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* SENT: 03/14/86 TIME: 17:25
* FROM: ANNIE NEUBAUER
* SUBJECT: POM/FAIRBANKS
* PRINT DATE: 03/14/86 TIME: 17:25
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H B288
file

TO: SENATE JUDICIARY COMMITTEE
SENS: RODEY, KELLY, FAIKS, HALFORD, ZIEGLER
ALSO: SENS COGHILL, FAHRENKAMP, BENNETT
REPS FRANK, M.W. MILLER, RINGSTAD, KOPONEN, DAVIS
FROM: CHARLES DERRICK, 891 SELDOM SEEN RD., FAIRBANKS 99712
PHONE: HOME 488-3093 WORK 356-2160
RE: SUBSISTENCE HB288

I OPPOSE THE MAKE-UP OF ANY SUBSISTENCE BILL THAT DOES NOT ADDRESS A "NEED" CRITERIA RATHER THAN JUST A "RURAL" CRITERIA. I ALSO FEEL ANY BILL SHOULD PROTECT THE TRADITIONAL SUBSISTENCE RIGHTS OF URBAN CHITINA DIPNETTERS.

TO: SENATE JUDICIARY COMMITTEE
SENS: RODEY, KELLY, FAIKS, HALFORD, ZIEGLER
ALSO: SENS COGHILL, FAHRENKAMP, BENNETT
REPS FRANK, M.W. MILLER, RINGSTAD, KOPONEN, DAVIS
FROM: TIMOTHY S. STEVENS, P.O. BOX 80673, FAIRBANKS 99708
PHONE: HOME 456-1845 WORK 479-4114
RE: HB288 SUBSISTENCE

WHEN YOU CONSIDER ANY LEGISLATIVE ACTION DEALING WITH SUBSISTENCE IN ALASKA PLEASE REMEMBER YOUR CONSTITUENTS IN THE INTERIOR AND THEIR CUSTOMARY AND TRADITIONAL USE OF THE CHITINA DIPNET FISHERY.

Kim Ingeik
Box 2271
Cordova 99574

Dear Senate Judiciary Comm.

I'm a second generation Alaskan River fisherman and family member. In regards to Senate Bill # 231 it is a necessity that this bill be pushed through. The economy of Alaska and all fishermen need this, it's crucial. I ask that you waive SB # 231, and not hinder it's progress.

Thank You,
Kim Ingeik

A Summary of Federal Acts from 1870 - 1925 allowing taking of Alaska animals for food or clothing.

1870: An Act.

Unlawful to kill fur seals on St. Paul and St. George Islands except from June to October.

EXCEPTION: Natives may kill "such young seals as may be necessary for their own food or clothing" during other months.

1902: An Act.

Prohibits "wanton destruction" of wild game.

Allows killing of game animals by native Indians or Eskimo, miners, explorers, travelers "when in need of food".

1908: An Act.

Amends 1902 Act. Prohibits "wanton destruction" of non-game wild animals and birds (except of eagles, ravens and cormorants).

Allows killing of any game animal or bird for food or clothing at any time by Natives, miners, explorers "when in need of food".

1910: An Act.

Allows Natives of Pribilof Islands to kill young seals "as may be necessary for their own food and clothing" and old seals "as may be required for their own clothing and for the manufacture of boats for their own use".

1925: An Act.

Allows an Indian or Eskimo, prospector or traveler to take animals or birds during the closed season "when he is in absolute need of food and other food is not available".

1940: An Act.

Allows Natives to take birds and animals out of season "when...in need of food and other sufficient food is not available".

Jan. 24, 1986:

Alaska Fish and Wildlife Federation v. Jantzen.

"In order to reconfirm that the 'need' exception was intended to apply to subsistence hunting, Congress amended section 10 of the 1925 Act to allow Natives to take birds and animals out of season 'when...in need of food and other sufficient food is not available'. Act of October 10, 1940, ch. 845, 54 Stat. 1103-4." (Page 16).

"In the absence of regulation to the contrary, subsistence hunting of migratory birds for nutritional (as opposed to cultural or other) needs remains legal." (Page 22).

LETTER OF INTENT -- HE 288

It is the intent of the Legislature that the needs criteria provided for in Section 16.05.262 be consistent with the customary and traditional language provided for in federal legislation and with customary and traditional uses of wild food resources by those in need as evidenced by An Act to Prevent the Extermination of Fur-bearing Animals in Alaska, ch. 139, 16 Stat., 180 (1870); An Act for the Protection of Game in Alaska, ch. 1037, 32 Stat., 327 (1902); An Act for the Protection of Game in Alaska, ch. 162, 35 Stat., 102 (1903); An Act to Protect the Seal Fisheries of Alaska, ch. 183, 34 Stat., 326 (1910); An Act to Establish an Alaska Game Commission, ch. 75, 43 Stat., 744 (1925).

I suggest that in view of the current financial state of the state that your committee determine how much income the state lost last year by bases on non-residents from hunting in certain areas and how much it will lose under this legislation

Senate panel OKs subsistence bill

By SUE CROSS
The Associated Press

JUNEAU — A bill that would re-establish priority subsistence hunting and fishing rights for rural Alaskans passed Tuesday through the Senate Resources Committee, which once was thought to be its last major hurdle.

Senate leaders now say the subsistence bill (SCS CSHB288) will be considered in at least two more committees before it can be voted on the Senate floor, and say it may not be voted on until near the end of the session.

The Resources Committee, in its last look at the measure, adopted an amendment offered by Sen. Vic Fischer, D-Anchorage. The amendment specifies that the Board of Fisheries must consider personal-use fishing along with sport and commercial fishing when drafting regulations.

Fischer said the amendment does not give personal use fishing priority over commercial or sport uses, or even require that it be considered equally with the other uses.

However, it does create a specific category for personal use, which is the catching of fish for personal or family

consumption by methods more efficient than rod and reel, as are used in sport fishing.

Fischer also expressed what seemed to be the committee's opinion in forwarding a bill that has been rewritten numerous times since the Senate began considering it in January.

"I think we've come a long way toward creating a bill that, while it may not please everybody, is something we can live with," he said.

The committee also adopted an amendment offered by Sen. Jack Coghill, R-Nenana, that includes bison as an example of stocks that would not be identified as subsistence stocks by the Board of Game. Coghill said he just wanted an extra assurance that bison would be hunted only under nonsubsistence regulations.

Sen. Pat Rodey, D-Anchorage, said he could not predict what kind of reception the bill will get in the Judiciary Committee, which he heads and which is to look at the bill next.

"I have no specific plans at this time," Rodey said.

(1) Past use, (2) present need should be the only criteria for subsistence use

Our First Birthday



Pat Winhold

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"The..."*

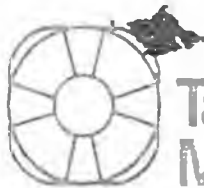
*on the banks of...
hand to speak!*

*As you will
return once a day*

VISA

Bertel-Konai - Pat now, etc are not rural!

1112 43288



Tacoma
Marine/Cordova

3-20-85

SENATOR PAT ROBEY
CHAIRMAN SENATE JUDICIARY
ALASKA STATE LEGISLATURE
POUCH V
JUNEAU ALASKA 99811

Dear Senator Pat Robey;

I am very concerned about the new subsistence ruling. If it is not changed back to rural, it could wipe out Cordova's economy this year.

As you know, Cordova survives from commercial gillnetting on the Copper River Delta. Commercial fishing is our only industry. If gillnetting is cut back or discontinued it will spell disaster for Cordova this summer. We have no winter industry or fishing.

It is very important for Cordova that emergency legislation be completed before May 15-85. Please do all you can to support S.B. #231.

I see S.B. #231 is getting bogged down in various committees. Please help. We can't afford to lose this year's gillnet season.

Sincerely,
Frederick S. Newirth
Manager

FREDERICK S. NEWIRTH

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 21, 1986

The Honorable Patrick Rodey
Alaska State Legislature
P.O. Box V - State Capitol
Juneau, Alaska 99811

Re: SCS CSHB 288:
Subsistence bill
AG File 663850375

Dear Senator Rodey:

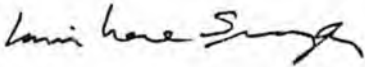
In order to assure that the Department of Law has a complete record of the history of the subsistence legislation, I would appreciate receiving copies of the tapes of any hearings and meetings held by your committee on SCS CSHB 288, and copies of any log notes and minutes.

Thank you very much.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


Larri Irene Spengler
Assistant Attorney General

LIS:rn

cc: Art Peterson

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

FOUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 18, 1986

Chairman Pat Rodey
Senate Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: HB 288

Dear Sir,

My name is Lee Stephan, I'm an Alaska Native Leadership participant (ANLP) for the 1985-1986 session. We were present in the Senate and House floor's and were individually introduced during the week of March 10, 1986. I am from Eklutna Village/Chugiak Area district unknown. I am writing in regards to HB 288, " An Act relating to the taking of fish and game for subsistence and personal use." My personal opinion of this bill is it attacks all Alaska Natives rights to be who they are. It sets a precedent to the beginning of eliminating the traditional Alaska Native life style no matter where we are located.

In the recent efforts to retain our culture, tradition, heritage and life style this bill strives to do the opposite. How would you appreciate someone telling you, you can't eat beef, chicken or pork you must eat seal, whale and fish? The foods eaten by native people has also to do with our general health, availability of alternative resources, how wealthy one is does not consider this aspect.

In the Constitution of the United States of America it says something to this effect, "We the people whom are created equal...".

On behalf of the people who developed this constitution Mr. Stewart signed the Treaty of Cessions which stated something to this effect, the aboriginal people of this territory shall be left alone as they always were. I believe they were referring to life style, traditions, culture, ect.

Again on behalf of the U.S. of America Mr. Nixon signed the Alaska Native Claims Settlement Act (ANCSA) which stated about the same thing(1971).

And still yet American National Interest Lands Conservation Act (ANILCA) this commitment was again reaffirmed on behalf of the people whom abide by the U.S. of A. constitution.

But now (1986) that a hand full of people whom do not abide by their word have a seemingly loud voice, our law makers are considering breaking still another agreement with native people.

From what I have learned while in Juneau the subsistence question seems to break down into four parts. 1) Geographical Area hense urban & rural 2) Traditional, Customary 3) Wealth, availability of alternate resources and, 4) Local residency.

Cont. Page 2

I am of the belief that Alaska Natives, be they Inupiak, Yupik, Aleut, Athabascan, Tlingit, Haida, Tsimpshian have superseding precedence no matter of our wealth, tradition, location, or residency. (See U.S. of A. Constitution, Treaty of Cessions, ANSCA, and ANILCA.)

What question you are trying to settle here is subsistence used by other nationalities who migrated to Alaska and settled either urban or rural areas.

Subsistence uses are defined by state law as the "customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, transportation, for the making and selling of hand crafted articles out of non-ateable byproducts of fish and wildlife resources taken for customary trade, barter or sharing for personal or family consumption."

Yes I grant you that in this day of over population and the western idealisms and values you should identify fish populations and games stock which are customary and traditionally used for subsistence and implement harvesting regulations. Native value was to take only what you need, kill only what you will eat but the western world introduced completely different values.

But to begin making different classes of native people by inserting rural goes against what America stands for. (See AS 16.05.330 Section 7. You people can't seem to get over the notion there should be different classes of people.)

If HB 288 is approved, AS 16.05.258(b) "Reasonable opportunity to satisfy the subsistence uses." Again you impose upon us your domination, consider whom is on the board whom decides if there has been a reasonable opportunity when they would permit this so called reasonable opportunity and this section is contradictory to why this law is being introduced.

I suppose subsistence reg's. would only be imposed upon the findings that the resource was low. But in the same breath you say you would then allow for others lower priority uses also.

Some peoples reasonable opportunity definition may be "one day" and then you "allow".

AS 15.05.258(c)

Tier II We in Eklutna Village, 27 miles N.W. of Anchorage have customary and sometimes direct dependency, are local residence and at times have alternatives depending on cash flow, but are under the, "personal use", category which is not to our best interests.

Tier II also hits the nail on the head! Quote the effect of this will be to leave more game for sports hunters unquote. This bill is not for subsistence users but for the sports hunters benefits.

AS 16.05.330 the boards are required to adopt a permit program when the subsistence preference requires reduction in the harvest by non-subsistence users. Think of

Cont. Page 3

the things a basically white dominated board can do with that.

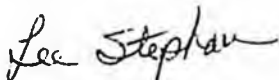
Section 9 AS 16.05.940 "Personal Use fishing", we have a commercial fishing sign, but put up fish (subsistence), and sell some of it. We fish below Eklutna Village in the Knik River and hook and line also. Under personal use, when fish and game gets low we; Eklutna, Cooper Center, Minto, Mentasta, Keniatze, and other chesi Tribes, shall have to have the second opportunity to feed our families after, "rural subsistence", preference has been "reasonably" exercised, along with the now majority uses. (ie; sports hunters, catch and release, ect..) We in these areas, (see Ak. Dept. of Fish and Game, Div. of subsistence, traditional resource uses in Knik Arm area: History & Contemporary patterns, Technical paper #25 by James A. Fall, Juneau office) Live the traditional life style, with these days of shrinking job opportunities, welfare, food stamps, social services, ect.. you take away our traditional right we basically starve. (See native hire statistics present time then project.)

What is also disturbing is you are trying to regulate what I can give away, and if I can give away anything. Availability of Alternative resources is a good line. When times were bad we would eat squirrels and not moose, because there was no moose. Think on that a while.

My personal recommendation as a registered voter in this state and a Alaska Native, of the Athabascan tribes is to rewrite or vote against this bill.

Thank you for your kind consideration pertaining to this matter.

Sincerely,



Lee Stephan
Executive Director
Ikluat INC.
ANLP 1985-1986

CC: Frank Ferguson - Note: Mr. Ferguson please distribute to
all bush caucus members.

Rick Halford
Tim Kelly

BIRCH CREEK VILLAGE COUNCIL
Birch Creek Village
March 20, 1986

Senate Judiciary Committee
Room 504 - Capitol Building
Juneau, Alaska 99811

ATTN: *Senator Patrick Rodey*

Dear *Senator Rodey*:

Recently, Statewide Village Delegates gathered in Juneau for the annual "Village Participation Workshop", sponsored by Rural Cap, to discuss common problem areas and methods that Village Councils could use to voice their concerns and actually gain recognition.

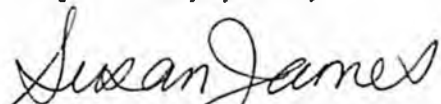
One of the major issues was SUBSISTENCE, Alaskan Natives are deeply concerned about the possibility of "traditional Hunting and Fishing" becoming absorbed into a single, statewide system. Rural Alaskans would no longer be given priority for SUBSISTENCE Hunting and Fishing.

Traditionally, the Alaskan Natives have depended on - and still depend on - Fish and Game as a source of Bartering and Trading; Food; Tools; Clothing; Equipment (sleds, snowshoes, canoes, etc.); Cash for items otherwise unobtainable. No true Alaskan Native would wantonly harvest Fish and Game. The harvesting of Fish and Game occurs seasonally or "in time of need". To take Fish and Game for any purpose other than SUBSISTENCE, such as Sports or Trophy Hunting, would be contrary to the very fabric of Native Lifestyle.

We urge our State leaders, those people who have within their power to decide what SUBSISTENCE is and can control the harvest of Fish and Game to take into consideration, that rural Alaskans are not wealthy, the majority of us live in remote areas, most rural Alaskans are economically deprived; therefore, we must be able to subsist for our livelihoods as we have done for centuries. SUBSISTENCE is an economy to rural Alaskans; Bartering and Trading natural resources provides Social and Economic ties between communal groups. If the right to subsist is taken from us, you will have removed an integral part of the Alaskan Native Culture.

We, as people of the land, ask that you take into consideration the tradition of hunting and fishing by Alaskan Natives, and understand that you dealing with the very economical ~~state~~ of our society.

Respectfully yours,



Susan James, Vice President
Birch Creek Village Council

On behalf of Group #8 of the
Village Participation Workshop
sponsored by Rural Cap

cc: Representative Kay Wallis
Senator John C. Sackett
Senator Robert H. Ziegler, Sr.
Senator Rick Halford
Senator Jan Faiks
Senator Tim Kelly
Senator Patrick Rodey
Terry Gottstin, Rural Cap

Naparyarmiut

City of Hooper Bay
P.O. Box 37
Hooper Bay, Alaska 99604
(907) 758-4311/4331

The Honorable Patrick Rodey
Alaska State Senator
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

March 21, 1986

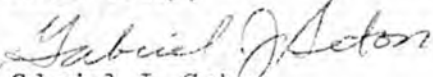
Re: Governor's Subsistence Bill and Senate Resource Committees' version

Dear Senator Rodey;

We, the governing body of the City of Hooper Bay, hereby request your support for the above referenced subsistence bill.

Our subsistence rights are an essential part of the government and should be respected.

Yours Truly;



Gabriel J. Seton
Mayor

cc. The Honorable Bill Sheffield, Governor
The Honorable Frank Ferguson, Ak St. Senator
The Honorable John Fuller, Ak St. Representative
Hooper Bay City Council

TESTIMONY BEFORE THE ALASKA STATE SENATE JUDICIARY COMMITTEE

April 2, 1986

Good afternoon Mr. Chairman, members of the Committee.

My name is Vernita Zilys. I serve as Director of the Subsistence and Natural Resources Department for the Rural Alaska Community Action Program, better known as RurAL CAP. I'm also staff to the Rural Alaska Resources Association. RARA, as that organization is better known, has members representing rural areas statewide.

We have been keeping an eye on the subsistence bill as it passes through the legislature because our constituency consists of thousands of Alaskans who derive their living from the land. In recent weeks, I am reminded of a saying that goes, "Laws are like sausages - it is better not to watch them being made." (As an observer new to the process by which ideas become laws in Alaska, I hope you will share the humorous side with me.)

The latest ingredient added to the subsistence legislation before you today will make some hot, hot sausage: I refer to the amendment offered by Senator Halford last week. We should review this amendment in the context of the presentation given to the Senate Resources Committee (which Mr. Halford also serves) by the Interior Department's Assistant Secretary last month. Clearly, a bill containing the language recommended by Mr. Halford would not ^{comply} with the interpretation of the Alaska National Interest Lands Conservation Act given by Mr. Horn on March 26th. The Rural Alaska Resources Association, as well as RurAL CAP, are in complete agreement with Mr. Horn's interpretation of the federal law on subsistence.

In the abstract, it is difficult to see the way the subsistence economy works. We have evidence from history which tells us that such an economy worked to keep people alive long before there was cash, grocery stores or restaurants. Many people would prefer to make history out of something which, in fact, is still very much alive. Although many who live off the land have come to depend on money to help them continue to do so, they still

derive the majority of their livelihood directly from the taking of fish, game and other natural renewable resources.

Let me use a particular definition of the word "economy" to make a point I feel has not yet been made emphatically enough in this debate. "Economy" deals with the production, distribution and consumption of goods and services. Since last February, I see the subsistence economy being treated as though it means only the consumption of fish and game. In truth, people who subsist by using fish, game and other resources participate peripherally in the cash economy, and the ways in which they produce, or harvest resources differ from the ways cash resources are derived from both renewable and nonrenewable sources. Likewise, the distribution of goods and services is strikingly different when compared to an economy based on livelihoods gained from wages.

Our distribution system has been treated as a curiosity by anthropologists; as an example of our primitive naiveté by cash economists; and as an unimportant facet of our society by some lawmakers who refuse to accept the validity of the subsistence economy. I refer to a distribution system that allows for communal uses of the harvest, yes, but also to the sharing of resources, including cash, that make a harvest possible in the first place.

Look at a caribou hunt: in Unalakleet, my hometown, the caribou have arrived for the first time in fifty years. The people are jubilant - for once they will not have to travel upwards of three hundred miles to get one of their favorite foods. Some people are a little downcast, at first - the younger ones, especially, who have not yet learned the way subsistence works. They think because they have no money, they will not get caribou to eat. What they quickly observe is that anyone who wants to, can hunt. The hunters go from house to house, or call each other on the phone, or meet each other in the street to plan to hunt together.

Some of those hunters are also workers for cash, whether full-time or part-time or seasonally. But unlike most heads of household in the cities, they will not pay what, in the bush, can be exorbitant, freight-inflated prices for ground beef or chicken from the store. Instead, they say to a friend, or a relative, or someone they know has little or no cash, "If I pay for gas, will you hunt for me?" or "I'll buy you ammunition if you share your caribou." Lots of times, several hunters get together and pool what money they do have so all of them can hunt.

Do you imagine that, if seven hunters go out and only four of them shoot caribou, that three hunters will come home to their families with no meat? The subsistence economy, unlike the purest form of the cash economy, does not operate on the principle of individual achievement for individual gain. Every hunter gets a share, enough to feed himself and others dependent upon him. In addition, most take a portion of their own share to others in need: widows, orphans, or the disabled.

Unless this form of distribution, which still operates in many, many communities in Alaska today, is understood, I fear we will continue to see threats to the subsistence way of life. Try to see the effect an amendment such as the one Senator Halford proposes, will have on people who survive by sharing. Subsistence is not a welfare economy; one should not have to be poor to qualify to participate. Accepting subsistence as an economy, then compare the reaction of those who participate in the cash economy if someone were to tell them that, by law, they could not support themselves within that economy unless they were destitute, below the federal or state poverty guideline!

If you abolish the ability of people who make money to share their cash resources so others can eat, who will take up the slack? Someone who was once able to use his or her money to enable others to fish and hunt is not likely to dole out cash for nothing. At present, cash can buy gas and ammunition and nets to be used by some for the benefit of many. Insert Senator Halford's amendment, and those who can share today, will not be able to do so if that amendment is adopted by the legislature.

The "slack" I spoke of will be taken up by an increase in the burden to the State of Alaska. Whether this burden takes the form of capital improvement projects to create jobs (or other ways to provide jobs), or an increase in the social burden of welfare would remain to be seen. But we all can see that, with the continuing decline in State revenues, even those recourses may be fantasies.

Last week the federal government made clear their intent to carry out their promise to manage fish and game in Alaska in the absence of an acceptable subsistence bill passing the legislature this session. Their action, I stress, would be to carry out not a threat but a responsibility they have recognized for a hundred years and more. It is not likely that they take this responsibility lightly - indeed, Assistant Secretary Horn elucidated their position in firm language.

Subsistence has come to be viewed as a bonus the government allows; for many people on the land, however, subsistence is a provenance of the land itself. While we recognize the authority of both the State and the federal governments to protect resources used for subsistence, ultimately the resources themselves govern us. They are our life; they are our food; and we truly are what we eat.

Thank you for this opportunity to speak to you.



Grand Camp
Alaska Native Brotherhood

ALASKA NATIVE BROTHERHOOD AND SISTERHOOD
73RD ANNUAL CONVENTION
KLAWOCK, ALASKA
NOVEMBER 11-16, 1985

RESOLUTION NO. 30

TITLE: Grand Camp Support of HB-288 and SB-231 - Subsistence

WHEREAS, The native peoples of Alaska, citizens of the United States and the state of Alaska, both enjoy and implement the duties thereof, and

WHEREAS, The economic system of the United States is one based on monetarism and rights of possession, and

WHEREAS, Monetarism and some rights of possession are recent acquisitions of Alaska's native peoples, and

WHEREAS, There are dietary nutritional needs, biological adaptations, and cultural mandates involved in the rural subsistence way of life, and

WHEREAS, The majority of Alaska's native people are rural, and

WHEREAS, The rural economy is one primarily based on subsistence, and

WHEREAS, There are limited alternatives available to meet the nutritional needs and health and well-being of Alaska's rural population, and

WHEREAS, Most other introduced nutritional supplements resulted in health related burdens to society, and

WHEREAS, The Grand Camp Alaska Native Brotherhood and Alaska Native Sisterhood has concern for its people and others, NOW

THEREFORE BE IT RESOLVED that the Alaska Native Brotherhood and the Alaska Native Sisterhood in Convention assembled at Klawock, Alaska during the week of November 11-16, 1985 support and urge passage of HB-288 and SB-231, maintaining stability by returning the subsistence preferences and procedural protections to rural Alaska.

ATTEST:

I certify that this resolution was adopted by the ANB-ANS Grand Camp in Convention at Klawock, Alaska during the week of Nov. 11-16, 1985.

Ronald Williams

Ronald Williams, Grand President

Albert Kookesh, Grand Secretary

Past ANB Grand Presidents
Roy Peratrovich
Alfred Widmark
Cyrus Peck

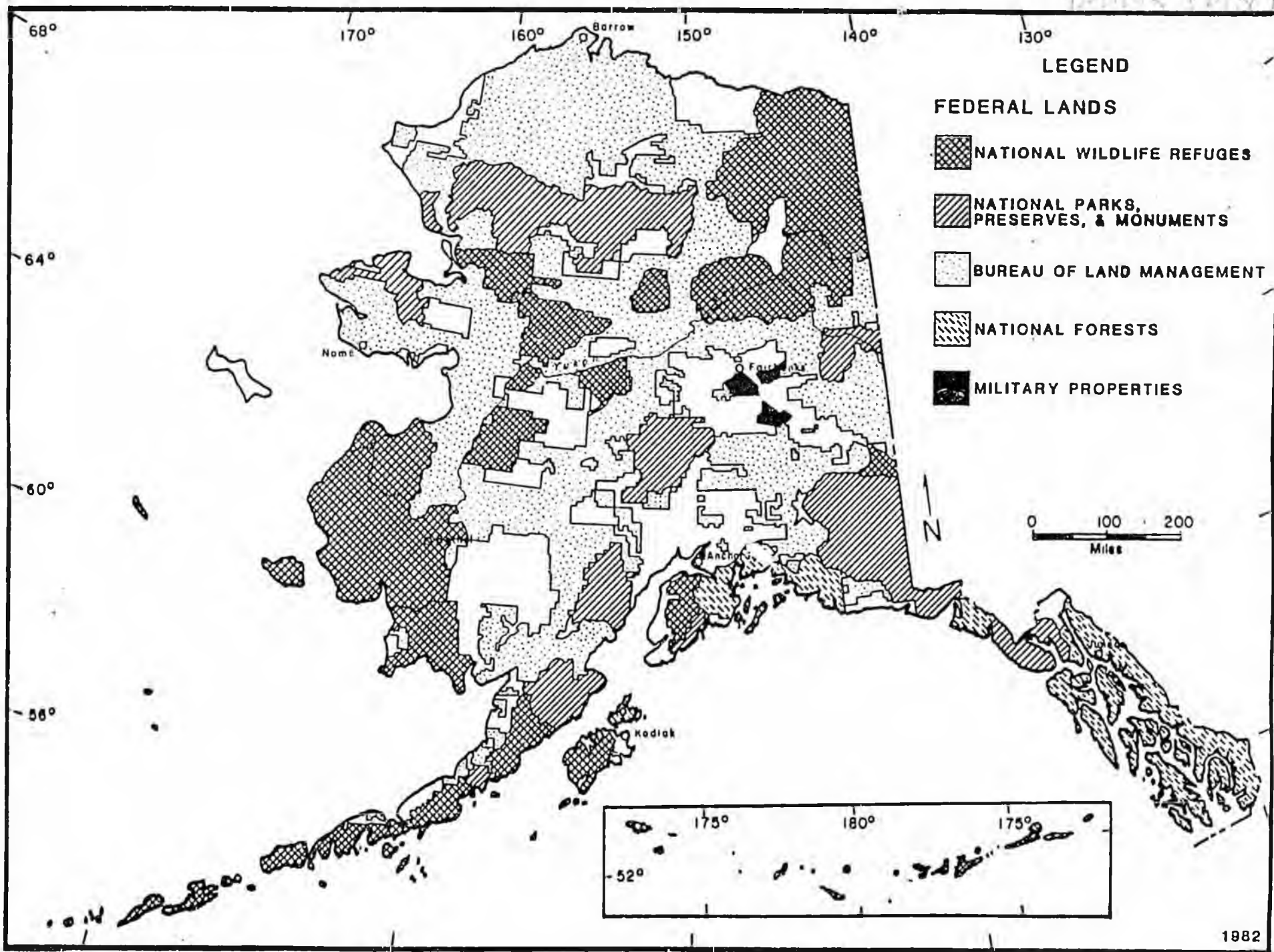
Frank Peratrovich
Patrick J. Paul
Thomas Jackson
John Hope

Frank See
Walter Soboleff
Richard Still
Steven V. Hatch

Nelson D. Frank
Frank O. Williams
Herbert Hope
Robert R. Martin

Roy Peratrovich Grand President Emeritus
Cyrus Peck Sr. Grand Secretary Emeritus
Mildred Spares ANS Grand President Emeritus

HB 288
Dennis Kolsch





44-323

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

In Reply Refer To:
FWS.CW.0136

APR 04 1986

Mr. Harold M. Brown
Attorney General
State of Alaska
Juneau, Alaska 99811

Dear Mr. Brown:

The Solicitor has asked that I respond to your February 6, 1986, letter concerning our interpretation of certain provisions in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. §§ 3111-3126. As you noted, William Horn, the Assistant Secretary, Fish and Wildlife and Parks, informed Governor Sheffield on September 23, 1985, of his determination that Alaska's subsistence program is no longer in full compliance with the requirements of Title VIII of ANILCA. That determination was based on the interpretation given by the Alaska Supreme Court to the Alaska subsistence statute in Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). Assistant Secretary Horn's letter stated that the Department of the Interior would be forced to take over administration of subsistence use on public lands if the State program were not brought back into compliance with ANILCA by June 1, 1986.

Title VIII of ANILCA provides that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be given a preference over taking for all other purposes. Title VIII also contemplates that the State of Alaska will enact and implement a subsistence system that is consistent with ANILCA's requirements. If the State does so, the State shall regulate subsistence use and the subsistence preference on both public and non-public lands.

In 1982, the Department of the Interior found that the State subsistence program was consistent with ANILCA's requirements and the State has therefore been regulating subsistence use on both public and non-public lands. That finding was based in part on certain State regulations that effectively limited the eligibility for the subsistence preference to rural residents. In Madison, however, the Alaska Supreme Court ruled that these regulations were inconsistent with the State statute, which on its face does not limit subsistence preference eligibility to rural residents.

The State legislature did not in 1985 pass legislation addressing the problems identified in the Madison decision; the legislature is, however, currently considering legislation to cure the Madison problems and address other subsistence issues as well. As your letter notes, the Department of the Interior will have to review any State subsistence bill that is enacted to ensure that it is consistent with ANILCA's requirements. The State understandably wishes in advance to have some sense of how these legislative responses to Madison might be received by the Department. For this reason, you have asked us to address several questions pertaining to the fundamental subsistence requirements of ANILCA. As you know, Assistant Secretary Horn appeared before the State Senate Resources Committee on March 5, 1986, to answer a series of questions on subsistence issues. Mr. Horn had discussed these issues at length with me and my staff prior to his appearance before the committee. My answers to your questions, which I have discussed with Mr. Horn, should be taken as supplementary to and confirming of the answers he gave before the committee. The questions raised in your letter, together with our answers, are as follows:

1. Does ANILCA require that "subsistence uses" be limited to customary and traditional uses of fish and game by residents of rural Alaska?

ANSWER: Yes. Section 803 of ANILCA, 16 U.S.C. § 3113, defines "subsistence uses" to mean "the customary and traditional uses by rural Alaska residents of wild, renewable resources...." Determination of customary and traditional use levels of particular populations requires reference to historical use patterns and the potential for natural shifts in use patterns, but should not focus on any specific era or year as the sole benchmark of subsistence use. For instance, overharvesting of a particular population may have reduced or even eliminated subsistence uses that would have been evident with a relatively healthy population and that would again be evident if the population were replenished. In still other cases, a species such as the caribou that is clearly the subject of subsistence uses may shift geographically to an area that had not previously been identified as part of its habitat. In each of these cases, a determination of customary and traditional use levels should include consideration of whether current use levels may be depressed below true customary and traditional use levels or whether the use levels reflect an unexpected but nonetheless natural shift in a species' habitat.

2. Does ANILCA require that takings for subsistence uses as defined in ANILCA be afforded a priority over takings for other uses whenever it is necessary to restrict the harvest to protect the resource or the continuation of subsistence uses?
3. Does ANILCA require that the priority operate to provide reasonable opportunity for all subsistence uses even if that means restricting or eliminating takings for other purposes before any subsistence use is restricted?

ANSWER: Yes on both questions. Section 804 of ANILCA, 16 U.S.C. S 3114, provides:

Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources

Section 804 clearly establishes a priority on public lands in favor of taking of fish and wildlife for nonwasteful subsistence uses over taking for other purposes. The priority does not come into effect with respect to fish or wildlife populations that are sufficient in number to sustain a harvest by all persons engaged in subsistence and non-subsistence uses. S. Rep. No. 413, 96th Cong., 1st Sess. 269 (1979); 126 Cong. Rec. 29280 (1980) (Statement of Rep. Udall). The subsistence preference does require, however, that if a harvest by all persons would harm the continued viability of a fish or wildlife population or harm continued subsistence uses of the population, then all taking of the population for non-subsistence purposes must be eliminated before subsistence uses may be restricted. S. Rep. No. 413, 96th Cong., 1st Sess. 269-270 (1979); 126 Cong. Rec. 29280 (1980); H.R. Rep. No. 97, Part I, 96th Cong., 1st Sess. 280 (1979); S. Rep. No. 1300, 95th Cong., 2d Sess. 221 (1978).

4. Do the provisions of ANILCA § 804 apply to each fish stock and game population which is the subject of subsistence uses?

ANSWER: Yes. On its face, the section 804 subsistence preference functions to protect continued subsistence use of fish and wildlife populations, rather than fish and wildlife in general:

Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses....

(Emphasis added). Moreover, the legislative history of section 804 shows that Congress intended the subsistence preference would protect subsistence uses of particular populations. For instance, the Senate Committee on Energy and Natural Resources Report states:

If a particular fish or wildlife population (e.g. salmon, moose or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the State rulemaking authority. However, if the continued viability of a particular population or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons, the State rulemaking authority, in conjunction with the recommendations of the regional council representing the affected area, is required by this section to establish regulations which restrict the taking of such population to Alaska residents engaged in subsistence uses.

If "subsistence uses" must be further restricted to protect the continued viability of the population or to ensure the satisfaction of rural subsistence needs, the State rulemaking authority, in conjunction with the recommendations of the regional council, must limit such uses to local residents of the affected area, or, if necessary, only those local residents with the most customary and

direct dependence on the population as the mainstay of livelihood and with the least access to alternative food supplies.

S. Rep. No. 413, 96th Cong., 1st Sess. 269-270 (1979) (emphasis added); see also H.R. Rep. No. 97, Part I, 96th Cong., 1st Sess. 280-281 (1979); S. Rep. No. 13400, 95th Cong., 2d Sess. 221-222 (1978). These statements are buttressed by Representative Udall's explanation that:

[t]he subsistence preference applies to individual wildlife populations and fish, and State regulation of the taking of each population and stock must be consistent with section 804.

The State must first identify the customary and traditional uses of each population and stock by rural residents.

126 Cong. Rec. 29279 (1980) (emphasis added).

Established customary and traditional uses of particular fish and wildlife populations therefore may be restricted only as set forth in section 804. Conversely, particular populations that are not subject to customary and traditional uses need not be regulated pursuant to section 804.

5. Does ANILCA authorize a durational rural residency requirement in identifying who may engage in subsistence uses?

ANSWER: No. The legislative history of the "subsistence uses" definition states explicitly that the reference to "rural residents" in section 803 "is not intended to impose a 'durational' residency requirement... or impede the traditional movement of Alaska residents between the rural areas and major population centers and vice versa." S. Rep. No. 413, 96th Cong., 1st Sess. 233 (1979); see also 126 Cong. Rec. 29279 (1980). ANILCA does, however, authorize consideration of the location of a person's primary or principal residence in determining whether that person is a rural resident of Alaska and therefore is eligible for the subsistence preference. H.R. Rep. No. 97, Part II, 96th Cong., 1st Sess. 192 (1979). For instance, a person whose permanent residence is in Anchorage, but who spends some time each summer in a rural area, would not be a rural resident eligible for the subsistence preference. We believe that means other than a durational requirement may be utilized to determine whether a person's primary or permanent residence is in a rural area of Alaska and whether the person is thus a rural resident.

6. Does ANILCA require that subsistence uses be identified and regulated on a community or area basis?

ANSWER: Yes. Representative Udall stated:

that customary and traditional subsistence uses must be evaluated on a community or area basis, rather than an individual basis. If not, ... the Alaska Native subsistence way of life would be terminated in one generation as rural residents with established subsistence uses pass away and their descendants with no established customary and traditional uses take their place in the subsistence cycle.

126 Cong. Rec. 29279 (1980). Representative Udall's statement reflects earlier legislative history that stresses the importance of protecting continued subsistence uses in particular areas.

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation.

S. Rep. No. 413, 96th Cong. 1st Sess. 269 (1979); see also H. R. Rep. No. 97, Part I, 96th Cong., 1st Sess. 279-280 (1979); S. Rep. No. 1300, 95th Cong., 2d Sess. 221 (1978).

7. Does ANILCA authorize only "important" subsistence uses to be subject to the protections of the subsistence law?

ANSWER: No. Section 803 defines "subsistence uses" to mean "customary and traditional uses ... of wild, renewable resources," and section 804 requires that "nonwasteful subsistence uses" be given a preference over other uses. The plain meaning of these provisions dictates that all "subsistence uses" as defined in section 803 qualify for the section 804 subsistence preference. To the extent that a particular population is relatively unimportant for subsistence purposes, this should be reflected in relatively low customary and traditional use of the population. Yet however low the customary

and traditional use might be (i.e., however "unimportant" it might be), section 804 requires that the opportunity to make the use be given an absolute priority over non-subsistence uses.

The "importance" of particular subsistence uses can come into play under section 804 when, even though all non-subsistence uses of a particular population have been eliminated, restrictions on subsistence uses of the population are needed in order to protect the continued viability of the population or to insure the continued subsistence uses of the population. As required by section 804, restrictions on subsistence uses of that population must be based on (1) customary and direct dependence upon the population as a mainstay of livelihood, (2) local residency, and (3) availability of alternative resources. These criteria provide indirectly the only means that the importance of particular subsistence uses may be employed to restrict subsistence uses. Of course, this may occur only after all non-subsistence uses have been eliminated.

8. Is the subsistence priority in ANILCA limited to a priority over other consumptive uses, or would it include a priority over other takings, such as catch-and-release fishing?

ANSWER: Section 804 of ANILCA provides that taking for nonwasteful subsistence uses shall be accorded priority over the "taking" for other purposes. Section 102(18) of ANILCA, 16 U.S.C. § 3102(18), defines "taking" to mean "to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct." Section 804 thus might be interpreted as requiring that the subsistence preference apply with respect to any non-subsistence taking, regardless of whether that taking might be consumptive.

It appears, however, that Congress actually intended the subsistence preference to apply only to consumptive non-subsistence uses. In describing subsistence policy, ANILCA section 802(2), 16 U.S.C. § 3112(2), states:

nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands 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, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses.

(Emphasis added). See also S. Rep. No. 413, 96th Cong., 1st Sess. 268 (1979); H.R. Rep. No. 97, Part I, 96th Cong., 1st Sess. 279 (1979); S. Rep. No. 1300, 95th Cong., 2d Sess. 220 (1978). In addition, the clear intent of the subsistence preference is to restrict and even eliminate those non-subsistence uses that compete with subsistence uses. By definition, nonconsumptive uses such as catch-and-release fishing should have little if any effect on populations that are the subject of subsistence uses. The continuation of nonconsumptive uses therefore should not interfere with subsistence uses, nor should their elimination benefit subsistence uses.

We conclude that the subsistence preference may be limited to a preference over consumptive non-subsistence uses.

9. Does ANILCA require that fish stocks and game populations can be harvested for subsistence uses only by people living in the immediate vicinity of the stocks and populations?

ANSWER: No. Nothing in the definition of subsistence uses or in the subsistence preference indicates that subsistence uses are limited to uses only by persons living in the vicinity of the resource. The section 803 definition of "subsistence uses" is not limited to uses in the vicinity of the user's residence, thus implying that customary and traditional uses a distance from the place of residence are included. The history of subsistence in Alaska shows that residents of some rural areas have customarily and traditionally traveled to locales away from their place of residence to harvest subsistence resources. Such uses are entitled to the subsistence preference. Movement that has no customary and traditional antecedent, however, would not be so entitled.

Section 804 implicitly recognizes that customary and traditional use may occur away from the place of residence by employing local residence as a means of determining the priority among different subsistence users in a time of resource scarcity. If uses by non-local residents could not be subsistence uses within the meaning of ANILCA, then Congress would have had no need to use local residency as a means of differentiating among competing subsistence users.

10. Would defining "subsistence uses" in terms of individual need be consistent with ANILCA?

ANSWER: No. As stated above in response to Question 6, ANILCA does not permit subsistence uses to be assessed on an individual basis; they must be assessed on a community or area basis. Moreover, the statutory definition does not refer to consideration of need or dependence in the process of identifying

subsistence uses of particular resources. The legislative history indicates clearly that "regulatory systems which employ income requirements [may] not be imposed upon rural residents," and that determination of customary and traditional uses may not be based upon "any form of economic or other need." 126 Cong. Rec. 29279 (1980). The legislative history also acknowledges, however, that economic dependence, one of the section 804 criteria, is relevant to regulatory determinations of subsistence uses. As stated in the final Senate Committee report:

The factors of local residence, economic dependence, and availability of alternative resources have been included in section 804 rather than in the definition. Although a truly comprehensive definition of "subsistence uses" must include a mix of those factors, the committee has determined that they should be incorporated through appropriate action by the State rulemaking authority in conjunction with the recommendations of the regional councils established pursuant to section 805 to implement the subsistence preference set forth in section 804. Sections 803-805 are intended to establish a dynamic process for the regulation of subsistence resources and uses which will enable rural people to participate in the decisionmaking process of the State rulemaking authority in the inclusion of the local residency, economic dependence, and availability of alternative resources factors into the definition of "subsistence uses" on a case-by-case basis to meet the needs of a particular management situation in a particular area.

S. Rep. No. 413, 96th Cong., 1st Sess. 269 (1979). We interpret this language to mean that Congress expected that rulemaking actions by the Boards of Fisheries and Game to implement the section 804 subsistence preference would, through consideration of the economic dependence factor, have the practical effect of including that factor into the subsistence uses definition "on a case-by-case basis to meet the needs of a particular management situation in a particular area." Id. We do not interpret this language as authorizing the inclusion of an economic need criterion into the statutory definition of subsistence uses.

I appreciate the opportunity to explain our interpretation of the requirements set forth in ANILCA. I trust that these answers will benefit the State in its consideration of subsistence legislation.

Sincerely,

[Sgd.] Gale A. Norton

Gale A. Norton
Associate Solicitor
Conservation and Wildlife

cc: Assistant Secretary, Fish and Wildlife and Parks
Director, Fish and Wildlife Service
Regional Director, Fish and Wildlife Service
Region 7, Anchorage, AK

PUBLIC OPINION MESSAGE

TO: SENATOR PATRICK RODEY

FROM: MARY BISHOP
1555 GUS'S GRIND
FAIRBANKS
455-6151

99709

BILL NO: HB 288

SUBJECT: SUBSISTENCE & PERSONAL USE OF FISH & GAME

MESSAGE:

COULD YOU PLEASE GET A COPY OF THE "HALFORD BILL"?
COULD WE GET IT SCANNED UP THRU LIO?
WE'D ALL LIKE TO SEE IT SO WE COULD PROVIDE INPUT

DATE: 04/09/86 TIME: 11:36:52 SENT BY: FAIRBANKS LIO

COPIES TO: SENATOR: RICK HALFORD



Rupe 9-7422
Andrews -

ALASKA OUTDOOR COUNCIL, INC.

3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

January 30, 1986

Mr. Bill Hagar
431 Gaffney Road
Fairbanks, Alaska 99701

Re: Subsistence Bill

Dear Bill:

On January 29, 1986 our informal group met at the regular Wednesday meeting and reviewed the subsistence bill, a copy of which is attached. Please note this bill is only in "draft" form and is the result of a lot of hard work by individuals in our group, including two lawyers.

In my opinion it should be reviewed by the Alaska Legislative Council because of their drafting expertise. If possible, we request that the bill, after review by the Legislative Council, be returned to us for additional review.

It is important for me to emphasize that this bill--which was only recently completed--has not been adopted by the Alaska Outdoor Council. Hopefully, within approximately two weeks, the Alaska Outdoor Council can take a position. Obviously, I cannot advise what that position will be.

The one area our local group differed in was whether the legislature should specifically address which species should be considered subsistence, or whether that issue ought to be left with the respective boards. You will note that the bill--as now written--involves the legislature in that determination. However, this bill also gives the right to the respective boards to add additional species. However, I want to emphasize that this area received considerable debate and this bill, as it relates to that issue, represents the consensus of our informal group--but only by a slim margin. To summarize, let me say that a substantial number of our group wanted the decision to be left entirely with the boards; some of our group wanted the legislature to specifically state what species would be subsistence species, such as moose, salmon, caribou, and marine mammals excluding polar bear; and some members wanted the legislature to specifically exclude, rather than include, certain species which could not be considered subsistence, such as dall sheep, bison, rainbow trout, etc.

You will note that this bill does not give any preference for people who live in rural areas. It was the consensus of the committee that such a provision may be unconstitutional and, in addition, the group simply

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Mr. Bill Hagar
January 30, 1986
Page 2

does not appear to feel that the Alaska Outdoor Council should promote any legislation which would create rural users as individuals having a special preference. It is my personal opinion that an effort to get the Alaska Outdoor Council to support such a proposition would be difficult. I mention this issue because it did come up during the committee discussions and some effort was made to draft a provision which would limit subsistence taking to people that live in clearly-defined and exclusively rural areas. Again, the committee ultimately decided not to use such a provision.

The bill—as presently drafted—is designed to provide a priority for subsistence only for people who can demonstrate an economic need.

I will inform you as soon as I am advised of the position of the Alaska Outdoor Council. It is my understanding that you are forwarding this bill and letter to one or more of our legislators.

Sincerely,

LYLE R. CARLSON
Vice-President Interior Region
Alaska Outdoor Council

LRC/dc

Attachment

cc: Mr. Rupert Andrews
Mr. Robert LaGuire
Mr. Ron Swanson
Mr. Ed Grasser
Mr. Sam Harbo
Mr. Warren Hoflich
Mr. Terrence H. Thorgaard
Mrs. Mary Bishop
Mr. Tom Scarborough
Mr. Stephen Cline

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE--SECOND SESSION
A BILL

Entitled: AN ACT RELATING TO SUBSISTENCE TAKING
AND PREFERENTIAL USE OF FISH AND GAME RESOURCES

*Section 1: Findings and Purpose

(1) The purpose of this legislation is to provide a preference for residents who establish that the gathering of natural foodstuffs is and has been virtually their sole means of support and that they are participants in the cash economy to only a limited extent. These residents are primary subsistence users. The intent is to provide a reasonable opportunity for these residents to harvest for their subsistence needs whenever a harvestable surplus is available.

(2) It is of benefit to the state and its residents that subsistence activities be regulated and continued on all lands possible within the state consistent with sound management of fish and game and the public interest.

(3) The skills and values predominant in the self-reliant subsistence lifestyle are practiced, in varying degrees by Alaska residents throughout the state. Many Alaskans treasure the self-reliant subsistence lifestyle and attempt to keep the skills and values of that lifestyle alive by participating in it to some degree but are unable to depend upon subsistence activities as their sole means of

support. These Alaskans are subsistence users too. The needs of these other subsistence users should also be met.

(4) It is no longer possible, nor in the best interest of the state, to permit, without limitation, a lifestyle requiring a high per capita consumption of fish and wildlife by large proportions of the population and in particular by those who generally live in cities, along highways, and in villages, and who also are able to take advantage of other means of support.

(5) The Boards of Fisheries and of Game must retain sufficient authority, flexibility and information to manage fish and game, maintain sustained yield, healthy populations, and meaningful opportunities for hunting and fishing by all who wish to hunt and fish. Sound management of fish and game will best be achieved if allocation of those resources is done on a state wide uniform scientific basis.

(6) Departmental divisions and their duties are rarely established through statute. They are more often established through executive order and their duties are defined through the respective commissioner's office and through departmental policy.

It appears that the emphasis within the Department is currently unduly focused upon anthropological concerns to the exclusion of other disciplines which are more directly concerned with sustained yield management to benefit all

Alaskans. Therefore one purpose of this legislation is to retain consistency and flexibility within the Department of Fish and Game.

*Section 2: A.S. 16.05.090(c) and AS 16.05.094 are hereby repealed.

*Section 3: A.S. 16.05.257 is hereby repealed.

*Section 4: A.S. 16.05.251(a) is amended to read as follows: (a) The Board of Fisheries may adopt regulations it considers advisable [IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT (AS.44.62)] for

...

(remainder of subsection not changed
and therefore not set out in full)

*Section 5: A.S. 16.05.251(b) is repealed and re-enacted to read as follows:

Whenever a harvestable surplus is available, the board shall provide a reasonable opportunity for primary subsistence users to harvest their subsistence needs. This may or may not require the Board to establish separate preferential regulations governing the taking of subsistence fish by primary subsistence users. Such regulations shall be in accordance with AS. 16.05.251 (a)

*Section 6: AS 16.05.251 is amended by adding a new

subsection to read as follows:

(d) (1) The adequate opportunity to take fish by primary subsistence users for nonwasteful use for themselves and their families constitutes a preference. The preference is not an absolute priority over the taking of fish by other users, and such taking by those other users need not be eliminated before use by primary subsistence users is restricted or regulated.

(2) Upon a showing that the primary subsistence user for which the license has been issued is not physically able to personally take the fish allowed by regulation, the license may be assigned to another qualified primary subsistence user under regulations to be promulgated by the board. Fish taken under such an assignment may only be used by the original licensee or his family.

(3) The board may provide for the issuance to primary subsistence users of yearly subsistence permits for the taking of subsistence fish on an individual or family basis.

*Section 7: AS 16.05.251 is amended by adding a new subsection to read as follows:

(e) (1) All actions taken by the Board of Fisheries pursuant to this section (other than subsection (c)) shall be done in accordance with the Administrative Procedure Act (AS 44.62).

(2) Determinations to be made by the board pursuant to this section are to be made of the basis of whatever information is available within time, budgetary, and other constraints. Regulations shall not be subject to challenge because more complete information was unavailable.

*Section 8: A.S. 16.05.255(a) is amended to read as follows: (a) The Board of Game may adopt regulations it considers advisable [IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT (AS.44.62)] for

...

(remainder of subsection not changed
and therefore not set out in full)

*Section 9: A.S. 16.05.255(b) is amended to read as follows:

Whenever a harvestable surplus is available, the board shall provide a reasonable opportunity for primary subsistence users to harvest their subsistence needs. This may may or may not require the Board to establish separate preferential regulations governing the taking of subsistence game by primary subsistence users. Such regulations shall be in accordance with AS. 16.05.255(a)

*Section 10: AS 16.05.255 is amended by adding a new subsection to read as follows:

(d) (1) The adequate opportunity to take game by primary subsistence users for nonwasteful use for themselves and their families constitutes a preference. The preference is not an absolute priority over the taking of game by other users, and such taking by those other users need not necessarily be eliminated before use by primary subsistence users is restricted or regulated.

(2) Upon a showing that the primary subsistence user for which the license has been issued is not physically able to personally take the game allowed by regulation, the license may be assigned to another qualified primary subsistence user under regulations to be promulgated by the board. Game taken under such an assignment may only be used by the original licensee or his family.

(3) The board may provide for the issuance to primary subsistence users of yearly subsistence permits for the taking of subsistence game on an individual or family basis.

*Section 11: AS 16.05.255 is amended by adding a new subsection to read as follows:

(e) (1) All actions taken by the Board of Game pursuant to this section (other than subsection (c)) shall be done in accordance with the Administrative Procedure Act (AS 44.62).

(2) Determinations to be made by the board pursuant to this section are to be made of the basis of whatever information is available within time, budgetary, and other constraints. Regulations shall not be subject to challenge because more complete information was unavailable.

*Section 12: AS 16.05.340 (a) is amended as follows:

(preceding portion of subsection
not changed
and therefore not set out in full)

...

(7) Indigent license.....(25 cents)

[HOWEVER THE FEE IS 25 CENTS FOR AN APPLICANT WHO IS THE HEAD OF A FAMILY OR A DEPENDENT MEMBER OF THAT FAMILY OR IS SOLELY SELF-SUPPORTING] upon proof presented [BY THE APPLICANT] that the applicant [(A) IS OBTAINING OR HAS OBTAINED ASSISTANCE DURING THE PRECEDING SIX MONTHS UNDER ANY STATE OR FEDERAL WELFARE PROGRAM TO AID THE INDIGENT OR] has an annual family gross income of less than \$5,600 for the year preceding the application.

(8) Primary Subsistence user license.....(25 cents)

upon proof in the sufficiency and form designated by the respective boards that the applicant is a primary subsistence user.

(remainder of subsection not changed)

and therefore not set out in full)

*Section 13: AS 16.05.930 (e) is amended to read as follows:

This chapter does not prevent the [TRADITIONAL] barter of fish and game taken by hunting or fishing, except that the commissioner may prohibit the barter of [SUBSISTENCE-TAKEN] fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

*Section 14: AS 16.05.940 (2) is amended to read as follows:

"barter" means the exchange or trade of fish or game, or their parts, taken for other than commercial[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 the first exchange and of a limited and noncommercial nature;

*Section 15: AS 16.05.940 is amended by adding a new subsection to read as follows:

"family" means those persons

(A) (1) who are related to the individual within the third degree of kindred, or

(2) whom the individual otherwise has a legal duty to support; and

(E) who have lived in the same residence as the individual for at least seven months within the previous year.

*Section 16: AS 16.05.940 is amended by adding a new subsection to read as follows:

"harvestable surplus" means that portion of the fish or game population that can be harvested and still allow the population the following year to persist at an optimum level.

*Section 17: AS 16.05.940 is amended by adding a new subsection to read as follows:

"primary subsistence user" means a subsistence user who,
(a) for the immediately preceding six years at least ninety percent of the animal protein consumption by that user's family has been wild fish or game and
(b) the family has had an annual gross income from all sources of less than \$5,600 for the preceding calendar year.

*Section 18: AS 16.05.940 is amended by adding a new subsection to read as follows:

"subsistence fish" includes all species of salmon and such additional species which the board finds, pursuant to the

Administrative Procedure Act (AS 44.62), to have been commonly used in specific areas for subsistence purposes by primary subsistence users

*Section 19: AS 16.05.940 is amended by adding a new subsection to read as follows:

"subsistence game" includes moose, caribou, all marine mammals with the exception of polar bears, and such additional species which the board finds, pursuant to the Administrative Procedure Act (AS 44.62), to have been commonly used in specific areas for subsistence purposes by primary subsistence users.

*Section 20: AS 16.05.940 is amended by adding a new subsection to read as follows:

"subsistence" means the taking by a state resident of fish or game for personal or family use as human food or clothing.

*Section 21: AS 16.05.940 is amended by adding a new subsection to read as follows:

"subsistence needs" means the quantity of fish and game which if harvested would be sufficient to provide 100% of the animal protein requirement of the primary subsistence user within a year.

*Section 22: AS 16.05.940 is amended by adding a new subsection to read as follows:

"subsistence user" means a resident of Alaska who, takes fish or game for subsistence purposes.

*Section 23: AS 16.05.940 (23) is repealed.

*Section 24: AS 16.05.940 (22) is repealed.

MARCUS F. JENSEN
P.O. BOX 2220
JUNEAU, ALASKA 99803

HE 2803
file

March 18, 1986

To the Editor:

Alaskans pay a heavy price when their leaders have a conflict of interest.

At present a state subsistence bill is in the Senate Judiciary Committee. The history of this subject started in 1977 when Governor Jay Hammond was testifying before a Federal Merchant Marine and Fisheries Committee, August 12, 1977. I had always thought that Governor Hammond was a strong state's rights man. He often voiced his opinion that the state should manage it's own fish and game.

Governor Hammond lives in a rural area, or the so-called "bush", and his testimony was the push needed to help pass the federal subsistence bill that the State of Alaska had been grappling with all these years. The fact the federal government is involved with the state management program rests on his shoulders.

Hammond repeatedly said the state had a workable subsistence program for many years but wanted the heavy hand of the federal government to make workable something that he knew would never go through the legislature of the state.

I always admired Governor Hammond's ability and felt he was a pretty close friend of mine, having known him for many years. I only wish that he could undo what he has started because it is causing friction and always will by dividing the people of this state.

The public would be interested in Governor Hammond's own words during his testimony. I quote from the August 12, 1977 hearing: "The allocation of the resources to be consumed among those who would compete for the right to consume them is a difficult problem at best. I would hope that this Congress establishes a priority of subsistence uses where there is a conflict. I believe that this is a legitimate subject for legislation, and hope that this principle, which has been state policy for some time, might be enacted into federal law." End quote.

I do not think that Governor Hammond was fair to the majority of the people because the testimony at the hearings of the Native Claims Settlement Act was that the 44 million acres was needed for the Natives for subsistence purposes.

The State of Alaska must have a budget of over two million dollars in order to promulgate the state's subsistence section, giving certain people priority in the harvesting of game resources. This does not produce animals, but only creates friction among our Alaska people. If some of this money was spent studying the benefits that could be obtained from using good habitat for game farming, the land would be used better and people would be fed on a good scale. I have been in New Zealand where game farming is a big industry. Alaska could learn a great deal by studying their operation.

MARCUS F. JENSEN
P.O. BOX 2220
JUNEAU, ALASKA 99803

Page 2

Our present Governor Sheffield has some real conflicts of interest, too, and because Alaskans will be going to the polls soon, I think his history in office should be examined.

Governor Sheffield's private business is so closely intertwined with the Native business interests that his decisions most always reflect in favor of the Natives. A good case in point is his recent testimony in Anchorage, on the amendments to the Native Claims Settlement Act. He endorsed all the proposals the Natives asked for, which constitutes a completely new and far-reaching settlement. The fact that the 1971 settlement says that "ALL aboriginal claims for land, fish and game, are hereby extinguished", was not considered.

If adjustments are going to be made a repeal of the subsistence section is the place to start, and easements, and the right of the individual to sell his stock, should be considered.

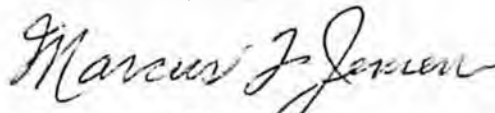
In 1984 the U.S. Fish and Wildlife Service recommended that the state take over management of marine mammals. They listed five reasons why this should happen, and I quote: "The Marine Mammal Protection Act places restrictions upon the federal government that impedes sound management. The State of Alaska has an established history of high quality research and management of Marine Mammals." End quote. Governor Sheffield acted by listening to a few Native villages that are in the black market on ivory, and did nothing.

When it came time for him to take a stand on subsistence, he merely wanted to add the word "rural", to the state bill giving all the advantages to the rural people.

Governor Sheffield's history of favoritism goes on to where he awarded the contract for the Fairbanks office building to his friends. This is still not settled and has cost the State of Alaska considerable amounts of money.

What we need is a governor who is a real Alaskan, knows the people and the country, and has a reputation for being honest.

Sincerely yours,



Marcus. F. Jensen
P.O.Box 2220
Juneau, Alaska 99803

907 789 7853

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF BOARDS

FILE HB 208

BILL SHEFFIELD, GOVERNOR

BOX 3-2000
JUNEAU, ALASKA 99802
PHONE (907) 465-4110

March 17, 1986

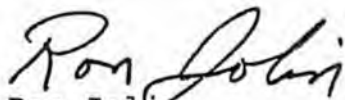
The Honorable Patrick M. Rodey
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Rodey:

The Alaska Board of Fisheries urges swift passage of subsistence legislation currently before the Alaska Legislature. The board is concerned that many fisheries are ongoing or about to commence which can be impacted by the recent series of judicial decisions relating to the current Alaska subsistence law which could significantly disrupt traditional fishing patterns of many Alaskans. Swift passage of legislation currently pending before the Legislature could avoid unnecessary adverse impacts on these participants in many Alaska fisheries.

Further, as time goes on, it will be increasingly difficult for the board and staff of the Alaska Department of Fish and Game to implement legislation due to commitments resulting from ongoing fishing activities.

Sincerely,



Ron Jolin
Chairman
Alaska Board of Fisheries



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

On May 14, 1982, former Secretary of the Interior James Watt certified that the State of Alaska's subsistence program complied with the requirements of sections 803, 804 and 805 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. §§ 3113, 3114 and 3115. Accordingly, the State has for the last three years assumed primary responsibility for the management of the program providing the preference for subsistence uses on the public lands in Alaska. Unfortunately, the Department of the Interior finds it necessary to advise you formally that the State subsistence program is no longer in compliance with the requirements of ANILCA as specified in Title VIII.

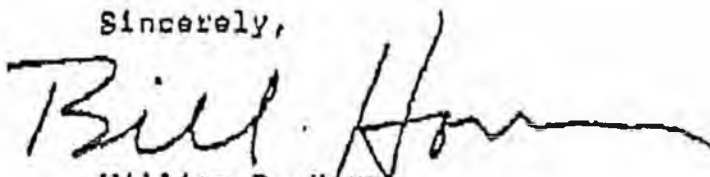
As you are aware, the Alaska Supreme Court, in Madison v. Alaska Department of Fish and Game, 596 P.2d 168, Op. No. 2911 (Alaska Feb. 22, 1985), invalidated a State Board of Fisheries regulation designed to determine eligibility for subsistence fishing in the Cook Inlet Region because the regulation was inconsistent with the State subsistence statute. This ruling held that under the State statute the subsistence preference must be extended to both "rural" and "urban" subsistence users. Because section 803 of ANILCA limits the subsistence preference to "rural Alaska residents," the Madison decision raised questions as to the continuing eligibility of the State to manage subsistence on public lands in Alaska under section 805(d) of ANILCA. In an effort to determine the State's views on this issue prior to Departmental action, I requested on April 7, 1985, the legal opinion of the State Attorney General on the effect of the Madison decision. To date we have received no formal response from the State on the effect of Madison on the State's eligibility under section 805(d) of ANILCA. We did receive a letter outlining the administrative actions taken by the State in the wake of Madison but it offered no opinion regarding compliance with Title VIII. Nonetheless, the absence of legislative action this year to amend the State subsistence statute to conform to ANILCA has confirmed our preliminary determination that the State is no longer in compliance with the requirements of section 805(d).

I Fully expect that the State, in cooperation with the Department, will bring its subsistence program back into compliance with the requirements of Title VIII of ANILCA prior to June 1, 1986. I have, however, directed the U.S. Fish and Wildlife Service, in cooperation with the Office of the Solicitor, to begin preparation of a contingency plan for providing the subsistence preference on public lands that meets the requirements of ANILCA. My goal is to ensure that, in the event that the State is not able to bring its program into compliance by June 1, 1986, the Department is ready and able to discharge effectively its obligations under sections 803, 804 and 805 of ANILCA.

As a matter of information, the Madison ruling does not expand eligibility to pursue subsistence activities in those national parks and monuments where subsistence taking is authorized. Eligibility to engage in subsistence activities within those units of the National Parks System in Alaska is still determined pursuant to Federal regulations issued in 1981, since the State of Alaska never sought to acquire control of this aspect of the ANILCA subsistence program.

I regret the unexpected decision by the Alaska Supreme Court in the Madison case that has moved the State subsistence program out of compliance with the requirements of ANILCA. I am confident, though, that the State will be able to bring its program back into compliance by within one year.

Sincerely,



William P. Horn
Assistant Secretary
Fish and Wildlife and Parks

cc: AK Delegation
CHM-Sen Energy
CHM-House Interior
Ranking Minority of both Committees
Asst. Sec, Peter Myers, U.S. Dept. Agriculture .

You are hereby advised that the State has until June 1, 1986, to revise its subsistence program to bring it back into compliance with the requirements of sections 803, 804 and 805 of ANILCA. Compliance will require that the subsistence preference be limited to those rural Alaska residents who customarily and traditionally make use of subsistence resources. If the State has not conformed its subsistence program to the requirements of ANILCA by that date, the Department will be obligated to discharge its obligations pursuant to section 805. As we noted to the State Boards of Fisheries and Game in 1982, there are various ways to comply with the requirements of section 805; the regime in force when the Madison decision was handed down represented one possible approach. I am confident and hopeful that the State can make the necessary changes in its program within this period, and I offer the full cooperation and assistance of the Department in this effort.

The Department has concluded that section 805(d) does not require an immediate Federal take over of the subsistence program, given the circumstances by which non-compliance with the ANILCA requirements has occurred. Section 805(d) provided the State with a one year period of grace following enactment of ANILCA in order to give the State an adequate amount of time to prepare and implement a program that met the requirements of ANILCA. After successfully establishing an adequate program, the State made a good faith effort to keep in compliance with the requirements of Title VIII of ANILCA. Indeed, the recent problems that have befallen the State's program have not been the result of legislative repeal of the program; instead, an unexpected State Supreme Court ruling in a case that was vigorously defended by the State has altered the State's subsistence program and created a non-compliance situation. Under these circumstances, we are persuaded that the spirit and intent of section 805(d) warrants a grace period in order to provide the State with a reasonable opportunity to make the necessary adjustments to its program. We have chosen as a deadline June 1, 1986, because it is roughly one year from the time the State legislature failed to rectify the State subsistence statute.

This course of action is further justified due to the fact that it appears unlikely that any adverse impact on rural subsistence users will occur during the grace period. The State subsistence program will continue to ensure that the Title VIII class of rural subsistence users are able to hunt, trap, and fish for necessary resources. The problem is that the Madison decision permits urban residents to be included in the subsistence class, contrary to the requirement of ANILCA that the preference be limited to rural residents. My decision that a grace period is warranted would, of course, have to change if significant adverse impacts on rural, customary and traditional subsistence users and on subsistence resources subsequently become apparent.

managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial plans; and

(4) unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

SEC. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

43 USC 1601
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

SEC. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

Backup from
Resources
Committee

scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

Ante, p. 2377.

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands 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, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources 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 byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

16 USC 3113.

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife 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.

PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

16 USC 3114.

Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

SEC. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, 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. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

Implementation.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

Reimbursement to States.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

Report to Congress.

FEDERAL MONITORING

SEC. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as

Report to congressional committees.
16 USC 3116.

he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

JUDICIAL ENFORCEMENT

Civil actions.
16 USC 3117.

SEC. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Hearing.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

SEC. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or

Subsistence
hunting pro-
gram.

investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him.

Program and
recommendation
implementation.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

COOPERATIVE AGREEMENTS

SEC. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title.

16 USC 3119.

SUBSISTENCE AND LAND USE DECISIONS

SEC. 810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

16 USC 3120.

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

Hearing.

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

Notice and hearings.

42 USC 4332.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

48 USC note prec. 21.

43 USC 1601 note.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

ACCESS

16 USC 3121.

SEC. 811. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation

RESEARCH

16 USC 3122.

SEC. 812. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submission to Speaker of House and President of Senate.
16 USC 3123.

SEC. 813. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

- (1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;
- (2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;
- (3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;

(4) the role of subsistence uses in the economy and culture of rural Alaska;

(5) comments on the Secretary's report by the State, the local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;

(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and

(7) such other recommendations the Secretary deems appropriate.

A notice of the report shall be published in the Federal Register and the report shall be made available to the public.

Publication in
Federal Register.

REGULATIONS

SEC. 814. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

16 USC 3124.

LIMITATIONS, SAVINGS CLAUSES

SEC. 815. Nothing in this title shall be construed as—

16 USC 3125.

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-jj), the National Park Service Organic Act (39 Stat. 535, 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal

Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777K), or any amendments to any one or more of such Acts.

CLOSURE TO SUBSISTENCE USES

16 USC 3126

Sec. 816. (a) All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence uses and sport fishing shall be authorized in such areas by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

Publication in
Federal Register.

TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

43 USC 1631.

43 USC 1601
note.

SEC. 901. (a) Notwithstanding any other provision of law, the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to the Alaska Native Claims Settlement Act or this Act, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to judicial determination unless a civil action is filed in the United States District Court within five years after the date of execution of the interim conveyance if the interim conveyance was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the interim conveyance was executed on or before the date of enactment of this Act. If a parcel of submerged land was conveyed by a patent rather than an interim conveyance, the civil action described in the preceding sentence shall be filed within five years after the date of execution of the patent if the patent was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the patent was executed on or before the date of enactment of this Act. The civil action described in this

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
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Senate Committee on Resources

TO: Senate Resource Committee Members

March 12, 1986

FROM: Senate Resources Committee Staff *MEK*

RE: SCS for CS for HB 288 (Resources) "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

SECTION BY SECTION ANALYSIS

This legislation is designed to comply with Title VIII of Public Law 96-487, the Alaska National Interest Lands Conservation Act.

Section 1

Section 1 amends the authority of the Board of Fisheries for classifying fish stocks whenever the board finds it necessary for regulatory purposes. Two new categories are added. They are "personal use fish" and "subsistence fish." Small personal use fisheries exist on the Copper River and on some salmon stocks on the Kenai Peninsula, in Southeast Alaska, and on the Naknek River. In addition to areas where personal use fishing already occurs, it is envisioned that personal use fisheries would be particularly appropriate in certain areas of the state that were considered rural before the enactment of this bill.

Classifying fish for particular purposes does not imply that the uses are exclusive of other uses. However, allocation decisions, management concerns, or biological considerations may in particular circumstances require that use of a fish stock be reserved for particular uses or that certain uses be excluded.

The classification of "subsistence fish" merely enables the board to classify fish to bring them under subsistence regulation.

Section 2

Section 2 adds a new paragraph to the authority of the Board of Fisheries.

This paragraph tracks the purposes of the Board of Fisheries, as stated in the statute that established the board and as stated in Article VIII of the Alaska State Constitution. Article VIII gave the Legislature the authority over the conservation, utilization, and development of natural resources. The Legislature delegated that authority to the Board of Fisheries. This new paragraph is broadly worded so that the board's authority for conservation, utilization, and development of fisheries is tied to all aspects of regulating commercial, sport, subsistence and personal use fisheries.

Section 3

Section 3 was an amendment offered by Senator Fischer which the committee adopted. Subsection (d) states that consistent with sustained yield and the subsistence preference of AS 16.05.258, regulations adopted by the board must provide a fair and reasonable opportunity for the taking of fishery resources by personal use, sport, and commercial fishermen. The committee's discussion on this amendment and the comments of the sponsor made it clear that neither sport, nor commercial, nor personal use fishing is afforded any priority over the others, nor is every type of fishery required on every stock or in every water.

Subsection (e) requires the board to establish criteria for the allocation of fishery resources among the various fisheries. The criteria shall be appropriate to the particular allocation decision, which might pertain to a particular geographic area (such as a stream or watershed) or to a particular stock. The subsection then lists seven criteria as examples for the board.

Section 4

Section 4 is identical to paragraph (13) in section 2, except that section 4 applies to game.

Section 5

Section 5 was an amendment offered by Senator Fischer which the committee also adopted. It provides that consistent with the provisions of AS 16.05.258 (consistent with sustained yield and the subsistence preference) the taking of moose, deer, elk and caribou for personal or family consumption has preference over taking by nonresidents.

Section 6

Section 6 is a major portion of the bill. It adds two new sections to the Alaska Statutes. AS 16.05.258 sets out a method of allocating fish and game among subsistence, sport, commercial, and nonconsumptive uses. It also contains important aspects of current subsistence law, such as the subsistence preference. It is intended to be consistent with Federal law. AS 16.05.259, is the second statute dealt with in this section. It addresses administrative appeals of decisions made by the boards.

Because the first of these two new sections, AS 16.05.258, is important and long, the detailed analysis of AS 16.05.258 is by subsection. In brief, AS 16.05.258(a) provides for the identification of those fish stocks and game populations that are subject to subsistence uses. Subsection (b) provides for a determination of what portion of those stocks or populations can be harvested consistent with sustained yield and how much of that portion is needed to provide a reasonable opportunity for subsistence uses of the stocks and populations. AS 16.05.258(c) describes the preference that shall be accorded for nonwasteful subsistence uses.

AS 16.05.258(a)

Subsection (a) requires the Board of Fisheries and the Board of Game to identify the fish stocks and game populations that are the subject of customary and traditional uses in each rural area.

In making these identifications, the boards should look at which fish stocks and game populations are normally used for subsistence in each rural area. The boards should consider the patterns of local use as established over time. It is not the intention of this bill to exclude from subsistence use any stock or population that is customarily and traditionally used in an area, even if the level of use is small. It is the intention, however, to exclude from subsistence use those stocks and populations that are not customarily and traditionally used for subsistence and whose use is limited to incidental or occasional individual animals.

The identification of which fish stocks and game populations will or will not be subject to subsistence regulations is a situation where both groups can potentially win. Identified stocks and populations are the ones on which allocation errors would infringe on subsistence. Identification of these stocks and populations will assure that use by those eligible for the subsistence preference is protected.

The identification of customary and traditional stocks leaves those that are not identified to be harvested by all Alaskans under nonsubsistence regulations as specified in proposed subsection (e) of AS 16.05.258. Some of the fish and animals most important to sport users are least important to subsistence users. Examples might be bison; goats; many sheep populations; elk and transplanted game; and perhaps some steelhead and trout stocks and brown bear populations.

Whether or not these are or are not subsistence stocks and populations is not decided by the proposed legislation. That matter should be left to factual determinations made by the boards. This bill gives them authority to make those determinations.

This section call for game populations and fish stocks to be identified in each rural area. Stocks and populations are geographically specific groups of animals and fish, as specified in the definition section of this bill. The identification of each stock or population subject to subsistence uses should be factually determined on a case by case basis.

Areas, as set by the board, should be large enough to include both where a particularly stock or population is normally taken and where it is normally used. As an example, the boundaries of areas should not pose a barrier to village residents who traditionally travel to a fish camp some distance from the village.

The boards should act with sensitivity in identifying subsistence stocks. They and the department should seek the assistance of regional councils and local advisory committees that are in place to assist the boards. However, the board may choose not to follow a regional council's recommendation if the board determines that the recommendation is not supported by substantial evidence. This requirement for substantial evidence is consistent with existing regulations governing the relationship between the councils and the boards, and this is consistent with Federal subsistence law concerning the regional councils.

AS 16.05.258(b)

After the boards identify subsistence stocks, subsection AS 16.05.258(b) then requires the boards to determine whether a harvestable portion exists and how much of that portion is necessary to provide a reasonable opportunity for subsistence. The determination of whether a harvestable portion exists must be consistent with sustained yield. The "sustained yield" principle is derived from Article VIII of the Alaska Constitution.

Paragraph (2) in subsection AS 16.05.258(b) establishes a legal standard for determining how much of a fish stock or a game population is needed for subsistence. The standard is a "reasonable opportunity to satisfy subsistence uses". Reasonable is a commonly accepted concept in law frequently used in statutes and applied by courts. Reasonable currently

appears 1,356 times in the Alaska Statutes. The standard means that the boards' decisions should be based on available information, for example, a consideration of the customary and traditional levels of harvest. It does not permit the boards to be arbitrary, capricious, or prejudiced in allocating to subsistence. Conversely, it does not require the boards to satisfy desires of subsistence users that are unreasonable, that are inconsistent with available information, or that are not based on facts.

A "reasonable opportunity to satisfy subsistence uses" does not guarantee that every subsistence user will get every fish or animal he or she wants before any uses of lower priority are allowed. In hunting and fishing, that type of guarantee is impossible to provide. What this standard does provide is that every subsistence user, shall be able to hunt or fish with the reasonable expectation of taking the amount of fish and game needed.

AS 16.05.258(c)

Subsection (c) requires the boards to adopt subsistence regulations for subsistence stocks and populations. Subsection (c) also contains the preference for subsistence. It is consistent with Federal law. It is a redrafting of the current State law, AS 16.05.251(b) and AS 16.05.255(b). The redrafting is intended to make the preference more clear.

The current State law contains the so-called "Tier I" and "Tier II" levels of the preference. The U.S. Senate Committee Report on the Federal law clearly indicates that Federal law also contains the "Tier I" and "Tier II" levels. Tier I is when there is not enough of a harvestable surplus to accommodate all consumptive uses without interfering with sound management of the resource, but there is enough portion to allow a reasonable opportunity for subsistence. At Tier I, the preference allocates enough of the resource to provide that reasonable opportunity, with any surplus that is left going to other consumptive uses.

Tier II is when there is not enough of a harvestable portion to provide a reasonable opportunity for subsistence. When that occurs, other consumptive uses must be prohibited and subsistence must be restricted on the basis of three factors: (a) customary and direct dependence on the fish stock or game population as the mainstay of livelihood, (2) local residency, and (3) the availability of alternative resources. Alternative resources means other wildlife and alternatives purchased with cash.

Several additional points need to be made about this subsection. First, almost all of the Tier II hunts that occurred after the Madison decision will be reopened by this bill. The Tier II hunts will be reopened by dramatically reducing the number of hunters eligible to participate in subsistence hunts. The effect of this will be to leave more game for sports hunters. Also, some hunts that are presently Tier II hunts are on game populations that will probably no longer be classified as subject to subsistence uses. Bison are an example.

Second, the subsistence preference is only a preference over other consumptive uses. This is consistent with Federal law, as stated in the policy and intent sections of the Federal law. Catch and release fisheries, taking of fish and game for management purposes such as transplanting stocks or poisoning undesirable fish prior to stocking are not consumptive uses for purposes of the subsistence law, so long as they do not interfere with reasonable opportunities for subsistence. Similarly, nonconsumptive uses in national parks or other areas, and administrative actions consistent with State and Federal law, may take precedence over subsistence.

AS 16.05.258(d)

Subsection (d) authorizes the boards to adopt regulations for stocks and populations identified under (a) to provide for nonsubsistence harvest of that portion of the harvestable portion that is not needed for subsistence. This would be the normal state of affairs for almost all hunts and fisheries.

AS 16.05.258(e)

Subsection (e) provides that fish stocks and game populations that are not identified as subsistence stocks and populations under (a) may only be harvested under nonsubsistence regulations. This section is previously discussed in more detail in the discussion of subsection (a).

In its final committee meeting on this bill, the Resources Committee adopted an amendment offered by Senator Coghill to add, "including bison" to this section. In its discussion of this amendment, the committee made it explicitly clear that the amendment should not be interpreted as giving guidance in any way on which fish stocks or game populations should or should not be subject to subsistence uses.

AS 16.05.258(f)

Subsection (f) provides that all takings of fish and wildlife, including subsistence harvest, are subject to reasonable regulation of seasons, bag and catch limits, methods and means, and other such restrictions including prohibitions of wanton waste.

AS 16.05.259

This new section grants the boards authority to establish administrative appeal procedures. It should be emphasized that this ability to adopt an appeal procedure is strictly optional at the boards discretion and that there are a variety of forms the appeal procedure could take.

Section 7

Section 7 amends AS 16.05 by adding a new section, AS 16.05.261, which states that in a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense to the charge that the taking was done for subsistence use. This section requires a person who disagrees with a board action or statute to seek to correct that action or statute through appeal, petitions for reconsideration, court action, etc. rather than permitting the person to violate the statute or

regulation and claim subsistence as a defense. This eliminates the "subsistence defense" as arose in the Eluska and Skuse cases.

This section does not effect AS 16.05.930 (b) which allows people to take fish and game in case of emergency. This section is also not intended to limit a persons ability to challenge a regulation that is unreasonable in its terms or fails to provide a reasonable opportunity to satisfy subsistence uses as required in proposed AS 16.05.258(c). An example might be a hunting season on caribou that was open in a particular area before or after the caribou migrated through the area, but was closed while the caribou were in the area. Such a regulation would be unreasonable on its face and would fail to provide a reasonable opportunity for subsistence uses as required by AS 16.05.258(c).

Section 8

Section 8 amends AS 16.05.330 to allow the boards to adopt regulations providing for subsistence permits. Those permits may be for all subsistence users within a rural area, for rural communities or villages, or for groups or individuals in rural areas. The boards are required to adopt a permit program when the subsistence preference requires reductions in the harvest by nonsubsistence users. Such a reduction should only take place in case of a resource shortage compared to the number of users. When that situation exists, the Department and boards should have such a system in place so they can closely monitor the harvest and the demand on the resource.

Section 9

Section 9 amends the definition of subsistence fishing to state that subsistence fishing may only be engaged in by rural residents domiciled in a rural area.

Section 10

Section 10 amends the definition of subsistence uses to state that it does not include harvests for commercial enterprises. The addition of the word "noncommercial" to the definition is not meant to prevent limited exchanges of goods for cash under customary and traditional trading practices, but it is meant to prevent subsistence harvest for substantially commercial enterprises. As specified in Section 6, it is understood that subsistence uses must be nonwasteful. The definition of subsistence uses is also amended to to make plain that subsistence uses have to be by a resident domiciled in a rural area of the state.

Section 11

Section 11 addresses several other definitions. The first of these is "domicile" which is defined as a person's "true and permanent home...". The definition states that domicile may be proved by presenting evidence acceptable to the boards. The board of fisheries already has regulations on domicile and it is anticipated that the board of game would adopt similar regulations.

Fish stocks and game populations are defined as any species or subgroup of a species that is manageable as a unit.

A definition of personal use fishing is contained in this section. This definition is very similar to the definition in the House version of this bill. As indicated in section 1 it is envisioned that personal use fishing may be particularly appropriate in certain areas of the state that were considered rural before the enactment of this bill. This legislation is not intended to statutorily increase or decrease existing personal use fishing. The scope of these fisheries is an allocation decision left to the board.

The bill adopts a definition of "rural area" similar to the definition added in the House. It is defined as a community or area of the State where the noncommercial, customary and traditional use of fish and game for personal and family consumption is a principal characteristic of the

economy of the community or area. The definition is designed to mesh with the definition of subsistence uses. The definition is not meant to preclude an area from being rural simply because there may also be significant elements of cash economy in the area, such as commercial fishing. This definition had previously read "...a significant characteristic...The Resources Committee adopted an amendment by Senator Halford to change "a significant" to "a principal". Both staff research and committee discussion indicated that "a principal characteristic" is more than "a significant characteristic " but does not imply a majority or a particular percentage of use. During his testimony on the bill, Assistant Secretary Horn said he believed "a principal characteristic" was in compliance with ANILCA.

The focus in this bill on the significance of the noncommercial, customary and traditional harvest and use in a particular area is consistent with ANILCA and its legislative history. In that history, Congress indicated an intent to protect subsistence use in areas of Alaska where subsistence "...uses have played a long established and important role in the economy and culture of the community...". The legislative history lists several communities that were considered rural in 1979, but acknowledged that the economic development and rural character of such communities may change over time. It is expected that the boards would look at ANILCA's legislative history when establishing rural areas and would review areas as conditions change to assure a rural or nonrural classification is still appropriate. As mentioned earlier in this sectional, areas, as set by the board, should be large enough to include both where a particular stock or population is normally taken and where it is normally used.

The definition of subsistence hunting is similar to the definition of subsistence fishing discussed above.

Section 12

Section 12 repeals three portions of subsistence law. AS 16.05.251(b) concerns fish, and AS 16.05.255(b) concerns game. They are similarly worded in current law. They require the boards to adopt subsistence regulations and establish the preference in current law. In the bill, these requirements and the preference are readopted in the new AS 16.05.258(c).

AS 16.05.257 is repealed because it is unused and is old law that predates the 1978 state subsistence law.

Section 13

Section 11 provides that the bill would take effect on June 1, 1986.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 7, 1986

The Honorable Arliss Sturgulewski
Alaska State Legislature
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Re: Subsistence: Equal protection and the use of "road connected" in the definition of "rural area" in SCS CSHB 288 (res) AG Files 663850375 and 773850176

Dear Senator Sturgulewski:

You have asked for an analysis under equal protection principles of including "road connected" as an exclusion in the definition of "rural area" contained in the proposed SCS CSHB 288 (res), an act relating to the taking of fish and game for subsistence and personal use. Experience with a definition of "rural" adopted by the joint Boards of Fisheries and Game in 1982 and repealed in 1983, and later board action based on information provided by the Department of Fish and Game indicates that a definition of "rural area" which incorporated an exclusion of road connected areas would be vulnerable to an equal protection challenge.

The proposed committee substitute defines "subsistence uses" as the "noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state" for certain specified purposes. Further, the bill defines "rural area" as:

a community or area of the state in which the non-commercial, customary, and traditional uses of fish or game for personal or family consumption is a significant characteristic of the economy of the community or the area....

These definitions establish a class of people eligible to participate in subsistence hunting and fishing. The definitions are very similar to the definitions incorporated in an earlier version of the bill considered by the House, CSHB 288 (jud). An analysis by this office based in part upon

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information provided by the Department of Fish and Game concluded that the definitions in that version would be defensible against an equal protection challenge. You have inquired whether an amendment to the definition of "rural area" which would exclude those parts of the state connected by road would pose equal protection problems. 1/

The state equal protection test generally has been discussed in connection with Article I, section 1 of the Alaska Constitution, which provides in part that "all persons are equal and are entitled to equal rights." In addition, Article VIII, section 17, is in essence an equal protection guarantee with regard to natural resources:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

The equal protection guarantee is designed to ensure that those people situated similarly with regard to the subject matter and purpose of the law will be treated equally under that law. Ketchikan Gateway Borough, Alaska, v. Bried, 639 P.2d 995 (Alaska 1981). A classification must bear "a fair and substantial relationship to a legitimate governmental objective." Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1264 (Alaska 1980). Finally, equal protection does not demand absolute perfection in the classification system. Id. at 1267. As the court noted in Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 160 (Alaska 1982):

The focus of our inquiry under Alaska equal protection analysis is whether the legislative classification is a reasonable means to accomplish a legitimate state purpose.

The Alaska Supreme Court has developed a three part test in analyzing whether legislation offends the equal protection clause of the Alaska Constitution. Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269-270 (Alaska 1984). The first

1/ Depending on how the term "road" was used and defined, problems of vagueness might also be presented by such an amendment.

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inquiry involves what weight should be afforded the constitutional interest impaired by the challenged enactment. Depending on the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation. Next, the court looks at the purpose served by the challenged statute. Again, depending on the level of review determined, legitimate objectives may suffice, or compelling state interests may need to be demonstrated. Finally, and closely entwined with the preceding examination, the court evaluates the particular means employed to further the purported goals. Depending on the level of review, a substantial relationship may be constitutionally adequate, or closer fit between means and ends may be required.

Turning to the first step in the equal protection analysis, the Alaska Supreme Court has noted that commercial fishing does not involve a suspect classification nor a fundamental right so as to require a the application of the compelling state interest test. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1262 (Alaska 1980). Therefore it would seem that the objectives of this bill, also relating to harvesting of resources, must be examined to see if they are legitimate, and the means employed to further those objectives must bear a substantial relationship to the ends.

Defining "subsistence uses" and "rural area" bears a fair and substantial relationship to a legitimate governmental objective, as required by the equal protection test. Id. at 1264. State v. Tanana Valley Sportsmen's Association, Inc., 583 P.2d 854, 859-860 n.18 (Alaska 1978), acknowledged the critical importance in Alaska of preserving and protecting subsistence uses, and in Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897, 903 (Alaska 1981), the court noted that the state subsistence statutes addressed that important issue on a statewide basis.

Your request regarding the equal protection ramifications of the addition of "road connected" as an exclusionary component of the definition of "rural area" in the proposed committee substitute in part relates to the definition of "rural" adopted by the joint Boards of Fisheries and Game in 1982 as 5 AAC 99.020. The boards defined "rural" to mean:

outside the road connected area of a borough, municipality, or other community with a population of 7000 or more, as determined by the Alaska Department of Community and Regional Affairs.

This definition was never implemented, and a year after it was

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adopted, the boards repealed it, based on the advice of the Department of Law that it appeared to violate equal protection. Information provided by the Department of Fish and Game had indicated that the factors employed in the definition did not correlate throughout the state to differences in use patterns of and reliance on fish and game resources by various communities and areas. 2/

After receiving your request for an analysis of possible consequences associated with the use of "road connected," I discussed with the Department of Fish and Game available information on the correlation of road connectedness to the use of fish and game. If a correlation could be shown, then presumably in general the use of the term in the definition would result in similar treatment for individuals situated similarly with regard to the use of fish and game. On the other hand, failing a correlation, equal protection problems are very likely.

The department data illustrate that some communities connected by road to major Alaskan cities have hunting and fishing patterns and reliance upon fish and game which are similar to those in small, remote communities off the road system. For example, the Board of Fisheries applied the eight criteria contained in 5 AAC 99.010 and determined that the Copper River basin area and certain upper Tanana communities qualified as being eligible for subsistence uses of Copper River salmon. (The Department of the Interior had certified that the method for identifying eligible rural communities and areas contained in 5 AAC 99.010 complied with the requirements of the Alaska National Interest Lands Conservation Act, Title 8.) The Department of Fish and Game had provided information to the board on the uses of fish and game in those areas. The board determined, based in part on that data, that the Copper River basin qualified, which encompassed road connected areas, 3/ and that some road connected upper Tanana communities qualified, including Tetlin,

2/ Wolfe, Dr. Robert J. and Linda J. Ellanna, et al., Mar. 1983, Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, Technical Paper no. 61, Division of Subsistence, Alaska Department of Fish and Game.

3/ Information on this area was provided to the boards in Technical Paper 107, Division of Subsistence, Department of Fish and Game.

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Northway, Tanacross, Tok, 4/ and Dot Lake. 5/ All these communities are "road connected," and the board's assessment of the uses of fish and game in those communities under standards which were consistent with ANILCA concluded that they were eligible for subsistence uses.

There are other communities in the state which are connected by the state's road system, about which research conducted by the Department of Fish and Game indicates that they are similarly situated to other communities not on the road system with regard to use patterns of and reliance upon fish and game resources. For example, the community of Klukwan is discussed in Technical Papers 69 and 95, Division of Subsistence, Department of Fish and Game, and the community of Minto, road connected and relatively close to Fairbanks, is covered by Technical Paper 122, Division of Subsistence, Department of Fish and Game.

It appears from these examples that road connectedness in itself does not mean that residents of certain communities or areas are differently situated with respect to the use of fish and game. Therefore, to insert "road connected" as an exclusionary factor in the definition of a "rural area" in which residents would be eligible to participate in subsistence uses could be vulnerable to an equal protection challenge. Of course, in a particular fact situation, the boards might conclude that roads were one factor which contributed to different patterns of use of fish and game resources, but as the examples above illustrate, such a factually specific determination could not be generalized to the entire state.

It appears, therefore, in answer to your question, that inserting "road connected" as an exclusionary component in the

4/ Information on Tetlin, Northway, Tanacross, and Tok was provided to the board in Technical Paper 115, Division of Subsistence, Department of Fish and Game.

5/ Information on Dot Lake was provided to the board in Technical Paper 19, Division of Subsistence, Department of Fish and Game, and in Technical Paper 61, Division of Subsistence, Department of Fish and Game, which compared case studies of a number of communities, and found that the hunting and fishing patterns of residents of Dot Lake were similar to the hunting and fishing patterns found in small communities off of the road system.

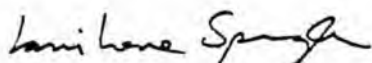
Honorable Arliss Sturgulewski
Alaska State Legislature
P.O. Box V, Juneau, AK 99811
AG Files No. 663850375 & 773850176

March 7, 1986
Page 6

definition of "rural area" in the proposed SCS CSHB 288 (res)
would pose significant equal protection problems.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Larri Irene Spengler
Assistant Attorney General

LIS:rn

cc: Don Collinsworth
Jim Ayers
Art Peterson

JILL SHEFFIELD, GOVERNOR

REPLY TO:

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 24, 1985

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POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

Honorable John L. Sund
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Equal protection and the
definition of subsistence
uses in CSM3 238 (judiciary)
AG Files 366-375-85 and
377-176-85

Dear Representative Sund:

You have asked for an analysis under equal protection principles of the definition of subsistence uses contained in CSM3 238 (judiciary), an act relating to the taking of fish and game for subsistence and personal use. The classification of those eligible to participate in subsistence hunting and fishing under the bill is supported by information about the different ways Alaskans use fish and game, and would be defensible against an equal protection challenge. (See the attached April 23, 1985, memorandum to me from Don W. Collinsworth, Commissioner of Fish and Game.)

The bill defines "subsistence uses" as the "customary and traditional noncommercial uses of wild, renewable resources by a resident domiciled in a rural area of the state" for certain specified purposes. Further, the bill defines "rural area" as

a community or area of the state in which the taking of fish or wildlife for personal or family consumption is a significant characteristic of the economy of the community or area....

These definitions, then, establish a class of people eligible to participate in subsistence hunting and fishing, which under AS 16.05.251(b) and 255(b) must be authorized by the Boards of Fisheries and Game unless sustained yield would be jeopardized, and must be given a priority if restrictions are required.

The state equal protection test generally has been discussed in connection with article I, section 1 of the Alaska

Constitution, which provides in part that "all persons are equal and are entitled to equal rights." In addition, article VIII, section 17, is in essence an equal protection guarantee with regard to natural resources:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

The equal protection guarantee is designed to ensure that those situated similarly with regard to the subject matter and purpose of a law will be treated equally under that law. Ketchikan Gateway Borough, Alaska v. Breed, 539 P.2d 995 (Alaska 1981). "A classification must bear a fair and substantial relationship to a legitimate governmental objective." Commercial Fisheries Entry Commission v. Anohacak, 606 P.2d 1233, 1234 (Alaska 1980). Finally, equal protection does not demand absolute perfection in the classification system. Id. at 1267. As the court noted in Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 160 (Alaska 1982):

The focus of our inquiry under Alaska equal protection analysis is whether the legislative classification is a reasonable means to accomplish a legitimate state purpose.

The Alaska Supreme Court has developed a three part test in analyzing whether legislation offends the equal protection clause of the Alaska Constitution. Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 - 270 (Alaska 1984). The first inquiry involves what weight should be afforded the constitutional interest impaired by the challenged enactment. Depending on the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation. Next, the court looks at the purposes served by the challenged statute. Again, depending on the level of review determined, legitimate objectives may suffice, or compelling state interest may need to be demonstrated. Finally, and closely entwined with the preceding examination, the court evaluates the particular means employed to further the purported goals. Depending on the level of review, a substantial relationship may be constitutionally adequate, or a closer fit between means and ends may be required.

Turning to the first step in the equal protection analysis, the Alaska Supreme Court has noted that commercial fishing does not involve a suspect classification nor a

Hon. John L. Sunu
House of Representatives
File No. 366-373-03 & 377-176-03

April 24, 1985
Page 3

fundamental right so as to require the application of the compelling state interest test. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1262 (Alaska 1980). Therefore it would seem that the objectives of this bill, also relating to harvesting of resources, must be examined to see if they are legitimate, and the means employed to further those objectives must bear a substantial relationship to the ends.

Defining "subsistence uses" and "rural area" bears a fair and substantial relationship to a legitimate governmental objective, as required by the equal protection test. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1264 (Alaska 1980). The findings in section 1 of the bill indicate that its purpose is to protect "the taking of fish stocks and game populations for personal and family consumption and related uses" which the legislature finds is

essential to the health, safety, and general welfare of Alaskans domiciled in rural areas or rural communities in which the taking of fish and game for such uses is a significant part of the economy of the community or area....

(Emphasis added.) This is certainly a legitimate governmental objective. State v. Tanana Valley Sportsmen's Association, Inc., 583 P.2d 854, 859-860 n.18 (Alaska 1978), acknowledged the critical importance in Alaska of preserving and protecting subsistence uses, and in Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 397, 903 (Alaska 1981), the court noted that the state subsistence statutes addressed that important issue on a statewide basis.

After receiving your request for an equal protection analysis, I asked the Alaska Department of Fish and Game for an evaluation of the definition of "rural area" contained in the bill and an assessment of whether the data available to the department indicates that fish and game have a different role in the lives of people in rural areas as defined by the bill, compared to the role occupied in the lives of other Alaskans.

The attached April 23, 1985, memorandum to me from Don W. Collinsworth, Commissioner of Fish and Game, indicates that the data available support the definitions and the classifications which the bill would establish. It compares the roles fish and game play in rural areas, as defined by the bill, to the function of those resources in non-rural areas, and notes a number of general differences.

The memorandum outlines those variances with regard to:

The social organization of the economy of the area.

Economic differentiation and specialization.

Wage employment.

Cash income.

Cost of goods and services.

Variety of fish and wildlife species used.

The seasonal cycle of economic activity.

Participation in hunting and fishing or using wild resources.

Harvest levels.

Values associated with the use of fish and game.

Where hunting and fishing occur.

Sharing and exchange of fish and game.

After detailing those general comparisons, the memorandum concludes that people living in rural areas and rural communities as defined in the bill "have in general a very different relationship to fish and game resources than people living in other parts of Alaska." */

*/ One of the sources of information evaluated by the department is Technical Paper No. 61 of the Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Series, Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, compiled by Dr. Robert J. Wolfe and Dr. Linda J. Elianna in March 1983. That paper examined case studies of sixteen communities, and then compared, contrasted, and analyzed the information derived from each study to reach certain conclusions about the socioeconomic systems present. What emerges is an understanding of the importance of the socioeconomic system of an area to all the individuals living there.

The Alaska Supreme Court has acknowledged the vast differences which exist between rural communities or areas and other parts of Alaska. In Alvarado v. State, 486 P.2d 891, 894 (Alaska 1971), the court discussed these differences in terms of the usual conveniences available, the degree of modern facilities such as running water, the number of roads, available transportation, the ease and frequency of access, the level of industry, the type and regularity of employment, the importance of cash income to the community, and the degree of interaction and dependence among residents.

It has been suggested that there may be some individuals who do not live in rural areas and rural communities which

and the relationship of the system to fish and wildlife resources. The report demonstrates that communities and areas with subsistence-based socioeconomic systems show a much higher degree of reliance on fish and game resources than do other socioeconomic systems, based predominantly on manufacturing, trade, government, finance, or defense, for example. The paper concludes:

Alaska is characterized by a diversity of socioeconomic systems and patterns of resource use. Our understanding of these contemporary systems is just beginning. Research like these case studies contributes information on the role of fishing and hunting in the diverse socioeconomic systems of the State. It seems clear that the economic and social stability of many communities depend upon access to and utilization of renewable fish and wildlife resources. Disruptions of the relationships between the community and the resource base may affect the viability of these ways of life.

Id. at 274.

will be identified under the definition in the bill who have a somewhat similar relationship to the resource as individuals living in those areas and communities. Even in that case, specific assertions about particular individuals are not determinative in an equal protection analysis. As noted by the Alaska Supreme Court in Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 160 (Alaska 1982) "to require a reasonable nexus between legislative means and ends is not to demand perfection in classification." Similarly, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1267 (Alaska 1980), notes that equal protection does not demand absolute perfection in a classification system. Thus, it would be reasonable for participants in rural areas as defined in the bill to be eligible to participate in subsistence uses, no matter what a particular person's personal statistics may be, for it would be the reliance of the economic system of the area or community upon the personal and family consumption of fish and game resources that would be relevant.

It has also been suggested that the legislature could develop a list of communities and areas either included or excluded from eligibility for subsistence uses. The advantage of delegating to the boards the authority to identify rural areas and rural communities and to authorize customary and traditional uses of fish and game for the residents for those communities and areas is that modifications can be made relatively soon after available data shows the necessity. For example, if a community initially identified as a rural community grew substantially, hunting and fishing for personal or family consumption may no longer be a significant component of the economy of the community. The board could respond to that new information by modifying the appropriate regulations. On the other hand, if that community were contained on a list in the statute, subsistence uses would have to be continued to be authorized. Further, allowing the boards to apply the law on an area by area and community by community basis will insure that the evaluations will be based on information as it is available. Information may not presently be available for some communities, and it would be difficult at this point and time for the legislature to develop a comprehensive list which would treat similarly situated individuals the same.

Similarly, there could be equal protection problems in another suggested approach, defining "rural" by the use of an arbitrarily selected population level, unless that level were shown to correlate to differences in the use of fish and game for personal and family consumption. Those problems are also avoided by the delegation in the bill to the boards to identify rural

Hon. John L. Sund
House of Representatives
File No. 365-375-25 & 377-176-35

April 24, 1985
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areas on an area by area and community by community basis.

Under the bill, Alaskans who do not live in rural areas or rural communities in the state "in which the taking of fish or wildlife for personal or family consumption is a significant characteristic of the economy of the community or area" are not precluded from harvesting fish and game. For example, the personal use fishing category which CSMB 288 (judiciary) would establish in statute would provide an opportunity for Alaskans to harvest fish by efficient methods such as gill or dip net, seine, fish wheel, or long line. Whenever the Board of Fisheries evaluates the uses of an area or community, if it determines that the uses are not customary and traditional uses by residents "domiciled in a rural area of the state," the board could authorize personal use fishing instead of subsistence fishing.

In conclusion, the definitions of "subsistence uses" and "rural area" contained in CSMB 288 (judiciary) establish a classification of Alaskans eligible for subsistence hunting and fishing which is supported by available data, and which would be defensible against an equal protection challenge. The information demonstrating that the distinction is a reasonable one, related to differences in the situations of Alaskans living in those different areas and communities is summarized in the attached April 23, 1985, memorandum from Don W. Collinsworth, Commissioner of Fish and Game. If you have any further questions, please do not hesitate to contact this office or the Department of Fish and Game.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: *Larri Irene Spengler*
Larri Irene Spengler
Assistant Attorney General

LIS:rn

Attachment

cc: w/attachment
Don Collinsworth
Dennis Kelso
Jim Ayers
Beth Stewart

Hon. John L. Sund
House of Representatives
File No. 366-375-85 & 377-176-85

April 24, 1985
Page 2

Steve Behnke
ADF&G

Lisa McCracken
Dept of Law

Adelheid Herrman

Peter Coll

MEMORANDUM

State of Alaska

Marri Spangler
Assistant Attorney General
Department of Law

DATE April 23, 1988

FILE NO

TELEPHONE NO

465-4100

TO: Don W. Collinsworth *DWC*
Commissioner
Department of Fish and Game

SUBJECT

Fish and
Wildlife Use
and the
Definition of
"Rural Areas"

You have asked the department to examine the definition of "rural area" contained in CS HB 288 (judiciary) in relation to subsistence uses. The bill defines "subsistence uses" as "the customary and traditional noncommercial uses of wild, renewable resources by a resident domiciled in a rural area of the state" for certain specific purposes.

The bill defines "rural area" as:

A community or area of the state in which the taking of fish or wildlife for personal or family consumption is a significant characteristic of the economy of the community or area.

You have asked for an assessment of whether the data available to the department indicate that fish and game have a different role in people's lives in rural areas, under the bill's definition, as opposed to other areas of the state. The Division of Subsistence has gathered information on use of fish and game in over 150 communities in Alaska and has compiled data from a variety of other sources. We have summarized here the major conclusions from that research in order to answer your question.

Alaska has a wide diversity in ways of life and types of communities. Most people in the state (about 62 percent) live in the three major population concentrations: Anchorage, Fairbanks, and Juneau. Most of the rest reside in approximately 389 smaller communities averaging fewer than 500 people each. Many of these places have fewer than 100. A relatively small number of people live dispersed outside these communities.

Research by the Division of Subsistence and other social scientists indicates that an individual's relationship to, and uses of, wild resources are typically part of a larger community pattern of wild resource use, which is determined by the community's history, customs, and socioeconomic conditions.

In many areas of Alaska, social and economic life centers on the use of wild resources. This dependence is most apparent in the less populated areas. In these areas communities are economically and socially dependent on hunting and fishing for local use.

These communities have what may be termed "mixed subsistence-cash economies" (Wolfe and Ellanna, 1983). In them, harvesting and processing of wild resources by families are an important component of the communities' economy, relative to other sectors such as wage employment. These are the areas to which OS HB 288 refers as rural.

In contrast to these places are large Alaskan cities which have economies and ways of life based on industry and capital rather than the use of fish and wildlife. These places are not economically or socially dependent on hunting and fishing for local uses in the same way as the areas described above. In this memorandum they will be referred to as non-rural, for the purposes of contrasting them with rural areas, as defined in the bill.

These non-rural places have economies similar to those of communities in the rest of the United States. The pattern of fish and wildlife use and its relationship to the community's economy and social structure differ significantly from those in the mixed subsistence-cash economy described above.

The following sections compare the roles fish and wildlife play in rural and nonrural areas:

The Social Organization of the Economy

- ° In rural areas, kinship groups (family units) are the major economic units. These units combine production, exchange, and consumption functions (a "domestic mode of production").
- ° In non-rural areas, corporate and other business structures are the basic units of the economy. Most economic production occurs outside the kinship unit, although families are important consumption units.
- ° In rural areas, economic activities, including hunting and fishing, are directed primarily toward family use and toward sustaining family relations and community stability.
- ° The economy of non-rural areas is organized around profit accumulation and earning cash to exchange for goods and services.

Economic Differentiation and Specialization

1. In rural areas, there is a limited variety of economic opportunities, services, and goods available locally.
2. The non-rural area's economy is much more differentiated and specialized, including well-developed private and public business sectors, and a broader variety of services and goods.

Wage Employment

1. Generally, wage employment opportunities in rural communities with a mixed subsistence-cash economy are limited, seasonal, part-time, and in jobs in the commercial fisheries, other primary resource extraction, or in public sector employment. There usually is not a well-developed private wage sector.
2. As a whole, wage employment opportunities are numerous in non-rural areas, and full-time wage employment is the norm for at least one person in a household.

Cash Income

1. Average household and per capita cash incomes are lower in rural areas of the state than in non-rural areas.
2. In the rural communities where detailed studies have been conducted, no simple relationship exists between level of monetary incomes and wild resource productivity and use, however. In fact, households with the highest monetary incomes within a rural community typically have been found to be the most productive fishers and hunters, and typically provide food for many other families through customary distribution and exchange of harvested fish and game.

Costs of Goods and Services

1. Purchasing power is lower in rural areas than in non-rural areas because the costs of goods, including food and services, are significantly greater in rural areas. This is largely due to the smaller economies of scale and greater transportation costs in rural areas.

Variation in Fish and Wildlife Species Used

- ° In rural areas, most households use a wide range of the available fish and wildlife species.
- ° In non-rural areas, most households typically harvest few of the available species, and generally focus on those which have a high recreational value.

The Seasonal Cycle of Economic Activity

- ° In rural areas, the economy follows a regular yearly, community-wide cycle of activities based on the seasonal appearance of fish and game resources. Social groupings and economic pursuits are modified to accommodate natural cyclic changes in the biotic resources.
- ° In non-rural areas, the economy is not organized around seasonal appearance of fish and game resources (that is, there is no community-wide seasonal round of activities synchronized with cyclic changes in biotic resources). Hunting and fishing are performed on periodic breaks from regular work routines.

Participation in Hunting and Fishing or Using Wild Resources

- ° In rural areas, most households harvest or use fish and game.
- ° In non-rural areas, a smaller percentage of households harvest or use wild resources.

Harvest Levels

- ° Harvests of fish and wildlife can be substantial, though variable in rural areas: community averages fall between about 100 lbs to 1,400 lbs per person per year.
- ° In non-rural areas, average per capita harvests are significantly lower; less than 100 pounds annually.

Values Associated with Use of Fish and Game

- ° In rural areas, fishing, hunting, and processing have central social, economic, and cultural values to community members.
- ° In the non-rural economy, hunting and fishing are typically valued because they are a diversion from central work activities, but also because they have social significance and provide valued food.

Where Hunting and Fishing Occur

- ° In rural areas, fishing and hunting primarily occur within a relatively well-defined community territory contiguous to the community.
- ° By contrast, non-rural residents typically travel long distances to fishing and hunting areas. The "territory" of use of a non-rural community may include large regions of the state, rather than a discrete well-defined area.
- ° In rural areas, customary, unwritten community "rules" control access to traplines, fishcamps, set net sites, fishwheels sites, and hunting territories.
- ° In non-rural areas formal legal limitations and personal experience are more significant than community customs in influencing where people hunt and fish.

Sharing and Exchange of Fish and Game

- ° Sharing is a central feature of the economy of rural areas. Fish and game is distributed through kinship networks. Households with elderly or infirm members or large numbers of dependent children receive food through these networks. (These are called "non-commercial distribution and exchange networks" in the social science literature).
- ° While some sharing and exchange occurs in non-rural areas, this is not a central feature of their economy; relatively few people regularly distribute fish and game through social networks, although food is used for gifts.

... and game.
... Division of Statistics, Welfare Department of
... in Alaska. ...
... 1933. ...
... Dr. Robert J. and Linda J. ...

... in their lives in general is quite different.
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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 12, 1986

The Honorable Vic Fischer
Alaska State Legislature
P.O. Box V - State Capitol
Juneau, Alaska 99811

REPLY TO:

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POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

Re: SCS CSHB 288 (res):
Subsistence:
AG Files 663850375

Dear Senator Fischer:

You and Representative Sam Cotten have both inquired whether the Senate Resources Committee substitute for House bill 288, relating to subsistence uses, offends article VIII, section 4, of the Alaska Constitution. It appears that the provisions of the bill relating to subsistence could be successfully defended against such a challenge.

Article VIII, section 4, provides:

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

(Emphasis added.) Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897, 904 (Alaska 1981), affirmed the authority of the Board of Fisheries to provide for "different treatment to such diverse user groups as commercial, sports, and subsistence."

Your question focuses on section 4 of the bill, the proposed AS 16.05.258(c). That provision first accords subsistence uses a preference over other uses, mandating nonsubsistence uses may not be authorized unless the "harvestable portion of a fish stock or game population is "sufficient to accommodate the subsistence uses of the stock or population." That preference is clearly consistent with the authorization in article VIII, section 4, to establish preferences among uses.

The final sentence of the proposed AS 16.05.258(c) would become operative in situations where the harvestable portion of a fish stock or game population is not sufficient to

Honorable Vic Fischer
Alaska State Legislature
P.O. Box V, Juneau, AK 99811
AG File No. 663850375

March 12, 1986

Page 2

provide a 'reasonable opportunity to satisfy the subsistence uses." In that case:

the preference shall be limited, and the boards shall distinguish among subsistence users, by applying the following criteria:

- (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

In this situation, only subsistence uses are being authorized; there will be no commercial, sport, or personal use of the fish stock or game population. The legislature is supplying criteria for the boards to use in determining which persons eligible for subsistence uses may engage in subsistence fishing or subsistence hunting if a reasonable opportunity cannot be provided for all of them. Depending on the available harvestable portion of the stock or population, a certain number of people will be allowed to harvest, those with the most dependence, living in closest proximity, with fewest available alternatives. This direction by the legislature to the boards on how to accommodate subsistence uses when the harvestable portion of a fish stock or game population is not sufficient to accommodate all subsistence uses does not appear to be inconsistent with article I, section 4. In fact, such direction seems quite consistent with the legislature determining how in that situation the stock or population is to be "utilized... on the sustained yield principle."

In a decision analyzing the state subsistence law as it was implemented before Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), state Superior Court Judge Douglas Serdahely ruled that identifying subsistence uses on a community or area basis did not violate article VIII, sections 2, (maximum benefit of the people), 3 (common use), and 15 (no exclusive right of fishery), of the Alaska Constitution. McDowell v. Collinsworth, 3AN 83-1592 civil, October 23, 1984, order. The judge's decision referenced the state's arguments, which in part relied upon the authorization in article VIII, section 4, of "preferences among beneficial uses." The precise issue of the use of the three criteria to distinguish among those eligible for subsistence uses when insufficient fish or game are available to provide for all subsistence uses of a stock or population was not before the court. However, it appears likely

Honorable Vic Fischer
Alaska State Legislature
P.O. Box V, Juneau, AK 99811
AG File No. 663850375

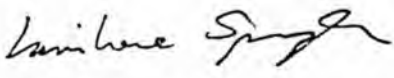
March 12, 1986
Page 3

that direction by the legislature to the boards on how to identify which persons eligible for subsistence uses are to be authorized -- those most dependent, living in closest proximity, with the least alternative resources -- would be defensible against an article VIII, section 4 challenge.

If a more detailed analysis on this question is necessary, please do not hesitate to contact me.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Larri Irene Spengler
Assistant Attorney General

LIS:rn

cc: Representative Cotten

Don Collinsworth
Dennis Kelso
Steve Behnke

Jim Ayers

Art Peterson
Liza McCrack

EXCERPT from Senate Resources Meeting, March 5, 1986, re Subsistence:

SENATOR STURGULEWICKI: (to Wm. P. Horn, Assistant Secretary, Department of Interior)

I would like a little more discussion on need. In this bill, as I'm sure you are aware, we haven't included any reference to economic need. We haven't included any reference to economic need because of our understanding that a law based on economic need would not comply with the federal law. Would you expand on this issue of ANILCA and economic need? It's a a real basic one. It's one that's important to a lot of Alaskans, and I'd like more information on the record regarding that.

SECRETARY HORN: Well, in Congress, during the development of Title 8, there was considerable discussion about how should a subsistence program should be established. Should it be a residency program, an area program, an individual program, a need program? When Congress addressed the issue of need, it decided not to go down that particular road for a very practical basis. It concluded that it would be inappropriate, very difficult, and extremely socially disruptive to, in essence, license a force of the equivalent of social workers to roam rural Alaska, deciding who was needy and who wasn't, and therefore, who would qualify for a subsistence permit and who wouldn't. It was decided that (it) would be such a nightmare, and such a headache.

(It was decided) to go with this community system (instead) -- a residency-based system, notwithstanding the fact that Congress knew that there would be circumstances in which relatively well-to-do individuals in some isolated communities would get a preference ahead of somebody less relatively well-to-do in an urban (setting). For very practical reasons, they decided to reject the approach of need.

Of course, that is clearly enshrined in the language in Section 803. They did bring need into effect when, of course, there is not enough resource to take care of the rural, customary, traditional subsistence users and said that the first criterion that you look at when you have to allocate among the subsistence users is customary and direct dependence. That's, basically, a need factor.

As I also indicated earlier, however, Congress did go on in the legislative history to specify that in defining the term customary and traditional, it would be appropriate to use the concepts of 804, including customary and direct dependence, and the availability of alternative resources, both of which are need-based factors, that those could be among the factors considered in rendering and reaching a definition of what customary and traditional was.

That, in essence, is the way need factors into the process and some of the decision-making process that Congress used in rejecting an individual need program, but leaving it in 804 and allowing parts of need to get into 803 under the hook of customary and traditional.



Alaska Native Brotherhood

Camp Number 2

510 West Willoughby Avenue

Juneau, Alaska 99801

March 24, 1986

Senator Patrick Rodey, Chairman
Senate Judiciary Committee
Room 504, Capitcl Building
Juneau, Alaska 99811

SUBJECT: Subsistence Position of Juneau ANB Camp #2.

Dear Senator Rodey:

On the eve of a meeting of your Committee, I want to take some time to convey the position of the Alaska Native Brotherhood, Camp #2 here in Juneau.

It is still our position that Governor Sheffield's original bill, House Bill No. 288 adequately addresses the concerns addressed in the Madison decision issued a little over one year ago. The bill as you know passed the House of Representatives and moved on to the Senate where the State Affairs Committee changed the language drastically. The bill moved to the Senate Resources Committee and became the Senate CS for CS for House Bill No. 288 after considerable amount of debate and hearings. It is our position the bill, as it was reported out of the Senate Resources Committee comes "very close" to meeting our concerns. We therefore urge you and your colleagues to report the bill out of committee, without amendments, as soon as possible! To continue the debate would only add more divisiveness in a State that so desperately needs to be united in a time of so many, many crisis such as falling oil revenue and poor economy.

We strongly urge Senate CS for CS for House Bill No. 288 be reported

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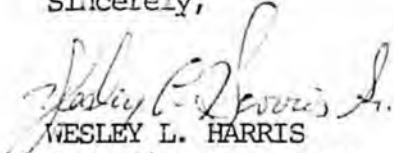
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Sen. Patrick Rodey, Chairman
Senate Judiciary Committee

out as passed by the Resources Committee as soon as possible! We feel the bill is not perfect, but appears to be constitutionally enforceable; it complies with the Federal Subsistence priority; and fair to all users.

Our Best Wishes.

Sincerely,



WESLEY L. HARRIS

Recording Secretary
Juneau ANB Camp #2

FOR: KENNETH GRANT
President
Juneau ANB Camp #2

cc: Committee Members:

Senator Tim Kelly

Senator Jan Faiks

Senator Rick Halford

Senator Robert H. Ziegler, Sr.

Peter Goll, Chairman of Special
House Committee on Fisheries

Edward K. Thomas, President, CCT&HIA

Kenneth Grant, Chairman Fisheries Comm. of
ANB Grand Camp

Richard Stitt, Sealaska Rep. Subsistence Comm.

PUBLIC OPINION MESSAGE

HB 288

TO: SENATOR PATRICK RODEY

FROM: STEVEN R. FASSBENDER
7960 RECERCURTIONDRIVIE
ANCHORAGE 99504
337-6250

BILL NO: HB 288

SUBJECT: SUBSISTENCE & PERSONAL USE OF FISH & GAME

MESSAGE:

I AM PLACING MY SUPPORT FOR SEN. HALFORD'S AMENDMENT TO THE SUBSISTENCE BILL. IT IDENTIFIES THOSE WHO ARE TRULY IN NEED OF SUBSISTENCE, WILL NOT CONDONE SUBSISTENCE TAKING FOR COMMERCIAL PURPOSES AND ENABLES PROFESSIONAL RESOURCE MANAGERS TO MAKE DECISIONS ON A BIOLOGICAL BASES RATHER THAN A POLITICAL BASES.

DATE: 03/26/86 TIME: 11:18:33 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

March 25, 1986

Hello Pat:

Per our phone conversation, please find the 1972 Subsistence report that clearly shows the history of Rod hook & line for personal use.

Its the work of AFN atty to write us out of present law and I think its truly a disgrace.

If this is not changed the Fish & Game Board does not have to consider us when they allocate fish for personal use!!!

Example they put the Subsistence Nets on late run Silvers after August 15th as the Board says they don't have to allow those Late Run Silvers to go into Kenai River as the Law says only Gill nets, set nets, drift nets, long line and seines qualify in law for consideration of personal use fishery. Of course the Commercial fishermen worked with AFN and Governor Sheffield to put these same conditions in Sheffield Bill!!!
Suggestions!

Rod, hook & line for personal use should be in any law even considered!

If not let the Gov't come on in and manage our resources! We would not be any worse off, as AFN and associated already wrote us out!!!

I'm really getting sick and tired of our Political leaders not considering all

March 25, 1986

Alaskans equal Rights! Not you Sir, you have always been extremely fair in your dealings.

Need for Suggestions!

Incorporate in the Rod, hook & line for Personal use provisions!

Set the sport fishing and Personal use regulations the same, with same Bag Limits!

What this will do is send a clear message to Board of Fisheries that if they regulate the Personal use net fishery to allocate 30 fish per person than they must allow enough fish into River System to make sure the Hook & line Personal use fishery has adequate escapement to satisfy these fishermen!

Your assistance will truly be appreciated.

Have a good day

Sam McDowell
Concerned Alaskan
336 E. 23rd Ave
Anchorage Alaska
99503

COOK INLET MANAGEMENT AREA SUBSISTENCE

FISHERY REPORT 1972

A. General Information

1. Description of Area: The Cook Inlet area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren Islands. (Figure 1)
2. Species Utilized: All five species of pacific salmon are utilized in the Cook Inlet area. Since 1962 cohos have made up 66 percent of the subsistence catch, reds 20 percent, pinks 8%, chums 5%, and kings 0.2 percent. (Table 1) King crab, Tanner crab, Dungeness crab, shrimp, smelt, herring, bottom fish, and clams are also utilized for subsistence purposes. However, few records are available on degree of utilization. In actuality it is hard to define what constitutes "sport fishing" and what constitutes "subsistence fishing" for the above listed species.
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FIGURE I

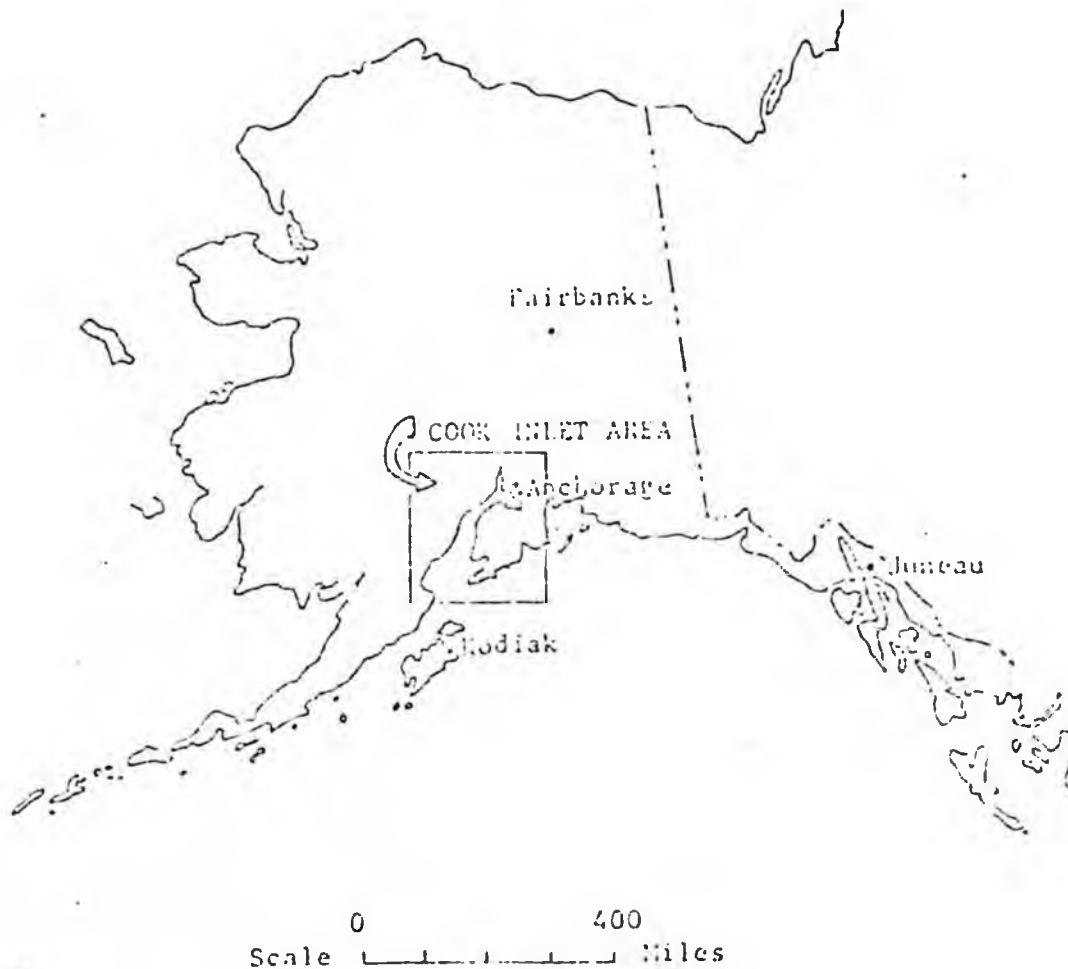
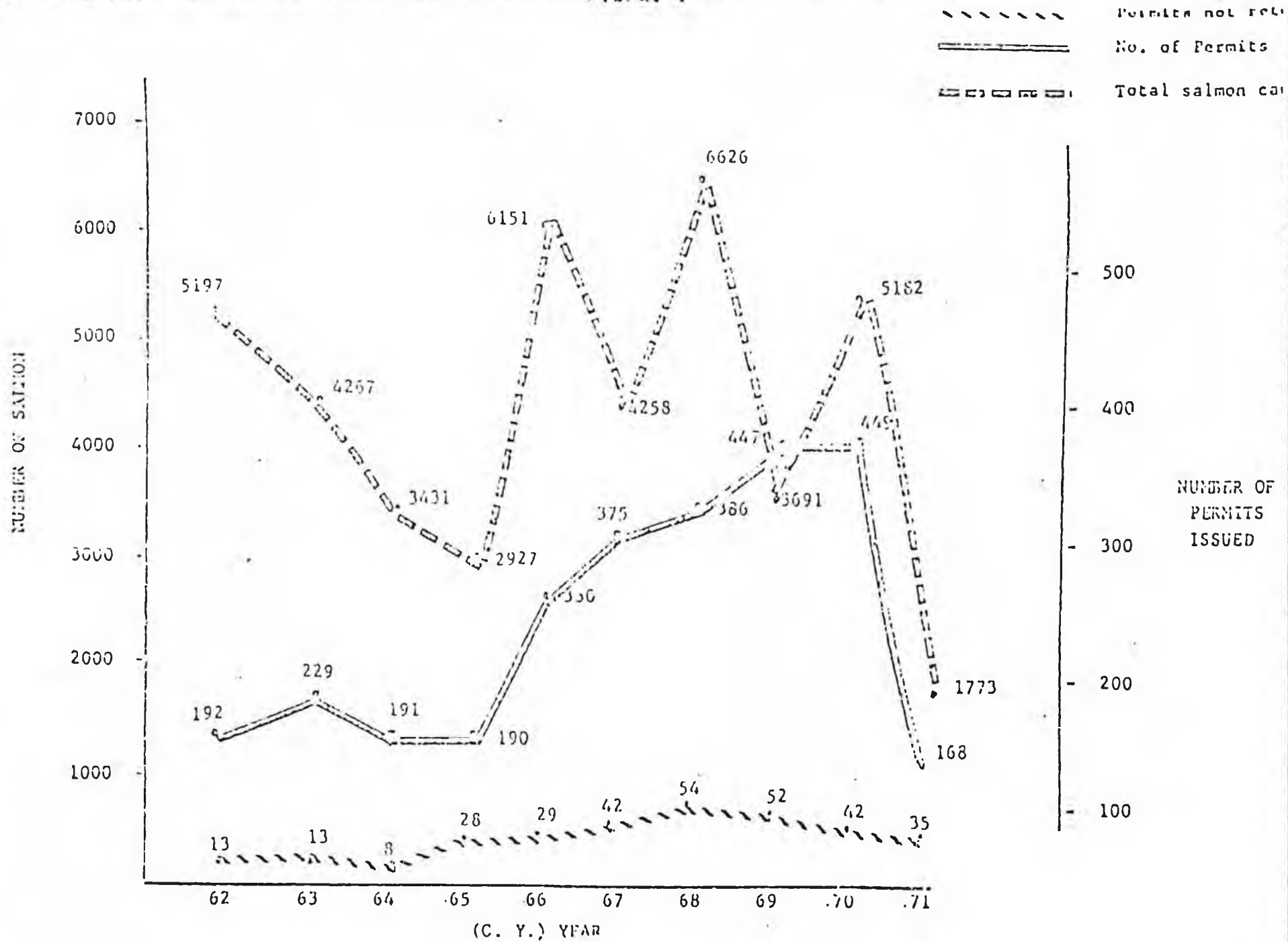


Figure 1. Cook Inlet area location map.

TABLE 1

COOK INLET SUBSISTENCE CATCH OF SALMON, 1962-1971

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or ten percent of the subsistence fishing in the area is carried out by persons in such financial positions that they actually have a legitimate need of the resource harvested in order to subsist. The type of subsistence fishing found in the Cook Inlet area could more appropriately be classified as recreational or supplemental fishing. Many people regard it as a form of sport fishing in which they not only derive recreational benefits but at the same time supplement their food stocks. Some people in the Cook Inlet area, natives and whites alike, because of either need or personal preference, are trying to maintain a "live-off-the land" life style. To these few, "subsistence" fishing may fall into a need category and may play an important part in their means of existing.

B. History of Fishery

1. Methods of Fishing: A variety of subsistence fishing methods are used in the Cook Inlet area, as it is a multi-species utilization area.
 - a. Salmon: Set nets, seines and drift nets are currently used with set nets accounting for about 95 percent of the effort. Since statehood, all subsistence salmon fishing has been in conformance

with commercial regulations and, therefore, areas open and methods used have been identical to those in commercial fishing. Prior

to statehood, much of the subsistence fishing took place in salmon spawning streams with gear ranging from hook and line to gill nets. Snagging was one of the more popular methods.

- * b. Shellfish: King crab, tanner crab, dungeness crab and shrimp are taken with various forms of pots. Most fishing takes place at or near the small boat harbors of Homer and Seward. Clams for subsistence are taken by use of a clam shovel. The methods currently used for taking shellfish species for subsistence purposes do not differ appreciably from those used prior to statehood.
- c. Smelt: Both bill nets and dip nets have been used in the Cook Inlet area for taking smelt, however, in 1972 dip nets became illegal gear for taking smelt in the waters of the Kenai Peninsula. A limited amount of hook and line snagging for smelt also exists.

d. Freshwater species: The gear most commonly utilized for freshwater species is small mesh gill nets and seines. In the past, fish-wheels and dip nets have also been used in freshwater.

2. Catches and Fishing Effort

a. Salmon: Salmon fishing is the only subsistence fishing for which reliable catch and effort data exists and this data covers from 1962 to 1971 only. During those years, a total of 2,957 subsistence permits were issued and all but 336 were returned. The total reported salmon catch from 1962 to 1971

* is as follows: 101 kings, 8,793 reds, 22,574 cohos, 2,365 chums, 3,672 pinks, for a total of 43,505 salmon.

The number of permits issued and the total catch by species appears in Table 1 and is depicted in graphic form in Figure 2.

b. Smelt: Catch data on smelt is only available for the past two seasons. In 1971, there were 1,387 smelt reported taken and in 1972, the reported catch was 8,542. Most effort has taken place along the western shoreline of the Kenai Peninsula and around Turnagin Arm.

The number of permits issued by year since 1969 appear below:

<u>Year</u>	<u>Salt Water</u>	<u>Kenai River</u>	<u>Total</u>
1969	150	194	344
1970	157	393	550
1971	92	*	92
1972	160	*	160

*Smelt permits not required for Kenai River.

- c. Shellfish: No permits are required for taking shellfish and, therefore, no records are available on effort or catch. Most effort occurs in Kachemak and Resurrection Bays.
 - d. Freshwater species: Relatively few permits have been requested for taking freshwater species and most of these have been for Lake Louise and Tyone Lakes. Whitefish comprise about 90 percent of the catch.
3. Management Regulations: The following is a history of subsistence regulations in Cook Inlet from 1943 to 1972.

1942 through 1950

No mention made in Cook Inlet section of commercial fisheries regulations.

1951

First mention in commercial regulations. Required notification of intention to take salmon for personal use, with statement of type of gear to be used, area, time, number of fish to be taken and intended disposition of fish taken.

Fish, Ship, and Campbell and Cottonwood Creeks closed to subsistence fishing.

1952

No intent to take notification required. More streams closed, including all tributaries to Knik Arm, Willow Creek (tributary to Susitna), Campbell Creek, and all streams and lakes of Kenai Peninsula that are tributary to Cook Inlet: Provided this
* shall not apply to fishing with rod, hook and line for personal use.

(Apparently this was the first time many Cook Inlet streams were closed to use of nets for personal use of fish.)

1953

Above regulations same, plus added stipulation that no personal use fishing allowed within 300 feet of weirs and ladders. Snagging was prohibited for the first time.

Also, personal use fishing prohibited within 500 yards of all other streams or lakes except with hand rod, hook and line. Day limit two (2) per day per person.

And subject to laws regulating commercial fishing 48 hours before and continuing 48 hours after each fishing period. Except for fall season and/or place greater than 25 miles from waters open to commercial fishing. . .

* And in Knik Arm where 15 fathom set nets, 100 yards apart, shall be operated prior to August 6, only during hours open to commercial fishing in the Northern district.

1954

Same as 1953 with additional sections that. . . Commercial gear may be used for personal fishing during any fall season. . .

Fishing allowed in Turnagain Arm east of a line between Hope and Indian, and. . .

Fishing allowed more than 5 miles upstream from tidewater on all streams and lakes of Cook Inlet drainage South and West of the Susitna River or South of town of Homer.

1955

General regulations and. .

Cook Inlet regulations same as 1954.

1956

Same as 1955 with added restrictions. . .

Closed Kenai & Russian Rivers within 300 yards of their confluence (this to 'Sportsmen').

Rod and line. . . limited take to two (2) salmon over 16 inches, per person per day.

1957

General regulations same as 1956.

Cook Inlet about same except for limit on take by rod and line fishermen ('. . . not to exceed 10 inches'. . . per person per day by hook and line, and not more than two (2) may exceed 16 inches').

1958

General same as 1957 plus. .

A series of regulations devised to try to curb snagging. . including limiting size hooks and making it illegal to use weights with multiple hooks.

Cook Inlet same as 1957.

1959

General same as 1958.

Cook Inlet--added restrictions that. . .personal use fishing be allowed in the main stem of the Susitna River above the town of Alexander. . with nets less than 30 feet and more than 100 yards from any other set net and from tributary streams-- and identified with name and address of owner.

And personal use fishing must be done in conformance with commercial regulations (This closed Knik Arm and Turnagain Arm).

Many Kenai Peninsula streams closed above ~~markers~~ placed from 3 to 5 miles up from mouth (Anchor, Deep Creek, Stariski and many others).

Added closure of Cooper Creek, Little Willow Creek and Montana Creek. . And. . allowed 30 yards of set nets for use in Knik Arm after August 9, also Fish Creek closed July 21 (snaggers harrassing red run).

1960

General same as 1959.

Cook Inlet--personal use fishing to be allowed on Northwest shore Knik Arm. . with nets 90 feet or less and more than 500 yards from terminus of any salmon stream. . and conform to commercial open periods in Northern district. . and identified with name and address of owner.

1961

General same as 1960.

Cook Inlet added open fishing season on clams, crabs, and bottomfish. . all in conformance with commercial regulations.

Salmon for subsistence was broken into districts. . . apparently this did away with fishing in main stem of Susitna River above Alexander (see subsistence regulations for Northern district 1961).

1962

General regulations added restrictions--personal use fishing must be done by permit only, issued by commissioner. . . limited subsistence catch to individual regional regulations.

Cook Inlet---same as 1961.

1963

General regulations--new regulation--fish other than salmon may be taken at any time in any area of state by any method except by use of explosives or chemicals, except as hereinafter provided or as provided in the Sport Fishing Regulations of the Department.

Cook Inlet--same as 1962.

1964

General same as 1963.

Cook Inlet--new regulation--must have permit for salmon and all catches by species, location and date of catch must be reported. Freshwater species except for trout, grayling, and char may be taken for subsistence purposes via permit and these permits be issued by commissioner or his representative when deemed warranted.

Also not more than 50 salmon be taken per permit and subsistence fishing is prohibited in any area closed to commercial fishing except for parts of Knik Arm.

And all districts with exception of Outer district, must have name and address of owner on fishing gear. The Outer district regulations were amended to conform with commercial regulations.

Another Cook Inlet regulation was amended-- sports fishing licenses required for clams and/or bottom fish and crab pot floats will contain the name of owner. No sex or size limitations on crab.

1965 through 1969

Outside of minor amendments and a few changes in regulations in the different fishing districts, personal use fishing regulations are about the same for that period from 1965 to 1969.

1969

Cook Inlet--new regulations--

Restrictions:

(a) Subsistence fishermen taking herring and smelt in the Kenai River must be physically present at all times said net is being fished.

(b) A sports fishing license is required when bottom fish are taken with fishing rod and line.

(c) A sports fishing license is required for the digging of razor clams.

Size Limits: There are no size or sex limitations on crab.

1970

Cook Inlet--new regulations--

Salmon - The subsistence fishery on the Northwest of Knik Arm was deleted.

Smelt - In the Kenai River the length of gill nets may not exceed 20 feet in length.

Smelt may be taken in that portion of the Kenai River from its mouth upstream to the Soldotna bridge from April 1 through May 31.

1972

Cook Inlet--new regulations--Smelt - Dip nets may not be used for taking smelt in the waters of the Kenai Peninsula.

Problem Areas

1. Northwest Shore Knik Arm: This area is no longer a problem as it was closed to subsistence fishing in 1971. The number of permits issued for this area had increased during the mid-60's to a level of 290 during the last two years of the fishery. (1969 and 1970) The reported catch during this period averaged 3,300 salmon (Table 2). The main justification for closing this area was the declining red salmon escapements into Fish Creek which reached a low of 6,233 in 1969.
2. Mud Bay: The problem here appears to be over-utilization of available fishing space rather than over-utilization of the resource. Commercial fishing, sports fishing, and subsistence fishing all take place in this rather confined area of Kachemak Bay along the Northeast side of the Homer Spit. Peak utilization occurs in mid to late August when approximately 10 scine fishermen, 50 subsistence fishermen and several hundred sports fishermen fish

TABLE 2

COOK INLET SUBSISTENCE SALMON FISHERY
Permits Issued and Total Salmon Catch By District, 1967 - 1972

YEAR	NORTHERN ^{1/}		NORTH and SOUTH CENTRAL		SOUTHERN		EASTERN	
	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch
1967	218	2,947	13	119	51	942	91	262
1968	276	5,395	30	303	79	953	--	--
1969	290	1,563	40	400	85	1,067	32	929
1970	290	3,448	45	206	78	1,386	36	181
1971	9	10	28	138	112	1,616	19	7
1972	9	<u>2/</u>	5	<u>2/</u>	151	<u>2/</u>	5	<u>2/</u>

^{1/} Northern district represents Northwest shore at Knik Arm

^{2/} Catch data not available for 1972.

this area. The main species being sought are silver salmon and the subsistence catch has averaged about 1,000 since 1967. The commercial catch in the Southern district has averaged 2,800 silvers since 1967 and an estimated 50 percent of these have been taken from Mud Bay proper. Sports harvest figures are not available, however, the average catch since 1967 would probably not exceed 500 fish. Commercial and subsistence harvest figures indicate no decline in abundance of silver stocks in Mud Bay. A tagging study in 1970 indicated the silver stocks of Mud Bay were mostly local stocks bound for upper Kachemak Bay and escapement indices in this area have been consistent in recent years.

Although there is no biological justification for closing Mud Bay, the time has perhaps come for closing a portion of Mud Bay to commercial and subsistence fishing because of user-group conflicts.

For the last several years proposals have been submitted to the Board of Fish and Game asking for either complete or partial closures of Mud Bay. The commercial fish staff has always opposed these closures on the basis that no biological justification exists.

Because of the increasing sports fish utilization there will be a public proposal submitted to the Board of Fish and Game at the November meeting by a Homer commercial fisherman which will ask for a partial closure of the Mud Bay area. The commercial staff intends to support this proposal.

3. Shellfish: Another potential problem is the crab and shrimp pot fisheries which have developed tremendously in the last few years. A considerable volume of gear is being fished in the immediate vicinity of the Homer small boat harbor and again, rather than over-utilization of the resource, the main problem is over-utilization of area. Gear is so concentrated in this one area that navigation has been hindered. A regulation may be necessary in the near future to close a section of the bay in the immediate vicinity of the small boat harbor entrance.

D. Recommendations:

It is the personal opinion of the area biologist that a need exists for subsistence fishing in Cook Inlet and that it should be continued perhaps with some modifications.

The 5 or 10 percent of the people who actually have a legitimate need to subsistence fish should not be denied this right just because the fishery has become recreationally oriented.

Perhaps a fee could be placed on a subsistence permit or license. This might tend to eliminate some of those who are participating more for recreation than need and yet keep the regulation constitutional. For those who could show need, through an application for a waiver on the license fee, a special free permit would be granted. A maximum income level would be established similar to that used in the Food Stamp Program and those falling below the established level would be eligible for the free permit. These measures would probably reduce subsistence fishing by 75 percent in the Cook Inlet area and subsistence fishing would again conform with the true meaning of subsistence.

APPENDIX

1. A copy of the Cook Inlet Subsistence Fishery Instructions of 1972.

COOK INLET SUBSISTENCE SALMON FISHERY, 1972

Salmon may be taken for subsistence purposes under authority of a permit which may be obtained from the local representative of the department.

Each subsistence fisherman taking salmon shall keep accurate records of the catch involved, by species, location caught, date of catch, and other such information as the department may require.

Salmon may be taken for subsistence purposes only by residents.

Identification of fishing gear shall consist of the name and address of the owner and the number of his subsistence permit.

Not more than 50 salmon may be taken under the authority of a subsistence permit.

Only one salmon subsistence permit will be issued to each person during a year.

A set gill net shall not be longer than 35 fathoms in length and 45 meshes in depth.

The operation of each set gill net shall be performed or assisted by the fisherman in whose name it is registered.

No part of a set gill net may be placed or operated within 600 feet of any part of another set gill net.

FISHING SEASONS:

NORTHERN DISTRICT: from 6:00 a.m. July 21 until 6:00 a.m. September 20 during open commercial fishing periods in conformance with all commercial regulations.

NORTH & SOUTH CENTRAL DISTRICTS: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations.

SOUTHERN DISTRICT: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

OUTER DISTRICT: in conformance with commercial regulations.

EASTERN DISTRICT: from June 1 through June 30 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

March 30, 1986

Hello Pat:

Per our recent phone conversation, please find enclosed copy of Memorandum with re to intent of our State Constitution!

I will contact Wash DC office of IWLFA and try and get copies of Udall pamphlet.

Do hope any Subsistence law passed has provisions for Rod, hook + line under personal use fisheries method and means.

The only reason Rod, hook + line was removed was a agreement between Mitchell and commercial fishermen.

The commercial fishermen agreed to back priority Subsistence provided the natives would back removal of Rod, hook and line from personal use approved method and means!

This than forced the fisheries board to put the personal use nets on the late run Silvers after August 15th instead of between July 1st and August 15th when 95% of annual run is available.

Its just plain not fair and must be changed.

Your assistance will truly be appreciated.

Have a good day

Sam McDowell
Concerned American

PS:

Do hope you had time to contact Eblutna!

MEMORANDUM

To Whom It May Concern:

The Delegates to the Alaska Constitutional Convention accurately predicted and foresaw the confusion and dissension that would exist if the Legislature and the executive branch of government attempted to provide in a special way for the traditional rights of some Alaskans to the exclusion of others. The minutes of the Alaska Constitutional Convention are very specific.

An amendment was presented to the members of the Constitutional Convention which stated, in part, as follows:

"The Legislature shall provide for translating the traditional rights of Alaskans of Indian, Aleut, or Eskimo ancestry to the use of land, fishing, hunting and trapping areas into approximately equivalent homestead or other property rights."

One delegate, Mr. Herman, thought that this amendment might very well be class legislation and he did not think the legislature should discriminate between one class of citizens over another.

The Marsden Amendment was defeated by a vote of 34 to 16. I believe that the treatment given that amendment is an indication that the authors of our constitution did believe that all Alaskans should be treated equally in terms of allocation of both fish and game resources.

At least one other American agrees with this interpretation. During July of 1977, remarks were prepared by Stuart L. Udall in a pamphlet entitled "The Alaskan Natives and Their Subsistence Rights: A Discussion of the Constitutional Questions".

Page 7 of that pamphlet prepared by Mr. Udall and given to the American Congress states, in pertinent part, as follows:

"It is not surprising that the Alaskan Legislature dealt gingerly with the Native Subsistence issue and made no effort to deal with the rights of the Alaska Native as a special class of citizens. Under its constitution it is patent that the Alaska Legislature cannot grant meaningful subsistence rights to the Alaskan Natives --- or to any other group of citizens. . . . Thus the State (of Alaska) cannot under its constitution single out its Natives --- or any other distinct class of citizens --- and grant them special subsistence rights. This is particularly true with respect to fishing, for Article 8, Section 15 of the Constitution prohibits the legislature from creating "any exclusive right or special privilege of fishery".

I ask that the Alaska Legislature consider this constitutional mandate. We all know that this question has not yet been presented to the Alaska Supreme Court; however, considering the plain intent of the authors of our constitution and the comments of Mr. Udall, I wonder if it is appropriate to present a scheme which Mr. Udall states, justly I believe, to be contrary to our Alaska Constitution.

Have a Good Day.

Sam E. McDowell

Sam E. McDowell
Concerned American
336 E. 23rd Avenue
Anchorage, AK 99503
Telephone: (907) 272-6605

Hello Don:

March 28, 1986

Please find enclosed data with Re:
two total disasters!

1st Subsistence:

(1) See enclosed Memorandum with Re: ^{to} the delegates stand on subject, during constitutional convention. Fairly clear, eh? (I'll arrange to have copies distributed to Legislators.

(2) Enclosed Cook Inlet (1973) management report! clearly shows complete history of Subsistence use in upper Cook Inlet before Subsistence law was passed.

Please note hook + line personal use fishing was a equal common use method. However Mitchell arranged to write us out. Same as he arranged to allocate 4200 King Salmon to the (239) residents of Tyonek.

Reasons: lot hook + line fishing! He did this to get support from commercial fishing to back his stand on Subsistence.

(2) The reason for allocation to Tyonek was to set the stage for Subsistence users to be ~~by~~ species selective.

Tyonek, was allocated 4200 King Salmon with a provision they need not count other species! (See Report) Note King Salmon historical harvest % was only 0.2 of total annual harvest.

If a law is going to be passed hook + line should be included like it use to be! This will force the Board of Fisheries to take into con-

March 28, 1986

identical equal allocation for personal use fisheries.

I suggest the law states the Lic, bag - limit, method and means, stay the same as for present Sport fishing regulations. However this will force the fisheries managers to allow for larger escapement to provide for all Rod, hook and line fishermen ^{as a} equal allocation to the Net personal use fishery!!!

Note: We have at last got the proof we needed to show without a doubt the true intent of proposed Amendment 7C. See Memorandum to AVCP and Calista Inc dated Aug 22, 1985 from attorneys!

Additional data enclosed Re: these two subjects.

Your assistance will truly be appreciated.

Have a good day

Sam E. McDowell
Concerned American
336 E. 73rd Ave
Anchorage Alaska
99503
DH# 907-272-1605

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FISHERY REPORT 1972

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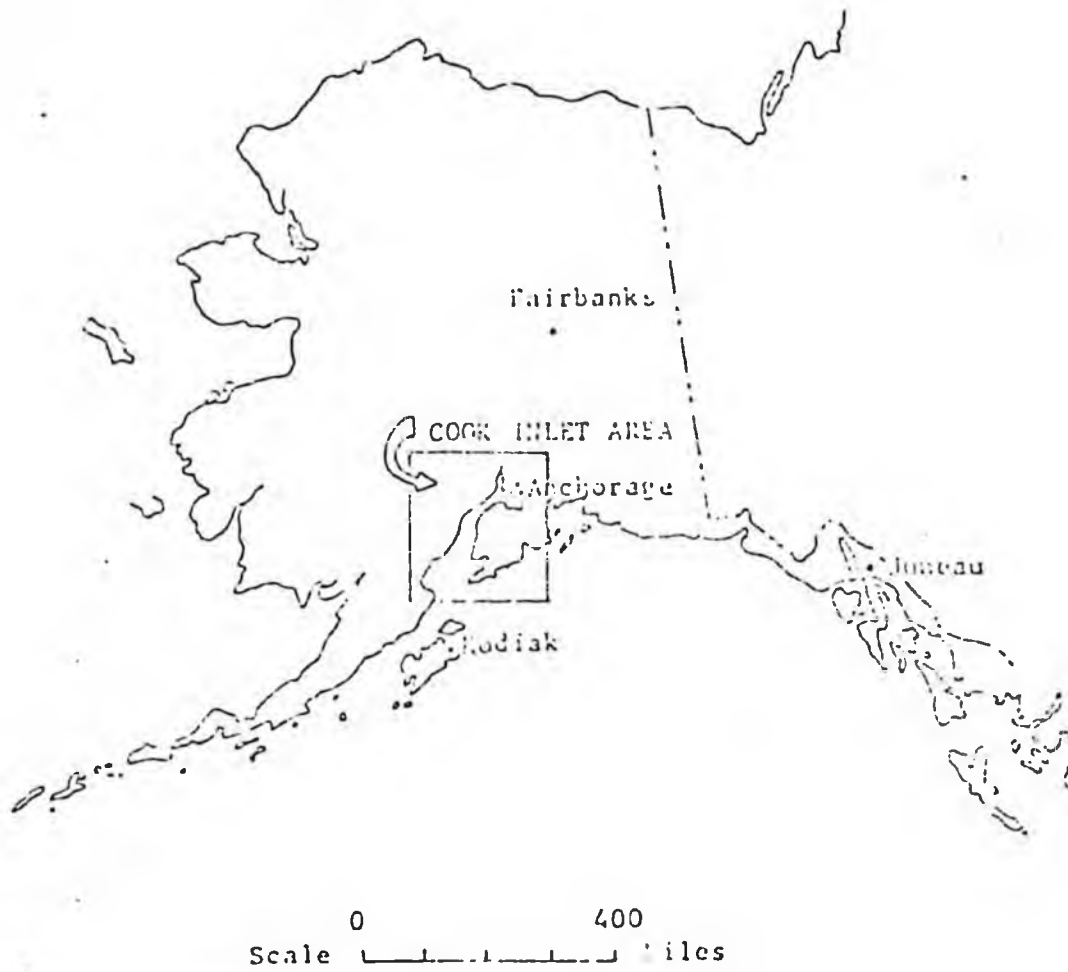
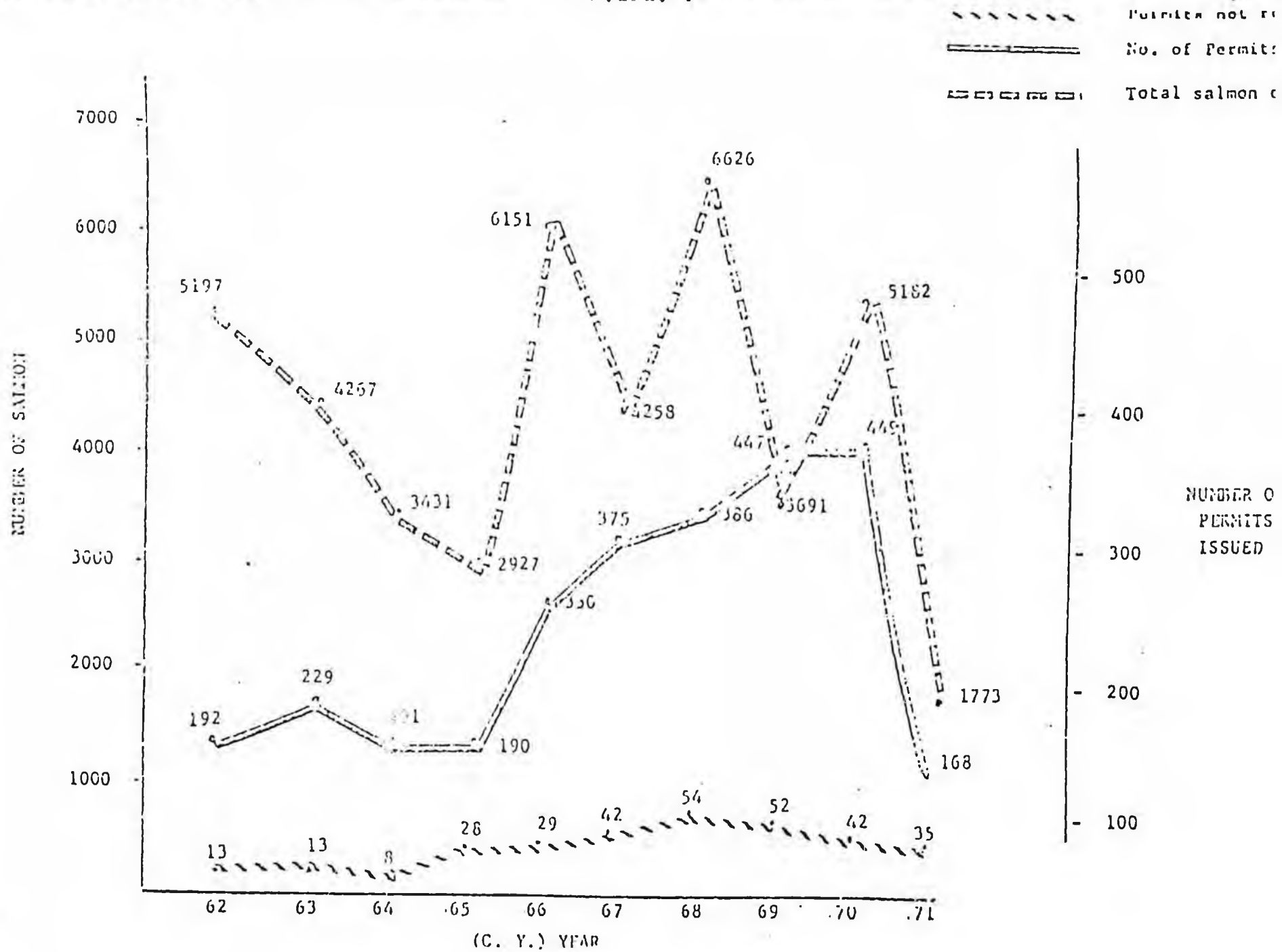


Figure 1. Cook Inlet area location map.

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to statehood, much of the subsistence fishing took place in salmon spawning streams with gear ranging from hook and line to gill nets. Snagging was one of the more popular methods.

- * b. Shellfish: King crab, tanner crab, dungeness crab and shrimp are taken with various forms of pots. Most fishing takes place at or near the small boat harbors of Homer and Seward. Clams for subsistence are taken by use of a clam shovel. The methods currently used for taking shellfish species for subsistence purposes do not differ appreciably from those used prior to statehood.
- c. Smelt: Both bill nets and dip nets have been used in the Cook Inlet area for taking smelt, however, in 1972 dip nets became illegal gear for taking smelt in the waters of the Kenai Peninsula. A limited amount of hook and line snagging for smelt also exists.

d. Freshwater species: The gear most commonly utilized for freshwater species is small mesh gill nets and seines. In the past, fish-wheels and dip nets have also been used in freshwater.

2. Catches and Fishing Effort

- a. Salmon: Salmon fishing is the only subsistence fishing for which reliable catch and effort data exists and this data covers from 1962 to 1971 only. During these years, a total of 2,957 subsistence permits were issued and all but 316 were returned. The total reported salmon catch from 1962 to 1971 ~~*~~ is as follows: 101 kings, 8,793 reds, 28,574 cohos, 2,365 chums, 3,672 pinks, for a total of 43,505 salmon. The number of permits issued and the total catch by species appears in Table 1 and is depicted in graphic form in Figure 2.
- b. Smelt: Catch data on smelt is only available for the past two seasons. In 1971, there were 1,387 smelt reported taken and in 1972, the reported catch was 8,542. Most effort has taken place along the western shoreline of the Kenai Peninsula and around Turnagin Arm.

The number of permits issued by year since 1969 appear below:

<u>Year</u>	<u>Salt Water</u>	<u>Kenai River</u>	<u>Total</u>
1969	150	194	344
1970	157	393	550
1971	92	*	92
1972	160	*	160

*Smelt permits not required for Kenai River.

- c. Shellfish: No permits are required for taking shellfish and, therefore, no records are available on effort or catch. Most effort occurs in Kachemak and Resurrection Bays.
 - d. Freshwater species: Relatively few permits have been requested for taking freshwater species and most of these have been for Lake Louise and Tyone Lakes. Whitefish comprise about 90 percent of the catch.
3. Management Regulations: The following is a history of subsistence regulations in Cook Inlet from 1943 to 1972.

1942 through 1950

No mention made in Cook Inlet section of commercial fisheries regulations.

1951

First mention in commercial regulations. Required notification of intention to take salmon for personal use, with statement of type of gear to be used, area, time, number of fish to be taken and intended disposition of fish taken.

Fish, Ship, and Campbell and Cottonwood Creeks closed to subsistence fishing.

1952

No intent to take notification required. More streams closed, including all tributaries to Knik Arm, Willow Creek (tributary to Susitna), Campbell Creek, and all streams and lakes of Kenai Peninsula that are tributary to Cook Inlet: Provided this
* shall not apply to fishing with rod, hook and line for personal use.

(Apparently this was the first time many Cook Inlet streams were closed to use of nets for personal use of fish.)

1953

Above regulations same, plus added stipulation that no personal use fishing allowed within 300 feet of weirs and ladders. Snagging was prohibited for the first time.

Also, personal use fishing prohibited within 500 yards of all other streams or lakes except with hand rod, hook and line. Day limit two (2) per day per person.

And subject to laws regulating commercial fishing 48 hours before and continuing 48 hours after each fishing period. Except for fall season and/or place greater than 25 miles from waters open to commercial fishing. . .

~~X~~ And in Knik Arm where 15 fathom set nets, 100 yards apart, shall be operated prior to August 6, only during hours open to commercial fishing in the Northern district.

1954

Same as 1953 with additional sections that. . . Commercial gear may be used for personal fishing during any fall season. . .

Fishing allowed in Turnagain Arm east of a line between Hope and Indian, and. . .

Fishing allowed more than 5 miles upstream from tidewater on all streams and lakes of Cook Inlet drainage South and West of the Susitna River or South of town of Homer.

1955

General regulations and. .

Cook Inlet regulations same as 1954.

1956

Same as 1955 with added restrictions. . .

Closed Kenai & Russian Rivers within 300 yards of their confluence (this to 'Sportsmen').

Rod and line. . . limited take to two (2) salmon over 16 inches, per person per day.

1957

General regulations same as 1956.

Cook inlet about same except for limit on take by rod and line fishermen ('. . . not to exceed 10 inches'. . . per person per day by hook and line, and not more than two (2) may exceed 16 inches').

1958

General same as 1957 plus. .

A series of regulations devised to try to curb snagging. . including limiting size hooks and making it illegal to use weights with multiple hooks.

Cook Inlet same as 1957.

1959

General same as 1958.

Cook Inlet--added restrictions that. . .personal use fishing be allowed in the main stem of the Susitna River above the town of Alexander. . . with nets less than 30 feet and more than 100 yards from any other set net and from tributary streams-- and identified with name and address of owner.

And personal use fishing must be done in conformance with commercial regulations (This closed Knik Arm and Turnagain Arm).

Many Kenai Peninsula streams closed above markers placed from 3 to 5 miles up from mouth (Anchor, Deep Creek, Stariski and many others).

Added closure of Cooper Creek, Little Willow Creek and Montana Creek. . And. . allowed 30 yards of set nets for use in Knik Arm after August 9, also Fish Creek closed July 21 (snaggers harrassing red run).

1960

General same as 1959.

Cook Inlet--personal use fishing to be allowed on Northwest shore Knik Arm. . with nets 90 feet or less and more than 500 yards from terminus of any salmon stream. . and conform to commercial open periods in Northern district. . and identified with name and address of owner.

1961

General same as 1960.

Cook Inlet added open fishing season on clams, crabs, and bottomfish. . all in conformance with commercial regulations.

Salmon for subsistence was broken into districts. . . apparently this did away with fishing in main stem of Susitna River above Alexander (see subsistence regulations for Northern district 1961).

1962

General regulations added restrictions--personal use fishing must be done by permit only, issued by commissioner. . . limited subsistence catch to individual regional regulations.

Cook Inlet---same as 1961.

1963

General regulations--new regulation--fish other than salmon may be taken at any time in any area of state by any method except by use of explosives or chemicals, except as hereinafter provided or as provided in the Sport Fishing Regulations of the Department.

Cook Inlet--same as 1962.

1964

General same as 1953.

Cook Inlet--new regulation--must have permit for salmon and all catches by species, location and date of catch must be reported. Freshwater species except for trout, grayling, and char may be taken for subsistence purposes via permit and these permits be issued by commissioner or his representative when deemed warranted.

Also not more than 50 salmon be taken per permit and subsistence fishing is prohibited in any area closed to commercial fishing except for parts of Knik Arm.

And all districts with exception of Outer district, must have name and address of owner on fishing gear. The Outer district regulations were amended to conform with commercial regulations.

Another Cook Inlet regulation was amended--sports fishing licenses required for clams and/or bottom fish and crab pot floats will contain the name of owner. No sex or size limitations on crab.

1965 through 1969

Outside of minor amendments and a few changes in regulations in the different fishing districts, personal use fishing regulations are about the same for that period from 1965 to 1969.

1969

Cook Inlet--new regulations--

Restrictions:

(a) Subsistence fishermen taking herring and smelt in the Kenai River must be physically present at all times said net is being fished.

(b) A sports fishing license is required when bottom fish are taken with fishing rod and line.

(c) A sports fishing license is required for the digging of razor clams.

Size Limits: There are no size or sex limitations on crab.

1970

Cook Inlet--new regulations--

Salmon - The subsistence fishery on the Northwest of Knik Arm was deleted.

Smelt - In the Kenai River the length of gill nets may not exceed 20 feet in length.

Smelt may be taken in that portion of the Kenai River from its mouth upstream to the Soldotna bridge from April 1 through May 31.

1972

Cook Inlet--new regulations--Smelt - Dip nets may not be used for taking smelt in the waters of the Kenai Peninsula.

4. Problem Areas

1. Northwest Shore Knik Arm: This area is no longer a problem as it was closed to subsistence fishing in 1971. The number of permits issued for this area had increased during the mid-60's to a level of 290 during the last two years of the fishery. (1965 and 1970) The reported catch during this period averaged 3,300 salmon (Table 2). The main justification for closing this area was the declining red salmon escapements into Fish Creek which reached a low of 6,233 in 1969.
2. Mud Bay: The problem here appears to be over-utilization of available fishing space rather than over-utilization of the resource. Commercial fishing, sports fishing, and subsistence fishing all take place in this rather confined area of Kachemak Bay along the Northeast side of the Homer Spit. Peak utilization occurs in mid to late August when approximately 10 seine fishermen, 50 subsistence fishermen and several hundred sports fishermen fish

TABLE 2

COOK INLET SUBSISTENCE SALMON FISHERY
Permits Issued and Total Salmon Catch By District, 1967 - 1972

YEAR	NORTHERN ^{1/}		NORTH and SOUTH CENTRAL		SOUTHERN		EASTERN	
	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch
1967	218	2,947	13	119	51	942	91	262
1968	276	5,395	30	303	79	953	--	--
1969	290	1,563	40	400	85	1,067	32	929
1970	290	3,448	45	206	78	1,386	36	181
1971	9	10	28	138	112	1,615	19	7
1972	9	<u>2/</u>	5	<u>2/</u>	151	<u>2/</u>	5	<u>2/</u>

^{1/} Northern district represents Northwest shore at Knik Arm

^{2/} Catch data not available for 1972.

this area. The main species being sought are silver salmon and the subsistence catch has averaged about 1,000 since 1967. The commercial catch in the Southern district has averaged 2,800 silvers since 1967 and an estimated 50 percent of these have been taken from Mud Bay proper. Sports harvest figures are not available, however, the average catch since 1967 would probably not exceed 500 fish. Commercial and subsistence harvest figures indicate no decline in abundance of silver stocks in Mud Bay. A tagging study in 1970 indicated the silver stocks of Mud Bay were mostly local stocks bound for upper Kachemak Bay and escapement indices in this area have been consistent in recent years.

Although there is no biological justification for closing Mud Bay, the time has perhaps come for closing a portion of Mud Bay to commercial and subsistence fishing because of user-group conflicts.

For the last several years proposals have been submitted to the Board of Fish and Game asking for either complete or partial closures of Mud Bay. The commercial fish staff has always opposed these closures on the basis that no biological justification exists.

Because of the increasing sports fish utilization there will be a public proposal submitted to the Board of Fish and Game at the November meeting by a Homer commercial fisherman which will ask for a partial closure of the Mud Bay area. The commercial staff intends to support this proposal.

3. Shellfish: Another potential problem is the crab and shrimp pot fisheries which have developed tremendously in the last few years. A considerable volume of gear is being fished in the immediate vicinity of the Homer small boat harbor and again, rather than over-utilization of the resource, the main problem is over-utilization of area. Gear is so concentrated in this one area that navigation has been hindered. A regulation may be necessary in the near future to close a section of the bay in the immediate vicinity of the small boat harbor entrance.

D. Recommendations:

It is the personal opinion of the area biologist that a need exists for subsistence fishing in Cook Inlet and that it should be continued perhaps with some modifications.

The 5 or 10 percent of the people who actually have a legitimate need to subsistence fish should not be denied this right just because the fishery has become recreationally oriented.

Perhaps a fee could be placed on a subsistence permit or license. This might tend to eliminate some of those who are participating more for recreation than need and yet keep the regulation constitutional. For those who could show need, through an application for a waiver on the license fee, a special free permit would be granted. A maximum income level would be established similar to that used in the Food Stamp Program and those falling below the established level would be eligible for the free permit. These measures would probably reduce subsistence fishing by 75 percent in the Cook Inlet area and subsistence fishing would again conform with the true meaning of subsistence.

APPENDIX

1. A copy of the Cook Inlet Subsistence Fishery Instructions of 1972.

COOK INLET SUBSISTENCE SALMON FISHERY, 1972

Salmon may be taken for subsistence purposes under authority of a permit which may be obtained from the local representative of the department.

Each subsistence fisherman taking salmon shall keep accurate records of the catch involved, by species, location caught, date of catch, and other such information as the department may require.

Salmon may be taken for subsistence purposes only by residents.

Identification of fishing gear shall consist of the name and address of the owner and the number of his subsistence permit.

Not more than 50 salmon may be taken under the authority of a subsistence permit.

Only one salmon subsistence permit will be issued to each person during a year.

A set gill net shall not be longer than 35 fathoms in length and 45 meshes in depth.

The operation of each set gill net shall be performed or assisted by the fisherman in whose name it is registered.

No part of a set gill net may be placed or operated within 600 feet of any part of another set gill net.

FISHING SEASONS:

NORTHERN DISTRICT: from 6:00 a.m. July 21 until 6:00 a.m. September 20 during open commercial fishing periods in conformance with all commercial regulations.

NORTH & SOUTH CENTRAL DISTRICTS: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations.

SOUTHERN DISTRICT: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

WESTER DISTRICT: in conformance with commercial regulations.

EASTERN DISTRICT: from June 1 through June 30 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 24, 1986

Honorable Tim Kelly
Chairman, Senate Rules Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 288 (Subsistence)

Dear Senator *TK* Kelly:

The subsistence bill (HB 288) has been transmitted to the Senate Rules Committee from the Judiciary Committee. Attached for your information is a briefing paper on the background of HB 288, which I introduced last year to solve the problems created by the Madison case. However, I have grave concerns about the recent Senate Judiciary Substitute for HB 288, which does not comply with ANILCA and which would result in federal takeover. (See the discussion in part VII of the attached background briefing.)

The federal government has indicated that it is gearing up to assume management of fish and wildlife on federal lands and waters -- which make up at least 60% of the state -- as of June 1, unless Alaska's statutes are brought into alignment with the requirements of the federal subsistence law. I therefore strongly urge your committee to adopt a substitute for HB 288 that deletes the language in the Judiciary Substitute on page 4, lines 10 through 27, and to pass it on to the Senate floor as soon as possible. Such an amendment is essential to achieve a bill that is constitutional, enforceable, complies with ANILCA, and returns to the Boards of Fisheries and Game the flexibility to treat all Alaskans fairly.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

Enclosure

Background Briefing on
HB 288 (Subsistence)

I. Introduction

In February 1985 the Alaska Supreme Court interpreted the state subsistence law for the first time in Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). The decision caused numerous problems for the state, which the governor sought to address in House Bill 288. The bill passed the House in 1985 and the Senate is currently considering it. This analysis describes the effect of Madison, the goals of the Governor's bill, how the Senate Resources Committee substitute for HB 288 would work if enacted, and the serious problems with the Senate Judiciary Committee substitute.

II. The Situation Before Madison

A. The state statutes: In 1978, the legislature enacted a state subsistence law which did four things.

1. It defined subsistence uses as "the customary and traditional uses" of fish and game for

food, clothing, trade and other specified purposes.

2. It required the Boards of Fisheries and Game to authorize subsistence hunting and fishing, unless sustained yield would be threatened.
3. It required that in cases of relative resource shortage, subsistence uses would have priority over other uses.
4. In situations where only subsistence uses could be authorized and not all those eligible for subsistence could be allowed to hunt and fish, it required that the boards determine who should be authorized to harvest based on three criteria: dependence, local residency, and available alternatives.

B. The boards' interpretation: The boards adopted a joint procedural regulation interpreting the subsistence law. The regulation did several things.

1. It limited subsistence uses to "customary and traditional uses by rural Alaska residents."

2. It listed eight criteria the boards would use to identify subsistence uses of a community or area, such as skills being passed from generation to generation, and reliance on a wide diversity of resources.
3. It clarified that the boards would provide a reasonable opportunity for subsistence, unless the resource would be jeopardized.
4. It clarified that subsistence uses could not be cut back until all other uses were first cut back, and, if necessary, eliminated. Subsistence uses would be the last to go in times of limited resources.

C. Personal use: The Board of Fisheries in regulation established the personal use fishing category, so that people from areas which did not have subsistence uses (for example, the Fairbanks people who fish at Chitina) would be able to harvest fish with efficient means, such as nets, for their own use, without a priority. The board could allocate among personal use, sport, and commercial fishing in its reasonable discretion in any particular situation.

III. Madison

- A. The decision: The Alaska Supreme Court ruled that the state legislature in 1978 had not intended that subsistence be limited to rural customary and traditional uses, and did not mean for it to be authorized on a community or area basis.

- B. ANILCA consequences: ANILCA allows the state to continue managing fish and game on all land and water in Alaska if the state provides in a law of general applicability, among other things, the same definition of subsistence uses as appears in ANILCA, "customary and traditional uses by rural Alaska residents" of fish and game.

- C. Harvest disruptions: Madison in combination with State v. Eluska 698 P.2d 174 (Alaska App. 1985) resulted in extensive disruptions in 1985 of harvest opportunities.
 1. Eluska held that the Board of Game had to have a separate set of regulations for subsistence uses, and could not simply accommodate subsistence through the general hunting regulations, and it also held that unless subsistence hunting regulations were

adopted, people could raise the "subsistence defense" in prosecutions for out-of-season hunting.

2. Since Madison meant that hunting by all Alaskans for food was subsistence hunting, action by the Board of Game in response to Eluska resulted in numerous "tier 2" hunts.

a. The statutes' three criteria (dependency, local residency, and alternative resources) were used in a point system to rank everyone who wanted to participate in those hunts and to decide who could participate.

b. The board could not after Madison use permit drawing lotteries, which had been a standard tool in selecting which non-rural Alaskans could hunt, for example, the Nelchina caribou.

3. Further disruptions can be expected, since at least one lower court has interpreted Madison to give sport fishing by Alaska residents a priority over commercial fishing. State v.

IV. The Governor's Bill

Shortly after Madison, the Governor introduced HB 288, designed solely to address the problems created by Madison.

- A. It would amend the definition of "subsistence uses" in statute to clarify that they are the customary and traditional uses by rural Alaska residents of fish and game.

- B. It would add a definition of "personal use fishing" to the statutes to provide a category for non-rural Alaskans to harvest fish for their own use by efficient means, such as nets.
 - 1. For example, the residents of Fairbanks and other parts of Alaska have long fished with dip nets at Chitina for salmon, and the residents of Kenai and Anchorage have long fished with gill nets in Cook Inlet for salmon.

2. The category would be used in the board's discretion on a situation by situation basis, along with sport and commercial fishing, and none would automatically be the last priority, nor the second priority to subsistence.

V. The Senate Resources Substitute Compared to the Governor's Bill

A. Similarities: The Senate Resources Substitute does accomplish the two necessary results which the Governor's bill addressed. It:

1. Adds a clarification that "subsistence uses" are uses of fish and game by rural Alaska residents.
2. Establishes as a definition of "personal use fishing" in statute.

B. Differences: The Senate Resources Substitute also substantially reorganizes the current statutes in ways not necessary to address Madison. It additionally provides the following:

1. Requires the boards to identify fish stocks and game populations used for subsistence.
 - a. This should not result in ANICLA problems if the identification process takes into account the fluctuations which Congress recognized are inherent in subsistence uses, which are often dependent on the sporadic movement of game over time (e.g. the varying migration patterns of caribou).
 - b. This should not result in implementation problems if the intent is an ongoing identification process as data becomes available.

2. Authorizes the boards to establish an administrative appeal process.
 - a. This could be cumbersome to implement.
 - b. This would be redundant to the reconsideration and petition procedures already in existence.

3. Prohibits the use of the "subsistence defense" by individuals being prosecuted for violations of a statute or regulation.

a. People who feel the regulations do not adequately accommodate a reasonable opportunity for subsistence may submit a proposal or a petition to the appropriate board requesting change.

b. People still unsatisfied by the board response may file a civil suit challenging the regulation.

4. Mandates that the boards require subsistence permits in many situations where the boards may not find that useful.

a. The boards already may require subsistence permits when useful.

b. This would burden the public with extra paperwork.

c. This could be difficult to implement and administer, if the boards required

individual permits in all cases instead of community or area permits.

5. Requires the Board of Fisheries to adopt criteria upon which to base its allocation decisions.
6. Makes explicit the existing requirement that non-subsistence uses -- sport, commercial, and personal use -- be treated fairly.
7. Provides that Alaska residents have a preference over non-state residents in the use of moose, caribou, elk, and deer consistent with and in addition to the subsistence preference.

VI. The Senate Resources Substitute: How Subsistence Uses Would Be Identified and Regulated

A. The Boards of Fisheries and Game would be required to adopt subsistence regulations

1. The Senate Resources Substitute requires the Boards of Fisheries and Game to adopt subsistence fishing and hunting regulations for each fish stock and game population which

has been subject to subsistence uses, and for which there is a "harvestable portion." Subsistence regulations would have to provide a reasonable opportunity to satisfy subsistence uses (AS 16.05.258(c)).

2. The bill also clarifies that subsistence hunting and fishing are subject to reasonable regulation of seasons, catch or bag limits, and methods and means (As 16.05.258(f)).

B. The bill sets out procedural requirements for the boards to follow in developing subsistence regulations

1. The bill requires the boards to make several specific findings in adopting subsistence regulations. Under AS 16.058(a)and(b), the boards must;
 - a. identify the specific fish stocks and game populations or portions of stocks and populations which have been customarily and traditionally used for subsistence in each rural area;

b. determine what portion, if any, of these stocks and populations can be harvested consistent with sustained yield;

c. determine how much of the harvestable portion is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

2. In making these findings the boards will have to identify, by community or area, the residents "domiciled in a rural area of the state" who are engaged in subsistence uses of the fish stocks or game populations for which regulations are being developed. This will require the boards to determine which areas of the state are rural and which uses of fish and game are subsistence uses.

C. The bill changes the definition of "subsistence uses" and adds a definition of "rural area."

1. "Subsistence uses" are defined as 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, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible 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" (AS 16.05940(23)). (The new portions are underlined.)

2. "Rural area" is defined in the bill as "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 principle characteristic of the economy of the community or area" (AS 16.05.940(23)). This is very similar to the definition used in the Governor's bill, except for the term "principal", which replaced the term "significant" in the Governor's bill.

- D. The boards could use the eight criteria to identify subsistence uses and rural areas.

1. The Senate Resources version clarifies that definition of subsistence uses has been narrowed to rural areas, as the boards were doing by regulation before the Madison decision. The boards could therefore go back to identifying subsistence uses using the eight criteria set out in the joint boards procedural regulation (5 AAC 99.010) discussed in II(B) above.
2. The boards could therefore implement this section of the bill by using the eight criteria, or a similar regulation, to determine, area by area, which uses of fish and game qualify as subsistence uses by the people living in the area.
3. This section also clarifies that the boards have the authority and flexibility to evaluate the facts and determine that there are no subsistence uses on some stocks or populations or portions of stocks or populations. For example if bison, sheep or goat populations are not customarily and traditionally used by residents of rural areas the Board of Game does not need to

adopt subsistence regulations for these populations.

4. If there are customary and traditional uses by particular communities or areas of stocks or populations the boards must provide reasonable opportunities for rural residents in those areas to satisfy their subsistence uses.

5. In making the required findings, the boards would rely heavily on information from the public, the fish and game advisory committees, the regional councils, and the Department of Fish and Game, including the Division of Subsistence.

6. The boards would have to determine, based on this information, whether regulations provide a reasonable opportunity to satisfy subsistence uses, or whether they restrict ("significantly impair") subsistence uses.

E. The bill continues to provide a preference for subsistence uses.

1. The preference for subsistence uses would operate as it does in the existing statute.
2. Non-subsistence uses of fish stocks and game populations can be authorized by the boards as long as there is enough of the resource to accommodate subsistence uses.
3. If there is not enough of a fish stock or game population to accommodate all consumptive uses, then regulations must give subsistence uses a preference over other consumptive uses and provide a reasonable opportunity to satisfy the subsistence uses (AS 16.05.258 (c)). This situation, when all subsistence uses can be accommodated, has been called "Tier One."
4. The boards can use a wide range of regulatory options to provide for subsistence uses and the Tier One preference, including limiting transportation methods, providing winter hunting seasons, and providing different seasons or larger bag limits to rural residents.

5. All non-subsistence hunting or fishing must be closed before subsistence uses can be restricted ("significantly impaired").

6. If it is necessary to restrict ("significantly impair") subsistence uses in order to assure sustained yield or continue subsistence uses, the boards must distinguish among subsistence users by applying the following criteria:
 - a. customary and direct dependence on the fish stock of game populations as the mainstay of livelihood;

 - b. local residency; and,

 - c. availability of alternative resources.

7. The situation where not all subsistence users can hunt or fish has been called Tier 2. With a rural definition Tier 2 situations would not occur in as many areas, or be as disruptive as they were in 1985 under Madison, because the group to be protected would be so much smaller.

VII. The Senate Judiciary Welfare Amendment

The Senate Judiciary Committee amended the Senate Resources Substitute to provide that people whose family's gross income is above 130% of the federal poverty level (which changes depending on other indices) will not qualify for subsistence hunting and fishing. This raises the following major problems.

1. An income level test is inconsistent with ANILCA, and would mean federal takeover. Congress clearly stated that ANILCA:

"requires that regulatory systems which employ income requirements not be imposed upon rural residents. Income requirements are by their very nature capricious classifications in rural Alaska..."

126 Cong. Rec. H10546 (daily ed. Nov. 12, 1980).

2. An income level test will result in families making more than the specified amount a year no longer qualifying for subsistence hunting and fishing even if they had relied upon subsistence in the past.

3. Any income level test is likely to violate equal protection.

a. Any income chosen is likely to be arbitrary and not linked to patterns of use and reliance on fish and wildlife.

b. Great variances in income, employment opportunities, and cost of living in different areas of the state would make it impossible to establish a single state-wide standard of economic need which would treat people similarly situated to fish and game resources alike.

4. A definition based on income is not consistent with reality in bush areas of Alaska.

a. Often the most successful members of communities are the most productive in terms of income and in terms of harvest, which is shared throughout the community.

b. In bush Alaska, even people with reasonably high incomes do not have

supplies available to buy with the money.

c. Hunting and fishing is not viewed as a subsidy, but rather as a way of life, in those bush areas.

d. A definition based on need would disrupt long established social and economic patterns in those bush areas.

5. Administrative problems would arise in constructing a system which would accurately identify individuals eligible under some kind of income level test; a system which was geared to be accurate would also be intrusive into people's lives in that some verification of income level might be necessary.

Bye-bye, hunting, if Senate dawdles further

The issue of subsistence is like a freight train out of control. The throttle is stuck at full-speed ahead and the train is rushing pell-mell toward the station, where, unless something changes, it's certain to crash.

No one wants to climb aboard and slow the engine, despite warnings by the Department of Interior's Bill Horn, Governor Bill Sheffield and a few (very few) men that a serious collision is imminent between the state and federal governments.

It's as if the majority of responsible people in our political system have become tongue-tied. They won't speak out for fear of offending someone or some group and everyone is holding their collective breath — hoping the runaway engine will lose its head of steam.

Aside from Horn's testimony before the Senate Affairs committee — that the federal government is **REQUIRED BY LAW** to take over management of fish and game — the other federal agencies have not said a word. The majority of state officials have remained silent, and most



Rising to the Bait

Dan Sisson

of the public is in the dark.

Their reasoning, I suppose, is why make a big noise over an issue that can be solved in minutes by a change of one or two votes. So they say and do nothing.

But the federal government, while silent, has not been idle. A group of men from the Forest Service, Park Service, Fish & Wildlife Service, BLM, BIA, FAA, the Solicitor's Office and the Army and Air Force have been meeting regularly — and seriously — for weeks, anticipating the worst case.

Under the leadership of Alaskan Ric Davidge, the coordinator of this Federal Subsistence Resource Management Program (FSRMP), a timetable has been

adopted if no subsistence bill passes the legislature in compliance with federal law.

On May 15th (less than a month from now) the FSRMP will give the state of Alaska a "notice of intent" that they are the federal agency responsible for taking over management of fish and game resources on federal lands. They will also publish documents outlining this purpose in the Federal Register — which gives them legal authority to act.

In this original notice will be specific references to all June and July hunts as well as the sportfishing and commercial fishing seasons that may be halted.

On May 30 they will publish "emergency regulations" on all other hunts if they have the necessary harvest information from the Alaska Board of Game. This will not be possible, though, if the Game Board does not meet in emergency session and agree on harvest numbers by July 31st. And if the numbers do not satisfy the federal managers, there will be **NO OPENING OF SEASONS**.

This effort is being underta-

ken with the approval of the highest officials in the federal government. So, what does it mean?

It means 60 per cent of Alaska (areas now under federal control) will be automatically under federal management. It goes up to 80 percent when one includes all private and non-federal lands within or adjacent to federal boundaries, plus waters and native lands. And, when one adds federal refuges, parks and preserves — plus the fish, birds and game in them — it comes close to 100 per cent of the resources.

It means a very conservative philosophy of managing wildlife resources. The feds — unlike the state — do not automatically act on management plans recommended by their biologists.

A detailed and exhaustive analysis of all biological implications is followed by an even more exhausting and time consuming administrative procedure that federal managers are required to follow by law. The Administrative Practices Act and the National Environmental Protection Act are just two laws that require hearings, hearings and more hearings in order that fed-

eral management plans will not be litigated and shot down in the courts. In sum, it means the feds will take a lot of time before they do anything. Months, if not years.

If the state senate fails to pass a bill acceptable to the feds there will be dozens, if not hundreds, of court battles by white sport hunters, guides, sportfishermen, commercial fishermen, wilderness advocates, urban residents, rural residents, subsistence users, natives, private organizations interested in conserving a particular resource, and undoubtedly out-of-state organizations. In short there will ensue a legal nightmare that paralyzes the FSRMP's attempts to manage fish and game.

According to legal experts this tangle of suits will take at least three to four years to settle. Meanwhile there may be **NO HUNTING** and limited fishing.

Those who pay will be the urban sportsmen, because of a few politicians. Mitch Abood threw up his hands and said, "It (subsistence) is too complicated," and passed the bill to another committee. Rich Halford

introduced an amendment (that Bill Horn specifically said was in violation of federal law) and then refused to answer questions about why he had done so. Pat Rodey refuses to pass the subsistence bill out of his Senate Judiciary Committee until his fire-arm bill (which is unrelated to subsistence) is reported out of the House Judiciary committee. Because of these politicians, majority of Alaskans may not be hunting for years.

Is this what we want? A frustrating and enraging scene which poisons an election year? One in which the voters are polarized over the use of resources common to all and which should be enjoyed by all?

The subsistence crisis is now a reality. Unless responsible people begin to speak out and tell a handful of state senators that they are like children, playing house with power, we will rue our silence.

Dan Sisson, an outdoors writer and college instructor living on the Kenai Peninsula, is a contributor to Field and Stream magazine.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 subsistence and personal use; and providing for an
8 effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 16.05.251(a)(6) is amended to read:

11 (6) classifying as commercial fish, sport fish, personal
12 use fish, subsistence fish, or predators or other categories essential
13 for regulatory purposes;

14 * Sec. 2. AS 16.05.251(a) is amended by adding a new paragraph to read:

15 (12) regulating commercial, sport, subsistence, and personal
16 use fishing as needed for the conservation, development, and utiliza-
17 tion of fisheries.

18 * Sec. 3. AS 16.05.251 is amended by adding new subsections to read:

19 (d) Regulations adopted under (a) of this section must, con-
20 sistent with sustained yield and the provisions of AS 16.05.258,
21 provide a fair and reasonable opportunity for the taking of fishery
22 resources by personal use, sport, and commercial fishermen.

23 (e) The Board of Fisheries shall establish criteria for the
24 allocation of fishery resources among personal use, sport, and commer-
25 cial fishing. The criteria may, as appropriate to particular alloca-
26 tion decisions, include factors such as

27 (1) the history of each personal use, sport, and commercial
28 fishery;

29 (2) the number of residents and nonresidents who have

1 participated in each fishery in the past and the number of residents
2 and nonresidents who can reasonably be expected to participate in the
3 future;

4 (3) the importance of each fishery for providing residents
5 the opportunity to obtain fish for personal and family consumption;

6 (4) the availability of alternative fisheries resources;

7 (5) the importance of each fishery to the economy of the
8 state;

9 (6) the importance of each fishery to the economy of the
10 region and local area in which the fishery is located;

11 (7) the importance of each fishery in providing recreation-
12 al opportunities for residents and nonresidents.

13 * Sec. 4. AS 16.05.255(a) is amended by adding a new paragraph to read:

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

16 * Sec. 5. AS 16.05.255 is amended by adding a new subsection to read:

17 (d) Regulations adopted under (a) of this section shall provide
18 that, consistent with the provisions of AS 16.05.258, the taking of
19 moose, deer, elk, and caribou by residents for personal or family
20 consumption has preference over taking by nonresidents.

21 * Sec. 6. AS 16.05 is amended by adding new sections to read:

22 Sec. 16.05.256. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

23 (a) The Board of Fisheries and the Board of Game shall identify the
24 fish stocks and game populations, or portions of stocks and popu-
25 lations, that are customarily and traditionally used for subsistence
26 in each rural area identified by the boards.

27 (b) The boards shall determine

28 (1) what portion, if any, of the stocks and populations
29 identified under (a) of this section can be harvested consistent with

1 sustained yield; and

2 (2) how much of the harvestable portion is needed to pro-
3 vide a reasonable opportunity to satisfy the subsistence uses of those
4 stocks and populations.

5 (c) The boards shall adopt subsistence fishing and subsistence
6 hunting regulations for each stock and population for which a harvest-
7 able portion is determined to exist under (b)(1) of this section. If
8 the harvestable portion is not sufficient to accommodate all consump-
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17 fishing or subsistence hunting in order to assure sustained yield or
18 continue subsistence uses, then the preference shall be limited, and
19 the boards shall distinguish among subsistence users, by applying the
20 following criteria:

21 (1) customary and direct dependence on the fish stock or
22 game population as the mainstay of livelihood;

23 (2) local residency; and

24 (3) availability of alternative resources.

25 (d) The boards may adopt regulations consistent with this sec-
26 tion that authorize taking for nonsubsistence uses a stock or popula-
27 tion identified under (a) of this section.

28 (e) Fish stocks and game populations, including bison, or
29 portions of fish stocks and game populations, not identified under (a)

1 of this section may be taken only under nonsubsistence regulations.

2 (f) Takings authorized under this section are subject to reason-
3 able regulation of seasons, catch or bag limits, and methods and
4 means. Takings and uses of resources authorized under this section
5 are subject to AS 16.05.831 and AS 16.30.

6 * Sec. 7. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a prosecution for
8 the taking of fish or game in violation of a statute or regulation, it
9 is not a defense that the taking was done for subsistence uses.

10 Sec. 16.05.262. SUBSISTENCE LICENSE. (a) The department shall
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14 department;

15 (2) pays an annual license fee of 25 cents; and

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17 income for the preceding calendar year was below 130 percent of the
18 official federal poverty line established by the director of the
19 federal Office of Management and Budget, as revised by the Secretary
20 of Health and Human Services under 42 U.S.C. 9847 and 9902.

21 (b) A subsistence license expires one year after the date of
22 issuance.

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24 person who takes fish or game for subsistence uses shall have in
25 possession a current, valid subsistence license that was issued under
26 AS 16.05.262 to the person or to another individual for whose benefit
27 the person is taking the fish or game.

28 * Sec. 8. AS 16.05.330 is amended by adding a new subsection to read:

29 (c) The Board of Fisheries and the Board of Game may adopt

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2 permits for rural areas as needed for authorizing, regulating, and
3 monitoring the subsistence harvest of fish and game. The boards shall
4 adopt these regulations when the subsistence preference requires a
5 reduction in the harvest of a fish stock or game population by nonsub-
6 sistence users.

7 * Sec. 9. AS 16.05.940(22) is amended to read:

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

13 * Sec. 10. AS 16.05.940(23) is amended to read:

14 (23) "subsistence uses" means the noncommercial, customary
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5 single species or subgroup manageable as a unit;

6 (31) "personal use fishing" means the taking, fishing for,
7 or possession of finfish, shellfish, or other fishery resources, by
8 Alaska residents for personal use and not for sale or barter, with
9 gill or dip net, seine, fish wheel, long line, or other means defined
10 by the Board of Fisheries;

11 (32) "rural area" means a community or area of the state in
12 which the noncommercial, customary, and traditional use of fish or
13 game for personal or family consumption is a principal characteristic
14 of the economy of the community or area;

15 (33) "subsistence hunting" means the taking of, hunting for,
16 or possession of game by a resident domiciled in a rural area of the
17 state for subsistence uses by means defined by the Board of Game.

18 * Sec. 12. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

19 * Sec. 13. This Act takes effect June 1, 1986.
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28
29

Halford Ver.
Hein
4/3/86 ✓

Original sponsor: Rules/Governor

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27 the person is taking the fish or game.

28 * Sec. 8. AS 16.05.330 is amended by adding a new subsection to read:

29 (c) The Board of Fisheries and the Board of Game may adopt

1 regulations providing for the issuance and expiration of subsistence
2 permits for rural areas as needed for authorizing, regulating, and
3 monitoring the subsistence harvest of fish and game. The boards shall
4 adopt these regulations when the subsistence preference requires a
5 reduction in the harvest of a fish stock or game population by nonsub-
6 sistence users.

7 * Sec. 9. AS 16.05.940(22) is amended to read:

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

13 * Sec. 10. AS 16.05.940(23) is amended to read:

14 (23) "subsistence uses" means the noncommercial, customary
15 and traditional uses [IN ALASKA] of wild, renewable resources by a
16 resident domiciled in a rural area of the state for direct personal or
17 family consumption as food, shelter, fuel, clothing, tools, or trans-
18 portation, for the making and selling of handicraft articles out of
19 nonedible by-products of fish and wildlife resources taken for per-
20 sonal or family consumption, and for the customary trade, barter, or
21 sharing for personal or family consumption; in [FOR THE PURPOSES OF]
22 this paragraph, "family" means [ALL] persons related by blood, mar-
23 riage, or adoption, and a [ANY] person living in [WITHIN] the house-
24 hold on a permanent basis;

25 * Sec. 11. AS 16.05.940 is amended by adding new paragraphs to read:

26 (28) "domicile" means the true and permanent home of a
27 person from which the person has no present intention of moving and to
28 which the person intends to return whenever the person is away; domi-
29 cile may be proved by presenting evidence acceptable to the boards of

1 fisheries and game;

2 (29) "fish stock" means a species, subspecies, geographic
3 grouping or other category of fish manageable as a unit;

4 (30) "game population" means a group of game animals of a
5 single species or subgroup manageable as a unit;

6 (31) "personal use fishing" means the taking, fishing for,
7 or possession of finfish, shellfish, or other fishery resources, by
8 Alaska residents for personal use and not for sale or barter, with
9 gill or dip net, seine, fish wheel, long line, or other means defined
10 by the Board of Fisheries;

11 (32) "rural area" means a community or area of the state in
12 which the noncommercial, customary, and traditional use of fish or
13 game for personal or family consumption is a principal characteristic
14 of the economy of the community or area;

15 (33) "subsistence hunting" means the taking of, hunting for,
16 or possession of game by a resident domiciled in a rural area of the
17 state for subsistence uses by means defined by the Board of Game.

18 * Sec. 12. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

19 * Sec. 13. This Act takes effect June 1, 1986.
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