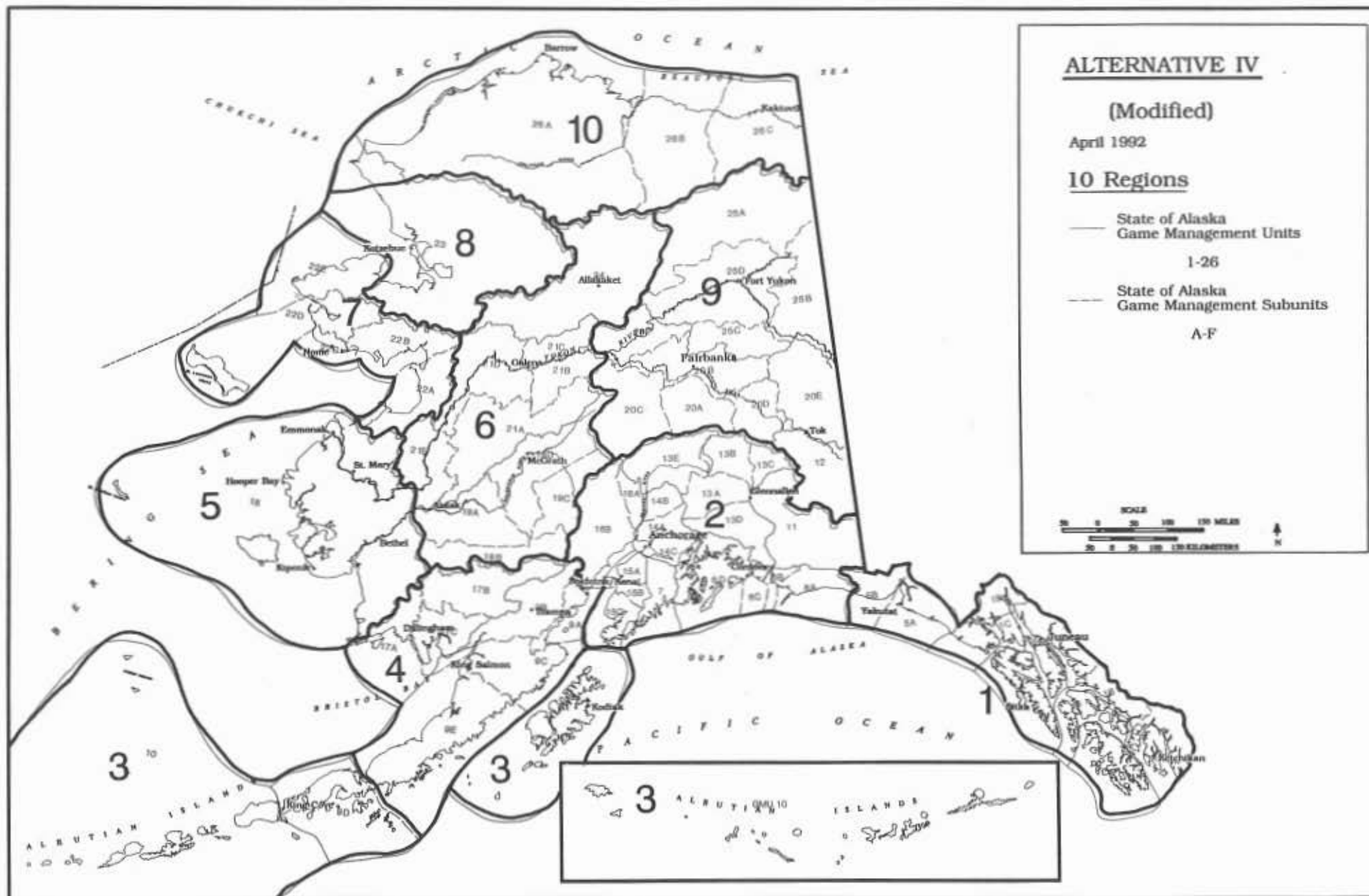
Section 102(3) of ANILCA, in conjunction with Section 804, requires subsistence use priority on all Federal Public lands in Alaska. There are no options to further minimize the amount of public lands under disposition of the Federal Subsistence Management Program.

3. REASONABLE MEASURES TO MINIMIZE ADVERSE IMPACTS UPON SUBSISTENCE USES AND RESOURCES

Alternative IV as modified is less likely to have restrictions than Alternatives II or III because of the fewer number of eligible subsistence users. This would reduce the possibility of further harvest restrictions due to excess demand for subsistence resources. Localized impacts may be experienced, as described under Chapter IV Section J.5.

Alternative IV as modified would have an advisory system focused on subsistence uses and would have the users involved at all levels to assure that all reasonable measures were taken to minimize or avoid adverse impacts. Existing impacts to customary and traditional practices of subsistence users are reduced or eliminated through the use of such mechanisms as permitting the use of designated hunters and community harvest allocations. The 5-year waiting period in the rural determination process will also reduce the impact on a community or area from losing its rural status.

Based on the evaluation process contained in Chapter IV.J of the EIS, and considering all relevant information, I find that there is no significant possibility of a significant restriction on subsistence uses as a result of the selected course of action.



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