Subsistence Committee Meetings & Testimony

SENATE STATE AFFAIRS COMMITTEE HEARINGS ON SUBSISTENCE

Prepared Testimony of
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The Alaska Legislature can and should enact numerous amendments to the state subsistence law. I will describe here several possible amendments, all of which are directed at two goals that are equally important: (1) improving the opportunity for sportsmen, and (2) protecting subsistence use of resources by those who are truly dependent on the resources. If we can accomplish those two goals, then many sport people will be more willing to accept some form of a subsistence priority.

I will now discuss many different possible amendments that I hope you will consider. For purposes of discussion I have devided my recommendations into those related to how people should qualify for subsistence, those related to how subsistence might be targeted on some fish and game stocks and not on others, and those that are simply additional proposals.

I. QUALIFICATION FOR SUBSISTENCE

The federal definition of subsistence is stated in terms of being for "rural Alaska residents". (Sec. 803 of ANILCA and the corresponding part of the state law are attached.) The state law does not on its face restrict subsistence to rural residents. Hence, the Alaska Supreme Court held in the Madison case that urban subsistence residents could be qualified. That tension between the federal and state statutes and the resulting Madison case are the cause of having to close down sport hunting on about

40 hunts that were previously open to sport hunters by permit drawing. The legislature can reopen those hunts to sport hunters, and even provide them more opportunity than they had before Madison, by limiting subsistence to rural residents who are engaged in an ongoing customary and traditional subsistence life-style. To do so the legislature should define "rural" and define "customary and traditional", in order to make a two-pronged test for qualifying people for subsistence.

A. Defining "Rural"

Neither the federal or the state law defines what areas of the state are "rural" for subsistence purposes. Therefore, the state is at liberty to do so, so long as it does so reasonably. To define "rural" the legislature could do one two things.

First, it could establish criteria that the Boards of Fisheries and Game would be required to consider when determining whether an area is rural. Reasonable criteria might be: (1) proximity to the road system, (2) community size and population, (3) dependency on major and frequent barge or air freight for foodstuffs, (4) dependency on the cash or subsistence economies, and (5) other such measures of the local characteristics might be reasonable criteria for the boards to consider when defining "rural".

Second, the legislature could statutorily find that some areas of the state are not rural and then direct the boards to use criteria, such as those mentioned, to determine what remaining areas of the state qualify or do not qualify for rural subsistence.

B. Defining "Customary and Traditional"

Both the state and federal statutes define subsistence in terms of "customary and traditional uses" of wildlife for food, shelter, clothing, and other uses. Thus, "customary and traditional" addresses the user and the use, while "rural" addresses the area.

However, neither the federal or state statutes, nor the state regulations, have tried to address how to identify a customary and traditional user. Tests based on individual or household economic need probably would not comply with federal law, since it protects cultural needs, too. Tests based on a combination of ecomomic need and cultural need might comply with the federal law. However, any need-based test of all rural Alaskans would be expensive, would be prone to fraud, would be an administrative nightmare, would invite numerous suits by individuals marginally disqualified, and would eliminate fish and game budgets for most other purposes such as enforcement, research, and administration. In the face of declining oil revenues, the state needs an efficient method of qualifying rural Alaska residents as customary and traditional u ers. I will propose a method.

In addition to being "rural" (however we define it), we could qualify users as "customary and traditional" if they are determined qualified by the Boards of Fisheries and Game by virtue of the user fitting into one of four categories. That is, the user would have to be a rural resident plus be qualified by one of four methods addressing "customary and traditional." Here are

four methods, that are not mutually exclusive, that the legislature could give to the boards for qualifying a person as "customary and traditional."

First, the boards could for reasons of administrative simplicity and efficiency qualify everyone residing in a large area as qualified for customary and traditional use. Large, sparsely populated areas of the remote bush might so qualify. It does not make administrative sense to spend time and money disqualifying a relatively few individuals in such areas who are not customary and traditional users. (This does not mean that such areas are without conflict over wildlife; those conflicts should be addressed through targeting subsistence on particular stocks and other administrative mechanisms I will discuss.

Second, the boards could find that within an area some communities would qualify as ongoing customary and traditional subsistence communities and some would not. Efficiency and simplicity would again be served. For example, in the Glennallen area, Dot Lake and Copper Center might qualify, but Glennallen as an ongoing customary and traditional subistence community might not. (This is not to say that some Glennallen residents would not still be qualified; it is only to say the whole community might not be qualified.)

Third, the boards could find that an identifiable, discrete group within a community qualifies as an ongoing customary and traditional subsistence group. For example, in Kaktovik there are the traditional villagers and there are the operators of the DEW-Line (Defense Early Warning) Site who are

employees of International Telephone and Telegraph, living a third of a mile away. These are discrete groups, one of which hunts birds, carribou and fish, while the other hunts Russians

Fourth, the boards could then turn to a needs test based on economic and cultural criteria for determining if individuals maintain an ongoing customary and traditional subsistence lifestyle, even though the groups, communities or areas to which they belong had not been found generally qualified for customary and traditional subsistence.

C. Effects of Defining "Rural" and "Customary and Traditional"

What would be the advantages of such definitions of "rural" and "customary and traditional"?

First, the definitions would identify not only how people qualify for subsistence, but they would also set up the method by which they become no longer qualified at some future date if they are not longer engaged in a customary and traditional subsistence life-style. (The Governor's bill failed to do this in that it defined subsistence in terms or "rural" and "rural" in terms of areas that had in the past been customarily tied to subsistence. That would have been a closed loop from which no community would ever become disqualified, once it was qualified.)

Second, if the sport people are right (as I think they are) that the present system has allowed many people who do not carry on a customary and traditional subsistence lifestyle to be qualified for subsistence, then these changes would put such people under sport regulations where they belong and not under

subsistence regulations where they raise the understandable ire of the urban sport community.

Third, competition between sportsmen and a smaller group of qualified subsistence users would be reduced. Therefore, where competition has been intense, such as on the Nelchina carribou herd near Glennallen, there would be more permits for the sport people.

Fourth, true subsistence could be more easily protected and managed.

Fifth, hopefully a greater sense of fairness would prevail.

Sixth, would this system comply with "tier I" and "tier II" subsistence, as stated by the Alaska Supreme Court? Yes, it would be a way of defining "tier I". "Tier II" would still work as it always has in the law as protecting a subset of qualified subsistence users when the wildlife stock cannot sustain the harvest of all qualified subsistence users. The subset would still be those who are qualified at Tier I and are also local residents, dependent on the resource, and without alternative resources.

II. IDENTIFYING APPROPRIATE SUBSISTENCE STOCKS

Another arena in which the legislature could amend the state subsistence law and give guidance to the boards is in the area of identifying subsistence stocks of fish and game. At least three questions fall within this arena. Under the present subsistence law the answers to each are at best unclear. The

legislature could give clear answers to the following questions: (1) Should the boards be given direction by the legislature to identify appropriate subsistence stocks of wildlife and what criteria might be established to guide the boards?, (2) Should the boards be allowed to shift subsistence harvest from one stock to another, and if so, under what circumstances should shifting the target be allowed or prohibited?, (3) Should the subsistence preference automatically require the elimination of all sport use when the stock is not fundamentally important to subsistence and the stock cannot sus' in the combined subsistence and sport harvest?

A. Identifying Appropriate Subsistence Stocks

The state and federal laws are silent on identifying appropriate subsistence stocks. Therefore, the state can address the issue so long as it does not unreasonably eliminate subsistence use of fundamentally important stocks.

The legislature could establish criteria by which the boards would identify stocks of fish and game that would be subject to the subsistence preference, and the legislature could require the boards th n to identify subsistence stocks, with the assistance of the Department of Fish and Game. Reasonable criteria might include: (1) historic subsistence use of the wildlife stock in question, (2) the degree of economic and cultural dependence, (3) the ability of the stock to sustain a subsistence harvest under methods and means currently used by subsistence users, and (4) the degree of competion over the stock with non-subsistence users.

In the past the boards took some steps in identifying stocks subject to the subsistence preference, but the efforts were piecemeal. The Board of Game was criticized by the court in the Eluska decision this spring for failing to provide subsistence hunting regulations. The Board of Game therefore recently had to adopt the controversial regulations allowing subsistence "tier II" hunts on sheep, brown bear, bison, and perhaps others speices that generally would not meet the criteria stated above and that generally are not subsistence stocks. The Board of Game should have flexibility to find that no subsistence preference is appropriate on those stocks, subject perhaps to specific and occasional exceptions related to documented but marginal historic subsistence use, such as that of sheep in the vicinity of Anaktuvuk Pass and Kivilina.

The Board of Fisheries has adopted a regulation prohibiting subsistence on rainbow trout and steelhead trout. I believe that is wise policy, but the legality of the regulation would be more clear if the legislature clarified the authority of the boards to identify appropriate subsistence targets.

I have attached a copy of two pages showing subsistence harvest data, and dollar value by species, for subsistence harvest by the village of Tuluksak, near Bethel. The data is from a document entitled "Does One Way of Life Have to Die So That Another Can Live: A Report on Subsistence and the Conservation of the Yupik Life-Style", by Yupiktak Bista. The data shows that certain species, such as brown bear, sandhill cranes, and rainbow trout, all of which are very important to sportsmen, are not

significant to subsistence. Although the data is now ten years old, it shows that in 1974, out of a total subsistence harvest having a cash equivalent value of $378,000 in Tuluksak, brown bear accounted for $416, cranes accounted for $25, and rainbow trout accounted for $330. These harvests should be put under sport regulations where all Alaskans would be treated equally. There is no need for a preference on those stocks, and it is sensible for sport people to cry out that a preference on such stocks is improper.

Other good questions related to subsistence targets are: (1) should subsistence or the priority be applied to transplanted game, such as Sitka black tail deer on Kodiak and Afognak Islands, bison in interior Alaska, elk, or hatchery released fish?, and (2) should subsistence be allowed on moose in the Nome area, which was never inhabited by moose until 20 years ago? I think these questions could be defensibly answered either way, but that doesn't mean the legislature shouldn't think about them and provide guidance to the boards and the Department of Fish and Game when new stocks are introduced or indigenous stocks occupy new territory.

B. <u>When Should the Boards be Allowed to Shift the Subsistence Target</u>?

Two contrasting examples will flesh out this question.

Opposite Anchorage is Tyonek. A superior court judge, and the Board of Fisheries reluctantly, found a qualified subsistence fishery to exist. The Tyonek residents net about 4000 king salmon off a run of 80,000 kings bound for the Susitna River

drainages. The kings are the first fresh meat of the year that arrives on the Tyonek beaches. There is no prior or contemporaneous stock onto which the Board could reasonablly shift the subsistence, and there are plenty of kings going to the sport fishermen up river. The court in the Tyonek case held that the Board could not shift the subsistence target. That made sense. However, the Attorney General's Office consistently tells the Board of Fisheries that shifting targets, therefore, is to be prohibited in all cases, because of the court decision in the Tyonek case. Regardless of whether the Attorney General is right, a total prohibition of shifting subsistence targets doesn't make sense. To see that, we need only look at the east beach Cook Inlet subsistence harvest of late Kenai River coho salmon now in effect because of the Madison decision.

The late Kenai cohos, like the famous late Kenai kings, are the largest of their race. They are a prize sport stock. They hit the east beaches of Cook Inlet in late August and run through September or later. Run size varies, but the Board of Fisheries has been told, I believe by the Department, that the late run averages 20,000 to 30,000 fish. Historically, there was a subsistence gill net harvest of 13,000 of these fish, engaged in mostly by commercial set net fishermen after the close of the commercial season. That harvest led to numerous court fights, including the Madison case, and heated political fights before the Board over allocation of salmon bound for the Kenai River.

Prior to the cohos hitting the east beaches, there is a run of hundreds of thousands to millions of sockeye salmon on the

same beaches, catchable with the same gear. Furthermore, higher price that sockeyes command on the commercial market indicates that they are preferred table fare.

Thus, it makes sense for the legislature to give the boards authority to shift subsistence target stocks in the situation of the late Kenai coho, but not in the case of the Tyonek kings. A statutory criterion for allowing the boards to shift in the coho case and prohibiting it in the Tyonek case, could be whether or not there is "a suitable, prior or contemporaneous stock".

C. Should the subsistence preference always mean that the sport harvest must be eliminated when the combined sport and subsistence harvest is greater than the stock can allow?

If sheep were a significant subsistence stock to the villagers in Anaktuvuk Pass, then the answer to this question would be "yes". The priority would demand elimination of sport hunting. However, I believe that the Subsistence Division of the Department of Fish and Game will tell you that sheep are an incidental subsistence target for the people at Anaktuvuk Pass. If that is true, then an allocation between sport and subsistence users might be appropriate to allow a reduced preference for subsistence and a permit draw for sport. Sport hunters should not carry the whole burden of reducing the harvest and the opportunity to hunt in such a situation where the target is only incidentally used for subsistence. The legislature could give the boards guaidance in such allocative decisions, by establishing criteria

focusing on the significance of the wildlife stock to the subsistence users.

III. ADDITIONAL ISSUES TO ADDRESS

A. When should new subsistence users be allowed and not allowed to use an area?

The federal government considered this issue in the late 1970's but left it to the State on the belief that the State could deal with it better? The fact that the subistence was designed to allow the opportunty for subsistence to continue and is tied to culture, custom and tradition in both the federal and state laws clearly implies that it is appropriate to allow children born into a subsistence life-style to continue to have the opportunity to choose that life-style, so long as they remain otherwise qualified.

However, a person who moves to a bush location, either from another bush location, or from Anchorage or New York, presents a more complicated set of questions. An Anchorageite or New Yorker who moves by virtue of a state or federal land disposal should not get the priority if there is not enough game to satisfy increased subsistence harvest and sport havest. Federal land disposals must be measured against their impact on subsistence, under Sec. 810 of ANILCA. I would recommend that the State go one step further and require that state land disposals be measured against impacts on subsistence and sport use. Land disposal will only make sense if it does not inhibit urban Alaskans from hunting

and fishing. Any "cap" on subsistence could be general or be species specific.

B. When should a person be allowed to return to a subsistence life-style?

This is a difficult question, but luckily we do not face it today in many instances. Nevertheless, the legislature might want to give the boards some guideance.

For more than a century our political and legal attempts to deal with Native issues have swung, like a pendulum, between two contadictory goals: assimilation and self-determination. Renewed interest by Alaska Natives in sovernity, less than two decades after Native corporations were set up as part of the Settlement Act, seems to indicate that the pendulum is again swinging toward self-determination, as it is in the lower-48, with renewed assertions of treaty rights and land claims.

Regardless of where the pendulum is now or in the future, how do we address the person who wants to return to a subsistence life-style? What if a young adult was born in Seattle and spent summers subsistence fishing with a grandparent in Alaska? What if a person resides and works in Anchorage for nine months of the year, and customarily and traditionally returns to subsistence fish at a home village during the summer? What if a person has been away from the subsistence life for a period of years without returning and then wants to return? There are other such questions that we may have to address in the future. For now, I would only recommend that the legislature do what it does best. That is, duck the issue and delegate it to the boards with

the authority to adopt reasonable regulations that can be amended as the pendulum swings.

C. Final Points

1. Protect Only Nonwasteful Subsistence

The federal law protects only "nonwasteful" subsistence. The state law is silent on waste of wildlife in subsistence. It should be amended to protect only nonwasteful subsistence for two reasons. First, a clarification that subsistence is for the nonwasteful use of wildlife would go hand in hand with the targeting issues, discussed above, and would provide additional underpinning for targeting subsistence on resources that can take substantial harvest. Second, waste has been a problem in the taking of walrus for tusks only.

2. How to Reduce Court Cases

Many law suits over subsistence could be avoided if the boards had an administrative appeal process. The federal law requires that before any subsistence related case goes to federal court the plaintiff must exhaust administrative remedies. The boards have no appeal process. They should have one and exhaustion of administrative appeals should be required before a plaintiff can go to state court.

TULUKSAK

Average Yearly Harvest Estimates and Approximate
Dollar Values of Meat, Fish, Skins, Berries, and Greens[1]

Species/Food Item	*Harvest*[2]	*(Pounds) Average Utilizable Weight*	*Equivalent $ Value Per Pound of Meat, Fish, Berries, or Greens*[3] *Anchorage*	*Bethel*
Big Game				
Moose	10	700	$1.35	$1.85
Black Bear	5	150	1.35	1.85
Brown Bear	1	225	1.35	1.85
Total Lbs.—Big Game	7975 lbs.			
Furbearers				
Beaver	500	20	.69	1.25
Muskrat	2000	2	.69	1.25
Mink	65			
Land Otter	30			
Red Fox	10			
Lynx	65			
Marten	1			
Weasel	30			
Tree Squirrel	5	.5	.69	1.25
Hare	165	3	.69	1.25
Wolverine	3			
Wolf	5			
Total Lbs.—Furbearers	14498 lbs.			
Porcupine	3	10	.69	1.25
Total Lbs.—Porcupine	30 lbs.			
Waterfowl & Birds				
Ducks	1150	1	$ .69	$1.25
Geese	990	3	.69	1.25
Swans	165	10	.69	1.25
Cranes	5	4	.69	1.25
Loons	10	2	.69	1.25
Ptarmigan	3000	1	.69	1.25
Grouse	20	1	.69	1.25
Total Lbs.—Waterfowl & Birds	8830 lbs.			
Fish				
Whitefish	16550	1.5	1.00	1.00
Pike	6600	6	1.00	1.00
Lush	30000	4	.69	1.00
Shecfish	660	9	1.00	1.00
Blackfish	200		1.00	1.00
Smelt	3300		1.00	1.00
Grayling	300	1	1.00	1.00
Rainbow Trout	165	2	1.00	1.00
King Salmon	1400	15	1.43	2.50
Other Salmon	7000	4.3	1.09	1.65[4]
Total Lbs.—Fish	245520 lbs.			
Berries	5000 lbs.		.87	1.30[4]
Rosehips	50 lbs.		.49	.74[4]
Rhubarb	3000 lbs.	$ .39	$ .59[4]	
Total Lbs. and Dollars	284903 lbs.			
Lbs. and Dollars per Capita	1619 lbs.			

(Notes to table on following page.)

Average Current $ Value of Skin	*$ Value per Animal*		*Total $ Value*	
	Anchorage	*Bethel*	*Anchorage*	*Bethel*
Not Determined	$945.00	$1295.00	$9,450.00	$12,950.00
Not Determined	202.50	277.50	1,013.00	1,388.00
Not Determined	303.75	416.25	304.00	416.00
32.00	45.80	57.00	22,900.00	28,500.00
1.25	2.63	3.75	5,260.00	7,500.00
40.00	40.00	40.00	2,600.00	2,600.00
43.00	45.00	45.00	1,350.00	1,350.00
45.00	45.00	45.00	450.00	450.00
80.00	80.00	80.00	5,200.00	5,200.00
25.00	25.00	25.00	25.00	25.00
1.00	1.00	1.00	30.00	30.00
.65	1.10	1.28	6.00	6.00
—	2.07	3.75	342.00	619.00
70.00	70.00	70.00	210.00	210.00
100.00	100.00	100.00	500.00	500.00
Not Determined	6.90	12.50	21.00	38.00
Not Determined	$ .69	$1.25	$ 794.00	$ 1,438.00
Not Determined	2.07	3.75	2,049.00	3,713.00
Not Determined	6.90	12.50	1,139.00	2,063.00
Not Determined	2.76	5.00	14.00	25.00
Not Determined	1.38	2.50	14.00	25.00
Not Determined	.69	1.25	2,070.00	3,150.00
Not Determined	.69	1.25	14.00	25.00
—	1.50	1.50	24,750.00	24,750.00
—	6.00	6.00	39,600.00	39,600.00
—	2.76	4.00	82,800.00	120,000.00
—	9.00	9.00	5,940.00	5,940.00
—			200.00	200.00
—			3,300.00	3,300.00
—	1.00	1.00	300.00	300.00
—	2.00	2.00	330.00	330.00
—	21.45	37.50	30,030.00	52,500.00
—	4.69	7.09	32,830.00	49,630.00
			4,350.00	6,500.00
			25.00	37.00
			$1,170.00	$1,770.00
			$281,380.00	$377,678.00
			$1,599.00	$2,146.00

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 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

16 USC 3113.

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—

(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

16 USC 3114.

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:

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.

Implementatio

(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.

Reimbursemen to States.

(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.

Report to Congress.

(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.

FEDERAL MONITORING

Report to congressional committees. 16 USC 3116.

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

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 program.

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.

Program and recommendati implementatio

(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.

(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

16 USC 3120.

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—

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

Hearing.

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

(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.

(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.

42 USC 4332.

(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.

48 USC note prec. 21.
43 USC 1601 note.

(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

Submittal 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;

LAWS OF ALASKA

1978

Source: SCS CSHB 900 am S

Chapter No. 151

AN ACT

Relating to fish and game management.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. INTENT. The legislature finds that there is a need to develop a statewide policy on the utilization, development and conservation of fish and game resources, and to recognize that those resources are not inexhaustible and that preferences must be established among beneficial users of the resources. The legislature further determines that it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated, with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained-yield principle.

* Sec. 2. AS 16.05.090 is amended by adding a new subsection to read:

(c) There is established in the Department of Fish and Game a section of subsistence hunting and fishing.

* Sec. 3. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.094. DUTIES OF SECTION OF SUBSISTENCE HUNTING AND FISHING. The section of subsistence hunting and fishing shall

(1) compile existing data and conduct studies to gather information, including data from subsistence users,

on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;

(2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;

(3) make information gathered available to the public, appropriate agencies, and other organized bodies;

(4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;

(5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;

(6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

(7) participate with other divisions in the preparation of statewide and regional management plans so that those plans reorganize and incorporate the needs of subsistence users of fish and game.

* Sec. 4. AS 16.05.251 is amended by adding a new subsection to read:

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

* Sec. 5. AS 16.05.255 is amended by adding a new subsection to read:

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will

jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

* Sec. 6. AS 16.05.257(a) is amended to read:

(a) The Board of Game, at its regularly scheduled annual meeting and other meetings held under authority of sec. 300(a) of this chapter, shall consider and may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit upon

(1) recommendation of the department, based on biological evidence;

(2) the recommendation of the active local advisory committees for that game management unit or subunit or a portion of a unit or subunit;

(3) the written petition of not less than 100 interested residents of that game management unit or subunit; or

(4) the written petition of not less than 25 interested residents of an area which is requested for establishment as a subsistence area within a game management unit or subunit.

* Sec. 7. AS 16.05.257(c) is repealed and re-enacted to read:

(c) No regulations may be adopted by the Board of Game under (a), (b) or (f) of this section unless, in addition to the requirements of AS 44.62.180 - 44.62.290, the department

(1) holds public hearings, after reasonable notice, at least 30 days before the meeting at which the regulation is to be adopted, with at least one of the hearings being held in close proximity to the area potentially affected;

(2) presents at the hearings the information provided for in (c) of this section;

(3) makes the information provided for in (c) of this section available to the appropriate advisory committees and to petitioners if consideration of adoption of regulations was prompted by petitions under (a)(3) or (4) of this section; comments shall be received by the board

until 10 days before any adoption of regulations.

* Sec. 8. AS 16.05.257(d) is amended to read:

(d) A petition submitted under (a)(3) - (4) of this section shall contain a complete description of the area requested as a subsistence area and a specification of the species within the area considered necessary for subsistence use. A petition or recommendation made under (a)(2), (3) or (4) of this section must be filed with the department at least 75 days before the meeting of the board at which the petition or recommendation is to be considered.

* Sec. 9. AS 16.05.257(e) is repealed and re-enacted to read:

(e) The department shall investigate, by collecting existing data, and, when necessary, conducting new studies, every petition or recommendation made under (a)(2), (3) or (4) of this section to the extent practicable within the time available and provide the following information:

(1) the concentration of the species to be affected and carrying capacity of the area to be affected;

(2) the current hunting practices in the area, including numbers of animals taken and by what methods and means and whether the take is subsistence or recreational;

(3) the dependence of persons in the area for subsistence use of a species;

(4) the population trends of the affected fish and game in the area;

(5) whether the affected fish and game population is able to support a nonsubsistence harvest; and

(6) other information considered necessary by the section of subsistence hunting and fishing.

* Sec. 10. AS 16.05.257(h)(1) is amended to read:

(1) "subsistence hunting" means the taking of game animals by a state resident for subsistence uses by means defined by the Board of Game;

* Sec. 11. AS 16.05.257(h)(2) is repealed and re-enacted to read:

(2) "subsistence hunting area" means an area in which only subsistence hunting of the affected species is permitted and which is managed for maximum food potential.

* Sec. 12. AS 16.05.257 is amended by adding a new subsection to read:

(i) The Board of Game may make no decision denying, creating or changing a subsistence hunting area unless based on specific written findings of fact regarding all the information provided in accordance with (e) of this section.

* Sec. 13. AS 16.05.930 is amended by adding a new subsection to read:

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence 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.

* Sec. 14. AS 16.05.940(17) is amended to read:

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

* Sec. 15. AS 16.05.940 is amended by adding new paragraphs to read:

(26) "subsistence uses" means the customary and traditional uses in Alaska 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, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(27) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Approved by the Governor: July 12, 1978
Actual Effective Date: October 10, 1978

Excerpt from Senate Resources Committee Meeting, 2-26-86

DENNIS KELSO, Deputy Commissioner, Alaska Dept. of Fish & Game

With me is Larri Spengler, Assistant Attorney General, and we thought we could save some time by presenting our comments jointly.

Madam Chair, you mentioned that the issue was out of the box now for several months. In fact, it was one year and four days ago that the Madison decision was issued. When we first appeared before the Senate State Affairs Committee last spring, we emphasized that our purpose was to participate in a spirit of cooperation, and we'd like to offer comments today in that same spirit of cooperation.

The original HB 288 was intended to address as simply as possible four basic concerns: constitutionality, enforceability, consistency with federal law in order to maintain state management of all lands in Alaska, and flexibility for the boards to provide fairly for all uses including subsistence, personal use, recreational and commercial.

Since the first meetings of the State Affairs Committee, several versions of HB 288 have been drafted. Many of these were seriously flawed. Because they tried to take on too much, these versions encountered problems that were unnecessary in addressing the Madison problem. In going beyond the four basic principles, they became entangled in complex issues not pertinent to a straightforward and succinct resolution of the problem. State Affairs did work very hard in order to reword these drafts, to trim them down to a more manageable version, and to their credit they tried to put together a version of HB 288 that could stay on track in aiming toward what we think we the correct goal. When the bill came from State Affairs, it still had serious legal and management problems, and some of these were critical flaws that made the bill rather seriously inaccessible to some of the basic concerns that we've been trying to resolve. However, the proposed version before you significantly reduces the problems that are present in the previous versions. It begins to resemble, in its essential detail, the original, and although there are still some ambiguities with respect to federal law, those probably can be resolved largely by a letter of intent. We were asked by the committee staff to discuss this proposed version, so rather than take the time to go through all the rather serious problems that came with the State Affairs version, we'll focus on the one you have before you right now.

We respect the work that was done in State Affairs. When the bill came forward it still had some major problems and the current version which you've adopted as a working draft is much improved.

I'll ask Larri to touch on those things that still remain as legal concerns, and you already have her more detailed critique of the problems with the previous version. In the interest in ease of following this, when Larri has a legal comment or when I have a management-related comment, we'll just follow through the bill in the order of pages rather than skipping around.

LARRI SPENGLER, Assistant Attorney General, Department of Law

Looking through this committee substitute, referencing the problems that were noted in the written analysis, and one problem that was not raised in the analysis that we do see in this proposed version.

Page 1 - lines 23 through 27 - the first subsection of the new section 258 - there is a potential ANILCA ambiguity in this language. However, the sectional analysis that accompanies the proposed ..... says that this part is designed to take into account patterns of local use as established over time. If that intent to accommodate such ... use is incorporated in legislative history through intent in some fashion, the ANILCA ambiguity that is present could be resolved. There is a comment that Mr. Kelso wants to make about the process the board uses to identify subsistence uses throughout the state.

KELSO: That same section, the lines 28-29, and at the top of page 2, first three lines -- if the intention of the bill is to require the boards to develop a master list of every resource in every area and how much is used, and there is a substantial burden in addition to what normally would be done -- in the past we've assumed that the boards would take action on proposals as the need became apparent, whether it was suggested by the department or by the boards themselves or by the advisory committees or the public. It is desirable from an administrative economy standpoint to have that same incremental evolution of regulations continue rather than have this be a situation where the department is supposed to go out and gather information so they can develop a master list. A master list would also be very expensive, and I presume that, depending on how the committee approaches this, that matter could simply be clarified in a letter of intent as well.

SENATOR HALFORD: A quick question on the specific point with regard to customary and traditional uses in areas identified by the boards to comply with ANILCA -- are you saying that in order to comply with ANILCA we have to provide that if a new population moved into an area and takes up residency, that they become the priority use of that resource, regardless of what the prior use was?

SPENGLER: The ANILCA legislative history indicates that the time frame Congress was concerned about was longer than one year or two years, and would take into account, for example, shifts in caribou migration patterns. So the notion is that if this language is intended to also take into account shifts in caribou migration patterns, for example, then there would not be an ANILCA problem. If it's intended to only allow subsistence uses of caribou where that caribou population is found the exact year that this legislation passes, then there could be an ANILCA problem because the patterns shift from year to year as to location.

HALFORD: What if you apply it to a substantially increasing population in the area of a fish stream that's currently used in commercial fishery, and later you have a major community there that is a rural community? How do we get "customary and traditional"? Is it only retrospective, or is it prospective? And if it's prospective, how does it affect existing other uses? If, for example, a community developed on a major fish-rearing stream in southeast, and that community developed a subsistence lifestyle which they initially met through the .... season but found they couldn't do it over time, would they in fact be entitled to a priority over the commercial fishery that'd been operating on that fish stock for decades?

SPENGLER: In that example, if there had not been a community there in the past, there would have been no customary and traditional use patterns built up in that area, so my guess is the board would not find that there would be customary and traditional uses of that stock. If there had been a community that was really small that had customary and traditional use patterns and then grew -- unless it grew to a size where it would no longer be a rural community, then the uses would be allowed to grow along with the population of the human community.

HALFORD: The point is just how it works in terms of being retrospective or prospective. If we're only dealing with existing uses, then that's one series of questions; if we're in fact dealing with all potential expansions of existing uses in new areas or expansions in existing areas, that creates a much greater potential for conflict.

SPENGLER: What is intended is up to the legislature. It's not a very simple question to answer, because of the different kinds of situations that can arise. Maybe the Department of Fish and Game would be better qualified to talk about this, but some examples are fish stocks that have been wiped out and have been restarted by hatcheries and then are stocked again, which may not exist at this moment but it existed years ago, so it's hard to give a simple answer to the question.

HALFORD: What if the stock has been returned by a hatchery and it hasn't existed for 25 years? But somewhere in history there was a traditional use of it. As soon as that stock comes back, is it subject to a preference?

SPENGLER: If the stock in existence 25 years ago had been subject to subsistence use and then had been wiped out or declined to such an extent that no harvest could be allowed, it seems that ANILCA legislative history would contemplate as those stocks grew again that subsistence uses would be allowed again on stock, because it wouldn't be a case where the subsistence uses had died out; it would be a case of subsistence uses couldn't be carried on.

The chairman requested that Spengler do some work on this issue and bring further information back to the committee. Demand for public hearing via teleconference limited the questions and discussion from the committee at this time.

SPENGLER: On page 1, between lines 25 and 27, the bill uses the term "subsistence purposes." This is not defined anywhere; suggest dropping word "purposes."

Page 3, lines 5 through 9: subsection (g) talks about military land. This subsection would exempt military land, which is federal land, from the subsistence priority for military personnel. This section would therefore be ..... with ANILCA because under ANILCA, Section 102, military land falls within the definition of federal public lands. From the sectional analysis, it appears that this section has been included because of a threat by the military to close their lands to all hunting and fishing, etc., unless the section is included.

Under ANILCA the military could not change their land to ANILCA subsistence uses and .... subsistence uses if those meshed (?) except in cases of public safety administration or to protect the continued viability of the stock. So whether or not the military have a right to close the lands to other hunting and fishing is another issue, but what the sectional would do would be exempt the portion of federal land from the requirements of federal law...

KELSO: Treating military personnel differently from other Alaskans does add an additional management complexity.

SPENGLER: On page 3, lines 10-12: this would allow the Board of Fisheries and the Board of Game to establish an administrative appeal process which would then be an avenue for people who were displeased with regulations. This is a discretionary section; does not require the boards to establish this procedure. If they did establish it and if they chose the Commissioner of Fish and Game to be the arbiter of the appeal, that could bring a separation of powers issue which was discussed in my memorandum. It also has practical problems which Mr. Kelso will discuss.

KELSO: Recognizing that the administrative appeals section is optional with the board, nevertheless if the legislature were to expect the board to follow this section, there are some real management problems. For one thing, the board already has the authority to reconsider its actions. In addition, anyone can petition for a regulatory change under the Administrative Procedures Act, AS 44.62.220 and 230. Petitions also can be filed with the board for emergency action, and if the statutory standards are met, that action can be granted expeditiously. The boards could not delegate this authority to a nongovernmental body. That means that if the commissioner is the entity that is granted the appeal authority, basically the commissioner would be looking over the boards' shoulder and would basically have the authority to redo what the board did. The board is really a legislative body, utilizing a direct grant of your authority, and the problem is if an executive branch entity has the ability to veto or overrule what the board has done using its legislative authority. There are other potential problems as well; I don't need to go into them in any detail; they are time-consuming. ...If the other board, for example, is the appeal entity, ... will hear all the things first board did; if there's a subcommittee of the board, you run into the problem of who really is taking the binding action when regulations are adopted. And since there's already the ability to petition, and since the board

can reconsider, basically this section provides for a cumbersome and duplicative function. ...It would be as if the legislature were delegating authority either to a committee or to the governor to rework what was done, and I'm sure you don't want to do that.

SPENGLER: On page 3, lines 20-26, regarding permits. Right now the boards of fish and game have the authority to require subsistence permits when they feel it is useful. The second sentence of this subsection (c) would require that the board adopt regulations requiring subsistence permits in circumstances where there was a reduction in the harvest of a fish stock, because of the subsistence preference. This has some management ....

KELSO: From a management perspective the boards already have the authority to require permits for subsistence hunting and fishing. Because this section would mandate permits in certain circumstances, there are three problems that might arise. First, under what circumstances are they required? For example, how does one evaluate reduction in harvest, which is the language used in this section. Harvests fluctuate from year to year as do populations of animals, so when this requirements would be triggered is the first problem. Second is the burden on people who harvest fish or game. Licenses, of course, are already required for subsistence hunting. Subsistence fishing has been administered by the Board of Fish somewhat differently. In the game context, harvest tickets are often required as well, but the boards have not always required permits because they didn't feel they were always necessary. When information was necessary that we weren't already getting, or when certain kinds of limitations were desired, permits have been used. It's required them in every instance where reductions of other kinds of uses might occur. It may put a burden that really isn't necessary from the management perspective on the board and the department. Finally, we have the problem of cost, in that dealing with the mandatory permit process basically an additional layer of bureaucracy could be substantial, even if that is only getting the word out to people about provisions of the permit. And if the permit itself is on a community or area basis, ... the permit itself is fairly illusory because it would simply be a regulation.

SPENGLER: On page 4, lines 20-21, definition of "domicile." Domicile is used in the definition of subsistence uses above on same page on line 6 as "...a resident domiciled in a rural area of the state" and "domicile" is defined as having a home in a particular location for the preceding 12 months or other evidence acceptable to the board. If the board did not take

action and it did not adopt regulations setting out additional criteria, this provision would cause constitutional problems because of the durational residency requirement. Someone would have to live in the rural area for 12 consecutive months or longer to qualify. This could raise "equal protection" problems, and some attorneys in our office even think the courts might find there is a "right to travel" that might be violated. At the moment the Board of Fisheries does have a definition of "domicile" which would get that board out of the situation if this bill passed; Board of Game would have to adopt a similar definition. But it would put us in the unusual situation of being constitutional because of board action and failing that board action, the statute would be constitutionally flawed.

One page 5: in the definition of "rural area" on line 3 -- the definition incorporates the term "customary and traditional taking and use." Rural areas -- the term is used in the definition... as found on previous page... "customary and traditional uses of residents domiciled in a rural area of the state" (page 4, lines 4-6). Subsistence uses itself uses the words "customary and traditional" in its definition, so what you end up with a somewhat circular definition. The definition of subsistence uses explaining what happens in a particular place; the definition of rural area explaining where it happens; but you would wind up with no ... -- rural area would be a term of art(word?) -- it would mean those areas where subsistence uses occurred and you would have no rural areas that did not have subsistence uses occurring there.

The chairman requested that Spengler work with the committee to clarify the wording.

SPENGLER: Also related to that definition, on page 5, line 3, the word "taking" is modified by "customary and traditional." There is no use elsewhere in the statute that ... "customary and traditional taking." "Customary and traditional use" is a part of the definition of subsistence uses, and if the word "taking" is left in this definition, it establishes a new factor that the boards have never dealt with before. It isn't clear what it's intended to mean, and depending on what it's intended to mean, it <u>could</u> raise ANILCA problems. And I would be happy to work with the committee on the "circular definition" and the meshing of the two definitions.

HALFORD: The Governor's bill provided for rural area residents. Why do we always refer to "rural area" instead of saying "local residents"? Is it the intention that the preference apply either in federal law or state law to a rural resident from one part of the state traveling to another part of the state and enjoying preference in hunting and fishing?

SPENGLER: If you prefer the term "local" rather than "rural," then you would run afoul of federal law, because Anchorage residents are obviously local to the Anchorage area, but they would not be rural (under federal definition). As far as the requirements of ANILCA go, subsistence use is defined in terms of "rural Alaska residents" not "local residents." That's the simplest answer to your question.

HALFORD: So we'd have to say that someone from a Southeast community traveling to somewhere in the interior has to be afforded a preference in the harvest of the resource in that area they're traveling to?

SPENGLER: No, that's not correct. If the question is, if they have to be rural residents in the particular area where they live, that is what this bill would do, because if they're domiciled in the particular rural area -- that's the function of the use of the word "domicile" in the definition.

HALFORD: But it says "domicile in any rural area," not the area where the harvest is taking place.

SPENGLER: If this bill is intended to be in compliance and consistent with ANILCA, what ANILCA envisions is that people in rural areas of the state would have subsistence uses reasonably accessible to the areas where they live.

HALFORD: It doesn't say that.

Chairman said Halford's issue was a good one and would be looked into.

Testimony was received from teleconference sites.
The chairman felt Halford's point was a good one

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

SENATOR STURGULEWSKI: (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.

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SENATE STATE AFFAIRS
STANDING COMMITTEE
August 27th and 28th, 1985

Members Present: Senator Mitch Abood, Chair
Senator Vic Fischer
Senator Tim Kelly

Members Absent: Senator Bill Ray
Senator Edna DeVries

COMMITTEE CALENDAR

The purpose of this meeting was a hearing to take public testimony on the issue of subsistence.

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ACTION NARRATIVE

TAPE #1 08/27/85 SIDE A.

The meeting was call to order by Chairman Abood at 1:18 p.m. Chairman Abood welcomed all participants to the meeting and informed them of the upcoming hearings scheduled for October 9th and 10th, 1985 in Fairbanks and those on November 19th and 20th in Anchorage. Informed public that their input was needed to help solve the issue of subsistence.

Commissioner Don W. Collinsworth, of Department of Fish and Game was the first to take the stand on the issue of subsistence.

Mr. Chairman, my name is Don Collinsworth, and I am the Commissioner of the Alaska Department of Fish and Game. I appreciate the opportunity to be able to testify before your committee today.

Mr. Chairman, the last time I met with your committee I made an appeal to you to take legislative action to amend the state's subsistence law. I advised your committee at that time that there was no administrative or regulatory solution which could be undertaken by the administration or the Boards of Fisheries and Game to solve the problems which we perceived would develop as a result of the Alaska Supreme Court's decision in Madison and the Court of Appeals' decision in Eluska. I advised you that the only solution to avoid disruption in the existing uses and patterns of use in fish and game was a legislative amendment to the state's subsistence law. I pointed out that the state's subsistence law must be amended to allow the Boards

of Fisheries and Game the flexibility to continue to regulate fisheries and hunts as they had since the passage of the state subsistence law, but prior to the Madison and Eluska court decisions, and that it was our belief that the law would have to be amended in order not to lose management on federal lands under the provisions of ANILCA.

I would like to present to you for the record a chronology of events leading to the emergency fish and game regulations which have resulted in considerable public consideration.

On February 22 of this year, the Alaska Supreme Court's decision in the Madison case changed the way the Boards of Fisheries and Game could regulate subsistence hunting and fishing.

The supreme court ruled in Madison that the state law (statute) would not allow the Boards of Fisheries and Game the flexibility to continue to regulate fishing and hunting based on the criteria that the boards had developed and believed to be fair and reasonable.

The Department of Fish and Game pointed out that serious disruptions to established hunting and fishing use patterns would result, and that neither the boards nor the Department of Fish and Game has the authority to overcome these problems without legislation. Accordingly, on March 13, 1985, legislation was introduced by the administration which would have given the boards the flexibility to regulate as they did prior to the supreme court decision.

The Boards of Fisheries and Game met in late March and early April. The boards recognized that serious problems lay ahead unless the authority they had exercised previously was restored. Neither board felt comfortable making the extensive regulatory changes necessary in order to meet the standards announced in Madison without the opportunity for public comment. The Board of Game wished to leave in place the permit drawings and limited registration hunts for one more season.

However, on April 12, 1985 (after the Boards of Fisheries and Game had adjourned), the Alaska Court of Appeals ruled that because of the Board of Game had not adopted specific regulations governing subsistence hunting, a "subsistence defense" could be used to block prosecution for some violations of existing regulations.

In effect, the Eluska decision required the Game Board to adopt separate subsistence regulations consistent with Madison or face unenforceability of many regulations.

The Court of Appeals also interpreted the supreme court opinion in Madison to mean that the current statutes are not adequate to allow the boards or the Department of Fish and Game to significantly impair subsistence for any Alaskan until they have first closed all sport and commercial fishing or hunting on a particular fish stock or game population.

On May 4, the House passed CSHB 288 (Jud), 52 days after being introduced. The Legislature adjourned on May 13, with out completing action on the House-passed bill.

On May 22, 1985, state Chief Prosecutor Daniel Hickey wrote a memorandum to Commissioner Robert Sundberg and me establishing guidelines for enforcement personnel and prosecuting attorneys in light of the Eluska decision. Mr, Hickey concluded that unless the Legislature took action, certain specific regulatory steps were necessary in order for normal enforcement and prosecution to continue.

With respect to fishing regulations, the Department of Law advised the Commissioner of Fish and Game "to exercise his authority under 5 AAC 01.015 and the authority delegated to him by the Board of Fisheries and to issue subsistence permits for taking salmon in areas where subsistence harvests have been historically authorized and conducted." I consulted with the Board of Fisheries and initiated the required emergency regulations on May 28,1985.

With respect to hunting, Mr. Hickey explained that specific subsistence regulations consistent with Madison and Eluska were necessary. Until regulations were adopted which complied with Eluska, guidelines would have to be followed which would sharply limit state prosecutions of hunting violations. In response to the Eluska decision and Chief Prosecutor Hickey's guidline memorandum, the Board of Game convened June 10, 1985, in emergency session to ensure that hunting regulations would continue to be fully enforceable.

Attorney General Norman Gorsuch met with the boards and advised them what steps were necessary in order to comply with the Madison and Eluska decisions. These are the rules as explained by the Department of Law:

> Under Eluska, the Game Board must adopt separate subsistence hunting regulations consisten with Madison, or the "subsistence defense" can be used and many regulations will be unenforceable.
>
> Under Madison, subsistence hunting means hunting by any Alaska for food, shelter, fuel, clothing, tools, transportation, customary trade, barter or sharing.
>
> Unless sustained yield would be jeopardized, subsistence hunting must be authorized on any game population that has been hunted in the past and used for these purposes.
>
> Because Alaska law requires that meat be salvaged from most game hunted in Alaska, these populations have been documented to be taken for food. This includes species like sheep, goats, and bison.
>
> If subsistence hunting of a game population must be restricted (that is, "significantly impaired") to protect the resource, then

nonsubsistence uses (nonstate resident hunting) must be eliminated first.

If, after nonresident hunting has been eliminated, and subsistence hunting on a game population must still be restricted (significantly impaired) to protect the resource, then the board must use the three criteria listed in AS 16.05.255(b) to determine how hunting opportunities are to be distributed among Alaskans. These criteria are:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

The Board of Game concluded that it was essential to have enforceable regulations and therefore took the following steps to comply with the court decision.

The practical results of the board's emergency actions in June included the following:

(1) Separate subsistence and general hunting regulations were adopted; in the process, approximately 450 regulations were evaluated and amended or readopted.

(2) Hunting opportunities in many areas of the state are open to both residents and nonresidents.

(3) Hunting opportunities for some species in certain areas are open in Alaska residents only (Tier I).

(4) Tier II standards were applied to distribute hunting opportunities for certain species in certain areas where more Alaskans wish to hunt than can be accommodated while maintaining sustained yield.

The Board of Game adopted emergency regulations in June which will become "permanent" approximately the first of October.

The board has scheduled these regulations for review and further action at its November meeting; comment from the advisory committee and other members of the public is invited.

The Board of Game took only those actions they believed necessary under the court decisions and to protect wildlife resources; the board used Tier II standards only when they concluded there was no effective alternative.

The board had previously used general permit drawing hunts and limited registration hunts to allocate hunting opportunity in situations where more people wished to hunt than could be accommodated.

The board would have used the same system this year if changes had not been necessary because of the Madison and Eluska decisions.

Before the Madison decision, both the Board of Fisheries and the Board of Game had interpreted "subsistence" narrowly; as a result, use of Tier II standards had not been necessary.

Under the boards' approach, even if some resource circumstance were to require the use of Tier II standards, the category of users affected by Tier II would be much narrower, and urban hunters would have been virtually unaffected.

Tier II standards were applied to a large number of hunts only because Madison overturned the boards' interpretation of "subsistence users" and greatly broadened the "subsistence" category. Consequently, many more situations resulted in which people who now qualified for subsistence hunting were competing for limited game resources.

Tier II standards will also be applicable to subsistence fishing, although in most areas the problem is likely to be less immediately acute than in hunting; however, where circumstances warrant, the three criteria (dependence, local residency, alternative resource) must be applied.

Mr. Chairman, in my opening remarks I mentioned a state rights issue, retention of state management. Without amendment to the state subsistence law, state management of Alaska's fish and wildlife is in jeopardy on all federal lands (about 60 percent of the land area) and associated waters if the state is out of compliance with federal law; this may include species which move through or into these lands and waters even if they do not remain there throughout their life cycles (including virtually all anadromous fish and a large proportion of the state's wildlife).

The department believes that loss of state management authority would be detrimental, both to proper management of Alaska's resources and the Alaskan user of these resources.

Mr. Chairman, rather then speculate about what the federal government may or may not do, I would suggest you may want to invite a representative of the Department of Interior to address your committee.

Mr, Chairman, the administration believes that there should be four key elements of any new subsistence legislation,

1. It must be constitutional.

2. It must be consistent with federal law so the state can retain management,

3. It must be enforceable.

4. It must provide reasonable opportunities for all uses: commercial, recreational, personal use and subsistence.

Experience with the Board of Game emergency regulations underscores the need for a solution which meets all four of these standards.

In summary, Mr. Chairman, the two court decisions have radically changed the way the boards and the department may do business. The current law does not provide the boards the authority they need to regulate hunting and fishing in the fair and reasonable manner as they had in the past. Neither the boards nor the department have the authority to remedy the situation.

We appeal to you again, Mr. Chairman, to take legislative action to return to the boards the authority to provide for all uses. The board system is a good one and it can work.

We also appeal to you, Mr. Chairman, and all Alaskans to work together to solve this problem in the spirit of cooperation.

Senator Fischer stated that one thing that bother him was who can hunt when there has to be a restriction in a hunt. For example the Nelchina caribou hunt. Some in Wasilla gets a priority over the person who lives in Anchorage, etc. Can the Board not give some fairer criteria in situation like these.

Commissioner states that the Board had to go into special session to set the criteria there was not as much time to prepare as they wish there would have been. Due the time crunch everyone knew that there would be problems and this is one of them. The Board will meet again this fall and review the criteria involve in the Tier II hunts.

Senator Fischer refers to legislation that continues the priority for certain individual. States that the Governor's bill does not include the personal use catagory as a priority. Does the Department have a plan for the personal use individual.

Commissioner states that it is important to establish this because of the number of court cases. There were a number of individuals that used the resource that did not fall under the subsistence area. Personal use catagory is something to be address with the legislature and the Department.

Senator Abood asks the Commissioner to explain the difference between subsistence and personal use.

Commissioner - the Boards has made a difference prior to Madison and Eluska. Subsistence was a activity very narrowly defined and accured

in rural Alaska and the rural communities qualified after they meet the criteria. Personal use was established by the Board to allow the use of the same kind of gear for fishing such as using nets instead of just rod and reel. It really was associated with the type of gear.

Senator Abood and the Commissioner converse about personal use, sport and subsistence and the gear used. Senator Fischer joins in and talks about the rod and reel fishing. They speak of taking the word "personal" out and who it would affect. There was the difference made between personal and personal because of enforcement.

Ron Sumerville took the stand on behalf of the Alaska Outdoor Testimony. The Alaska Outdoor Council would like to again thank the Senate Committee on State Affairs, Chairman Senator Mitch Abood and Committee members for giving Alaskans another opportunity to participate in determining the fate of Alaska's common property fish and wildlife resources. We applaud the Alaska State Senate's efforts to openly review and possibly restructure Alaska's controversial subsistence law.

For the record, we would like to point out that the Alaska Outdoor Council is a statewide Alaskan organization consisting of 45 affiliated clubs and a total membership of almost 9,000 Alaskan residents. Our organization represents a broad spectrum of outdoor resource users throughout Alaska. Special emphasis is made of the fact that our membership includes significant rural as well as urban residents.

The Alaska Outdoor Council is committed to protecting the rights of all Alaskans with regard to the use of our fish and wildlife resources and our public lands. Because of this commitment we have consistently opposed regulations and statutes which tend to provide exclusive uses of our common property resources to one class of citizen over another. For this reason, the Alaska Outdoor Council and its parent organization, the Alaska Sportsmen's Council, have consistently opposed the philosophy inherent in the State's subsistence law which unfairly discriminates between Alaskan residents in the establishment of an ultimate priority over use of our fish and wildlife resources.

It would be a waste of the Committee's time, as well as that of the participants to once again review all the material associated with the subsistence controversy. We have finally reached a critical point in history where it appears possible to clearly dissect the present subsistence law and decide whether it or some form would establish a more publicity accepted mechanism to provide some sort of preference for legitimate subsistence uses.

Undoubtedly, the biggest decision facing the Committee involves whether or not to give a priority to rural Alaskans over all other Alaskans. One of the solutions being offered it to inset the word rural into the State law. If one were to take the existing Game emergency regulations as examples, it would mean that only rural residents would be able to participate--primarily in their area of

residence. It is our contention, however, that the regulations you have on the books today are only a minor illustration of how far reaching the impact of the subsistence law will be in the near future.

For example, I am submitting as part of my testimony, a study conducted by the Division of Game, Alaska Department of Fish and Game, in 1981. The title of the submittal is "Subsistence Demand Forms." These summary forms were developed to aid the Board of Game in developing regulations concerning subsistence uses statewide. The subsistence demand forms simply summarize in which units and subunits the residents of the local areas are capable of taking the harvestable surpluses given lenient seasons, bag limits and methods and means.

According to the Game Division in 1981, on all major statewide hunts of Sheep, Bison, Elk, Caribou, Moose, Goat, and Muskoxen the local residents were capable of taking the harvestable surplus in 143 out of the 216 hunts. In other words, even in 1981 urban users and residents of other units could have been legally excluded from participating in 67% of the hunts on the major Big Game species statewide. The contrast is even more pronounced if you consider that the existing controversy only involves 42 permit hunts which are being limited to Tier 1 or Tier II residents. The reason for submitting this evidence is to illustrate the potential discrimination that could occur if the existing course is continued whereby these species are limited to only local residents under the guise of subsistence.

Certain other key points and issues must be addressed before a rational solution can be found.

1. It should be recognized that the existing law has proven to be a catalyst for extreme and increasing social unrest in Alaska. Any law which openly discriminates against its citizens can only lead to social conflicts.

2. Contrary to what Alaskans had been told initially, the State and Federal subsistence laws do not only come into play when there is an extreme shortage of a particular resource. The two major 1985 court decisions have verified that the "priority" is in effect at all times and it is a legal requirement that the Boards of Fish and Game implement the law.

3. Alaskans were clearly told when the State law was enacted in 1978 that all Alaskans would be subsistence users if they took fish and game for personal or family consumption. We are now considering making a major modification in that law by eliminating urban residents from participating. It is our contention that the 1978 law would never have passed if all Alaskans were advised originally of the intent to exclude most Alaskans from participation.

4. Contrary to the provision in the State Constitution providing for "preferences amongst beneficial uses", the State law

provides an absolute "priority" which requires that, according to the State Supreme Court, all other uses must be eliminated before restricting subsistence uses.

5. The Boards of Fisheries and Game have wrestled unsuccessfully for over eight years with implementing the State law.

6. The Sheffield Administration's solution to the current problem is to guarantee rural subsistence users will be given a priority over urban residents who are now, under State law, considered to be valid subsistence users. This priority to rural residents, as evident in the present Game regulations, means a priority only in the area in which they reside. In essence, a rural subsistence user on the Kenai Peninsula will not be given any priority in the Nelchina basin or any other area of residence.

7. The State Supreme Court has accurately interpreted the existing State Law. The question is whether or not the law should be changed to unfairly exclude a major part of Alaskans from participating or should the law be changed to narrow down a subsistence preference to a relatively few Alaskans who are true subsistence users.

8. At present, the Alaska subsistence law is inconsistent with the Federal subsistence law in a number of areas---particularly because the State law does not give a priority to "rural" residents. The question is whether or not the State must or will conform to the Federal law. We seem to have one of two choices, either adopt the Federal law in total and accept the social decisiveness and discrimination or construct a State law which will be accepted by Alaskans.

9. It will be continually debated whether or not the Federal law can or should be changed. It is a certainty that the law will never be altered if corrective surgery is not applied to the State law. Most certainly, the Federal law only applies to Federal lands and waters and the State lands and waters.

10. The subsistence issue is not and should not be a racial issue. The only individuals that are attempting to construct this as a racial issue are those special interests who are proposing to identify segments of Alaskans, namely rural Native Alaskans, and certain associated culture as having first rights to Alaska's common property resources.

11. Subsistence harvests should be based on meeting the protein needs. One species should be substitutable for another comparable species, and harvest should occur on those species that are most abundant and best able to withstand the harvest.

12. Certain areas exist where the fish and game resources are so sensitive that the efficient harvest methods associated with some subsistence taking (i.e. gill nets) would destroy those resources. The regulatory Boards must have the authority to close or severly regulate these uses, including allowing other less efficient means.

13. The definition of subsistence gear in State law is proper and should not be amended.

14. The Boards must have the authority to designate which species are subject to the subsistence priority.

The Board of Directors for the Alaska Outdoor Council would like to once again reiterate that the Council has consistently supported the continuation of subsistence uses. We question, however, the mechanisms being used to identify the subsistence users and to provide for a legal preferential use.

Of all the legislation now pending before the Alaska Senate, we much prefer using SB 320, introduced by the Chairman, as the piece of legislation used for markup. For the Committee's assistance, I am submitting as part of this testimony, the "Subsistence Consensus Points" which have been reviewed by our membership and approved by our Board of Directors. These consensus points are the major items that have to be reflected in any State legislation before this type of allocation will be acceptable to most of the Alaskan public. The Consensus points are as follows:

ALASKA OUTDOOR COUNCIL

SUBSISTENCE CONSENSUS POINTS

August 21, 1985

1. Permitting: A permit will be required for subsistence preference use. Permitting will be based on personal or family qualifications--not on the locality in which one lives nor upon racial, cultural or ethnic considerations.

2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that: (1) the wild resource taken be used for personal and family consumptive use only; (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent family unit with income from all sources at or below Federal poverty levels with no more than one subsistence license per family unit.

3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations regarding applicable or substituted species by area, seasons, quotas, bag limits, and methods and means as authorized by the Boards of Fish and Game.

The opportunity to harvest will be given a preference bu. no guarantee of harvest is intended.

4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.

5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges or commercial sale shall be included in subsistence use.

The Board of Directors of the Alaska Outdoor Council would like to clear'y point out that nothing in the subsistence statutes should interfere with the Boards of Fisheries' authority to establish and regulate personal use fisheries on a non-priority basis.

For consideration of the Committee during markup, we have provided additional material titled "Aspects Needing Consideration in Subsistence Legislation". This is an initial cut in comparing and adjusting the various bills now before the State Senate with the above consensus points in mind.

In closing, I am submitting three documents for the record: (1) a letter from Ms. Janie Leask, President, AFN for Representative Jack Fuller; (2) a Petition from Ms. Janie Leask, President, AFN to a the Joint Boards of Fisheries and Game; and (3) a letter from the A.G.'s office to Commissioner Collinsworth concerning the pending Bobby vs. State (Lime Village) case. It is important to note that all three documents call for or advocate some form of Federal preemption of State of fish and game management in Alaska.

It is also important to point out that the petition to the Boards request the insertion of a priority for "rural" residents be accomplished by State administrative action despite the fact that the legislature refused to modify the State law accordingly last year. Also, the petition requests specifically that "rural" be defined in such a fashion to allow subsistence that "rural" be defined in such a fashion to allow subsistence uses to be limited to communities - a practice which was specifically excluded by the State Supreme Court in the Madsion case.

Most importantly, it is of major concern to the Alaska Outdoor Council that none of these documents acknowledge that the State retains exclusive control over all State and private lands, even if some Federal preemptive authority existed on Federal lands and waters.

It is extremely difficult for the average Alaskan to swallow these discriminatory and decisive actions when we are witnesses to the fact that the "true subsistence" user is not the beneficiary. Rather we see the allocation based almost exclusively on where you live and not whether the user is any more deserving or needy that his excluded neighbor.

It is not difficult to understand why most Alaskans are getting upset with existing subsistence laws. For once, we are getting an accurate look at what the law really means. We are also beginning to visualize what sort of regulations we can expect within a few short years for all our fish and wildlife resources, if the laws remain intact.

Most importantly, we are witnessing the rapid loss of one of the major benefits for Statehood in 1959--the right to manage our fish and wildlife resources.

We would like to remind the State Senate that HB 288, now before you, was passed by only one vote in the State House of Representatives. This was accomplished after much debate and political maneuvering. Regardless, we hardly consider that a mandate for immediate irresponsible action on the part of the Senate. Rather, we request that your consider modifying the State subsistence law so that it is fair and reasonable, will stand Constitutional challenge and, most of all, provide a path for social understanding and harmony.

Tape 1, Side B

Mr. Rupe Andrews then took the stand for the National Rifle Association. At statehood there were three methods of hunting and fishing, commercial, subsistence and sport. Believes that if federal law took over that it would be in non-compliance with ANALICA. Noted that with the passage of ANALICA what are we going to loose to federal management? Believed that we should return to state management. Priority does not bother this organization.

Mr. Ralph Andy Johnson took the stand. First I want to thank you for the stand you took during the first session of this legislature. At least you listened to the voice of the people and was not snowed by the WUG (Wugs are "wild unsupported guesses" but there is nothing scientific about the propaganda related to subsistence), and the political mis-information they use to justify their position.

After seven years of fighting in and out of court, we the appellants of the Madison case, finally thought that now since the Supreme Court of the State of Alaska has agreed with us that out interpretation of the law is correct and that the Board of Fisheries with its questionably able attorney have been fighting, would be required to write regulations that conformed to AS 16.05.251.

The Madison decision has partially restored my faith in our educational system because prior to it I wondered how bureaucrats and attorneys were taught to read and understand the English Language.

Even the AFN with its masterful attorney has learned to read during this time and changed from an adversary to a supportive position. To prove one of my points I am going to quote this attorney's present position as stated in the document they submitted to the Court naming that Title 16.05.251 is confusing and unclear and all that Madison did was to add to this confusion. This is not a direct quote but the mis-quote conveys the intent.

Ever since Moses came down the mountain, man and more particular lawyers have been saying the law is unclear and confusing.

But that should be settled now, all the Board has to do is write regulations that give the subsistence user the prior right to the fish and game but which allows all users the right unless the propagation of the species is endangered.

If the species is endangered, sport and commercial uses will be the first curtailed. If that proves to be insufficient the first tier of subsistence will be shut down using the criteria of traditional uses. If that is not enough, the second tier will be shut down.

Before the Madison decision the Board of Fisheries, Governor, and Department of Fisheries had a legitimate excuse to protest and make the illegal regulations. However, since Madison and the clear decision given them there is no excuse and it seems to me that it is out and out malfeasance for them to continue to make regulations that are contrary to the law, and I feel the Constitution of the State of Alaska. The Supreme Court did not see the necessity of ruling on the constitutionality or the unequal treatment of people saying those questions were moot since the regulations were illegal.

Now comes the question of what can you do to stop a Governor, Commissioner and or a bureaucracy form making illegal regulation. I suggest that we circulate a petition asking for the resignation of the Governor, Commissioner and Board on the grounds of malfeasance and that the State be required to re-imburse us for costs incurred in trying to force them to obey the law plus stopping all funding to the Department of Fish and Game until new regulations are written and passed.

I was told of an interesting side light relating to subsistence at a meeting I attended recently.

In a Federal report on subsistence one section of it states "trust the State of Alaska has been re-imbursed up to 5 million dollars last year to manage the subsistence enforcement." If this is true, I would like to know where it has been spent and on what?

In conclusion, I feel that the Commissioner, Board Members and Department Head of the Bureau of Fish and Game should be requested to sign a statement that they have read and understand AS 16.05.251 (intent of law) and the Madison decision. If the Governor, Commissioner of Fish and Game and other public officials do not pay

any attention to the laws you have already passed or the decision of the Supreme Court, what good will it do to change the law or pass a new one?

Signed Sincerely, Ralph A. Johnson. Mr. Johnson read the above statement and Chairman Abood asked if he would mind sending in a typed copy of his testimony. Mr. Johnson agreed to do so and the above testimony is just that.

Al Gagon agreed with subsistence use, but only for the people who truly need it. This should not be limited to Natives only. He felt there is a need to protect the resources as well as the real subsistence users, but felt a defination of a true subsistence user needed to be found. Maybe a defination of a subsistence could be determined by the location of where a man lives and his income. He noted that to come up with a solution to this problem that everyone would have to give some.

Mr. Chairman, members of the Committee. My name is Janie Leask and I'm the president of the Alaska Federation of Natives. The AFN Board of Directors is composed of representatives of the thirteen regional corporations formed under the Alaska Native Claims Settlement Act and the twelve non-profit associations which deliver human service programs throughout the state.

Today, on behalf of my Board, I would like to express our anger and frustration at the current state of affairs with respect to subsistence.

There have been numerous newspaper columns, stories, and letters to the editor in recent months and weeks regarding the subsistence issue - and, in particular, the emergency regulations adopted by the Board of Game which unfairly restrict urban hunters. Hunters in Anchorage and other urban areas are angry - and they have a right to be. The current situation is not only unfair - but also unnecessary - it could have been avoided.

Alaska is unique, in that it is the only one of our states in which the continued health and well-being of a significant number of residents is dependent upon the harvest of fish, game and other wild renewable resources for personal and family consumption. The whole economy of our rural communities is dependent upon the continuation of these uses.

In 1978 the Alaska Legislature recognized this unique situation by enacting the state subsistence law. That law required subsistence uses be afforded a priority over other uses in situations where the harvestable surplus of a fish stock or game population is not large enough to accommodate all harvest demands. In 1982 regulations interpreting this law were passed by the Boards of Fish and Game and put into effect.

Later that year a group called "Alaskans for equal hunting and fishing rights" disagreed with the policies embodied in that law and were successful in obtaining enough signatures to place an initiative on the ballot to repeal it. The subsistence issue was thoroughly debated during the 1982 election. The initiative was defeated and the 1978 law, and the regulations interpreting that law, were retained.

At that time, regardless of whether you supported or opposed the repeal initiative, every Alaskan assumed the 1978 subsistence priority was limited to residents of rural communities, native and non-native, in which hunting and fishing for personal and family consumption is the base for the local economy. No one believed the subsistence priority was intended to provide those of us who live in Anchorage and Alaska's other urban centers a priority over commercial and sport fishermen or hunters.

The supreme court decision in the recent Madison case decided that that was in fact what the 1978 legislature had intended; and consequently, all hunters and fishermen - both urban and rural - are lumped together in the "subsistence uses" category established by the 1978 law. So, rather than expending the access of urban hunters and fishermen to the resources, the current situation restricts it.

The Madison decision transformed urban hunters into "subsistence" hunters and now allocates hunting opportunities based on three criteria: local residency, dependence on the game populations as a mainstay of livelihood, and availability of alternative food resources.

The once-popular lotteries have been replaced by an allocation formula based on the three criteria. The result is that all hunters are now competing against each other and the lottery hunts have been eliminated. This has angered the urban hunters - and justifiably so.

The unfortunate aspect of our current situation is that it was all unnecessary. The position in which we now find ourselves, which has the effect of pitting urban against rural could have been avoided - through the enactment of subsistence legislation during the 1985 legislative session. If legislation had passed last session, we would not have to be here today. The urban hunters would have been treated fairly, and we would not be faced - again - with the decisive situation we encountered back in 1982 when alaskans for Equal hunting and Fishing Rights tried to repeal the state subsistence law.

The Governor, the Department of Fish and Game, the members of the Boards of Fish and Game, and a majority of the House realized the negative impact on urban hunters. That is why the Governor introduced legislation and why House legislators passed it out.

We can all turn around and find someone to blame four our current situation. Certainly there are a number of individuals and groups which I feel are responsible. But the fact of the matter is we are all sitting here today: without legislation, with the hands of the

Boards of Fish and Game tied, denying them the flexibility they need to make fair allocations, and with a potentially explosive situation on our hands - similar to what we faced in 1982.

You have heard a lot of talk about "equal" hunting and fishing rights. But in this area we don't have rights - we have privileges. Is commercial fishing a right, and should all Alaskans be treated "equally" in their access to it? No. A policy decision on this was made in the mid-1970's when the legislature and the Governor realized that there were too many people wanting to fish commercially and there were too few fish. A priority was established for access to this resource, similar to the establishment of exclusive guiding areas. We now have a limited entry permit system reflecting our resource allocation priorities. The holding of this permit is a privilege, not a right, and the courts have upheld it in several challenges to its constitutionality.

Mr. Chairman, members of the committee, I am here today on behalf of my Board to ask that you pass legislation which would simply amend Title 16 of the Alaska Statutes to the extent necessary to provide the Boards of Fisheries and game the same regulatory authority and flexibility which they possessed on the day prior to the issuance of the Madison decision - no more and no less.

The people of Alaska spoke in 1982 when they defeated the initiative to repeal the State subsistence law. They voted to retain the subsistence priority for those residents living in rural alaska who are most dependent on fish and game resources.

Since that time the Boards of Fish and Game have implemented the subsistence statute in a fair and reasonable manner. Their regulatory success is proof that the 1978 law is good public policy - a workable way to protect Alaska's unique rural economy without drastically reallocating hunting and fishing opportunities for those of us - native and non-native alike - who live and work in urban centers.

As everyone knows, Sam McDowell and Dale Pondourant have gone to court stating the current regulations are invalid and trying to stop all hunts. AFN is intervening in this lawsuit for two reasons:

* to oppose a temporary restraining order or preliminary injunction to ensure that innocent people who have nothing to do with the current situation don't get hurt; and

* To agree that the regulations are invalid - but not for their reasons, but because the state is out of compliance with the federal law. But rather than asking all hunts be stopped, we feel the Boards of Fish and Game should be allowed the opportunity to bring the regulations into compliance. In that light, we have filed a petition with the Boards of Fish and Game to bring the state into compliance with the federal law. If those petitions are adopted, we again will have in place regulations which were in effect when the 1982 initiative was defeated.

While we feel this is an Alaskan problem to be solved by Alaskans, we are advocating federal intervention in an effort to ensure those Alaskans living in the rural areas of our state whose lives and communities are dependent upon fish and game resources, are protected.

We are not anxious to see a re-play of the decisive, bitter kind of politics which accompanied the 1982 repeal effort, and we hope this situation will be avoided.

We feel the subsistence law has worked in the past and we strongly urge the Senate to move quickly to put an end to the current situation and to pass out legislation as quickly as possible next year.

To do otherwise would put subsistence again in the political arena, and would do all Alaskans, hunters and fishermen alike - urban and rural - a great disservice.

Thank you.

Fred Bismark stated that he believed that subsistence was vital to the needs of his people, the Natives of Alaska. Noted that he has lived off the land all of his life and has never required welfare. If subsistence is taken away then the land should also be taken away. This move would hurt his people greatly.

Ms. Susan Frey then took the stand and noted that she was opposed to Tier II hunting. She agrees with the Alaska Outdoor Council and there stand on subsistence. Subsistence is for those who need to survive. Stated that she would rather see rural people feed the meat to the dogs then see hunters take the horns and leave the meat. Felt that all citizens and residents of Alaska should be treated equally.

Jim Kowalsky with the Rural Alaska Resources Association is in favor of rural subsistence. Felt that rural residentsshould have the opportunities to feed themselves, due to the fact that many have no cash to live off. Stated that subsistence was the mainstay of many rural Alaskans. Mr. Kowalsky was in total agreement with the Governors bill, SB 288 and wanted the system to return to the way it was. Didn't want rural areas to be put on a lottery system and that it should not be treated like a welfare system. Added that maybe it was possible for Communities to subsist as communities and not as individuals. Felt that rural communities should not be considered poor, but should be allowed to protect and fend for themselves

Senator Abood ask Mr. Kowalsky what he thought was rural. Tok? Mr. Kowalsky responded that yes Tok is rural. Abood--Kotzebue? Mr. Kowalsky--yes. Abood--Kenai? Mr. Kowalsky--yes. Abood--Stevens Village? Mr. Kowalsky--oh, yes.

Senator Vic Fischer then question Mr. Kowalsky on the defination of rural and what the rural people thought of Tier II process. Mr. Kowalsky did not give a defination of rural and was not certain of the

what rural people thought of Tier II, but under the current Tier II conditions have been a shambles.

Senator Fischer wanted to know the difference between Tier II and subsistence. Mr. Kowalsky deffered to the Department for an answer to this question. A Mr. Behanke took the stand for the Department to answer this question. Mr. Behanke said that Tier II applied only in certain cases

Senator Fischer continues to question Mr. Behanke on the issue by asking if subsistence should be put in one use and then certain criterias made.

Questioning continues.

Walter Johnson took the stand and agrees with rural subsistence.

Tape 2 Side B

Margery Roose took the stand on behalf of equal rights for hunting for all residents in the State. As an urban resident hunter, she feels that the meat her family uses saves her between $1500.00 and $2000.00 a year on her family's regular food bill. Mrs. Roose feels that everyone should have access to all the natural resources of this State.

Senator Fischer asked if they have to choose between hunters and hunting rights, would she rather see it be on permit basis or income need. Mrs. Roose answered it should be equal rights for all residents.

Evelyn Pete of the Native Village of Chitina Tonsina was the next to testify. Noted she was the first baby born in Glenallen. According to Federal law we were a third party trespassing on their land. Stated that her life was hunting and not just a lifestyle. Rural villages have their own jurisdiction and have no concern over our (the State's) issue.

Sheldon I. Katchatag of the United Tribes of Alaska agreed with rural subsistence and that it was the true intent of western society. Stated that there is going to be a meeting on September 10 in Unalkleet, Alaska to finalize the Declaration on a new sovereignty in Unalkleet. Noted that they would only stand behind tribal government and will not stand behind the state laws.

Senator Abood then ask Mr. Katchatage to step away from the stand due to the fact that what he was saying had no baring on the issue of subsistence as earmarked for this hearing.

Bob Hunter then took the stand on behalf of the Alaska Sportsfishing Association. Senator Abood, members of the State Affairs Committee: We wish to thank the members of this committee for taking the time for public input to this crucial issue.

Once the legal interpretation of the 1978 subsistence law was forced, the Board of Fish and Game had no alternative but to adjust regulations and allocations according to the existing law. Only now is the public beginning to understand what we were trying to explain in 1981.

Even now, as in 1981, the Governor and AFN (via Janie Leask) are attempting by publicizing in local papers to cloud the real issues the subsistence priority creates. The very nature of a priority designation creates a class system, or Alaska's own apartheid laws. Hunters and fishermen alike recognize that in all cases there is insufficient fish and wildlife resource for everyone to take what they want. We do, however, wish to have an equal and fair chance just for the opportunity to take fish and game. Yet, even with that statement we are willing to recognize that it is still possible in this vast state to allow exceptions to this equal opportunity to permit those in very remote, rural areas not yet affected by the rapid population expansion to harvest fish and game on limited need for survival basis.

During the 1985 legislative session, Governor Sheffield introduced Don Mitchell's subsistence bill entitled HP 288. Not only was there insufficient time for public understanding and input, but the bill would simply have insured that all rural Alaskans have priority in taking the fish and game public resource. This is why we asked that the bill not be passed, or at best pass it with one year sunset clause. Fortunately, it was not passed.

Since AFN was successful in obtaining a federal law that finally included subsistence wording in ANILCA, we are now faced with an even less understood federal law and intervention situation. In summary we have a very unfair, unconstitutional mess on our hands.

Alaska is a very dynamic and growing state. People are drawn here for numerous reasons besides jobs and one of those major reasons is the hunting and fishing opportunities. The existence of a subsistence law, as exists today or as proposed by the Governor, will seriously affect an individual's desire to stay in such a prejudicial and corrupt climate. The tourism industry, both in hunting and fishing, will be drastically affected. Not all of this will happen overnight, but as individuals are excluded from sport hunting and fishing, they will apply for subsistence permits. In a relatively short number of years, it will be all subsistence fishing and hunting to the detriment of sport and commercial operations.

Currently, we have land still being given away by the state for "settling" A2, 5, 40, or even 160 acre tract of land does not necessarily raise the moose, caribou, salmon, and other needs of the individual that moves there to "live on the land". Yet rural preference would give that lucky winner of a lottery preference for all time to fish and game resource. "Rural" in itself is not the answer and we cannot go for a short-term solution to the subsistence mess.

We are willing to recognize limited subsistence needs of an extremely limited few remote individuals, but we will also state that we will not accept a priority subsistence right to an individual or family that has chosen the remote living over urban living as a way of life and expects all urban residents to give up their rights to a common resource. Neither do we recognize individuals or families taking part in the commercial activities commonly associated with Alaska's business or industrial expansion as having a priority right to suddenly with Alaska's business or industrial expansion as having a priority right to suddenly claim subsistence need and priority. Cook Inlet and its surrounding relatively densely populated area is an excellent example of an area where subsistence priority for any resource must be a very rare exception. You simply can no longer support that type of living no matter how desirable.

What all of this adds up to is the fact that the Boards of Fish and Game were doing an excellent job in accounting for true subsistence needs prior to the imposition of the literal translation of the law. We are therefore providing eleven points that we feel are necessary for consideration and inclusion in any amendment to the 1978 subsistence law. These points will enable the Boards of Fish and Game to return to an equitable allocation of the resources.

We hope that these points will be incorporated into SB 320 or other appropriate legislation. All points are important. These eleven points are:

1. Permit: A permit will be required for subsistence preference use. Permits will be based on personal or household qualifications. No fee will be charged for this permit .

2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that (1) the wild resource taken be used for personal and household consumptive use only, and (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent household. The Board may initially qualify an area, then restrict further to a community, then groups, the families, and individuals, as the situation and need arise... or otherwise pass a needs test as specified by the Boards.

3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations on seasons, quotas, bag limits, etc. The opportunity to harvest will be given a preference, but no guarantee of harvest is intended.

4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial, or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.

5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter, or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges shall be included in subsistence use.

6. POSITION STATEMENT

Subsistence harvests should be based on meeting the protein needs and in some cases, significant cultural needs of the harvesters. One species should be substitutable for another comparable species, and harvest should occur on those species that are most abundant and best able to withstand the harvest.

BACKGROUND

The need for the Board of Fisheries to be able to shift subsistence harvests to the most abundant species is statewide in application. However, it is most clearly demonstrated by the existing Cook Inlet situation. Current law stipulates that subsistence harvests are based on "customary and traditional" harvest patterns. The courts, as in the Tyonek case in Cook Inlet, ruled that harvests originally were a spring fishery on King Salmon, and thus the Board of Fisheries could not shift to a more abundant species of salmon for the Tyonek fishery.

The history of modern subsistence in Cook Inlet is that it was chiefly conducted by commercial fishermen who already owned gill nets. These people fished for subsistence early in the season until sufficient salmon were available to harvest commercially. They then fished commercially until the late fall, when they again subsistence fished for their winter food supply. In recent years the Board of Fisheries allocated early and late runs to sport fishermen and the large mid-season runs to commercial interests. The result, at least in Cook Inlet, was the subsistence fisheries are directed upon the small runs given to sport fishermen rather than the huge mid-season runs which have a commercial priority.

7. POSITION STATEMENT

Certain area exist where the fishery resources are so sensitive that the efficient harvest methods associated with subsistence fish (gill nets) would destroy those resources. The Board of Fisheries must continue to have the authority, upon a formal finding of fact, to close such areas to subsistence fishing while still allowing less efficient methods, such as pole and line.

BACKGROUND

An example of this program is the trophy Rainbow trout streams of the Illiamna Lake Drainage. Trout in these streams grow very slowly with some large trout being over 10 years of age. These trout also occur in limited numbers. Counts by Alaska Department of Fish and Game personnel have, during some years and in some streams, found less than

1,000 adult trout. About 1975 one gill net, set illegally during one night, caught nearly ten percent of the adult Rainbow trout in Lower Talaric Creek. The Board of Fisheries has recognized the fragile state of the Rainbow trout resource in that area, and current regulations allow only one Rainbow trout to be taken per day; no bait or treble hooks are allowed to reduce incidental hooking mortality. Gill nets have been banned in and near these streams for approximately 10 years. However, since subsistence fisheries were allowed in these areas at one time, the Madison decision appears to grant priority to the use of subsistence gill nets over pole and line angling.

8. POSITION STATEMENT:

The the definition of subsistence gear in AS 16.05.940(22) is proper and should not be amended. That definition does not normally allow pole and line to be used as subsistence gear.

BACKGROUND

We strongly believe that pole and line should not be included for subsistence use for serveral reasons:

(1) The present problem with subsistence is principally that one Alaskan has been given priority over another Alaskan based solely on where he lives. We disagree with that concept. Including pole and line users in subsistence would simply increase the problem by giving more people a priority. We call for a major reduction in the number of people having a priority or preference. We have, since 1978, disagreed with the concept of giving priority to one person over another. Adding pole and line would be nothing more than giving sport fishermen a priority over commercial users. We reject that premise.

(2) Pole and line subsistence users would create an enforcement nightmare. How would we distinguish between subsistence harvesters and sport (non-resident?) fishermen?

9. POSITION STATEMENT

That a set of personal-use fishing regulations is needed to allow the harvest of fish, when they occur in numbers in excess to escapement and commercial/consumptive needs.

BACKGROUND

In many areas of the state, large numbers of fish (commonly salmon) occur which are excess to spawning needs and are not harvested by commercial, subsistence, or sport fishermen. Personal-use regulations may be an ideal tool for the Board of Fisheries to allow the harvest of the fish on an equal priority basis with other user groups. Personal-use regulations were created by the Board of Fisheries for exactly this purpose. However. the Madison decision vastly expanded subsistence qualifications, and personal-use harvesters have now been included in subsistence with a priority over other users. The

legislature should enact personal-use regulation, by statute, or permit harvest of fisheries resources on an equal priority basis.

10. POSITION STATEMENT

Rainbow/Steelhead trout shall not be subject a subsistence priority. The Board of Fisheries shall continue to have the authority to allocate the harvest of this species to any user group without priority on a case by case basis.

BACKGROUND

Despite Alaska's reputation as having some of the world's best Rainbow fishing, Rainbow trout in this state are limited both in number and location. Only in Bristol Bay and Cook Inlet do major numbers of Rainbow trout occur. For 1983, the latest year for which complete catch data exist, the entire statewide Rainbow harvest was less than 175,000 fish. Approximately 125,000 of these fish were from Cook Inlet waters, and over half of the statewide total were small stocked trout from lakes adjacent to urban centers.

Rainbow trout in Alaska are not only limited in number, they are slow-growing, and stocks are very easily damaged. In recognition of these facts, the Board of Fisheries regulates wild Rainbow stocks with very stringent bag limits, in many cases allowing only one trout per day,

11. POSITION STATEMENT

Subsistence fishing in Cook Inlet waters should be limited to the areas adjacent to English Bay, Port Graham, and Tyonek, as previously designated by the Board of Fisheries. All other non-commercial net fishing in Cook Inlet should be conducted under personal-use regulations.

BACKGROUND

This is the only recommendation of the Alaska Sportfishing Association relating to a specific area of the state. We must face the fact that Cook Inlet is unique. Over half the state's population resides in this drainage. Most of these people have access only to Cook Inlet fishery stocks. According to Fish and Game data, approximately 140,000 sport fishermen and several thousand commercial fishermen utilize Cook Inlet fisheries, in addition to persons wishing subsistence fishing privileges.

Regulations promulgated by the Board of Fisheries, after passage of the 1978 subsistence law, restricted gill net subsistence fishing to remote villages of Cook Inlet. These regulations successfully avoided the intense conflict which resulted when priority mandated subsistence gill netting was opened in high-use waters accessable to the Cook Inlet highway systems.

We have no objection to continue subsistence harvests by any Alaskan in the three communities noted above. However, in basic fairness to all Alaskans living in Cook Inlet and to avoid the inevitable future chaotic controversy associated with priority mandated gill net fisheries, in the remainder of Cook Inlet subsistence fisheries should not be permitted. We wish to make clear that we believe that gill net, or dip net fisheries, may be desirable in certain times and for sites in Cook Inlet waters. However, it is critical that these fisheries be permitted on a non-priority basis by the Board of Fisheries under personal-use regulations. If the subsistence amendment law is properly written, this would actually be a conclusion arrived at by the Board of Fisheries as a result of limiting criteria.

Jeanine Kennedy then took the stand in favor of rural subsistence. Stated that she believed the Natives in the rural areas would be willing to share, after they got their share.

Terrie Gottstein then followed and believed that subsistence users should be given priority if dependent on the natural resources. Senator Abood noted that many non-native residents don't feel this way, but they in no way wish to interfere with those who depend on subsistence, but rather only want their fair share.

Senator Vic Fischer wanted to know why rural users should be given priority over urban users when urban users are not totally against rural users. Abood then questioned what is the true need in the Rural areas?

Mr. Hank Otrowski then took the stand and told the committee that he felt this hearing was a public farce. Senator Abood then called Mr. Otrowski out of order and after Mr. Otrowski failed to comply with the Chairman's request, Senator then called a recess and ask Mr. Otrowski to step down from witness chair.

Mr. Thomas Stevens, Chairman of the Anchorage Fish and Game Advisory Committee spoke on behalf of this organization. Started by saying that the Tier II hunts as they are now being conducted are a sham. He requested that two documents containing the minutes from two previous meetings of the Advisory Committee be added to the minutes of this hearing. The documents are as follow

ANCHORAGE ADVISORY COMMITTEE MEETING

A special meeting of the Anchorage Fish and Game Advisory Committee meeting was held on August 19, 1985 at 7:00 PM at East High Auditorium. The meeting was advertised in both Anchorage papers for 5 days prior to the meeting, and in public service announcement on 8 radio stations.

Those present were:

Jeff Parker
William Bartlett

Ribert Butt
Denny Daigger
Richard Johnson
Cindy Lowery
David Sipos
Stan Smith
Tim Stevens

In addition, 150 interested persons were present and gave public testimony concerning Tier II hunts. Fish and Game personnel were present from Game Division, Subsistence Division and Boards and participated in the meeting.

Following approximately 4 hours of testimony and after receiving biological data from Division of Game that the closure will cause no biological harm to any of the herds involved, Denny Daigger moved that the Anchorage Fish and Game Advisory Committee request that the Department of Fish and Game effect an immediate emergency closure of all Tier II permit hunts under the concurrent jurisdiction of the Anchorage committee hunts based on the overwhelming testimony of 150 individuals at the public meeting held August 19, 1985 and 400 individuals polled at the public forum August 14. Conservation and wise use of the resource are the foundation of the public testimony.

Seconded by Bill Bartlett.

The tier II hunts for immediate emergency closure are:

Units	Hunt Number	Species
6C	967	Moose
6C	968	Moose
7	501	Caribou
7 & 15B	831	Goat
	834	Goat
	835	Goat
	843	Goat
	855	Goat
7 & 14C	910	Moose
	911	Moose
8	872	Goat
11	406	Bison

	510	Caribou
13 & 24B	515	Caribou
	562	Caribou
14A	919	Moose
	920	Moose
14C	923	Moose
	978	Moose
	974	Moose
	975	Moose
14C	925	Moose
	927	Moose
	928	Moose
15B	930-939	Moose
16B	981	Moose
	982	Moose
13	1102	Sheep
	1150	Sheep
	1107	Sheep
	1104	Sheep
14A	1110	Sheep
14C	1130-1135	Sheep

The decision was based on conservation of the resource, defined as the most good for the most people for the longest period of time I.E. conservation on the sustained yield principal.

The vote was as follows:

Name	Yes	No
Cindy Lowery		X
Jeff Parker		X
Dave Sipos		X

Stan Smith	X
Bill Bartlett	X
Robert Butt	X
Dennis Daigger	X
Richard Johnson	X
Tim Stevens	X

Total Membership of Anchorage Advisory Committee 15

Majority of Members 8

Members Present 9

Number voting in favor of emergency closure 6

Three members of the committee (Mark Neuman, John Toenes, and Dan Schwarzer) voted by proxy in favor of the closure; however, their votes were not considered by the committee due to the fact that proxy votes would not be allowed.

Signed Tim Stevens, Chairman

notarized by Dorothy Labb, Notary Public

ANCHORAGE ADVISORY COMMITTEE
August 19, 1985

7:15 PM Meeting called to order by chairman.

Members Present	Members Absent
Tim Stevens--Food Broker	Ron Swanson
Jeff Prker--Attorney	Wayne Hall
Richard Johnson	Marilyn Hauser-excused
Bill Bartlett--Commercial Fisherman	Bruce Griggs-excused
Denny Daigger-=DNR	Dan Schwarzer-excused
Stan Smith--Wildlife Clubs	Mark Neuman-excused
Dave Sipos--Non-consumptive User	John Toenes-excused
Cindy Lower--Field Representative for Greenpeace	Ken Wynn

Robert Butt-- Commercial Fisherman

Mitch Abood will hold teleconference Wednesday at the National Guard Armory, Tuesday, August 27th and Wednesday, August 28th.

Public Testimony

Sam McDowell Urged everyone to get involved - said Anchorage Advisor Committee should not accept emergency regulations - Anchorage members should be fired if they do. Spoke of Natives trying to take away hunting and fishing rights. Tier II hunts should be cancelled.

Dale Bondurant Wants cancellation this year of all subsistence hunts. They are unconstitutional, both state and federal. His temporary restraining order was denied - Judge Ripley supported questioning of states hunts - but he would not sign for it. Claims Fish and Game said during the hearing there would be biological harm if hunt was stopped. Doesn't believe there is any danger to resource. Want hunts closed down until law is constitutional. Want to get rid of state subsistence law. Doesn't want Tier II permit hunts I.E. wants all Alaska residents to be able to put in for a hunt. Tier II hunts do not allow everyone in the state to apply. Game are common property resource - everyone in state has right to hunt. Alaska is only state with Feds telling us what to do with our fish and game.

Warren Olsen Anchorage, Juneau, Fairbanks, and Ketchikan are not able to take part in any Tier II subsistence hunts. Anchorage Advisory Committee is spinning its wheels. Give strong message to Governor and legislature that we have been disenfranchised. Double standard for Natives.

Jerry Leubke Paxson Advisory Committee Chairman. Read minutes from their meeting re emergency closures of 913W and 515. Anyone can get foodstamps. Would prefer to see a season of 10 days for everyone - not a select permit hunt for a few.

Gordon Culpepper Read an editorial from Times. Alaskans divided - pitting races against each other - now permits are being issued by race. August 15 editorial Anchorage Times. Close all subsistence hunts. Subsistence hunters should have to turn over hide, antlers, hooves, because you can't eat it. Wants to return to the system of last year. (Pre-Madsion)

Lyle Montogomery Rural Alaska is just a place for people to live where they don't want to work. Too many people. Go back to laws before 1978. Cancel the hunts.

Al Stevens Strongly recommend closure of Tier II hunts. Wants audience polled for support.

Bud Tiche Subsistence drawing hunts should be done away with. The system has split up his household. Members not treated equally. Geese are being killed by Natives. Natives get free hospital, foodstamps, etc., now they have first shot of game and fish. Put everyone's name in hat. People who need meat should get road kills. Fish and Game shouldn't be political - should be left to competent biologists.

Paul Woodward Everyone should join the Southcentral Outdoor Council. Greenpeace, Sierra Club and other environmental groups do not represent hunters and fishermen - they should be removed from advisory council. Robert Butt said everyone has to be treated equally. Chair explained make-up of committees - non-consumptive users, too.

Chair asked for show of hands for closing Tier II - unanimous. No hands for continuing Tier II hunt.

Jim Cline Rural people choose to [illegible] where there are not jobs and then complain because they don't have money for food. Close all Tier II hunts - and next year open to all hunters equally.

Jim Stubbs Alaska is saying we aren't created equal. Do away with Tier II hunts - discrimination. Fish and Game has fine biologists but Juneau won't let them work.

Dom Skidmore Equal opportunity for permits.

Jim Haverd Got a Tok management area sheep permit - will not use it-doesn't believe there is such a thing as subsistence. Believes there is subsistence waste. Polar bears, walrus wasted for hides and tusks. Tier II should be stopped.

Jim Achison There is provision in law for kill for need.

Patrick Wright Was subsistence user right in Anchorage - fished at Pt. Woronzoff, Pt. McKenzie, and trapped hillside. Rights are being infringed on.

Rod Mulis Rural man shouldn't have any advantage over urban. Throw out subsistence permits hunts. Native land claims act was never settled - whites are still paying.

Jay Cross (Part Native) No real subsistence anywhere. If the Natives want to got to subsistence use, let them use woven nets, spears and bidarkas. There is no real subsistence with ATV's and 3-wheelers. Tyoneks will sell you king salmon for $10.

10:00 lot of audience gone - 75-80 people left.

Joe Sheehan From Delta. Been on advisory committee in Delta. Alaska has changed over the years - game is managed for sustained consumption and used by all the people. No one can define subsistence. He says advisory committees up in the interior are voting to close hunts. Board of Game has been weak. It will get worse - not better. Recommended advisory committees publish in papers who got permits.

Mike Layton Go to the teleconference next week. Wants to be on the Anchorage Advisory Committee.

David Neese Against Tier II. Doesn't think bison should be subsistence - they are transplanted from lower 48. Go to newspapers - publicize. Anchorage members have to come from this group.

Doug Wheatin We're being divided - we have to stop it before it gets worse. This is the worst discrimination.

10:35 PM Closed public forum.

Committee Chairman questions to Sterling Eide: "Could the closure of the hunts result in biological damage to the Tier II hunts in Question?"

Eide: No, but all hunts are not same - some are trophy (archery), some are purely subsistence (cows.)"

Daigger asked if the Game Board established Tier II hunts based on a consensus of attorney general's opinion or just one individual attorney general.

Edie: "Don't know - opinion was prepared by AG's office prior to meeting."

Hunts in Anchorage (airport - hillside, Ft. Richardson), "Does harvest have to take place for biological reasons?"

"Not necessarily for biological - but for the good of the Anchorage residents - road kills - confrontation of moose-child. Some hunts are "aesthetic" not biological. 50" bulls, full curl rams. Some herds need reduction to grow."

Jim Fall "Nelchina - had a subsistence hunt prior to '85 permit hunts. Can't speak on all areas, but from his own knowledge, closing some hunts would be a hardship in 16B and Nelchina. Subsistence Division doesn't weigh individual "need" only how the local fish and game resource is used by the community. Not whether the people would starve without it. Dependency of community on resource."

"Was it necessary to provide across the board permits to put food on the table of subsistence users?"

Fall answered, "Things seemed to be going well before the Tier II hunts. What percent of applications were validated for truthful answers."

Question: "Was data on Tier II permit applications verified?"

Eide "Only two questions can be verified. Residency and number of years taken animal in hunt in past. Other questions are subjective - applicant must make determination re dependence on resource, income, etc."

Question: "Is there biological emergency to bac closure?"

Eide "If there questions is, Will the animal population go into a deline because of these hunts? Absolutely not."

Explanation of difference between Tier I and Tier II. Tier II hunts are based on 3 criteria set out in statutes.

Parker "Would oppose the hunts based on objections to what we feel these hunts are all about. Urge board to work with legislature to get

laws back to pre-Madison. (Doesn't believe there is true emergency need to close hunt.) Same numbers of animals as has been harvested in past. Can tell commissioner we find status of these hunts objectionable - do everything to see that these hunts are eliminated in future."

Daigger "Same number of animals, but different people taking them. Stop hunts." Makes motion: "I move that the Anchorage Fish and Game Advisory Committee request that the Department of Fish and Game effect an immediate emergency closure of all Tier II hunts under the concurrent jurisdiction of this committee based on the overwhelming testimony of 150 individuals at the public meeting held in August, 1985 and 400 individual at the public forum held August 14. Conservation and wise use of the resource are the foundation of the public testimony."

Seconded by Bill Bartlett.

The paradox caused by creating full curl sheep subsistence hunts, 50 inch bull moose subsistence hunts, and transplanted species subsistence hunts completely destroys the credibility of the majority of the so-called Tier Ii subsistence hunts scheduled for 1985.

Listed below is the roll-call vote:

Against	For
Cindy Lowery	Stan Smith
Jeff Parker	Bill Bartlett
Dave Sipos	Robert Butt
	Dennis Daigger
	Richard Johnson
	Tim Stevens

Meeting adjourned

Signed Tim Stevens, Chairman

Mr. Stevens then went on to state that only a small amount of people truly depended on subsistence. Some of the permits that were used were not checked for validity and this was a black mark on the Fish and Game Board. A solution for issue is needed as soon as possible, due to the fact that it is causing the State a lot of headaches.

Mr. Archie Gottstein then took the stand and remarked that he felt that the Federal Government to be present when dealing with this matter. He suggested that the State stay out of the whole issue and let the Federal Government handle it.

Senator Abood noted that the Federal government was involved and that the legislature was complying with them.

Recess until 6:30PM

TUESDAY NIGHT

Senator Abood calls the meeting back to order and ask the next person who is testifying to take the stand.

Mr. Jim Gottstein an attorney for some Native Corporations and subsistence issues took the stand. He stated that this was really unnecessary and the blame for this situation was to be placed on the Board of Game and Fish and Game Board.

Mr. Gottstein went on to explain the background of the Board of Fish and Game and their failure to change regulations. When forced to do something about this issue they came up with the 10 criteria. If Board would have followed the clear cut law, there would have been no problems at all. The law as it stands now is OK but the implementation is wrong.

He went on to say that urban hunters should not be excluded from subsistence but not go to remote areas to take away from those who depend on the natural resource to live.

Senator Abood ask Mr. Gottstein to put all of his ideas on paper and questioned him on the Supreme Court decision. Mr. Gottstein answered that the law was ok, but the Board of Fish and Game regulations were all wrong.

Senator Vic Fischer noted that as the law is now, all Alaskans have priority. He questioned if Alaskans could live with the law as it is with the proper implementation. Mr. Gottstein answered, "yes".

Mr. Dennis Lattery then testified on behalf of himself. Noted that there was quite a bit of confusion over this issue and that the law should be repealed totally. He agrees with Ron Sumerville and with the Alaska Outdoor Council. Mr. Lattery doesn't like the word priority and would prefer the use of the word preference.

Mr. Sam McDowell was the next person to take the stand. Confined his remarks to the fisheries and it was related to subsistence only. He felt that Mr. Bondurant who will follow his testimony will deal with the issue of game. The biggest or more pronounced problem is with the fisheries in this State. The number one priority in this State is not subsistence but commerical fishing. Commerical fishermen agree with the Governors bill because it will eliminate 85% of the people. It has been stated that they want to impliment subsistence due to a shortage in resource, but if you look at the historical records of Commercial Fishing, over 110 million salmon have been harvested in the last 5 years. The projection of fish to be harvested this year in around 135 million. There is no shortage of resource. He feels that not only the poeple of urban Alaska, but the rural Alaskans have been grossly mistreated.

Mr. McDowell stated what he would do if writing an new law. He would take the hook and line and make it the same as gill net or a long line

etc. If that sounds like a total disaster, believe me it will not be. The bag limit shall remain the same, the bag limit of three (3) salmon a day, only we can call it for personal consumtive use. The only problem with that is that they are going to have to manage the fish for all Alaskans. That is letting enough fish go into the river for the people who now have the equal opportunity to catch these fish for consumtive use.

He then went on to say that 220 thousand silver salmon is the historcial harvest in the upper Cook Inlet, but the commercial fishermen every year for the last five years have harvested over 500 thousand silver salmon per year. The board of Fisheries put the nets back on the late run silvers. He noted that the Board of Fish and Game are not monitoring the Fisheries.

Mr. McDowell then noted that if the commercial fishermen have already harvested 500 million fish, wouldn't it seem like the best thing to do would be to shut down the gill nets.

Some village don't have to claim anything but the king salmon they catch. Which means they can catch hundreds, even thousands of other species of salmon and not even have to acknowledge that they did. Then they can sell, trade and barter these unnumbered salmon.

He stated that they only people that could help were the people seated at the table. We need to sit down with reasonable people and deal with the fisheries.

Senator Fischer comments on the hook and line. States that the Fish and Game people early today said the enforcement would not be possible.

Mr. McDowell said that would not be a problem because they check the river anyway. Speaks about pulling the nets from the Susitna River and the neglect of the people that owned them.

Speaks of the powerful lobby of the fisheries. Hook and line was not included for one reason, because the commercial fisherman were afraid of all the people that would come. Why should a man be able to use a net and catch a hundred salmon for personal use and I can't even catch one for personal use. Speaks of personal experience on his property in Kenai. The fish are intercepted by the nets before they get to the people with the hook and line. He has been involved in this since 1950 and will not stop until it is managed fairly. We have to a means that does not rape the resource.

Senator Fischer. How many commercial fisherman do we have in Cook Inlet. Mr. McDowell I believe 734. Keep in mind that 95% of the salmon harvested in Alaska is harvested in other areas besides Cook Inlet.

Senator Fischer what is the value of commercial vs. sport, recreational. King Salmon is worth $660 in Anchor River. Tourism is

the second industry in the state. States that only reason certain people want a priority is for the money. Tahnks the committee for having the meetings.

Dale Bondurant then took the stand. Involved in the equal defense unit. Made reference to the need for equal opportunity to hunt throughout the State. The legislature does have the right to make a preference users not priority. The word user is one of the main problems. The word use was to changed to user. Use is a reason for the resource. User is a person doing the action. They changed it to include limited entry to include the commercial fisherman. Use applies to everyone in Alaska and user would only apply to a limited number of people in the State. Should not use the area in which you live as a condition. What about customary and traditional. Is that communities or individuals. He does not want to take responsibility for some elses action even if it is his ancestors. Speaks of the word "rural" in the law. Talks of the Madison decision. It did not say whether we were right or wrong.Mr. Bondurant disagrees with the Governors bill SB 288 and was not satisfied with what was happening before. Under his bill 85% of Alaskans will be eliminated. There were lawsuits filed about how the way things were -- so not everyone was happy with the way things were. There is a need to get rid of the priority user. States that you can give a priority to a use but you can not give a priority to a user, except in limited entry which we changed our law to include. The Federal law states rural, which is not Anchorage, Fairbanks, Juneau or Ketchikan. We have no right to take resources for personal use.

Senator Kelly asks if it would be beneficial to separate fish and game statutes. Mr. Bondurant does not believe so because we need to do something that will solve the problem for years to come. The demand will not be same as it is today.

Jeff Parker was the next to testify.
The Alaska Legislature can and should enact numerous amendments to the state subsistence law. I will describe here several possible amendments, all of which are directed at two goals that are equally important: (1) improving the opportunity for sportsmen, and (2) protecting subsistence use of resources by those who are truly dependent on the resources. If we can accomplish those two goals, then many sport people will be more willing to accept some form of a subsistence priority.

I will now discuss many different possible amendments that I hope you will consider. For purposes of discussion I have divided my recommendations into those related to how people should qualify for subsistence, those related to how subsistence might be targeted on some fish and game stocks and not on others, and those that are simply additional proposals.

I. QUALIFICATION FOR SUBSISTENCE

The federal definition of subsistence is stated in terms of being for "rural Alaska residents". (Sec. 803 of ANILCA and the corresponding part of the state law are attached.) The state law does not on its face restrict subsistence to rural residents. Hence, the Alaska Supreme Court held in the Madison case that urban subsistence residents could be qualified. That tension between the federal and state statutes and the resulting Madison case are the cause of having to close down sport hunting on about 40 hunts that were previously open to sport hunters by permit drawing. The legislature can reopen those hunts to sport hunters, and even provide them more opportunity than they had before Madison, by limiting subsistence to rural residents who are engaged in an ongoing customary and traditional subsistence lifestyle. To do so the legislature should define "rural" and define "customary and traditional", in order to make a strong test for qualifying people for subsistence.

A. Defining "Rural"

Neither the federal or the state law defines what areas of the state are "rural" for subsistence purposes. Therefore, the state is at liberty to do so, so long as it does so reasonably. To define "rural" the legislature could do one of two things.

First, it could establish criteria that the Boards of Fisheries and Game would be required to consider when determining whether an area is rural. Reasonable criteria might be: (1) proximity to the road system, (2) community size and population, (3) dependency on major and frequent barge or air freight for foodstuffs, (4) dependency on the cash or subsistence economies, and (5) other such measures of the local characteristics might be reasonable criteria for the boards to consider when defining "rural".

Second, the legislature could statutorily find that some areas of the state are not rural and then direct the boards to use criteria, such as those mentioned, to determine what remaining areas of the state qualify or do not qualify for rural subsistence.

B. Defining "Customary and Traditional"

Both the state and federal statutes define subsistence in terms of "customary and traditional uses" of wildlife for food, shelter, clothing, and other uses. Thus, "customary and traditional" addresses the user and the use, while "rural" addresses the area.

However, neither the federal or state statutes, nor the state regulations, have tried to address how to identify a customary and traditional user. Tests based on individual or household economic need probably would not comply with federal law, since it protects cultural needs, too. Tests based on a combination of economic need and cultural need might comply with the federal law. However, any need-based test of all rural Alaskans would be expensive, would be prone to fraud, would be an administrative nightmare, would invite numerous suits by individuals marginally disqualified, and would

eliminate fish and game budgets for most other purposes such as enforcement, research, and administration. In the face of declining oil revenues, the state needs an efficient method of qualifying rural Alaska residents as customary and traditional users. I will propose a method.

In addition to being "rural" (however we define it), we could qualify users as "customary and traditional" if they are determined qualified by the Boards of Fisheries and Game by virtue of the user fitting into one of four categories. That is, the user would have be a rural resident plus be qualified by one of four methods addressing "customary and traditional." Here are four methods, that are not mutually exclusive, that the legislature could give to the boards for qualifying a person as "customary and traditional."

First, the boards could for reasons of administrative simplicity and efficiency qualify everyone residing in a large areas as qualified for customary and traditional use. Large, sparsely populated areas of the remote bush might so qualify. It does not make administrative sense to spend time and money disqualifying a relatively few individuals in such areas who are not customary and traditional users. (This does not mean that such areas are without conflict over wildlife; those conflicts should be addressed through targeting subsistence on particular stocks and other administrative mechanisms I will discuss.

Second, the boards could find that within an area some communities would qualify as ongoing customary and traditional subsistence communities and some would not. Efficiency and simplicity would again be served. For example, in the Glennallen area, Dot Lake and Copper Center might qualify, but Glennallen as ongoing customary and traditional subsistence community might not. (This is not to say that some Glennallen residents would not still be qualified; it is only to say the whole community might not be qualified.)

Third, the boards could find that an identifiable, discrete group within a community qualifies as an ongoing customary and traditional subsistence group. For example, in Kaktovik there are the traditional villagers and there are the operators of the DW-Line (Defense Early Warning) Site who are employees of International Telephone and Telegraph, living a third of a mile away. These are discrete groups, one of which hunts birds, caribou and fish, while the other hunts Russians.

Fourth, the boards could then turn to a needs test based on economic and cultural criteria for determining if individuals maintain an ongoing customary and traditional subsistence lifestyle, even though the groups, communities or areas to which they belong had not been found generally qualified for customary and traditional subsistence.

C. Effects of Defining "Rural" and "Customary and Traditional"

What would be the advantages of such definitions of "rural" and "customary and traditional"?

First, the definitions would identify not only how people qualify for subsistence, but they would also sent up the method by which they become no longer qualified at some future date if they are no longer engaged in a customary and traditional subsistence life-style. (The Governor's bill failed to do this in that it defined subsistence in terms of "rural" and "rural" in terms of areas that had in the past been customarily tied to subsistence. That would have been a closed loop from which no community would ever become disqualified, once it was qualified.)

Second, if the sport people are right (as I think they are) that the present system has allowed many people who do not carry on a customary and traditional subsistence lifestyle to be qualified for subsistence, then these changes would put such people under sport regulations where they belong and not under subsistence regulations where they raise the understandable are of the urban sport community.

Third, competition be sportsmen and a smaller group of qualified subsistence users would be reduced. Therefore, where competition has been intense, such as on the Nelchina caribou herd near Glennallen, there would be more permits for the sport people.

Fourth, true subsistence could be more easily protected and managed.

Fifth, hopefully a greater sense of fairness would prevail.

Sixth, would this system comply with "Tier I" and "Tier II" subsistence, as stated by the Alaska Supreme Court? Yes, it would be a way of defining "Tier I". "Tier II" would still work as it always has in the law as protecting the subset of qualified subsistence users when the wildlife stock cannot sustain the harvest of all qualified subsistence users. The subset would still be those who are qualified at Tier I and are also local residents, dependent on the resource, and without alternative resources.

II. IDENTIFYING APPROPRIATE SUPSISTENCE STOCKS

Another arena in which the legislature could amend the state subsistence law and give guidance to the boards is in the area of identifying subsistence stocks of fish and game. At least three questions fall within this arena. Under the present subsistence law the answers to each are at best unclear. The legislature could give clear answers to the following questions: (1) Should the boards be given direction by the legislature to identify appropriate subsistence stocks of wildlife and what criteria might be established to guide the boards , (2) Should the boards be allowed to shift subsistence harvest from one stock to another, and if so, under what circumstances should shifting the target be allowed or prohibited?, (3) Should the subsistence preference automatically require the elimination of all sport use when the stock is not fundamentally important to subsistence and the stock cannot sustain the combined subsistence and sport harvest?

A. Identifying Appropriate Subsistence Stocks

The state and federal laws are silent on identifying appropriate subsistence stocks. Therefore, the state can address the issue so long as it does not unreasonably eliminate subsistence use of fundamentally important stocks.

The legislature could establish criteria by which the boards would identify stocks of fish and game that would be subject to the subsistence preference, and the legislature could require the boards then to identify subsistence stocks, with the assistance of the Department of Fish and game. Reasonable criteria might include: (1) historic subsistence use of the wildlife stock in question, (2) the degree of economic and cultural dependence, (3) the ability of the stock to sustain a subsistence harvest under methods and means currently used by subsistence users, and (4) the degree of competion over the stock with non-subsistence users.

In the past the boards took some steps in identifying stocks subject to the subsistence preference, but the efforts were piecemeal. The Board of Game was criticized by the court in the Eluska decision this spring for failing to provide subsistence hunting regulations. The Board of Game therefore recently had to adopt the controversial regulations allowing subsistence "tier II" hunts on sheep, brown bear, bison, and perhaps others species that generally would not meet the criteria stated above and that generally are not subsistence stocks. The Board of Game should have flexibility to find that no subsistence preference is appropriate on those stocks, subject perhaps to specific and occasional exceptions related to documented but marginal historic subsistence use, such as that of sheep in the vicinity of Anaktuvuk Pass and Kivilina.

The Board of Fisheries has adopted a regulation prohibiting subsistence on rainbow trout and steelhead trout. I believe that is wise policy, but the legality of the regulation would be more clear if the legislature clarified the authority of the boards to identify appropriate subsistence targets.

I have attached a copy of two pages showing subsistence harvest data, and dollar value by species, for subsistence harvest by the village of Tuluksak, near Bethel. The data is from a document entitled "Does One Way of Life Have to Die So That Another Can Live: A Report on Subsistence and the Conservation of the Yupik Life-Style", by Yupiktak Bista. The data show that certain species, such as brown bear, sandhill cranes, and rainbow trout, all of which are very important to sportsmen, are not significant to subsistence. Although the data is now ten years old, it show that in 1974, out of a total subsistence harvest having a cash equivalent value of $378,000 in Tuluksak, brown bear accounted for $416, cranes accounted for $25, and rainbow trout accounted for $330. These harvests should be put under sport regulations where all Alaskans would be treated equally. there is no need for a preference on those stocks, and it is sensible for sport people to cry out that a preference on such stocks is improper.

Other good questions related to subsistence targets are : (1) should subsistence or the priority be applied to transplanted game, such as Sitka black tail deer on Kodiak and Afognak Islands, bison in interior Alaska, elk, or hatchery released fish?, and (2) should subsistence be allowed on moose in the Nome area, which was never inhabited by moose until 20 years ago? I think these questions could be defensibly answered either way, but that doesn't mean the legislature shouldn't think about them and provide guidance to the boards and the Department of fish and game when new stocks are introduced or indigenous stocks occupy new territory.

B. When Should the Boards be Allowed to Shift the Subsistence Target?

Two contrasting examples will flesh out this question.

Opposite Anchorage is Tyonek. A superior court judge, and the Board of Fisheries reluctantly, found a qualified subsistence fishery to exist. The Tyonek residents net about 4000 king salmon off a run of 80,000 kings bound for the Susitna River drainages. The kings are the first fresh meat of the year that arrives on the Tyonek beaches. There is no prior or contemporaneous stock onto which the Board could reasonably shift the subsistence, and there are plenty of kings going to the sport fishermen up river. The court in the Tyonek case held that the Board could not shift the subsistence target. That made sense. However, the Attorney General's Office consistently tells the Board of Fisheries that shifting targets, therefore, is to be prohibited in all cases, because of the court decision in the Tyonek case. Regardless of whether the Attorney General is right, a total prohibition of shifting subsistence targets doesn't make sense. To see that, we need only look at the east beach Cook Inlet subsistence harvest of late Kenai River coho salmon now in effect because of the Madison decision.

The late Kenai cohos, like the famous late Kenai kings, are the largest of their race. They are a prime sport stock. They hit the east beaches of Cook Inlet in late August and run through September or later. Run size varies, but the Board of Fisheries has been told, I believe by the Department, that the late run averages 20,000 to 30,000 fish. Historically, there was a subsistence gill net harvest of 13,000 of these fish, engaged in mostly by commercial set net fishermen after the close of the commercial season. That harvest led to numerous court fights, including the Madison case, and heated political fights before the Board over allocation of salmon bound for the Kenai River.

Prior to the cohos hitting the east beaches, there is a run of hundreds of thousands to millions of sockeye salmon on the same beaches, catchable with the same gear. Furthermore, higher price that sockeyes command on the commercial market indicates that they are preferred table fare.

Thus, it makes sense for the legislature to give the boards authority to shift subsistence target stocks in the situation of the late Kenai

coho, but not in the case of the Tyonek kings. A statutory criterion for allowing the boards to shift in the coho case and prohibiting it in the Tyonek case, could be whether or not there is "a suitable, prior or contemporaneous stock".

C. Should the subsistence preference always mean that the sport harvest must be eliminated when the combined sport and subsistence harvest is greater than the stock can allow?

If sheep were a significant subsistence stock to the villagers in Anaktuvuk Pass, then the answer to this question would be "yes". The priority would demand elimination of sport hunting. However, I believe that the Subsistence Division of the Department of Fish and Game will tell you that sheep are an incidental subsistence target for the people at Anaktuvuk Pass. If that is true, then an allocation between sport and subsistence users might be appropriate to allow a reduced preference for subsistence and a permit draw for sport. Sport hunters should not carry the whole burden of reducing the harvest and the opportunity to hunt in such a situation where the target is only incidentally used for subsistence. The legislature could give the boards guidance in such allocative decisions, by establishing criteria focusing on the significance of the wildlife stock to the subsistence users.

III. ADDITIONAL ISSUES TO ADDRESS

A. When should new subsistence users be allowed and not allowed to use an area?

The federal government considered this issue in the late 1970's but left it to the State on the belief that the State could deal with it better? The fact that the subsistence was designed to allow the opportunity for subsistence to continue and is tied to culture, custom and tradition in both the federal and state laws clearly implies that it is appropriate to allow children born into a subsistence life-style to continue to have the opportunity to choose that life-style, so long as they remain otherwise qualified.

However, a person who moves to a bush location, either from another bush location, or from Anchorage or New York, presents a more complicated set of questions. An Anchorageite or New Yorker who moves by virtue of a state or federal land disposal should not get the priority if there is not enough game to satisfy increased subsistence harvest and sport harvest. Federal land disposals must be measured against their impact on subsistence, under Section 810 of ANILCA. I would recommend that the State go one step further and require that state land disposals be measured against impacts on subsistence and sport use. Land disposal will only make sense if it does not inhibit urban Alaskans from hunting and fishing. Any "cap" on subsistence could be general or be species specific.

B. When should a person be allowed to return to a subsistence life-style?

This is a difficult question, but luckily we do not face it today in many instances. Nevertheless, the legislature might want to give the boards some guidance.

For more than a century our political and legal attempts to deal with Native issues have swung, like a pendulum, between two contradictory goals: assimilation and self-determination. Renewed interest by Alaska Natives in sovereignty, less than two decades after Native corporations were set up as part of the Settlement Act, seems to indicate that the pendulum is again swinging toward self-determination, as it is in the lower-48, with renewed assertions of treaty rights and land claims.

Regardless of where the pendulum is now or in the future, how do we address the person who wants to return to a subsistence life-style? What if a young adult was born in Seattle and spent summers subsistence fishing with a grandparent in Alaska? What is a person resides and works in Anchorage for nine months of the year, and customarily and traditionally returns to subsistence fish at a home village during the summer? What is a person has been away from subsistence life for a period of years without returning and then wants to return? There are other such questions that we may have to address in the future. For now, I would only recommend that the legislature do what it does best. That is, duck the issue and delegate it to the boards with the authority to adopt reasonable regulations that can be amended as the pendulum swings.

C. Final Points

1. Protect Only Nonwasteful Subsistence

The federal law protects only "nonwasteful" subsistence. The state law is silent on waste of wildlife in subsistence. It should be amended to protect only nonwasteful subsistence for two reasons. First, a clarification that subsistence is for the nonwasteful use of wildlife would go hand in hand with the targeting issues, discussed above, and would provide additional underpinning for targeting subsistence on resources that can take substantial harvest. Second, waste has been a problem in the taking of walrus for tusks only.

2. How to Reduce Court Cases

Many law suits over subsistence could be avoided if the boards had an administrative appeal process. The federal law requires that before any subsistence related case goes to federal court the plaintiff must exhaust administrative remedies. The boards have no appeal process. They should have one and exhaustion of administrative appeals should be required before a plaintiff can go to state court.

The next to testify was Patrick Wright. Mr. Wright started by saying that subsistence affect his life more than anything since statehood. Decisions should be based on imput form citizens and his

recommendation would be to go back to he 1978 law. Mr. Wright did not agree with going back to looking into what was traditional and or customary. He felt that we need to deal with things that are presently here and not the back issues. Noted that this need not turn into a political issue and that he had confidence in the Board of Fish and Game in making the right decision in this matter.

Warren Olsen then took the stand. He was in disagreement with the Governors bill, SB 288. He noted that the native community received 44million acres and this law would not effect this land in any way. He stated that 90% of subsistence needs are met by sea mammals, fish and water fowl and that 80% of Alaskans will be excluded when and if a rural definition comes down. He made light of the fact that no rural legislator had come forth at this time with any definition or solution to this problem and that in all his years in working with this issue he has never seen it.

Mr. Olsen went on to say that a permit system could be used as a limited system. Solutions are tough and he felt that the 1978 law should be abolished, but not subsistence. He warned the committee to make sure that it was not their problem, and not there issue.

Senator Vic Fischer as if Mr. Olsen was saying to back off of the situation altogether. Mr. Olsen replied that it was a non-workable situation and will cost you at it has many individuals.

Senator Fischer wanted to know if Mr. Olsen meant to abolish the 1978 law totally. Mr, Olsen replied subsistence should be given to the people who need it.

Senator Kelly noted that there was no way to repeal the law.

Senator Abood questioned if the defination of rural would be narrowed if that would help. Mr. Olsen noted that it would not be narrowed.

The next person to testify was Lou Soumas. He supported the Alaska Outdoor Council.

Ron McAlpin then took the stand and noted that very few people lived off the natural resources in this State. He said he had trouble with the issue of what the use of the word traditional was. Many of the traditicnal ways are not applicable in this day and age. Mr. McAlpin went on to say that this should not be a rural vs. urban issue but that it was more of a residency issue.

Mr. McAlpin ended by saying his personal preference was to eliminate the 1978 law due to the fact that it lack reality. He also is in support of the Alaska Outdoor Council.

Mr. Clyde James was up next. He felt that there were very few cases where true subsistence was needed and that the 1978 law should be repealed. Mr. James went on to say that he felt this was just the tip if the iceberg and it could or would eventually turn into a racial

issue. He also noted that the natural resources was one of the main reasons that people migrate to Alaska. Felt that Federal takeover would eventually come about, but probably not for a while.

Richard Sanchis then took the stand and went on to say that the basic principle of fairness are being abused. The issues of priority, rural vs. urban and the Federal goverhment are making this a people issue. Everybody had the right to manage this property. The natural resources of this State belong to everyone who lives here. Mr. Sanchis continued by stating that special interest should not be brought into this. Mr. Sanchis said he knew of only one person who thought of the resources first and that was Sam McDowell.

Mr. Sanchis continued by saying that priority was the big problem. He wanted to substain yield principal and manage it this way. There is a big need for more professional management and we need to leave it up to these professional people and keep politics out of it. He felt that the one way to manage the natural resources was to do it with special licences and special seasons. Do away with urban, rural and priorities. He also stated that he was not against those with a true subsistence need, but we have to realize that the style of life has change in this state. We have become more metropolitan. He was in total disagreement with those who had the money to spend on food, yet insisted that they hunted for subsistence.

Richard Koskovich was the next person to speak on the issue. His main point was that no one was forced to live out in the rural areas of Alaska. He said that he had lived out in the bush and required no special privileges to live.

Keith Appel took the stand and cited his thanks to the committee for having these hearings. He noted that this was a crucial issue, that dealt with physical and well as emotional issues. This situation has caused many prejudices and is unfair as far as it is today.

Mr. Appel went on to say that all people in the state could live with a subsistence need. He felt that a commission should be formed to decide who can and cannot use subsistence. Mr. Appel has subsisted on wildgame.

Senator Abood questioned if Mr. Appel had ever seen a subsistence user. Mr. Appel answered "yes". Abood then asked if there is more waste then actual food used. Mr. Appel felt that there was a 10 to 1 waste in the rural villages opposed to sports hunting. Abood then ask him to elaborate on this statement. Mr. Appel then went on to explain how he had seen wasted caribou due to the fact that when they were out hunting they killed and then when they were coming in closer to the village they killed again. Instead of going out to the further locations were kills had been made, they picked up only those that were nearer to the village, leaving the rest to rot. He had also seen many walrus shot and never recovered.

In conclusion, Mr. Appel said that this whole situation need to be pulled together and quickly.

John Anton was the next person to testify. He does not understand the interpretation of subsistence. He personally came to Alaska for the wildlife and his love to hunt. He feels that the choice of hunting should not depend on where you live. Mr. Anton stated that the shooting of seals and whales by natives were a waste of animal.

Mr. Richard Henderson wanted to go on record as being in support of the Alaska Outdoor Council.

Ms. Vernita Zilys took the stand in defense of rural subsistence. She felt that subsistence must continue to rely on priority. Ms. Zilys noted that people in the remote areas of the State have nothing else to eat. Her suggestion was to do as the Canadians do. Have subsistence based on the population numbers and have the Natives fighting among themselves rather than with anyone else.

Ken Wynne of the Anchorage Advisory Board was up next. He stated that the Advisory Boards point of this issue was equal opportunity for everything and everyone. That a fair solution was to draw for the permits to hunt. If no equal opportunity for everyone, then close down all hunts.

Mr. Wynne personal view point was that it was not a people issue, but rather a resource issue. The state has gone thru cultural changes and it is not the same as it was 30 years ago. Now the native villages are not all native, whites are moving into these villages.

He continued by saying that the Fish and Game Board is appointed by the Governor and are all political. He felt they are not worth what they are there for. He felt that the biologist should be allowed to make decisions and then we should follow them. A lot of animals are on subsistence eg., goats and they should not be on the subsistence list.

Mr. Wynne suggested that the committee make resource the main priority and they should carry out the will of the people and not make it a political issue. He stated that what we have now is totally unacceptable.

Mr. James Stubbs took the stand in support of the Alaska Outdoor Council. He was in favor or equal opportunity for everyone in the state. We need to protect the resource for the next generation of Alaskans.

WEDNESDAY AUGUST 28th, 1985

STATEWIDE TELECONFERENCE

Senator Abood called the meeting to order at 9:15 AM. Members of the committee that were present were Senator's Abood, Tim Kelly and Vic Fischer.

Rob Lohr from Juneau was the first to speak. He suggested that we correct the problem made by the Madison decision. Subsistence is not a welfare system and should not be converted into one. He basically agrees with rural subsistence use and believes that the need base approach is the way to go. He noted that the taking of fish and game should be based on the need of the community rather than the need of the individual.

Senator Vic Fischer stated that if we went to a need base approach there would be no Federal guidelines. He questioned Mr. Lohr on what kind of guideline he would find acceptable. Mr. Lohr answered that it would be on a cost of living basis in the communities where it is effected.

Bill Thomas of Ketchikan read his prepared statement, but the system was gargled and Mr. Thomas was asked by the chairman to send in his typed testimony for the records.

Authur Elliott was the next person to take the stand in Anchorage. He spoke on the need for equal protection for all residents. He felt there should be not preference to particular groups and that the location of where a person lived should not be a major factor in determining who got subsistence. He went on the say that he could understand if there was a shortage of game in the remote areas, but if not then a lottery should be put in play and everyone given a fair opportunity to participate. Mr. Elliott continued by saying that everyone should be treated with equal opportunities like it has been throughtout the years.

Senator Vic. Fischer stated that the law was being misinterpreted. He questioned if he, Mr. Elliott, felt that if the lottery method was use for everyone and then subsistence used when it was only necessary and needed by villages in remote areas, would that be acceptable to him.

Mr. Elliott replied that he would have no argument with that. He just does not want to be discriminated against because of the area he choose to live in.

Senator Abood then went on line to Dillingham, where Mr. Jim Timmerman spoke in support of SB 231 and CSHB 288. He felt that rural Alaskans need the subsistence areas.

In Nome, a Mr. Pagaway also spoke in support of SB 231 and CSHB 288. He stated that rural Alaskans depended on the natural resources of this State.

Con Bunde in Anchorage took the stand next. He submitted for the records a newspaper article which he requested go on record.

The article is from the August 22, 1985 edition of the Anchorage Daily News, written by Randall E. Farleigh, who is and Anchorage attorney and waterfowl hunter.

There are many sound reasons why the current federal and state subsistence priority laws and regulations for the taking of Alaska's wildlife should be repealed. These laws are premised upon a dangerous notion of cultural superiority. They create unequal rights, opportunities, and protection among our citizens' participation in our wildlife, contrary to constitutional principals.

They reduce our wildlife resources to a welfare transfer payment exempt from regulation, applying biologically based management practices necessary to preserve and maintain abundant wildlife for all. And they irrationally dedicate the resources to people who supplement their wildlife-based lifestyle with limited cash, while denying it to those who supplement their largely cash-based lifestyle with wild food.

Under the current scheme, the former are "subsistence" users entitled to priority; the latter are mere "sportsmen" effectively denied the resource. Both are subsistence users for their respective livelihoods.

Perhaps the greatest arguments for elimination of the artifical user classed of fishermen and hunters is the importance and value of the wildlife opportunities to all Alaska citizens. These values were eloquently expressed in the August Daily News article by Vernita Zilys. Zilys wrote of the tranquility and well-being experienced by those who rely on fish and game in some way for their identity and satisfaction in hunting wildlife, preparing it for consumption, and sharing it with others. What Zilys ignored is the universal sharing of these values by most Alaskans.

These values are not unique to Zilys' culture. These values are as important, or more so, to those in the "asphalt jungles" of urban centers who are close to losing a last meaningful contact with the land, its meaning to our ancestors, and the lessons it holds for us all.

Many people are now labeled "sport" hunters and fishermen because they happen to live a more cash-based existence in urban areas, living lives productive to a society larger than themselves and their immediate families, paying federal income taxes, Social Security taxes, unemployment taxes, and such. Some of them even work for corporations that pay state income taxes and vast royalities, as well. These are the same people and businesses that produce and distribute the goods and services used by "rural" Alaskans in the prusuit of their privileged "subsistence" lifestyle: aircraft; shotguns; rifles; ammunition; outboard motors; snow machines; fishing nets; ATV's fuel; medical care' expensive schools and the educational services to make them work; state-subsidized electricity; satellite television; transfer payments such as food stamps; unemployment compensation, and

attitude of state and federal assistance grant. These are also the people who are changing the face of Alaska, and should not be denied their only link with, and stake in, the land they must respect and preserve.

The current subsistence/sport classification system will only succeed in escalating bitter cultural divisions among our citizens and in further isolating urban residents from their cultural roots with the land, however distant, and however diverse. The majority of Alaskans now live a cash-based lifestyle to some degree, and our government's denial to them of a personal stake in our wildlife resources will bode ill, indeed, for all who treasure the land and man's special place upon it.

The subsistence priority laws must be repealed so that all Alaskans live by the same laws for noncommercial consumption of fish and game resources, and to provide for their careful management regulation, and preservation.

Mr. Bunde them got up to relay his own feelings regarding this issue. He thank the committee for having these hearings and not giving into the pressure of the Governor. Personally he feels that subsistence is a dead issue and has been since the late 1960's. With the economic changes that have been taking place, it is hard to find anywhere in the State where there is a true need for subsistence. Plus the fact that we all have the freedom to choose where we live in this State.

Mr. Bunde went on to say that he felt that this issue of subsistence was dividing the people of the State to non-native and natives,

He also stated that he felt the Governors bill is a political payoff to bush votes.

Senator Vic Fischer then questioned Mr. Bunde on his feelings about the equality for Alaskans and if subsistence should be measured on need or income, etc.

Mr. Bunde answered that there should be no discrimination as to income or need.

Senator Vic Fischer then asked a question based on a hypothetical situation. If a dentist who made a good living in town and save his money, so he had enough to exist on for the rest of his life, decided to retire to the bush and live off the land with some of the benefits of his lifetime earnings; should he have the equality of a person who lives in the bush, but does not have the savings or money he has, and claims to depend on subsistence for a living?

Mr. Bunde answered that subsistence should not be used like a welfare system and that the dentist should be afforded the same benefits as the person with less money.

Ann Long of Sitka was the next to speak on the issue. She stated that she disagrees with SB 320 because of the fees. She did favor CSHB 288 except for section 28, page 2 and noted it should be non-commercial rather then rural. She did not understand the definition of rural. Ms. Long felt that CSHB 288 meets the criteria better than the other two bills.

In Homer, Willie Mie noted that the natural resources belonged to all Alaskans and not just the rural villages.

John Durkin a 38 year resident took the stand next. He noted that the law of the land was formed in 1796 and then proceeded to read the law as quoted below:

This quote is being taken from Appendix A of the Organizations Alternatives and Regulation of U.S. Commercial Fisheries.

1. DOMESTIC FISHERIES, REGULATION, AND THE COMMERCE CLAUSE

A. Ownership of Animals Ferae Naturae

The roots of western man's in harmony with his environment and his attitudes toward exploitation of natural resources were already evident in the Old Testiment. Whatever their origin there is deep-seated tradition in our law that every man, as an individual, has an equal right to pursue and take to his own use all such animals as are ferae naturae, i.e., of a wild nature, the property of no one, but liable to be seized by the first occupant. Traditionally, also, the soverign has asserted ownership of migratory species, under a variety of theories. In Roman law, animals ferae naturae were considered to belong in common to all the citizens of the state. Speaking to English common law, Blackstone asserted that such animals were prerogative property vested in the King alone. The original 13 colonies succeeded to the rights of the Crown, from which has developed in American law theories regarding the ownership of wild game and fish. The rule of law which American courts have consistently recognized is that animals ferae naturae are owned by the States, not as proprietors, but in their sovereign capacity as the representatives and for the benefit of all their people in common. The property right is a common ownership... to be exercised... as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good.

But the "ownership" is not unqualified. It is the law that whoever claims title to animal ferae naturae must first reduce them to possession. Where statutes speak of title to game and fish and being in the State, they speak to the State's police power to regulate the taking and use of wild game and fish, do not effect a landowner's interest in land, and have generally involved the relationship between a State and an individual, not between a State and the Federal Government. The ownership theory is not without modification. "To put the claim of the State upon title is to lean upon a slender reed,"

said Mr. Justice Holmes, because wild animals are in the possession of no one and "possession is the beginning of ownership." The ownership theory has been characterized as "a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource."

Mr. Durkin went on to say that everyone has equal rights to take the resources of the land for his own personal use. In his years here in Alaska, he has seen an inner Alaskan migration to the urban areas of the State.

Mr. Durkin suggested that if Congress did pass an unconstitutional law without the approval of the Supreme court than an "friendly law suit" should occur. He reiterated that the law of the land is equal opportunity for all.

Senator Abood asked Mr. Durkin his stand on subsistence. Mr. Durkin replied that he felt it was a way of survival in particular parts of Alaska and it should be on a need basis.

Doug Wheaton then took the stand. He noted that the state was being segregated by this issue and that it should not be made a racial issue. The use of subsistence has declined because of the higher incomes. He felt that subsistence should be on strictly a need basis, but should not be limited to the rural areas. He also stated he felt 60% of rural Alaska do not need subsistence.

Senator Abood asked Mr. Wheaton if he would take his chance on a draw or lottery system. Mr. Wheaton noted that he wanted the same opportunity as everyone in the State.. Senator Abood went on to ask what if you didn't get a permit in 5 years or more, would he think that was unfair. Mr. Wheaton replied that it wouldn't be unfair, but he felt something could be done to work out not getting a permit over an extended period of time.

Senator Abood called a recess at 11:05 AM.

Senator Abood called the meeting back to order at 1:35 PM.

David Betley of Homer started this session. He felt the the problem of subsistence now deals with population. He suggested we go to a need basis due to the lack of natural resources.

Mr. Jack Randle spoke on behalf of himself although he is a member of the Advisory Board of Cooper Landing. He spoke on four words he felt important to the subsistence issue; privilege, opportunity, choice and rights. Mr. Randle feels there is no one who absolutely requires or uses fish and game to survive. He did note that maybe in the remote areas of the State, people do use some means of subsistence to survive, but not totally dependent on it. With the society becoming more money oriented true subsistence users are becoming far and few between.

Mr. Randle went on to suggest that the new law will have to look toward the movement of the future. The new law with probably stem from a modification of the federal law.

Senator Abood questioned if he felt it was fair for him (Mr. Randle) to put in for a Caribou hunt in his area. Mr. Randle answered that he felt no need to put in for the hunt as he couldn't justify his right to claim subsistence..

Senator Vic Fischer then asked what direction did Mr. Randle see the subsistence issue moving toward and what he would put in the proposed legislation. Mr. Randle replied that in time even the remote areas of the state will not be able to depend on fish and game as their total support system.

Abood then ask if Mr. Randle felt this was because of a cash influx or lack of resources. Mr. Randle answered it was due to the increase of the cash in our economy.

Senator Fischer then continued the questioning by asking what Mr. Randle thought of the two tier method of priority between urban and rural. Mr. Randle stated that he hoped that it did not come to that and that everyone should have a chance at the resources in our State. Senator Fischer then asked how do we define subsistence? Mr. Randle noted that the rural definition was the best now, but it had holes in it. Senator Fischer spoke on the issue of subsistence being used as a welfare system. Mr. Randle stated that the system was working toward that but that subsistence should not be used as a welfare system.

Caroline Tyke was the next person to take the stand. He was in favor of equal opportunity for all Alaskans throughout the State. He noted that bush people live out there at their own choice and they can have supplies flown out to them.

Mike Chambers of Delta Junction was the next to speak on the issue. He spoke in favor of HB 448 and 414. He also favored equal opportunity for those around the State and that the economical issues should not have a basis for subsistence use.

Jim Miller a 20 year resident, spoke on behalf of himself and family. He was totally against subsistence and felt there should be equal rights for all Alaskans. Also noted that the people who lived out in the bush did so at there own choice.

Tom Peterson of Kodiak was the next to speak. He disagreed with SB 320 and felt there should be rural subsistence because rural Alaskans have different need to those who have more access to the urban areas.

Nett Kinney of Valdez supported rural subsistence hunters and felt they should be given priority. He also suggested that out of state hunters be eliminated from hunting.

Terry Colden of Wasilla then spoke. He is a member of the Wasilla Waterfowl Association. He stated that subsistence has vanished in the true since of the word. He also stressed equal opportunity for all in Alaska. Mr. Colden then suggested that we leave it up to the Board of Fish and Game and not let it become a political issue.

Tim Gorski also of Wasilla spoke on equal opportunity for all as well. Mr. Gorskei stated that people live where they choose and are not forced to live in the remote areas.

Jessie Kinisken of Dillingham spoke via statewide teleconference. He supported CSHB 288 and SB 231, as well as rural subsistence.

Bob Uhles was the next to speak. He stated that he was being raped by this subsistence issue and that no man had the right to hunt where he didn't. Wants equal opportunity. Suggested that legislators put aside prejudices and work on this bill.

Julie Kitka of the Cordova area suggested we go back to the way before Madison.

Chairman Abood noted the presents of Representative Roger Jenkins.

Dick Rose of Kodiak questioned the limit of species in SB 320.

Carolyn Demientieff spoke in support of the natives. She stated that the natives have to fight for their rights everyday and she felt that the legislators worked against the natives. Ms. Demientieff noted that the issue of subsistence should go back to the way it was.

Mike McCollin of Delta Junction was the next to speak. He felt that Tier II hunts were hypocritical and that the fish and game belongs to the people of the State of Alaska. Also wanted equal right for the entire State.

Theresa N. Devlin agrees with rural subsistence. She believes the natives were forced into a situation where they have to fight for their lives. She does however realize that no one survives on subsistence totally.

Andy Gorden spoke for the equal rights for all Alaskans to hunt. He felt there were two key issues to this and that is the number of people and access. He feels that 3-wheelers are not a very traditional way of hunting. He felt that bow hunters are more sportsman like.

A letter from the Alaska Waterfowl Association was received in Senator Aboods office and they requested that the letter be entered into the record. The letter is as follows:

Dear Senator Abood:

We wish to commend you for holding hearings on this vital issue in Anchorage. The whole notion of subsistence has proved absurd. It has resulted in the loss of one half or more of all the geese on the Pacific Flyway. The folks that are responsible for this have the worst conservation practices I have ever seen in over 40 years of working on conservation matters. They for instance kill mated pairs in the spring. This means if one of a pair is killed it will not pair up and nest until the following spring. This results in a loss not only the goose killed but the loss of all of its progeny for that year. One shot kills 5 or 6 geese but results in a meal of only one.

Our subsistence natives also rob the eggs from the birds nest, which also results in loss of a building family of geese which will be six to eight in number and a good meal in only a few months. Instead they settle on a modest egg or eggs of questionable age and value. Clubing of the females on the nest also destroys not only the nesting female and sometimes her male mate but results in the loss of the eggs and goslings.

The Togiak and Yukon Delta wildlife refuges were set up to protect and preserve geese, ducks, swans, and big game. The are bereft of species and now there are too few geese for even a small group to subsist on.

Out of a flyway population of over 1.5 million geese we have lost 700,000 to 800,000 to the two footed depredation of the natives on the Y-K Delta. A continental resource has been destroyed by them. Subsistence has meant no law enforcement of any kind. It has meant the total lack of game management and the decimation of moose, caribou, bear and geese by modern gunned, gased and mechinical tow footed predators who are not hunting in the traditional way.

Subsistence has proved to be a racial preference promoted by organizations, attorneys, and lobbyists who represented various native groups. No wonder race has been mentioned. It was racial groups that brought this about. We need one set of harvest regulations that treats all equally. It worked before the subsistence law and it can work again. We must have sound regulations or some species may become extinct.

Perhaps we could call this single set of regulations "Harvest Regulations" and junk the notions of subsistence and sport fishing and hunting.

Signed, Very truly yours, John W. Hendrickson, President.

Due to the distortion on the teleconference network we could not understand Ketchikan clearly. Senator Abood asked Mr. William Thomas of Ketchikan if he could send in his written testimony. The fcllowing is his testimony :

HB 288 provides the necessary umbrella of protection for both users and resource. Presently I support HB 288 and SB 231. SB 320 eludes the existing interpretation of the term subsistence.

To introduce the necessity of licenses would ultimately eliminate the user group that the law was written to protect and provide for. It removes the lattitude of the decision making process tht the Board of Fish and Game now exercise.

W..ther or not either of existing bills are signed into law, I wish there was a positive avenue for implementing the concept of regionalizing state jurisdiction of managing fish and game.

Southeast Alaska does not seem to be experiencing the same ills as the rest of the state appear to be. At least if we are regionalized we won't all have to suffer results form a single mistake in judgement of management and lawmakers will be able to monitor the successes and weaknesses of various regions. Thus allowing some areas of the state to do something right for a change.

Nothing can be more indicative of a system or lack of a system garnering negative results like we are experiencing now.

I'm listening in Ketchikan and you and some participants are severly misconstruing. You are interjecting racial discrimination when proposed laws address location only. Bear in mind that native Alaskans are minority in most of the communities they reside in. I am distressed at you presentation and reflection you are initiating. Please be more responsible.

Signed, Again good luck, William C. Thomas Sr.

Also as part of Mr. Thomas's testimony he submitted a newspaper article written by Jeff Black, a Daily News Staff Writer. The article is as follows:

A word that means living off the land has turned topsy turvy into a tangled issue involving two government bureaucracies, the courts, citizen boards and politicians.

Before a white man set foot in the territory called Alaska, before the first lawyer ventured north, before a centralized government ruled the territory and before national forest, national monuments, native corporations and urban dwellings, there was subsistence, Eskimos, Aleuts, Tinigit, Haida, Athabascans and other native groups lived from the fruits of the land, building their dwellings from trees, fishing the seas and rivers and hunting the forests and mountains. When the white man first came for furs and gold and to educate and Christianize the natives, they too lived off the land.

There have always been subsistence hunters and fishermen in Alaska, but with the influx of an an urban way of life, and the breakdown of some traditional ways, subsistence is being intermingling, regulations and laws have been enacted since 1978 to try and define who is a subsistence user and where they can hunt and fish.

Today any Alaska hunter, who is the focus here, qualifies for subsistence hunting because of two Alaska Supreme Court rulings earlier this year. A 1980 federal law, meant to preserve the ability to live off the land in Alaska, jeopardize the rulings that allows both rural and urban hunters subsistence use and might mean two governments managing the state's game land in the future if the state law is not changed.

The federal law defines subsistence users as "rural" Alaskans, while the state law does not specify rural Alaskans, but defines subsistence as the "customary and traditional uses in Alaska of wild renewable resources for direct personal or family consumption..." Both laws are similarly worded, but the state law did not specify rural, according to the courts.

Governor Bill Sheffield met with Assistant Secretary of the Interior Bill Horn August 19th to discuss several Alaska issues including subsistence use. Part of the discussion revolved around the fact that the federal government would have to step in if Alaska does not resolve the conflict between federal and state statutes.

If the federal government begins managing game on federal lands it would become an "administrative nightmare". Southeast Alaska would be heavily affected if the federal government steps in because much of the land in the area is national forest.

Title 8 of the Alaska National Interest Lands Conservation Act (ANILCA) passed in 1980 by Congress includes the definition of subsistence users as rural residents of subsistence users as rural residents, both native and non-native, and gives subsistence hunters preference over other users.

The Alaska Supreme Court, in rulings in February and April, interpreted the state's 1978 subsistence law to mean any urban residents as well, as creating a conflict with the federal statute. The court rulings prompted the state fish and game boards to meet in emergency session in April to set up new rules restricting subsistence hunting for big game animals because of a fear the management of wildlife resources would become impossible as Alaskans began to use subsistence as an excuse to hunt anything anywhere.

The board had been enforcing subsistence use by the rural standard through regulation, but the court held that it needed to be backed up by statute. A new "two tier" system of management was set up by the board in an emergency meeting in April requiring that a questionnaire be filled out for certain big game hunts.

"The reason the board (game) had to make changes is that if it didn't they (regulations) would not be enforceable," said Steve Behake, director of the Alaska Department of Fish and Game subsistence division.

Southeast moose hunters wishing to stalk moose in the Berners Bay area, Yakutat or Haines need to fill out the questionnaire under the two-tier system to establish who qualifies for subsistence use in a given area. Most of the Tier II regulations apply to interior Alaska.

While the emergency Tier II regulations are in place as a stop gap measure to protect the resource, the conflict between the two government laws are a top priority of the Sheffield administration, McCammon said.

In response to the disparit between state and federal law, the governor proposed three bills during the last legislative session which would put into statute the rural definition and bring the two government statutes together. The House of Representatives passed one of the bills on to the Senate, but it still sits in the Senate State Affairs Committees.

Subsistence legislation was a hot item during the 14th Alaska Legislature with both House and Senate legislators split on whether to allow for rural and urban subsistence use. Sheffield's bill would return to rural Alaskans the first rights to use fish and wildlife resources closing the gap between the laws of the state and federal governments.

Thank you for holding these hearings. I am unable to want to testify in person and wish to submit this for your consideration.

I am a 26 year resident of Alaska. My wife and I have raised four children here and we all enjoy the outdoor life here. We fish, hunt and even peck berries and on occasion pecked ferns and mushrooms. While we don't have to do this to live we enjoy it and it is a lifestyle we choose. I work for Wien Airlines and before that Northern Consolidated and I have many friends in the bush towns we have sewed through the years. I don't want to be treated any different than they are. We are equal citizens in this state and they depend on us city folk to help supply them so they can live in the bush. We need each other. Why can't the state and federal government sit together and resolve this problem. Our fish and game department can manage the resource is such a way that everyone is treated fairly and during shortages of a species close that certain area to all but local use. It worked before and still can. Please help all Alaskans to be proud of their state government by fair treatment for all citizens.

Thank you. William Deal 11820 Ellen Avenue, Anchorage Alaska 99515
344-2660

HOUSE COMMITTEE ON SUBSISTENCE

July 2, 1985

The following people were present at the meeting in Juneau:

Denny Kelso	Department of Fish and Game
Larri Spengler	Department of Law
Beth Stewart	Department of Fish and Game
Jim Ayers	Department of Fish and Game
Norm House	Forest Service
Deborah Greenberg	Rep. Herrmann's office
Linda Wild	Rep. Fuller's office
Rodger Painter	Rep. Goll's office
Helen Fisher	Rep. Thompson's office
Paula Scavera	Sen. Ray's office
Mary Halloran	Speaker Grussendorf's office
McKie Campbell	Sen. Sturgulewski's office
Sandra Borbridge	Office of the Governor
Roland Shanks	Department of Fish and Game

The following were on line from other sites in the state:

Rep. Jack Fuller	Nome
Rep. John Sund	Wrangell
Howard Wayne	Wrangell, aide to Rep. Sund
LouAnn Cutler	Anchorage, for Rep. Adams
Lou Walker	Anchorage, National Park Service
Bartz Englishoe	Anchorage, AFN
June Baker	Anchorage, for Rep. Wallis
Henry Mitchell	Anchorage, Bering Sea Fish. Assoc.
Rep. Johne Binkley	Bethel
Bob Charles	Bethel, for Rep. Binkley
Rep. Katir Hurley	Wasilla
Rep. Peter Goll	Haines
Tom Panamaroff	Kodiak, aide to Sen. Zharoff
Dick Rohrer	Kodiak
Deborah Niedermeyer	Fairbanks, Aide to Rep. Koponen

Comments have been transcribed verbatim except where indicated by brackets [ ]. Material in brackets has been summarized.

Rep. Fuller - Good morning everyone. This teleconference is a meeting of the House Interim Committee on Subsistence. I've asked Denny Kelso and Beth Stewart from the Department of Fish & Game, Larri Spengler, Attorney General's Office, and Jim Ayer if they could give us a briefing on the recent meeting of the Game Board.

The Board needed to do two things--promulgate subsistence game regulations separate from general regulations to comply with the Eluska decision, and to make those regulations consistent with the Madison decision.

[Polls teleconference sites again to see who's on the line.]

Thank you Marty. I would like Denny and Beth and Larri and Jim to outline for us just what was the Board's task and what the process, (garbled)]was necessary] to accomplish that task. Some specific examples how hunts around the state were treated would be useful, particularly where the Board had to go to a Tier II situation. I would like to know, too, what the public's reaction has been so far on the new regulations. Finally, what is the next step for the Board? What is planned for the fall meeting? Once the presentations are finished I will open it up to legislators and staffers for questions.

[Stressed that this was not a public hearing. Public can testify during open subsistence hearings at a later date. Minutes of this meeting will be sent to members in a few days.]

Mr. Ayers - Thanks Jack. This is Jim Ayers. We really appreciate the opportunity to continue to work with you during the interim. The issue has not gone away and we don't see that it's going to go very quickly and that the issue seems to be getting more and more difficult as well as complex and, I might add, costly, as you will hear when we talk about the Game Board meeting.

Now what we had in mind for this morning was about 30 seconds of Madison and Eluska, since that seems to be the threshold of tolerability at this point for discussing those cases. Then Larri Spengler will talk a little bit about how we got to the Game Board meeting, what Eluska actually required and mention the 3 criteria again, then actually discuss--Beth and Larri will discuss--the Game Board meeting, and Denny will try and pull all that together in a summary about what we intend to do next and then the continued need for legislation.....

Ms. Spengler - In February the Supreme Court, the state Supreme Court, issued the Madison decision and in April the state Court of Appeals issued the Eluska decision. What the Madison decision did was determine that the Board had been implementing the state subsistence law incorrectly since it had been enacted in 1978, that the approach of the Board in identifying subsistence as rural, as rural uses based on (inaudible). . . criteria was not correct. This is the first time the state Supreme Court had had the opportunity to look at the subsistence law since it was passed.

The Madison decision held various things, and the nutshell of those is that all Alaskans who hunt . . . (inaudible). . . are subsistence hunting, and all Alaskans who hunt with subsistence gear--net, fishing [methods described in the subsistence statutes] as subsistence fishing, and that subsistence hunting and fishing cannot be restricted until other uses, non-subsistence uses, are eliminated.

In fishing that means you cannot restrict subsistence fishing until sport fishing and commercial fishing are eliminated. And in hunting it means that hunting by Alaskans for food cannot be restricted until uses by non state residents (which are virtually the only non-subsistence uses since there's no real commercial, nobody hunts to sell the product)

have been eliminated.

Now to say that the subsistence uses of fish and the subsistence uses of game cannot be restricted does not mean they cannot be regulated. The court in Madison and the court in Eluska made it quite clear that the Board can regulate as long as the regulations . . . . do not significantly impair subsistence uses. So that was one facet of Madison that was elaborated on in Eluska. Eluska confirmed that interpretation of the Madison decision. .... The Eluska decision did one other thing, which was determine that the approach the Board of Game had taken, which was not to have separate subsistence hunting regulations but rather just have one general set of regulations, was not correct, was not consistent with statute; that the statute required as the Fish Board now has one set of subsistence fishing regulations and one set of sport fishing regulations and one of commercial fishing regulations, that had been the case (inaudible) because it's basically been in the past gear type distinctions--sport fishing was rod and reel, subsistence fishing was net, commerical fishing was anything but you got money for it. In hunting there was no similar gear type distinction so all hunting was authorized just in the general regs. The court in Eluska said you cannot, people can go out and hunt out of season and assert what the court called the subsistence defense, unless the Board of Game had adopted separate subsistence hunting regulations that accomodated subsistence as defined by Madison, which means hunting by all Alaskans for food.

So, therefore, the Board of Game had a rather magnificent task set out for them. They had to look at the entire state and separate the regulations into subsistence regulations, which were regulations for hunting for Alaskan residents, and general regulations, which were for non state residents basically.

Because of the definition of subsistence in Madison that everybody qualifies, a facet of the state statute which had not ever really been triggered before became a very common thing that the Board of Game had to deal with. The way the state subsistence statute is set out, first it requires that if subsistence uses exist they have to be allowed, as long as it won't hurt the resource. This is different from non-subsistence uses which are up to the Board's discretion. The next step is that if there's a problem, if it's necessary to cut back, then subsistence uses cannot be restricted until other uses are eliminated. That's the subsistence priority kicking in.

But what if you've eliminated all subsistence uses, all non-subsistence uses? You've eliminated non state residents from hunting and you still don't have enough game compared to the amount of people who want to go hunting to allow people to hunt without there being significant impairment. Well in that case the statute sets out 3 criteria that explain how the Board is to decide who gets to go hunting among those eligible for subsistence hunting in those cases. If everybody can't go hunting, formerly what we had was random permit drawing. People put their names in the computer hat and were drawn out

at random. Say 2000 people applied, but only 50 can go hunting, they put the names in then draw out 50 and those people are the ones who go hunting. No longer is that acceptable, because now we're at what the court called Tier II, and the Board had to decide who of all the people who wanted to go hunting could go, based in situations where you couldn't let everyone go, based on local residency, availability of alternative resources and direct dependence on the resource as a mainstay of one's livelihood. These were the 3 criteria that were set out in the statute--direct dependence on the resource as a mainstay of one's livelihood, local residency, and availability of alternative resources.

The Board had not really used these 3 criteria ever before because the pool of people who were eligible for subsistence before was so much smaller--it was rural communities and areas. And now what Madison did was expand that to include all Alaskans. And so suddenly the Board was faced with a number of Tier II situations. The Board therefore had a meeting in June in order to do basically the job set out by Eluska--separate out the regulations so there were separate subsistence hunting regulations so that violations could be enforced and that poaching would not just sort of be allowed and be unenforceable--and to make those subsistence regulations consistent with Madison, which was a very different job than they would have had if Madison had not occurred, because they still would have had to separate out subsistence hunting regulations, but it would have been a much more limited task because there would be so much smaller amount of hunting that would qualify as subsistence hunting. So maybe Beth can describe how the meeting shaped up.

Rep. Fuller - Larri, could you take half a second and review Tier II for everybody that's in the listening audience please?

Ms. Spengler - Tier I and Tier II are terms that were used by the Supreme Court in the Madison decision. Tier I is a situation where all Alaskans can go hunting--let's just use hunting since this is about the Game Board, but it would also apply to fishing. Tier I is a situation where all Alaskans can go subsistence hunting, and you may have non state residents or you may have eliminated them, but in any event all Alaskans can go hunting. Therefore the regulations for subsistence hunting would simply provide reasonable opportunity for all Alaskans.

However, sometimes there is not enough game available for harvest of a particular game population for all the people that want to go hunting on that game population. In that case you have a Tier II situation. Now people are not either Tier I or Tier II, it's the situation that is either Tier I or Tier II.

In a Tier II situation you cannot let everyone, all Alaskans, who want to go hunting on a particular population of game go hunting. You have to only let some people go hunting. Or it may be a situation where you can let all Alaskans go hunting but they can't have the same opportunity. Some of them may have a much more restricted opportunity.

For example you might have a fall season where everybody can go hunting and a winter season on the same population where you can't let everyone go hunting and that additional opportunity is basically the Tier II. You have people with different legal opportunities to go hunting and that's the Tier II situation.

In deciding which Alaskans get to go hunting in a Tier II situation the Board had to at this Board meeting use the 3 criteria that are set out in the statute. Those criteria are direct dependence, local residency, and available alternatives. What the Board had to do then was figure out factors that correlated to those 3 criteria so they could basically score everyone in a somewhat crude fashion at this first meeting, and then people would be ranked. And if you could only let, and Beth can go into this in more detail how it actually will be working, but if you could only let 150 people go hunting and you have 3000 people wanting to hunt, they would all be ranked as to how they fell with regard to the 3 criteria and the top 150 people in the scoring would get to go hunting.

Now if you had 100 people who had a score of 20, so they came out with the highest score and they got to go, and then you had let's say 75 people who are 19, but 50 more people could go hunting, at that point where you had people tied on a score and you had less permits available than people on that score, then you could have a drawing of those people because they had the same score with regard to the 3 criteria. But basically what the 3 criteria do is change the way hunting opportunity is distributed when everybody can't go, and instead of just letting everyone have the same chance by having their name put in a hat, you evaluate, the Board evaluates people based on the 3 criteria and decides who gets to go. This might become more clear as we get into the specifics of how the Board developed factors to correlate to the 3 criteria and how they followed them.

Jim Ayers - [Does anyone have any questions about Tier II?]

Rep. Sund - I don't have the statutes . . . . are the 3 criteria in the statute books or are they something the court trumped up in the Madison case?

Mr. Kelso - I think it's important to point out that the 3 criteria appear in both state and federal law. The Supreme Court specifically talked about the 3 criteria in the Madison case, but they have their origin in both state and federal law.

Rep. Goll - I've got some specific questions that have come out of the complication of these criteria in Haines. Are you going to be elaborating on exactly how the criteria are going to be handled in terms of the point system in which case I'll defer those questions?

Mr. Kelso - Yes we are. In fact Beth is ready to go with that right now. I might just summarize that what we told the Board was that under the court cases and the statute and the advice we got from the

Department of Law, basically Tier I is the situation where any Alaska resident subsistence hunter could participate, and the status of non resident hunting was in a separate part of that Tier I question. But at Tier I any Alaskan who wanted to hunt for food or the other purposes listed in the statute could participate. At Tier II we had not enough animals available so that everybody could hunt and we were having to make decisions among the subsistence users on an individual basis. So maybe I can let Beth pick up exactly how the Board had to deal with that when they began looking hunt by hunt through all 450 regulations that they addressed.

Rep. Goll - [My question are specifically about the point system. Please let me know when the proper time is to ask them.]

Ms. Stewart - As Larri and Denny have pointed out, the Board members had to deal with approximately 450 different regulations with probably coming to that meeting with the same amount of information that you have now. It was a very difficult meeting. . . . . They did very well given the situation.

The Board approached each regulation by deciding first whether subsistence uses were substantially impaired. If the Board could say that they were not, then they just duplicated what was in the regulations that you know as the general regulations in the subsistence regulations. An example of that would be western arctic caribou where the season is 10 months long and the bag limit is in the subsistence regulations now 5 caribou per day, so that's a fairly liberal season and the Board was able to say that subsistence uses were not impaired. Unfortunately, there were not very many of those situations and so the meeting took about 12 days, the Board members working about 11 to 12 hours a day.

If the Board could not say that subsistence uses were not substantially impaired, then the Board had to look at the impairments. The permit system and the first come, first served registration drawings were the most obvious cases there. But there were other cases where the seasons were either very short, a device the Board had used in the past to insure that overharvest did not occur, or when the seasons were placed in the time of year that make hunting very difficult, or whether the bag limits were very restrictive. And those cases were very difficult for the Board.

If the Board found that subsistence uses were substantially impaired, then automatically the Board had to eliminate non-resident uses. Sometimes this caused problems because the Board members had difficulty understanding why they had to eliminate non-resident uses even if non-resident uses had not been a factor in the impairment of subsistence uses. However, that is an automatic step and eventually they came to understand that and went ahead and eliminated non-resident uses.

If eliminating non-resident uses didn't alleviate the impairment,

then the Board had to look at other regulatory changes. And in those cases where other regulatory changes that would still allow all Alaska residents to hunt were not possible, then the Board did, as Larri described, go to Tier II.

Before the Board started examining each of the hunts, it did examine the Tier II criteria which are found in 16.05.255 and for the Board of Fish identically in 251. Those 3 criteria are customary and direct dependence on the resource for the mainstay of one's livelihood, local residency, and availability of alternative resources. This is a very difficult situation to deal with and the Board will be dealing with it again in joint session with the Board of Fisheries in November. However, for now the Board has adopted....(interrupted)

Mr. Kelso - Beth, maybe I should point out one thing. The reason the Board dealt with the impairment of subsistence uses is because that language "significant impairment" was used by the Court of Appeals in the Eluska case, so they were applying language specifically out of the case and the Department of Law helped them articulate just how to do that. The other thing which I know you're on the verge of pointing out here is that the Board took those 3 criteria that you've just read and established standards for the scoring system that Rep. Goll mentioned earlier. What I wanted to point out was that those 3 criteria now track directly into what we've been calling Tier II. When we get to Tier II it means we're automatically talking about those 3 criteria and the scoring system that was based on them.

Ms. Stewart - The Board had to find a way to measure each one of those criteria and they did it by developing a series of questions that are going to be used on the Tier II permit hunt applications. The Board had a great deal of difficulty with this and realizes that this approach will probably be modified somewhat in November. However, for now if someone finds himself interested in a Tier II hunt then he must fill out an application which will available we hope fairly soon, probably by the first of August, and the questions on that application include basically the questions that deal with those Tier II criteria.

[She went on to describe questions which will appear on the applications and the number of points assigned to the possible responses. See attached material for this information.]

Those are basically the questions that people will be answering when they fill out these applications. Those questions will all be scored then and as Larri described, based on the number of permits that are available for the hunt, people with the highest scores will be allowed to go hunting.

Mr. Kelso - Perhaps we should turn to Rep. Goll's questions about the scoring system for a moment and then I think it might be useful for us to talk about which hunts are using this particular system.

Rep.Goll - Thank you very much. [Asked for clarification of some of the questions and the number of points which would be assigned for the various answers.]

Ms. Stewart - [Clarified the breakdown of the 30 points which are possible for each of the 3 criteria. See information packet.]

Mr. Kelso - [A packet of all the materials under discussion will be available within a day or so.]

Ms. Stewart - Perhaps then we can go through some of the Tier II hunts so you can get some idea of the kinds of hunting situations that resulted in assigning of Tier II. I'll preface that by saying that the Board took a fairly conservative approach this time around. They did not have of course public hearings, and so there were many cases where they had no way of documenting or verifying whether or not subsistence uses were substantially impaired. In cases where they felt they didn't know that, they did not make the finding that they were. After a public hearing, however, when people come in and talk about whether or not those regulations substantially impaired subsistence uses, we may see additional changes in the regulations that result in a few more Tier II situations.

[Here Ms. Stewart summarized which hunts were affected, where the Tier II situation existed and thus the hunting had to be restricted. This list can be found in the attached material.]

The regulations, before we get into more specific questions, are being prepared right now in my office to be sent to Lt. Governor and adopted as emergency regulations. As soon as that is completed we will circulate the regulations for written public comment. We have put an August 1 comment deadline on those regulations. After the Department has reviewed the comments that come in, the Commissioner has been delegated the authority to adopt those as permanent regulations. This was necessary because emergency regulations only last 120 days. The Board will not meet again until about mid November and we did not want to have a situation where we once again had no regulations that could be enforced.

For the mid November meeting we will, instead of calling for proposals, format the new regulations in the proposal format and circulate those to get public comment for advisory committee meetings, for regional council meetings, we will draft a fairly explicit "dear reviewer" letter so that people have some idea of what's going on with these regulations. Tier I and Tier II are fairly alien ideas to people. There's a lot of confusion about. . . We're getting probably throughout the department 100 phone calls a day about what's going on with these hunts. Some of the phone calls are from down south, from Field and Stream magazine and other magazines like that, some of them are from people who want to know if they can still go hunting as they had planned to this year. We're putting together a public information packet that will go out I hope by the end of this week or the first part of next

week. All in all, I think it's a fairly difficult thing for people to understand and it's going to take quite a bit of time for people to even begin to know how to analyze those regulations. The Board's going to have to meet for about 2 weeks in November and about 2 weeks in January, which is very unusual for the Game Board, to get public comment on the regulations they have developed.

Mr. Kelso - One of the things we are trying to do now is to get the regulations in final form as quickly as possible and then publish a new handbook of hunting regulations for Alaskans to use during this coming season. We've shortened the turn around time as much as we possibly can on that and we anticipate handing them out in time to have them usable in the field, assuming that there are no printing delays. But it's still going to be a very tight fit.

There are some other administrative details that have actual effects on people that are probably worth bearing in mind. One of them is that in order to use the questionaire and to score it in the way that the Board directed we're going to need a certain amount of time. First of all that time is used up in getting information out, and having the regulations finalized is the first step in that.

The next part of it, though, is getting the applications filled out and returned. We'll be distributing applications to all the normal vendor outlets as well as all the department offices. They'll be available to people there and of course by mail if any of those outlets are not convenient. And then our staff will be available to help people fill them out. We're of course preparing a set of instructions to help with that, but I think it's going to be very important for people to have access to department staff to have assistance in making sure they're filled out, because unless they're filled out correctly and completely they automatically fall out of the pool of possible hunters.

Initially we are, there are very few permit drawing hunts that have remained untouched. Most of them have either gone to registration hunts, which we've been calling Tier I hunts, or have gone to the Tier II hunts as Beth just described. Now the registration hunts outnumber the Tier II hunts. It's simply that the Tier II hunts probably have a greater impact on Alaskans. However, in the short run what that means is we are returning virtually all the applications for permit drawing hunts that had been accepted so far and we have received over 40,000 of those. So we're basically returning all applications and application fees for any hunt that no longer is to be conducted the way it had been planned in March. That means we're returning about $275,000 to Alaskans and in excess of 40,000 pieces of application.

The next step then would be for us to get the information out so people can determine whether there are registration hunts, or what we've been calling general hunts open to any participant, and if there are then of course people are free to participate in those. If there are not, then Tier II hunts will require a separate application for each hunt the individual wishes to participate in. And there will be a five

dollar application fee for all the hunts that are Tier II except bison and musk oxen and there the fee is ten dollars and those fees are set by statute.

Once we receive the completed application we'll have staff working overtime to get them scored as quickly as possible. The scoring will probably be done manually by a template because that is likely to be faster than data entry and running on computer. Now if we're doing this next year we'll have it all computerized. But the time required to get it set up, key punched and run is actually greater than what we we take to do them as they come in using the manual template.

Then we need to give people a reasonable amount of time to pick up the application materials, fill out the form and get it back to us. And then once that happens we will score them and mail out the permit information as quickly as we can. The problem of course is that we have to get all the permits [applications] back in order to score any of them. We can score the ones we get first, but in order to compare them to other applications and the scoring for those other applications, we have to have them all in hand. So we are somewhat limited in how quickly we can get the scoring done and send out permits. What we're trying to do, though, is expedite the earliest hunts so that there are minimum delays. There are August hunts that will require attention first, but again we can't do that until we actually receive the entire set of applications back.

Now the danger in that, in our view, is that it is possible that some hunts may be delayed, and the Board recognized that by providing a specific delegation authority to the Commissioner in case that becomes necessary. We will not open hunts for which we have not processed the applications and if we have not gotten the regulation materials out to the public so that they know what the rules are. But we will do everything we can to expedite that.

What that means in terms of impact in addition to the administrative disruption to the department is that it will cost between a hundred and fifty and two hundred thousand dollars to implement this system and there are some potentials for additional costs, depending on if there are problems that actually develop. This is as we have scheduled it now. In addition, there may be fiscal impacts to the Fish and Game fund depending on the percent of impact on non-resident hunters and on resident hunters who would otherwise pay fees for taking trophy animals. In this instance we are calculating what we estimate that to be and there has been requests for us to provide information on just what that fiscal impact is. We've been working on it. It's somewhat difficult because we have not only the Tier II hunt impacts but also the registration hunt impacts, and it's difficult to estimate. We will have that information as quickly as we can put it together.

Beth, are there any other administrative details that affect people that you think we ought to mention?

We see the potential for disruption because of delays as significant, but the directive we've given the staff is we want to find any way we can to shorten the time so that Alaskans have the opportunities to hunt that the Board envisioned. So far, we discovered a couple of ways to change our planned procedure so that we could cut a few days off of the scoring for sheep hunts which are some of the earliest hunts beginning in August. So we'll continue to try to do that, although the primary limitation is the time required for people to have the permit applications in their hands and to get them back to us. They just need some time to figure out how to do that.

Maybe, I have a few things to summarize, but before I do maybe I could ask is there are any questions on this scoring system, or the administration of it, or what the Board intended us to do in handling this material.

Ms. Greenberg - I have a couple of questions. It seems to me that for the Tier II hunts in particular that the people that are most likely to qualify for that may also be people that are the least acquainted with the system in terms of filling out forms. They may never have done that before for any kind of hunt that they've participated in. Is there any kind of administrative way of, I don't know, hooking up with other agencies or the number of available state people that may be bilingual in areas to help out with that? What kind of effort is going on?

Mr. Kelso - We're trying to get the word out to the public in a couple of ways. First, we've put together, we're in the process of putting together, a public information program--not simply press releases, but public service announcements, newspaper advertisements, the hunt supplement, the newspaper insert that we publish listing what the hunts are, and we'll have to of course do one specific to these hunts now that the Board has taken action. We'll be attempting to get information on statewide media networks including Learn Alaska Network, so we are going to try to do an integrated approach to really get the word out. We'll also have codaphones for people to call in and get a brief run down on what hunts are affected in particular areas and we have them now in Juneau but there'll be one in Anchorage as well. And we haven't discussed yet the details of which offices need to have that kind of capacity. Maybe Beth would want to comment more on how we're trying to get the word out.

But the second part of that is in areas where there may be bilingual requirements we may have some difficulty getting correctly filled out applications because people aren't familiar with the materials or don't have access to assistance in quite the same way that you would if you were in Anchorage or Juneau or Fairbanks. What we're going to try to do is either work with non profit organizations or to have our own staff help people in communities where we know Tier II hunts are going to be needed, and in particular I've asked the subsistence division to put together a plan for how they can target some effort on those communities that we think are going to be filling out Tier II application forms, and just how that thing fits with our

overall public information effort. So we're going to have people in the field, but the subsistence division is a very small staff, so we're not going to have the resources to move everybody from subsistence division to those communities that will be filling out Tier II applications But where we can we'll be working with non profits, we'll be working with the electronic media and with educational organizations and institutions in the different communities to try to get that word out.

I think the key is not only getting the word out so people know that they have to do it, that's a big enough problem. The other problem is filling out the form in a way that allows meaningful scoring. Because if a question is confusing and it's left out, that has the potential for totally ruining the application. So it's a serious problem and we're open to any suggestions you might have. If your offices can provide assistance we would certainly appreciate it.

Ms. Greenberg - I have one more question I guess on that note too, and this has been based on my experience with the Commercial Fisheries and Limited Entry system where frequently for one reason or another after the deadline has closed or something or the deadline is missed or whatever . . . . Are the Tier II hunts, when you score all the applications, all the applications are in, then you say this much resource can be taken and these many people can have permits, will that be so tight that say somebody that really legitimately misses the ball can't be picked up later in some kind of appeal? Is there any flux in the system for a problem like that?

Mr. Kelso - I'll let Beth talk about. . . . I'll answer the question initially and then I'll let Beth explain how the Board visualized it.

I don't think there is much flux, because the limiting factor is the number of animals available for harvest. Either we hold back a certain number of those permits, assuming that there will be some problems with people filing on time in which case the people who have applied in a timely fashion may be at some disadvantage in planning their activities, or we go ahead and issue the number of permits that the Board has authorized and we run into the problem that you described. So it is a difficult problem. We don't have a ready answer because the Board has specified how many permits are to be issued.

Ms. Stewart - I'm not really sure that I can elaborate very much on that. The Board did discuss what to do in terms of late applications, and without any real way to estimate what that might be or what percentage of the population for instance might have problems getting applications in on time or even being aware of that process, they pretty much felt what Denny explained, that they could not treat unfairly those people who did get their applications in on time. So we are planning to make every effort we can to insure that people do know about these things. These six, we have five on board right, regional regulatory programs, incidentally, have received copies of the regulations and of the Tier II hunts, and they are contacting the

advisory committees which is not simple at this time of year. Many people are extremely busy with commercial fishing right now and so we're not positive that that's going to really work, but it's one other way we have of trying to do it. We're also fairly well assured that rural radio stations and media will help us quite a bit in trying to get that message across. So I think basically the answer is no, there isn't going to be any late application period, there isn't going to be any appeal process, there just really isn't any way to do that. Unlike the Commercial Fisheries Entry Commission where a person was given an opportunity, a use privilege that lasted for that person's lifetime, this hunt opportunity thing is something you have to go through every year. It isn't like the entry permit in that way. It can't be sold, it can't be transferred. It's for that hunt, for that season and then it must be all done again.

Ms. Fisher - . . . This application for a Tier II hunt, does this entitle me to just the actual hunting, or may I hunt until I have the animal? What decides that?

Ms. Stewart - It means that you can participate in the hunt during the time that that hunt is legally authorized. It does not mean that you are guaranteed a moose. If you get a Tier II moose permit for the Anchorage area, you have the same opportunity as other people who have those permits to go out and hunt, but you cannot hunt until you are successful. You can only hunt until the period is closed.

Ms. Halloran - Jack, this is Mary. Maybe one of the things the committee members might want to consider is making available the help of the legislative information offices in getting some of this information out in the villages. We do have a good network there. See what you think about that.

Rep. Fuller - I think that's a good idea, and also I have notes here for Linda . . . for maybe cutting some tapes that we run on the rural broadcasting throughout all the different villages.

Rep. Sund - . . . . . I didn't even know the Board of Game had been meeting, so you've got a big chore ahead of you there. But I have two questions. One is that if somehow by late application this year you were unable to participate in a hunt and you have to reapply next year, I assume next year's permit is going to give points for having prior participation. Is that person somehow going to be able to just slowly fall out of the system because he was late to get his first application in and therefore has less points for the next year and then following years? What's the prognosis on that issue? And then I have one more question.

Ms. Stewart - There's a possible ten points, ten points that a person can accumulate for having actually harvested the animal in the past. And you're correct in that those people who are able to successfully hunt every year will continue accumulating those points. I don't know that any of us can predict how far apart the point spread is

going to be on getting a permit or not getting a permit. I don't know that it's going to come down to you know, somebody having 60 points and somebody have 59 and the separation being right there. Also, I'm not sure that that exact point system will be what's in place permanently. I think it's important to understand that the Board adopted a point system they thought could be used this year without doing a lot of research or having a lot of information available to them at the time. So I'm not positive that that's you know, that's something that's going to have a long term effect. But yes, if something like that 10 point total is available on the applications in the future, not only your not going hunting but your being unsuccessful in your hunting would cause you to not be able to accumulate those points.

Rep. Sund - Thanks a lot. I have one more question, probably to Larri. Did somebody trace the legal ramifications of prohibiting out of state hunters from hunting game on federal land? I'm sure the issue's going to come up from some out of state people saying that's federal land, they're federal animals, and why is one state prohibiting us from traveling across state lines to hunt in another state. What are the state statutes and then the federal statutes that allow us to do that?

Ms. Spengler - Are you referring to a situation where we have a Tier II situation on federal lands? Is that what your question's directed at?

Rep. Sund - The question goes to the first step you do in looking at an area that's substantially impaired, if the subsistence hunting is substantially impaired, the first thing you do is eliminate non resident uses regardless of whether they're a cause of the impairment or not, if I understood the prior testimony. My question is what is the legal basis for doing that, either in federal statute and then where does it show up in the state statute that gives us the right to first toss non residents out regardless of whether they're a cause of the impairment or not?

Ms. Spengler - That's not in the statute itself. Even before this all happened, and even separate entirely from the subsistence law, in at least one hunt in the state the Board had decided that non state residents were a different kind of beneficial use than state residents when they were hunting, because the Board determined that Alaskans were generally hunting the Nelchina caribou for food, while out of state residents were more generally hunting it for trophies and/or recreation rather than food. Therefore, even before any of this happened the Board had quite a while ago eliminated non state residents from the Nelchina caribou hunt even when the Board did not consider the Nelchina caribou hunt to be a subsistence hunt. The basis I suppose would be in the state constitution that allows the Legislature and boards of the delegation to treat beneficial uses differently, and the Board determined that in that case, for example, the beneficial use that was participated in by Alaskans was paramount and that the other use could fall to the side. I think that those same principles would apply for the rest of it, whether we're at Tier II or Tier I with the non state

residents being eliminated. Case law allows states to treat non state residents differently than Fish and Game, particularly in non commercial kinds of situations which the game would be, with some justification. And the justification here is would be uses by different kinds of groups.

Rep. Sund - . . . [instead of] just throwing them out, why don't we just put them within the same point system as everybody else is, therefore they're being treated the same. Just because they can't accumulate the same amount of points or an adequate amount of points isn't our problem. But it seems to me that the arbitrariness of just eliminating, of making the determination that . . (inaudible) . . the subsistence use of that hunter will be substantially impaired because there's too many hunters, and our first arbitrary action is to eliminate non resident users, I don't understand the logic in that. Why don't we just toss them into the point system and let them make application like everybody else?

Ms. Spengler - I see your point, and there is some basis in statute for this part of it. The definition of subsistence hunting in the state statute is hunting for subsistence uses by Alaska residents, so that's the first piece . . (inaudible) . . and the way Madison and Eluska interpreted the framework of the subsistence statute does provide for what seems . [an] irrational and unnecessary step. If the Board looks at subsistence uses and determines that they are significantly impaired, the first step, no matter whether the non state residents are the cause or not, is to eliminate non state resident hunting. And then to go along and divide up, if there's still significant impairment, to apply Tier II if that's the appropriate step. The language in Madison and Eluska don't really leave any options on that, and because of the definition of subsistence hunting in the statute to be restricted, to be limited to state residents, the Board didn't have any way to allow, either to allow non state residents to keep hunting or to put them into the Tier II pot. That was just part of guidelines that were surrounding how they had to behave.

Mr. Kelso - Representative Sund had a question which triggered another question in my mind for which we do not yet have an answer, and that is whether there may be effects on federal funding, Pittman Robertson funding if non-residents are significantly restricted from participating in hunts in Alaska. We've actually posed that question to the federal aide coordinator with U.S. Fish and Wildlife Service, and we actually don't have an answer yet. But we are quite concerned about that possibility, and the funding from Pittman Robertson is a substantial amount. It's been less in recent years but it's still very significant. It's figured on a formula basis and we certainly would still meet the formula. The question is whether we would in some way have failed to qualify because of some guideline and we don't know the answer to that. Of course we would argue that we should still receive the funding and we intend to do that if the question arises.

Rep. Sund - I'd like to follow that up, because it seems to me that the real driving force behind the subsistence issue we're in is the

the federal law itself, and I can't see the rationality of us having to do this to comply with the federal law, and by complying with the federal law get kicked out of another federal program. It seems to me our posture should be one of trying to find the grass roots in the federal statutes for the rational of what we're doing now.

Ms. Spengler - John, this last board meeting had nothing to do with federal law. In fact, it probably took us farther away from complying with federal law. What it had to do with was complying with what Madison and Eluska said state law required. In federal law, if you're at a Tier II situation, if we were in a Tier II situation, the 3 criteria and the way that we've been interpreting the state law before Madison, the 3 criteria would have been used to decide which rural residents got to go hunting. And the federal law would never, to have a system where people from anywhere in the state can put their names into the Tier II calculation from anywhere in the state, and possibly depending on how they scored on the different criteria, override or rank higher than someone from a rural area, it's just I mean that certainly is a theoretical possibility that someone from Anchorage could have very little alternative resources, be poor, have hunted in the past, those other criteria--they might score low on local residency by high on everything else--and beat out someone from the local area. So this system has nothing to do whatsoever with complying with federal law.

Rep. Sund - I guess, Larri, the same issue I was looking at there was that we wouldn't probably have a subsistence law on the books at all if it wasn't for the federal law to start with.

Ms. Cutler - There was an article in the paper up in Anchorage a few days ago that seemed to indicate that the Feds were still threatening to take over. . . (inaudible).

Mr. Kelso - The information we have is that the Department of the Interior is prepared to indicate what their position is, but that they are awaiting response to an earlier letter which we will be responding to as rapidly as we can. We wanted to wait until after the Game Board had completed it's work so that we could advise the Interior on what they had done. We had, as a matter of record we're not prepared to concede that the state is out of compliance, although that isn't ours to determine. So we want to communicate in writing with them carefully. But we thought that now that the Game Board has concluded it's work we can correspond with them, and we expect that they will then respond to us by telling us what their intentions are over the next few months.

Ms. Cutler - Okay, okay. I guess what you're really saying is that it's basically the same.

Mr. Kelso - We have reason to believe that they actually have formulated a position so that it isn't the same as Bill Horn's original letter to the state. We expect, we don't know exactly what the content of that position is, but we are aware that the federal agencies have been asked to prepare contingency plans.

Mr. Painter - I'd like to follow that up with another question. I believe that the federal government is looking at this from two separate angles--from enforceability of state Fish and Game laws and from compliance with ANILCA. Is that correct?

Mr. Kelso - That's correct. There was some initial concern that the Eluska case might make enforcement difficult on federal lands and especially the interest there was in parks and refuges. I think we, through our communications directly with those game managers, we indicated that actions were being taken and that the state regulations were going to be enforceable. I think that is understood now, and of course we're, since we're putting out these emergency regulations we expect that they will be enforced and that prosecution can be brought if necessary. But that was one point of their concern. And the second point of their concern was whether under the Madison case we are now in compliance with Section 805 and 804 of ANILCA. So I guess that's the point that we'd like to know exactly what they intend.

Ms. Cutler - I've got one more question. If I could change the subject just for a minute, can you guys talk a little bit about what's going on with fish, I guess both in terms of are there any areas that are being. . . people are being adversely affected. Also, what plans does the Fish Board have, does the same process have to be gone through for fish? . . .

Ms. Stewart - The Board of Fisheries does not have to go through quite the same process in that they already have subsistence regulations. Many of those regulations are probably fine just the way they are. Those that are not, the Board took some initial steps in March to correct. After Eluska came out, though, the Board did have to delegate authority to the Commissioner to do something that they hadn't planned on and that was to issue permits for subsistence fisheries that had existed at some time since statehood. Statehood is not the automatic answer to the question of how far back you have to go, but it was one that was agreed upon so that the D.A.'s office . . . protection, would prosecute violations for this summer. I don't know that anything bad is happening right now. It's a little early in most fisheries for the species that people are interested in to even be fished right now.

We do have some new things happening right now. We have the Taku River gillnet fishery, which is new. We have some new fisheries in Cook Inlet that will be taking place basically on cohoes and then later in the year, so as far as fishing goes right now, we don't know of any instances where subsistence fishing has dramatically changed the way we prosecute either sport fisheries or commerical fisheries. There is a case near Klawock on the Klawock River with the sockeye salmon that has caused us to issue an emergency order closing the sport fishery on sockeye. And that's being done this week. And that's as far as I know. We did receive a request to open the Chitina dip net fishery. Actually, it was a letter to the Governor that came to our office just last week from the Chitina Dip Netters Association asking that the fishery be conducted according to the 1978 regulation in the belief, apparently,

that those regulations allowed seven day a week fishing. That's not the case. Those regulations did not allow seven day a week fishing. Apparently the other belief was that the fishery had no limits at that time. That's also incorrect. In fact, the regulation that was in effect in 1978 allowed the Commissioner to "set limits from time to time", and that's a quote. That kind of regulation wouldn't be tolerated any longer, but at the time the Board frequently did things like that. So as it turns out, no situation has arisen because that fishery is actually going on seven day a week fishing anyway. The dip netters have not taken their weekly quotas since the fishery opened, and so the Department opened the fishery to seven day a week fishing. I guess the Department that since they're so far behind in their weekly catch quotas, it's unlikely that they will catch up. It's probably also unlikely that they'll take the 60,000 fish that have been identified for the dip net fishery for this season. It seems pretty clear that the Board's going to have a tough time deciding how to deal with those tasks on the subsistence fisheries. The Board will have to insure that they've provided reasonable opportunities for subsistence fishermen. We believe they can still use guideline harvest levels as long as those guideline harvest levels realistically reflect the kind of participation the Board believes will occur in that fishery. In the case of fishing we need some kind of harvest level to shoot for so that you can prosecute other fisheries that occur ahead of subsistence fishing. But that's kind of a long and involved argument.

Mr. Kelso - I might note that we've always believed that the changes in the fisheries would be over a longer period. It takes people time to get geared up, to figure out where they might want to set a net if they want to participate in the expanded subsistence fishery after Madison, and we've never expected that that would happen all at once. Certainly a potentially difficult problem in the future will be that allocation between the Chitina dip net fishery and (inaudible) the Copper River Flats. But in terms of the conflict related to the Kenai Peninsula, we would expect developments in those subsistence fisheries to take some time. There is an August fishery which has some potential for being a difficult situation. 13,000 coho have been allocated for the subsistence fishery there for this year, and assuming that that's sufficient, that people don't demand more than that, it probably will be relatively straight forward. If the 13,000 are taken, however, it's our understanding from the Department of Law that we have no alternative but to close the other fisheries, which would include the sport fishery, in order to allow for the subsistence fishery to progress. So there's a potential danger spot. And there are other potential hot spots scattered throughout the Kenai Peninsula, but we don't expect that there'll be a major, instant conflict. It's a much slower process, with fish, just because there are so many more fish and so many more kinds of uses of those fish than there are in the hunting context.

Ms. Cutler - (inaudible)... asking about the Kenai fishery, and of course since it's not really something that's of concern to a rural legislator. I did just pass the inquiry on to one of the legislators that represents that area. But this person was under the impression that,

when he heard you talking earlier about another Board meeting in November, that in November there would be discussion of whether or not there would need to be changes made to regulations for subsistence fishing. And that's what prompted the question and I guess what you're really saying is that you just sort of have to take . . .(inaudible). . and see what develops, and make changes as they're needed.

Ms. Stewart - Good advice, LouAnn, we could probably put you on duty.

Mr. Kelso - I think our first responsibility, of course, is to the resource. And so as we try to implement the rules announced by the two courts we're trying to take it as specifically step by step as we can, and although there are some problem areas, in the longer run, some potential for real conflict in those fisheries, right now we don't have anything right now on the east side beaches, for example, that is a major conflict. We have had a request, we had a request earlier to open the east side beaches to king salmon fishing north of a certain point, and we did not open them at that point in time because we had not permitted that kind of (inaudible) during prior regulation since statehood. But we have opened the requested areas as of June 22, so yes there is some potential, but I don't want to overstate what the conflicts are at this point. I think the longer range conflict is very much greater than the short term conflict.

Mr. Painter - I'd just like to add that the Special Committee on Fisheries will be sending out an update on the subsistence situation on the fisheries side in the near future. I might also ask Denny or Beth or Larri or whoever's the appropriate person to update people on the lawsuit that was brought to make hook and line subsistence fishing, and the implications of that lawsuit in terms of disruption to the (inaudible).

Ms. Spengler - The lawsuit was filed in Homer by an individual representing himself. The pleadings are not drawn in the traditional style of pleadings, but it appears that he is requesting that all rod and reel fisheries be declared subsistence fisheries. The status of the suit is we have not yet filed our response. The (inaudible) . . . so we have not yet answered. He has not requested any sort of preliminary relief, so at the moment it's on hold. The pleadings were drawn in such a way that it's not entirely clear what his arguments are going to be so it's a little harder for me to predict what the implications will be at this time.

Rep. Goll - [Wants to review the point system.] As Roger pointed out, the Special Committee on Fisheries will be doing continuing updates on the situation. We're getting an awful lot of questions from people here in Haines now that the moose are in season. As they said, it's a Tier II subsistence hunt. I'm a little bit concerned and I think my reasons will be clear. We are questioned here locally as I'm sure you would if by doing it this way the local folks will get a sense of . . . (inaudible). We're getting a kind of a backlash. For example, working

people are worried that someone who is collecting public assistance will essentially be getting a double advantage, with the working person feeling that he is subsidizing the income of the non working person plus deferring his ability to hunt. The second concern has to do with the fact that a lot of the people in the area do not (inaudible) [believe] that the moose is in fact a critical means of support for anybody. This is being alleged based on the number of moose that have been taken and basically what a moose can do for a family and this of course will be subject to challenge by the people who would disagree, but this is what I'm hearing. Another issue is whether limited entry like situation which was developed that one person qualifies one year and (. . . inaudible. . .). And these are the kinds of concerns. Another is how much the dependence factor is going to weigh. Here in Haines, for example, dependence on the moose is not a major issue or (inaudible) maybe, but in some place--let's say up in the arctic--we might find that residents, that is being right in the unit or the hunting area, . . . (inaudible). Because of issues like this I'm trying to get a clear handle on exactly what the point system is.

[Rep. Goll and Ms. Stewart review the points and scoring on the permit application. See attached material.]

[If there's a lot a fish available in the area, would that be counted as available alternative resources, or would it only be game to game comparison?]

Ms. Stewart - The Board decided to include big game and/or fish, and so in those cases where there are a lot of fish available then people should view that as a reasonable substitute. Some of the problems with these things, of course, is that we don't have quantifiable information for what's available in each community at this point. So we're relying somewhat on people's subjective views of that question.

Rep. Goll - Okay. Do you feel that the point system as it will be applied around the state will be.... How will you deal, now getting back to the issue that brought me to ask you this, how will you deal with the circumstance where dependence in one area maybe more important than residents' dependence in another area, less important, are you basically going to try to use the same point system with the same kind of guidelines statewide, or do you expect to do any local tailoring? And if so, what will be the procedure in that regard?

Ms. Stewart - In the short term, the only local tailoring that has gone on the Board has already determined, and that is in defining those residency zones. Certainly over time I would expect that the standards used to weigh those three criteria will be modified and I believe probably met for each hunt. You may see some special modifications after the Board has been able to get public testimony and additional information from the department. As you know, the division of subsistence is always engaging in subsistence research and is coming up with new information for both boards on a fairly regular basis. So

while for now we have this single application with very few exceptions, I would expect that in the future those things will be modified.

Rep. Goll - Okay, thank you. Just a final question, what will you do about the income issues? When you say income sufficient to purchase alternatives, if someone's on public assistance, do they have income sufficient to purchase alternatives or do they not?

Ms. Stewart - That certainly was a difficult one for the Board. The way the question is worded now, the answer is just subjective. We are not asking for any kind of proof of income at this time, so it's a subjective question. Someone is going to decide for themselves whether or not they have adequate income to purchase other items as alternatives.

Rep. Goll - Don't you see that's kind of a problem? Obviously one person may think he does and another person might think he doesn't, and they might have the same income. A person could even say it's going to be difficult to purchase any equivalent to a moose. Therefore, even though I make a hundred thousand dollars a year I could never do it. How are you going to deal with peole who come back to you later and say well, I could have answered it one way but I didn't? And this person lied or in my opinion misrepresented the facts and he qualified. These kinds of issues are being raised to me roughly five and six times a day over the past week, and I want to bring them to the attention of the group. And I'm really concerned about getting some consistency here.

Ms. Spengler - The Board, when they determined what language to use to correlate to the 3 criteria, realized that they in some regard would have to rely at this stage, because of having this other crude set of factors that can't be a very sophisticated system, on people's assessment and honesty. Some of the factors that they used are verifiable, and those can be verified and cross-checked and will be on a spot check basis. Some are not verifiable, but the Board felt that people would to the best of their ability sort themselves out and assess themselves. At this stage, having to do this on fairly short notice and without a lot of knowledge about how this is going to work and with such a short time frame before the hunt, that was the best that they felt could be done at this time. If this system has to be in place for next year, I'm fairly certain that the Board will refine the regs which set out the factors and try to work in more verifiable, more objective rather than subjective questions. At this time, the best they could do, though, was a mix of those.

Rep. Goll - Okay, well then just to get off the air but to put on the record that I'm already getting some concerns about the income issue. A lot of people allege that income is not a valid factor and alternatives are not available whatever your income. And on the issue of years of participation I've got several people concerned as Rep. Sund was about creating something of a limited entry subsistence proof based upon participation which you know, since there's a ten year limit, may or may not be [an all-important thing].

Ms. Stewart - The joint boards will be adopting, we believe, the standards for measuring those 3 criteria together come November. That meeting will be in Anchorage. This, the set that the Game Board adopted, is what will go out for public comment and we certainly plan to work very closely with the advisory committee so that their comments then can help the boards build a better system than the one that the Game Board was able to come up with at this time. The Game Board certainly has no pride of authorship in the set of regulations that they have right now in terms of defining those criteria. They did the best they could with the kind of information and time they had, but they certainly realize that there are problems with these questions. They spent about four of the twelve days they were in session working on ways to measure those 3 statutory criteria, and as you say there are certainly problems with a great many of those. Local residency is probably the least problematical, but availability of alternative resources and customary and direct dependence on the resource are two very difficult criteria to measure. So encourage people to get their comments in to us as soon as we get the regulations out.

Rep. Goll - Thank you very much. That's exactly what I'm going to do. I would make one comment and pose the question to Rep. Fuller if I could. Specifically, what has brought me to be concerned about this, and I'm pretty new to the game issues--it's mostly fisheries that I have some familiarity with--when I found out that this was coming down people started coming up to me and making comments like "we would rather see the season closed for a couple of years and let the stocks rebuild than to cut 90% of the participants out of the hunt." Our areas here in this particular moose hunt is fairly different from the areas up north. The circumstance is that there is a great mixture of (inaudible) participation and an awful lot of local people reading the criteria believe they're going to be excluded and they say "well, I'd rather go spend a day in the woods and get a crack at it" in this particular community where we allege or they allege that there is no real dependence upon the moose herd for subsistence, irregardless of how it may be defined legally. A lot of people are saying, they take a look at this, they say before I go through the bother of filling this out I'm going to poach, or they say before you make everyone do this you ought to just close the season for a year, and I was rather surprised by that response as you can imagine. I'll pose my question to you, Jack, a bit later, but it has to do with the issue of residence and how far the people in your region have to go in order to get the subsistence gathering done. Again, thank you for your time.

Mr. Kelso - I might summarize very quickly and then turn it back to Rep. Fuller, but I'd like to emphasize again that under no circumstances will the Boards actions or the Department's actions abrogate the responsibility to maintain the resources on a sustained yield level. We're going to continue doing that, we're going to protect the resources. And the reason for the Board's action was to enable us to do that by having enforceable regulations. The Board . . . are implementing what are mandatory directives of the courts and neither the Board nor the Department had the authority to do otherwise than what the

Board has done at this point. The effects on Alaskans will be impacts on hunting opportunity, the permit drawing hunts in which every Alaskan had an equal chance of being drawn have been greatly reduced, and of course the registration hunts have been changed as well. This means there will be impacts not only on Alaska residents but on Alaskans who are involved in the guiding industry. And even if Alaskans are able to hunt in hunts that are of interest to them, there may be potential delays associated with getting this new system on the line.

I mentioned the fiscal impacts, and out of pocket costs are between 150 and 200 thousand dollars, as well as potential revenue effects to the Fish and Game fund as a result of, a possible result of fewer tag fees being paid in.

What I thought might be most useful is for us to go ahead and put together the information packet that we've been talking about, we'll get that out to you as rapidly as we can, and then this is going to obviously be a continuing concern because people, as people get more familiar with it they're going to have more questions. So we'd like to be on call to all the legislators. If you need to talk with us about it please feel free to call us directly. If you'd like to get together for a meeting we're happy to be available to you and please just treat us as available for the balance of this year. If you have suggestions on how we can be more effective with this and we can work with you to get word out to your constituents we'd very much like to do that. I'll turn this back to Rep. Fuller.

Rep. Fuller - Thank you very much. I really appreciate this update and I'm sure that everyone that's listening in does. [Thank you all for your information. Linda will be sending out minutes of the meeting.]

[Rep. Sund asked if there would be upcoming meetings of the House Interim Committee on Subsistence. Rep. Fuller answered that he didn't anticipate any, but if it was necessary they would give everyone as much advance notice as possible. Rep. Goll asked a question about clarifying what is meant by principal means of support. Ms. Stewart had left the room and would answer him by phone later.]

Rep. Binkley - Just a quick question. . . . . .Was he referring strictly to Tier I hunts when he says registration hunts and that's just something that you have to register for in those Tier I hunts?

Mr. Kelso - You are correct that when we talk about Tier II hunts we're talking about those hunts where those 3 criteria have to be applied and that's what that questionaire was all about, that application form. Registration hunts are what we've been calling Tier I hunts, although some registration hunts may be occurring in situations where no other hunting is allowed, for example, non resident hunting may already have been eliminated. But the registration hunts are those hunts where, because they're, the resource is not so numerous that we can simply allow an open ended season and bag limit, let me rephrase that, an open ended participation with set seasons and bag limits, we

have to register people so we can sort of keep track of the level of participation. But that is less restrictive than in the Tier II situation.

So the most general hunting opportunity would be what we've been calling general hunts, which do not require registration. An example might be the western arctic caribou herd. The next most restrictive kind of participation would be a registration hunt, and that's what we've been calling Tier I, in which people have to sign up. They don't have to be drawn out of a hat, they don't have to be pre-selected, but they have to register when they arrive in the area where they want to go hunting. Then the most restrictive, which is what we've been calling Tier II, is where we use the application form and the 3 criteria--customary and direct dependence, local residency, and availability of alternatives. Does that respond to your question Johne?

Rep. Binkley - So there's actually 3 different levels and that registration hunt is the middle level.

Mr. Kelso - Yes. We really are, in dealing with subsistence hunting, we have sort of 3 levels at which people can participate and the most general one is the one in which non subsistence hunters can also participate. That's what we've been calling the general hunt. Then when we get down to Tier I, we may be in a situation where the non subsistence hunting has been eliminated and it is within Tier I that registrations hunts could occur. Now a registration hunt is not the only kind of hunt you might have in Tier I, but it's a good example.

. . . . [Jim Ayers asks legislators to call their offices.]. . . .

SENATE RESOURCES COMMITTEE

HEARINGS ON SUBSISTENCE LEGISLATION

February and March, 1986

SENATE RESOURCES COMMITTEE
February 19, 1986

During the last portion of the Senate Resources Committee meeting of February 19, 1986, the committee had a brief introductory session on the SCS for CS for HB 288 (State Affairs): "An Act relating to the taking of fish and game for subsistence and personal use."

McKie Campbell of Senator Sturgulewski's staff went through a sectional analysis of State Affairs version of the bill as it was passed out by that committee on February 5, 1986.

The bill's title, the fisheries section, section (3) on hunting, and other details were discussed until the end of the meeting, at which time Senator Sturgulewski, chairman, stated that a public hearing on the bill would be scheduled in the near future.

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

S. RESOURCES February 26, 1986 1:30 pm
S. RESOURCES March 12, 1986 1:15 pm

Excerpt from Senate Resources Committee Meeting, 2-26-86

DENNIS KELSO, Deputy Commissioner, Alaska Dept. of Fish & Game

With me is Larri Spengler, Assistant Attorney General, and we thought we could save some time by presenting our comments jointly.

Madam Chair, you mentioned that the issue was out of the box now for several months. In fact, it was one year and four days ago that the Madison decision was issued. When we first appeared before the Senate State Affairs Committee last spring, we emphasized that our purpose was to participate in a spirit of cooperation, and we'd like to offer comments today in that same spirit of cooperation.

The original HB 288 was intended to address as simply as possible four basic concerns: constitutionality, enforceability, consistency with federal law in order to maintain state management of all lands in Alaska, and flexibility for the boards to provide fairly for all uses including subsistence, personal use, recreational and commercial.

Since the first meetings of the State Affairs Committee, several versions of HB 288 have been drafted. Many of these were seriously flawed. Because they tried to take on too much, these versions encountered problems that were unnecessary in addressing the Madison problem. In going beyond the four basic principles, they became entangled in complex issues not pertinent to a straightforward and succinct resolution of the problem. State Affairs did work very hard in order to reword these drafts, to trim them down to a more manageable version, and to their credit they tried to put together a version of HB 288 that could stay on track in aiming toward what we think we the correct goal. When the bill came from State Affairs, it still had serious legal and management problems, and some of these were critical flaws that made the bill rather seriously inaccessible to some of the basic concerns that we've been trying to resolve. However, the proposed version before you significantly reduces the problems that are present in the previous versions. It begins to resemble, in its essential detail, the original, and although there are still some ambiguities with respect to federal law, those probably can be resolved largely by a letter of intent. We were asked by the committee staff to discuss this proposed version, so rather than take the time to go through all the rather serious problems that came with the State Affairs version, we'll focus on the one you have before you right now.

We respect the work that was done in State Affairs. When the bill came forward it still had some major problems and the current version which you've adopted as a working draft is much improved.

I'll ask Larri to touch on those things that still remain as legal concerns, and you already have her more detailed critique of the problems with the previous version. In the interest in ease of following this, when Larri has a legal comment or when I have a management-related comment, we'll just follow through the bill in the order of pages rather than skipping around.

LARRI SPENGLER, Assistant Attorney General, Department of Law

Looking through this committee substitute, referencing the problems that were noted in the written analysis, and one problem that was not raised in the analysis that we do see in this proposed version.

Page 1 - lines 23 through 27 - the first subsection of the new section 258 - there is a potential ANILCA ambiguity in this language. However, the sectional analysis that accompanies the proposed ..... says that this part is designed to take into account patterns of local use as established over time. If that intent to accommodate such ... use is incorporated in legislative history through intent in some fashion, the ANILCA ambiguity that is present could be resolved. There is a comment that Mr. Kelso wants to make about the process the board uses to identify subsistence uses throughout the state.

KELSO: That same section, the lines 28-29, and at the top of page 2, first three lines -- if the intention of the bill is to require the boards to develop a master list of every resource in every area and how much is used, and there is a substantial burden in addition to what normally would be done -- in the past we've assumed that the boards would take action on proposals as the need became apparent, whether it was suggested by the department or by the boards themselves or by the advisory committees or the public. It is desirable from an administrative economy standpoint to have that same incremental evolution of regulations continue rather than have this be a situation where the department is supposed to go out and gather information so they can develop a master list. A master list would also be very expensive, and I presume that, depending on how the committee approaches this, that matter could simply be clarified in a letter of intent as well.

SENATOR HALFORD: A quick question on the specific point with regard to customary and traditional uses in areas identified by the boards to comply with ANILCA -- are you saying that in order to comply with ANILCA we have to provide that if a new population moved into an area and takes up residency, that they become the priority use of that resource, regardless of what the prior use was?

SPENGLER: The ANILCA legislative history indicates that the time frame Congress was concerned about was longer than one year or two years, and would take into account, for example, shifts in caribou migration patterns. So the notion is that if this language is intended to also take into account shifts in caribou migration patterns, for example, then there would not be an ANILCA problem. If it's intended to only allow subsistence uses of caribou where that caribou population is found the exact year that this legislation passes, then there could be an ANILCA problem because the patterns shift from year to year as to location.

HALFORD: What if you apply it to a substantially increasing population in the area of a fish stream that's currently used in commercial fishery, and later you have a major community there that is a rural community? How do we get "customary and traditional"? Is it only retrospective, or is it prospective? And if it's prospective, how does it affect existing other uses? If, for example, a community developed on a major fish-rearing stream in southeast, and that community developed a subsistence lifestyle which they initially met through the .... season but found they couldn't do it over time, would they in fact be entitled to a priority over the commercial fishery that'd been operating on that fish stock for decades?

SPENGLER: In that example, if there had not been a community there in the past, there would have been no customary and traditional use patterns built up in that area, so my guess is the board would not find that there would be customary and traditional uses of that stock. If there had been a community that was really small that had customary and traditional use patterns and then grew -- unless it grew to a size where it would no longer be a rural community, then the uses would be allowed to grow along with the population of the human community.

HALFORD: The point is just how it works in terms of being retrospective or prospective. If we're only dealing with existing uses, then that's one series of questions; if we're in fact dealing with all potential expansions of existing uses in new areas or expansions in existing areas, that creates a much greater potential for conflict.

SPENGLER: What is intended is up to the legislature. It's not a very simple question to answer, because of the different kinds of situations that can arise. Maybe the Department of Fish and Game would be better qualified to talk about this, but some examples are fish stocks that have been wiped out and have been restarted by hatcheries and then are stocked again, which may not exist at this moment but it existed years ago, so it's hard to give a simple answer to the question.

HALFORD: What if the stock has been returned by a hatchery and it hasn't existed for 25 years? But somewhere in history there was a traditional use of it. As soon as that stock comes back, is it subject to a preference?

SPENGLER: If the stock in existence 25 years ago had been subject to subsistence use and then had been wiped out or declined to such an extent that no harvest could be allowed, it seems that ANILCA legislative history would contemplate as those stocks grew again that subsistence uses would be allowed again on stock, because it wouldn't be a case where the subsistence uses had died out; it would be a case of subsistence uses couldn't be carried on.

The chairman requested that Spengler do some work on this issue and bring further information back to the committee. Demand for public hearing via teleconference limited the questions and discussion from the committee at this time.

SPENGLER: On page 1, between lines 25 and 27, the bill uses the term "subsistence purposes." This is not defined anywhere; suggest dropping word "purposes."

Page 3, lines 5 through 9: subsection (g) talks about military land. This subsection would exempt military land, which is federal land, from the subsistence priority for military personnel. This section would therefore be ..... with ANILCA because under ANILCA, Section 102, military land falls within the derinition of federal public lands. From the sectional analysis, it appears that this section has been included because of a threat by the military to close their lands to all hunting and fishing, etc., unless the section is included.

Under ANILCA the military could not change their land to ANILCA subsistence uses and .... subsistence uses if those meshed (?) except in cases of public safety administration or to protect the continued viability of the stock. So whether or not the military have a right to close the lands to other hunting and fishing is another issue, but what the sectional would do would be exempt the portion of federal land from the requirements of federal law...

KELSO: Treating military personnel differently from other Alaskans does add an additional management complexity.

SPENGLER: On page 3, lines 10-12: this would allow the Board of Fisheries and the Board of Game to establish an administrative appeal process which would then be an avenue for people who were displeased with regulations. This is a discretionary section; does not require the boards to establish this procedure. If they did establish it and if they chose the Commissioner of Fish and Game to be the arbiter of the appeal, that could bring a separation of powers issue which was discussed in my memorandum. It also has practical problems which Mr. Kelso will discuss.

KELSO: Recognizing that the administrative appeals section is optional with the board, nevertheless if the legislature were to expect the board to follow this section, there are some real management problems. For one thing, the board already has the authority to reconsider its actions. In addition, anyone can petition for a regulatory change under the Administrative Procedures Act, AS 44.62.220 and 230. Petitions also can be filed with the board for emergency action, and if the statutory standards are met, that action can be granted expeditiously. The boards could not delegate this authority to a nongovernmental body. That means that if the commissioner is the entity that is granted the appeal authority, basically the commissioner would be looking over the boards' shoulder and would basically have the authority to redo what the board did. The board is really a legislative body, utilizing a direct grant of your authority, and the problem is if an executive branch entity has the ability to veto or overrule what the board has done using its legislative authority. There are other potential problems as well; I don't need to go into them in any detail; they are time-consuming. ...If the other board, for example, is the appeal entity, ... will hear all the things first board did; if there's a subcommittee of the board, you run into the problem of who really is taking the binding action when regulations are adopted. And since there's already the ability to petition, and since the board

can reconsider, basically this section provides for a cumbersome and duplicative function. ...It would be as if the legislature were delegating authority either to a committee or to the governor to rework what was done, and I'm sure you don't want to do that.

SPENGLER: On page 3, lines 20-26, regarding permits. Right now the boards of fish and game have the authority to require subsistence permits when they feel it is useful. The second sentence of this subsection (c) would require that the board adopt regulations requiring subsistence permits in circumstances where there was a reduction in the harvest of a fish stock, because of the subsistence preference. This has some management ....

KELSO: From a management perspective the boards already have the authority to require permits for subsistence hunting and fishing. Because this section would mandate permits in certain circumstances, there are three problems that might arise. First, under what circumstances are they required? For example, how does one evaluate reduction in harvest, which is the language used in this section. Harvests fluctuate from year to year as do populations of animals, so when this requirements would be triggered is the first problem. Second is the burden on people who harvest fish or game. Licenses, of course, are already required for subsistence hunting. Subsistence fishing has been administered by the Board of Fish somewhat differently. In the game context, harvest tickets are often required as well, but the boards have not always required permits because they didn't feel they were always necessary. When information was necessary that we weren't already getting, or when certain kinds of limitations were desired, permits have been used. It's required them in every instance where reductions of other kinds of uses might occur. It may put a burden that really isn't necessary from the management perspective on the board and the department. Finally, we have the problem of cost, in that dealing with the mandatory permit process basically an additional layer of bureaucracy could be substantial, even if that is only getting the word out to people about provisions of the permit. And if the permit itself is on a community or area basis, ... the permit itself is fairly illusory because it would simply be a regulation.

SPENGLER: On page 4, lines 20-21, definition of "domicile." Domicile is used in the definition of subsistence uses above on same page on line 6 as "...a resident domiciled in a rural area of the state" and "domicile" is defined as having a home in a particular location for the preceding 12 months or other evidence acceptable to the board. If the board did not take

action and it did not adopt regulations setting out additional criteria, this provision would cause constitutional problems because of the durational residency requirement. Someone would have to live in the rural area for 12 consecutive months or longer to qualify. This could raise "equal protection" problems, and some attorneys in our office even think the courts might find there is a "right to travel" that might be violated. At the moment the Board of Fisheries does have a definition of "domicile" which would get that board out of the situation if this bill passed; Board of Game would have to adopt a similar definition. But it would put us in the unusual situation of being constitutional because of board action and failing that board action, the statute would be constitutionally flawed.

One page 5: in the definition of "rural area" on line 3 -- the definition incorporates the term "customary and traditional taking and use." Rural areas -- the term is used in the definition... as found on previous page... "customary and traditional uses of residents domiciled in a rural area of the state" (page 4, lines 4-6). Subsistence uses itself uses the words "customary and traditional" in its definition, so what you end up with a somewhat circular definition. The definition of subsistence uses explaining what happens in a particular place; the definition of rural area explaining where it happens; but you would wind up with no ... -- rural area would be a term of art -- it would mean those areas where subsistence uses occurred and you would have no rural areas that did not have subsistence uses occurring there.

The chairman requested that Spengler work with the committee to clarify the wording.

SPENGLER: Also related to that definition, on page 5, line 3, the word "taking" is modified by "customary and traditional." There is no use elsewhere in the statute that ... "customary and traditional taking." "Customary and traditional use" is a part of the definition of subsistence uses, and if the word "taking" is left in this definition, it establishes a new factor that the boards have never dealt with before. It isn't clear what it's intended to mean, and depending on what it's intended to mean, it <u>could</u> raise ANILCA problems. And I would be happy to work with the committee on the "circular definition" and the meshing of the two definitions.

HALFORD: The Governor's bill provided for rural area residents. Why do we always refer to "rural area" instead of saying "local residents"? Is it the intention that the preference apply either in federal law or state law to a rural resident from one part of the state traveling to another part of the state and enjoying preference in hunting and fishing?

SPENGLER: If you prefer the term "local" rather than "rural," then you would run afoul of federal law, because Anchorage residents are obviously local to the Anchorage area, but they would not be rural (under federal definition). As far as the requirements of ANILCA go, subsistence use is defined in terms of "rural Alaska residents" not "local residents." That's the simplest answer to your question.

HALFORD: So we'd have to say that someone from a Southeast community traveling to somewhere in the interior has to be afforded a preference in the harvest of the resource in that area they're traveling to?

SPENGLER: No, that's not correct. If the question is, if they have to be rural residents in the particular area where they live, that is what this bill would do, because if they're domiciled in the particular rural area -- that's the function of the use of the word "domicile" in the definition.

HALFORD: But it says "domicile in any rural area," not the area where the harvest is taking place.

SPENGLER: If this bill is intended to be in compliance and consistent with ANILCA, what ANILCA envisions is that people in rural areas of the state would have subsistence uses reasonably accessible to the areas where they live.

HALFORD: It doesn't say that.

Chairman said Halford's issue was a good one and would be looked into.

Testimony was received from teleconference sites.

Senate Resources Committee
March 5, 1986

Statement of WILLIAM P. HORN, Assistant Secretary, Department of the Interior, with questions and answers

It's a pleasure to be here today to address the vital issue of subsistence management within the state of Alaska. In particular, I would like to go through an opening statement and provide the department's views regarding the requirements of Title 8 of the Alaska Lands Act and what steps the state needs to take to comply with those statutory provisions. Then, after going through Title 8 and some of the history of the department's work with the state since 1981 in implementing the statute, I'd be more than pleased to answer any questions that the members of the committee may have.

Essentially, Title 8, a critical provision of the 1980 Alaska Lands Act, sets forth three requirements relating to subsistence management on federal lands. These three requirements are, first, that rural residents who customarily and traditionally use subsistence resources be provided a preference over other forms of consumptive taking. That is specified in Section 803 of the act. Secondly, that if there are insufficient resources to provide for the rural, customary, and traditional users, that there be a subgrouping, an allocation within rural, identified rural users, and that such suballocations be made among this group according to the criteria of direct dependence, local residency, and the availability of alternative resources. Those criteria are spelled out in Section 804 of the act.

The third aspect of Title 8 is laid out in Section 805. That requires that the state establish a system of regional advisory councils to be part of the regulatory process. Now, 805 goes on to specify that the state of Alaska fulfills these criteria by enacting laws of general applicability. The secretary is directed to approve the state's program, and that ensures that the state continues to manage fish and wildlife resources on all federal lands in Alaska.

However, should the state choose not to comply or take actions to comply or actions occur which put it out of compliance, the statute compels the Secretary to intervene and assume management of fish and game resources on federal lands. Importantly, there is no discretion vested in the department of the Secretary on this matter. It is a compulsion under statute, and we would be required to act if the state is not in compliance.

Now, since 1981, the department has been committed very closely to working with Alaska to ensure that the state is in compliance. We believe extremely strongly in state management for reasons of both policy and practice. From a policy perspective, fish and game management is a traditional prerogative of state management. We believe that this is a prerogative that should not be upset and should be maintained for although this is an administration committed very strongly to a concept of federalism, we believe that this aspect of state's rights should be continued, particularly here in Alaska.

As a matter of practice, aside from policy, we are persuaded that the state can do and has done a superior job. We have neither the resources nor the inclination to take over a task of the magnitude of managing the sixty percent of Alaska that remains in federal ownership and believe that the good job the state has done should be continued on all lands in Alaska. Obviously, my presence here today is part of our commitment to trying to work with the leadership in Alaska to ensure that state management does continue. Our work with Alaska dates back to 1981 and the immediate wake of enactment of the Alaska Lands Act. We spent considerable time working with the joint Boards of Fish and Game and the Alaska Department of Fish and Game during 1981 and '82. That resulted in the boards enacting a program in the spring of 1982 that Secretary Watt subsequently certified was in compliance with the requirements of Title 8. That compliance continued until February of 1985 when the Alaska Supreme Court in the Madison decision basically struck down the program that had been approved in '82 by permitting urban and nonrural residents to qualify to become part of the subsistence group which receives the preference. Because federal statute in 803 limits that group to rural residents only, the ability of urban residents to become part of that group put the state program, therefore, in violation of 803.

After extensive consultations with the State, the Attorney General's office, the Governor's office, and others, I had to reluctantly conclude that as a result of the Madison ruling, the State of Alaska was out of compliance with Title 8 and so informed the Governor in the letter of September 23, 1985 which, Madam Chair, you referenced in your opening statement. The letter also concluded that a grace should be extended to the state; that just because an action had been taken by the court that put the state out of compliance, the federal government should not immediately intervene; but that we should give the state a reasonable period of time to take corrective action if it wanted to come back into compliance.

The ruling was in February of '85. We said that we would, basically, give the state a grace period that lasted approximately sixteen months, until June of 1986, and that is June of this year. Since that time, we have answered many questions, communicated quite extensively with the executive branch of the state government, members of the legislature, numerous interest groups and constituency organizations, and have been engaged in continuous review of the pending legislation.

Let me finish by offering my conclusion -- that of course is subject to final confirmation by the secretary -- that the measure pending before this committee does indeed satisfy the requirements of Title 8 of the Alaska Lands Act and if enacted would obviate the need for any form of federal intervention later this year. It is my personal, sincere hope that action will be taken to comply with Title 8 and ensure continued state management of Alaska's vital fish and wildlife resources and, with that, I conclude my statement and I will be glad to answer any questions.

SENATOR STURGULEWSKI: Thank you, Mr. Horn. I would assume that you are prepared to write a letter to the executive branch of the Alaska state government to inform them that you feel that this bill is, in fact, in compliance?

HORN: I will be pleased to.

SENATOR STURGULEWSKI: Fine. I feel that would certainly be appropriate.

SENATOR VIC FISCHER: First of all, is it correct that under ANILCA's subsistence uses, stock and population are specific in that provisions of ANILCA apply to each fish stock and game population that is the subject of subsistence uses?

HORN: That is correct. The program is designed to reflect emphasis on particular stocks, particular species that have been subject to subsistence uses. That is part and parcel of the language that Congress used in Section 803 regarding customary and traditional uses, and it is our conclusion that wherever there has been customary and traditional subsistence use made of a particular resource, the state program should, basically, provide for a continuation of subsistence uses on those identified stocks. However, if there is a particular stock that has not been the subject of subsistence use in the past, the state then is under no obligation to take special actions to provide a preference on those identified stocks.

SENATOR FISCHER: When you say "in the past," how far in the past are you talking about? Are we talking about the last ten years, fifty years, two hundred years?

HORN: Congress did not address that in any real manner, shape or form. In the statutory and legislative history, it makes reference to long-established uses and important uses. That's about the only guidance the United States Congress has given in this area. I would think that those two basic criteria are the things that the state board should follow in implementing this particular law.

SENATOR FISCHER: In other words, the fish and game board would have the flexibility to make determinations as to what is appropriate based on those criteria?

HORN: That would be my understanding and that is the way I understand this pending bill would work.

SENATOR FISCHER: My second question is whether ANILCA indicates Congress intended that subsistence uses be identified and regulated on a community basis or area basis as against individual basis. Is that correct or not?

HORN: The general approach in the program is a residency basis with a particular focus on communities and areas as opposed to individuals. When Title 8 was under consideration, thought was given to establish an individual-based program with different criteria. It was concluded that the means and methods of enforcing an individualistic program would require an enormous bureaucracy of people checking residents of bush Alaska to see who qualified and who didn't. Congress concluded that a community, area-type program was better and would be more practical to operate within the state of Alaska.

SENATOR FISCHER: Under Section 804, where we get down to specific priorities, when there is a shortage and all subsistence users cannot be accommodated, do we then get down to individual users or are we still talking about _____ users?

HORN: The area or community use relates to the 803 category of users, and when, as you indicated, there is insufficient resources to take care of the rural, customary, and traditional users at a non-wasteful level of use, then internal allocations need to be made within that particular group. When those internal allocations are made, they are made by the 804 criteria of direct dependence, local residency, and availability of alternative resources. So, only in those periods of acute shortage would the program then begin to look at the status of particular individuals.

SENATOR STURGULEWSKI noted that the draft bill under discussion was the March 4 draft by Mr. Hein. At that point SENATOR FISCHER moved that the Resources Committee adopt Senate CS for CS for House Bill No. 288 (Resources). Hearing no objections, it was so ordered.

SENATOR FISCHER: I understand then, Bill, that on the 804, needs consideration can be brought into play when we get down to individuals as one of the three criteria?

HORN: That is correct.

SENATOR FISCHER; Under 804, can need be a criterion in defining what communities, what areas can participate in subsistence?

HORN: Congress indicated that the primary criteria to look at, of course, are rural residency and customary and traditional use. Congress went on in its legislative history to discuss what it meant by the term "customary and traditional." Primarily, it said that means long-established and important or significant uses. It then went on and said, however, in outlining definition and criteria to better define the term "customary and traditional," that it would be appropriate to use the factors enunciated in Section 804 such as direct dependency and availability of alternatives as among the factors that can be used to establish what is customary and traditional; so Congress says that you cannot make it solely a needs-based program but some elements of direct dependency can be considered in properly defining the term "customary and traditional." It can't be solely needs-based, but some aspects of dependency can be brought into the definition of "customary and traditional."

SENATOR FISCHER: Two more brief questions. Now, I am going to refer to the bill that just we adopted. On page 2, lines 12 and 13, reference is made to: the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. The question is, do we need to have that kind of language in there? Could this phrase be eliminated, because "reasonable opportunity" may leave the way open toward taking the opportunity away altogether?

HORN: Well, I'm not sure the language is absolutely necessary to comply. However, I would add that the legislative history of Title 8 speaks very specifically to the concept of reasonable opportunity. What the state needs to be doing is to identify the customary and traditional uses of a particular stock and then set up a regulatory program to afford the rural, customary, and traditional users a reasonable opportunity to satisfy their needs. This language paraphrases and

almost parrots exactly some of the legislative history. In terms of its absolute necessity, it probably is not absolutely necessary, but it does bring it closer into compliance with the general approach outlined in the history of Title 8.

SENATOR FISCHER: On page 3, in the middle of the page, there is Section 5 entitled "No Subsistence Defense." Some of us have had a little problem with this particular section. I'm not sure whether the question is appropriately addressed to you or to Dave Gayer, but does this, in your view, render any constitutional questions a problem?

HORN: Let me outline what my understanding of this provision is and see if it fits. The way I've read the entire bill and how it complies with Title 8 is that if the state -- and this bill affords an obligation to identify the subsistence stocks, to identify the group of subsistence users, provide those particular users the preferential treatment in terms of when there is a shortage; and the bill authorizes state boards to establish, basically, reasonable bag limits and season lengths and means and methods to take the subsistence resources. I have read this particular section to say that if the state has satisfied, if the executive branch has satisfied all of those statutory obligations laid out in this measure, and some individual then comes along at a later date after the particular subsistence season is closed on a given species, and then takes an animal out of season or over limit, what have you, that if the state has afforded the reasonable opportunity for a subsistence taking in some other place and time, that individual could not raise the defense, "Oh gee, I needed it for subsistence purposes." You would have to, basically, stay within the confines of what the state had set up under the terms of this legislation.

I see that this is more of an issue related to the state in its internal dealings and dealing in the advent of some recent Supreme Court decision in Alaska as opposed to dealing with the particular compliance of the federal law. The federal law says the state will have satisfied its obligation if it identifies the group of subsistence users and gives them the preference. At that point, the federal obligation will have been satisfied by the state.

SENATOR HALFORD: Mr. Horn, when you spoke of the preference said rural residents who "customarily and traditionally use." Can I infer from that that if the state were to take action that defined "customary and traditional" with a cutoff date, that would or would not be legal? What would the effects of, for example, saying "customary and traditional as used in <u>these</u> ways before <u>this</u> date"?

HORN: The thing that would have to be looked at would be the factual issues around it and how it complied. If it were subject to review by both ourselves under our monitoring obligations or by a federal court, what they would look to was the concept that Congress laid out that customary and traditional use means long established and important uses. It relates to both economy and culture. Whether or not that permits any cutoff, probably not. There was some consideration in Congress about establishing a particular use level. At one time, they said that subsistence uses could not exceed the level of subsistence taking that has occurred over the past ten years. In this case, since the law was enacted in 1980, they would fix as a use level the period from 1970 to 1980. Congress expressly rejected the idea of a particular use level, but they did leave the terms of limitation and customary and traditional use so that I think the state has flexibility to determine within the concept of what is long established, what is important. To move it around, I don't think you're going to be locked in and the state would be locked in to a particular use level, but to go to the other extreme and say the base that we're going to measure off of is the subsistence take over the last ten years, for example, I think that would clearly be prohibited because Congress expressly rejected that type of an approach.

SENATOR HALFORD: What if the state took the approach that preference didn't apply to any individual who had not at any time prior to X date customarily or traditionally exercised any subsistence use?

HORN: That approach was also contemplated by Congress. At one time, one of the pending measures, and I think, if my recollection is correct, supported by the Interior Department in the prior administration, would have fixed a date that said anybody born after a certain date was no longer eligible for subsistence. Congress expressly rejected that approach as well. So, I think that, again, any attempt to fix arbitrary dates would run afoul of the congressional intent as expressed by those provisions that were considered and expressly rejected.

SENATOR HALFORD: How does an individual establish a customary and traditional priority for a use which they have never previously exercised?

HORN: I think that is the reason the program was designed and aimed really at a community, residency, area wide type of a basis, not so much aimed at individuals but what has been the track record in this given community over a period of time. That is what the program pegs off of -- the community uses rather particular individuals.

SENATOR HALFORD: What if the community didn't exist at the time legislation was passed?

HORN: Well, then I think you've got a case where it's pretty clear that you don't have a customary and traditional use in that community. Moreover, Congress has made it very clear that they expected that things could change over time in Alaska and that a certain community that at one stage may have been rural, may no longer be rural because of a growing population, change in the local economy. It's not intended to be a static program, it's intended to be a flexible program reflecting the facts and trends that are occurring in a given period of time.

SENATOR HALFORD: In assessing customary and traditional use, would the state be compelled to go back from today's date and establish that on that basis or would it be permissible to go back to the ANILCA passage date and establish that base use for customary and traditional prior to that date?

HORN: I think it's got to be a rule of reason, to take a look again, the criteria would be long established and important use. To look at what the general trends are over time. Remember, in addition, in looking at the question of customary and traditional, Congress indicated it was permissible to bring in the 804 criteria to some degree of direct dependency and availability of alternatives, and those, among other factors, could be brought into the equation to decide what was a reasonable level of customary and traditional use.

SENATOR HALFORD: Another question: we hear, back and forth, the term "federal management." As I read the ANILCA legislation, it provides for federal management of subsistence resources if the state doesn't basically do the same thing. Now, would you explain the mechanisms and the process that would be followed if, for example, the federal government were to take over subsistence management, and its potential effect on other management.

HORN: Let me outline this. In the wake of the letter to the Governor last September instructed the Fish & Wildlife Service which has been given the administrative lead within the Department of the Interior on this question of subsistence in Alaska to begin making contingency plans that in the event -- and let me just reiterate, the event that we are not interested in having occur at all -- that we would have to, basically, assume the responsibilities mandated under 805(d). Let me just outline the basic points. First, we would try to the degree that we could, to use the existing state advisory council system to satisfy the regional advisory council

requirement in 805. Secondly, we would try to make efforts to contract for information to be obtained from the State Department of Fish and Game. We're not necessarily interested in trying to set up our own division of subsistence to gather the type of information that is necessary to establish who the users are and what these customary and traditional levels are. So, we would try to, basically, through contract, acquire that information from the state. In terms of the regulatory approach, what we would endeavor to do would be working, taking the advice from the councils, taking the information that we had obtained under contract from the state, examining who the rural, customary and traditional users were, try to fix in our minds what a reasonable, non-wasteful level of subsistence use that is entitled to the priority would be, and then, provide to the state guidance and say that in a particular area on this moose stock or this fishery area, here is what we think is necessary to be provided to the subsistence group in order to, on the federal lands, to, basically, satisfy their Title 8 requirements. We would then, also, at the same time note to the state that if the state did not voluntarily adopt that guidance, we would then be required to, in essence, preempt state regulations on federal lands and then substitute our own. In other words, say no, that since your regulation didn't follow the guidance that we established and since we do have the obligation to provide for subsistence on federal land, we are going to preempt and stop commercial taking or stop sport hunting or stop some other form of consumptive use to ensure that the subsistence preference was properly taken care of. At that stage of the game, we would then step back and then the state would, basically, reassert or resume control over that particular stock or that particular species on the federal land. The other major problem that would likely crop up, of course, is that in Alaska, we are dealing some highly migratory creatures: caribou don't stay put, fish don't stay put. One of the outstanding questions that has not been answered yet is what type of the authority the federal government may have in order to reach over and preempt state regulations on adjacent state land to ensure that the moose made it from the state land to the federal land in order to take care of the subsistence users. Conversely, what type of authority might we have to intercede in commercial fishing to ensure that X number of salmon got up a river to provide for the subsistence requirements. That's a major concern that I have about the potential impact on state management overall if we are compelled to step in.

SENATOR HALFORD: You don't know what the legal ramifications of that would be, where the decision in terms of authority would be?

HORN: I will tell you that this is obviously going to be an issue that someday would be resolved in the courts and obviously I would try to take my cues from the solicitor, but we've done a lot of work on this issue. It's been one that was discussed at great lengths with the joint boards in 1982. The recent trend of federal case law has been to authorize the federal government to exercise this type of preemptive authority. That has been the trend in case law. My suspicion is that even if this administration or department chose not to exercise that type of authority, if you end up in the right federal judiciary, we may well be compelled to exercise that type of preemption given the trends in federal case law.

SENATOR HALFORD: With regard to the way the federal government would take over management for this specific purpose, it sounded like you said it would be kind of a two-tier operation. One that the federal government would take over through the regional councils a system to recommend regulations. If, in fact, those regulations were adopted at that point on a specific species and population basis, based on a subsistence need, and if the state follows those recommendations at that point, then the state would still maintain management.

HORN: In other words, the state would be our surrogate or our agent. In other words, the state would, basically, remain in control as long as they took our advice and didn't deviate. The ultimate decision making authority would rest with the Interior Department, federal government, and not rest with the state. The state could maintain control, basically, by accepting guidance.

SENATOR HALFORD: In the second tier, the federal government would actually be the enforcement agency as well?

HORN: When you say second tier...?

SENATOR HALFORD: I'm talking about, in a federal takeover situation, the federal government does contract with the state and the state, basically, does the management and does the enforcement provided it is consistent with your guidelines. If the state failed to do that, then the entire structure with regard to subsistence use in those areas would be under federal management and federal enforcement?

HORN: That is correct. In other words, if the state did not cooperate, did not accept our guidance, and we had to exercise our preemptive authority, then we, basically, would have federal enforcement officials on the ground. We would be out actively promulgating federal regulations which would set seasons and bag limits and things of that nature. That is assuming that we didn't get the cooperation from the state.

SENATOR HALFORD: When you started through that, you say that that would be specific species and populations after establishing a subsistence need with that species and population?

HORN: That is correct. We would, basically, be required to do what the state, at least in our mind if it wants to comply with Title 8, is required to do and that's identify the particular stocks and set the appropriate levels and use levels and do the necessary specific allocations to take care of the subsistence preference. We would, in essence, have to do the same thing because we would be under the same statutory regime, Title 8.

SENATOR HALFORD: It's amazing to me that what I'm hearing about federal intervention sounds like a more logical, more specific, and a more rational approach than the state has taken so far because we haven't been specific in areas, in identifications, nearly to the degree that we should have been. We haven't been specific in species and populations. The things that are bad about federal management sound like they might be better than, at least, the way the state has been managing it recently. That is my conclusion.

HORN: I think that, frankly, the bill that is before the committee now yields the specificity that we have discussed so far. I guess I have been comparing what our program would look like if we were compelled to intervene versus what the state program would look like under this measure. In essence, our program would look like this measure just with the feds in control instead of the state in control.

SENATOR HALFORD: A specific question with regard to the bill draft in front of me: on page 4, I asked you a question something about this before, the definition of rural area.

(There is some confusion here over the correct draft.)

Page 4, line 29 describes the 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 significant characteristic of the economy of a community or area. In your opinion, if that were changed from a significant characteristic to a principle characteristic, would that still meet the requirements of ANILCA?

HORN: I think that is essentially the same. In other words, what you are looking for is different legal terms, and do you want to use "significant," "important," "principal"... I think they're all basically within the gambit of what Congress intended.

SENATOR ZHAROFF: On a follow up here on the previous question from Senator Halford in the context, if a community or an area is relocated into another area where they are not traditionally the inhabitants of an area. I can think of two situations. During the 1964 earthquake, there were two communities that were relocated into other areas in which they, they were not in the area in which they were originally located. How does a situation like this receive protection under 803 and 804?

HORN: Well, what's that old euphemism -- hard cases make hard law. I think that you could pick and we could go through a number of factual circumstances where it might be very difficult for me in a very esoteric legal sense to say what is legal and what is not. I think that the bill here and the general approach that Title 8 outlines is to make this a factual program to deal in the realms of equity and reason. If you have some sort of an act of God, an earthquake, that makes folks move and relocate, obviously, I think the state would have more than adequate flexibility under this measure. I think Title 8 would intend that equitable measures and equitable steps be taken to deal with the interests of people who had been displaced by an activity like that. I'm not sure that I could tell you categorically that in the event of an earthquake and a community is relocated whether the law should, indeed, provide for guarantees, but I think that the general structure of the program is to be reasonable and equitable, and if taking care of that community's interest was both reasonable and equitable, I think you'd have an excellent case both before an executive decision making body or a court of law in case the decision came that far.

SENATOR ZHAROFF: I could see that as a potential problem. Of course, if the predictions are true, we are looking at another major natural disaster here in the next ten, fifteen, twenty years.

SENATOR STURGULEWSKI: Senator, you don't know something we don't know, do you?

SENATOR ZHAROFF: I guess I'm a little bit concerned because quite often we find ourselves or our communities relocating into areas that may be a little bit more accessible. I can see a particular user group using an area that is unoccupied, but because of some need to move or to relocate that that happens to be an area that is identified for relocation.

HORN: I think that, in general, the concept of movement was addressed by Congress. They understood that in Bush Alaska there is quite a bit of movement. You know, you go from village to fish camp, someplace to, basically, gather berries, move up to intercept moose movement or caribou migration. The legislative history makes it clear that they expected people to be able to move around and move around freely, understanding the nature of the lifestyle in the Alaska Bush. I think that the program is designed to deal with that, which is why it was dealt with a residency-area type of a program so that if you step over the line, you don't lose some thing. In the particular case that you're talking about, I guess I never heard in all the conversations I had in the process during the congressional consideration, any talk about complete community relocation. I must confess that's a new one for me, but the idea of individuals relocating or groups moving around in a general area to satisfy seasonal demands, I think that would be very clearly provided for under both the pending bill and the federal statute.

SENATOR ZHAROFF: I believe in the case of the 1964 earthquake, Chenega was the community that was relocated and also Afognak.

SENATOR FAHRENKAMP: When we talk about the management of fish and game, who actually today is managing fish and game in the State of Alaska in federal areas?

HORN: The State of Alaska sets all seasons and bag limits, methods and means of taking. We have no responsibility in that particular field.

SENATOR FAHRENKAMP: ANILCA says that if we don't manage those fish and game on federal management areas in compliance with ANILCA, then the federal government would take over, fish and game would take over, what, subsistence management or all management?

HORN: Basically, it would take over subsistence management, but indirectly, it would have an enormous effect on other management because what we would do is, we'd be required to set up seasonal arrangement and regulatory arrangements that would provide for the subsistence users. Those regulation would, in essence, preempt state regulations in all other areas: commercial, sport, non-resident guided hunting. In other words, the state would always stand second in line. We would set the regulations first up on subsistence, and then state regulation of all other aspects of taking of fish and game would have to, in essence, comply with the federal seasons and arrangements set up for subsistence.

SENATOR FAHRENKAMP: In Park Service, Fish & Wildlife, BLM, all the rest of the management plans that are going in now, the regulation of the fish and game and that kind of stuff is now state?

HORN: That is correct. The only, the residual authority that we have is that if at any time, any of the federal land managing agencies were to conclude, for example, that the state were permitting over harvest of moose or excessive harvest of salmon or something like that, the law empowers us to close those areas to taking. We, basically, cannot substitute and say, gee, in the Wrangell-Saint Elias National Preserve, we don't like your Dall sheep season, we think it's too long or we don't like the curl requirement; The Park Service does not have the authority, in my mind, to substitute its judgment and step in and say, gee, we're going to open the season and have it X instead of Y; we're going to have the curl requirement A instead of B. We do have the residual authority to close the area if we think that the species of the game populations are being harmed, but we don't have the authority to set up substitute hunting and fishing seasons in lieu of the state.

SENATOR FAHRENKAMP: Does the federal government consider Dall sheep as a subsistence animal?

HORN: It depends. Based on the review that we have seen of the state program, in some parts of the state there has been no customary and traditional use of Dall sheep. Yet, in other parts of the state, I know one, for example -- Kaktovik on the North Slope -- it has been customary and traditional for those folks to take Dall sheep for subsistence purposes. It is an area stock specific arrangement.

SENATOR FAHRENKAMP: In the trend of case law that you were talking about, can you off the cuff think of any area in the State of Alaska that would not be -- you were talking about the migration of the animals or the fish or whatever -- can you think of any area within the State of Alaska today that would not in some way or other affect the fish or the wildlife within the federal areas?

HORN: I think within the fisheries, I would be awfully hard-pressed to find one where the fishery and the movement of salmon does not somehow impinge on federal land. I think we could probably go through and pick up on certain species, Dall sheep in limited areas, maybe the central Alaska Range, moose in some areas where the state has fairly large blocks of land where you probably have

resident moose populations that never leave state ownership, but for most of your caribou, for your waterfowl, for your fisheries, most of them move around enough that they hit both state and federal lands and would be affected by a federal intervention.

SENATOR ELIASON: During the last public hearing, it was referenced to me to possible congressional intent where they identified cities in Alaska which would be considered urban. Would you put it all into context?

HORN: The question came up, obviously, when Congress crafted this term rural, customary and traditional, what do you mean? So, in the Senate Energy Committee report, and it's the Senate Energy bill that in large measure finally became the law, the Congress, the Committee, basically said, here's what we mean in 1979 by rural and urban. At the time, they said, in our minds, very clearly, Anchorage, Fairbanks, Juneau, and Ketchikan are not rural. Then, it listed some others -- I think Barrow, Kotzebue -- and said, basically, those are rural, at least at this time. Then, it went on to state, however, that the Congress, the Committee, clearly understands that things are changing in Alaska, demographic trends, socioeconomic trends, and this is not intended to be a static determination of what is rural and what is not. In 1979, here's how we kind of looked at it, this is kind of what our cut was in terms of what is rural and what is not rural, but we expect the state to be making a definition of rural, customary, and traditional per the general guidance outlined in the legislative history when it runs the program from now into the future.

SENATOR ELIASON: What you are saying, essentially, is that they mention that but it is not congressional intent to name those communities as urban communities as _____ in this bill?

HORN: Well, I think it's pretty clear that it would be very difficult to craft a bill that would let a resident of Anchorage or resident of Juneau qualify as a rural subsistence user given that Congress said pretty clearly in 1979, we think these cities....(tape ends; Horn is discussing urban areas).

Tape 1, Side 2

HORN:...this group of individuals, a group of areas, but in terms of other areas within the state, I think the definition there has to rely on the concept of where subsistence has been important and where it has been long established, how important is subsistence to local economy, what are the availability of alternative resources, what's the balance between the cash economy and subsistence reliance in these basic areas, and a whole panoply of factors, many of which the state had been using in their program. I think they were using eight criteria in determining what customary and traditional mean. Obviously, I think Congress intended a flexible program of that type to continue, and that's what they had in mind.

SENATOR COGHILL: If the authority that Congress used in setting up this criteria is 803, 804, is that the commerce clause or is that how they are getting around the constitutional provisions?

HORN: Well, they cited both the commerce clause, the property clause, and their plenary authority over Indians. They, basically, cited all three. I think they caught them all in.

SENATOR COGHILL: Put them all in one bunch. What would be the effect of putting a cap on the time element? I proposed an amendment that I circulated; say, that as the first criteria on page 2 that before we get to the customary and direct dependence on fish stock, game population as the mainstay of livelihood, you have to read up above there saying that the basically that the boards shall adopt subsistence fishing and subsistence hunting regulations and then it goes into a whole bunch of criteria and it gets down and it says then, the preference shall be limited and the board shall distinguish among subsistence users by apply the following criteria. What would be wrong with putting a cap on the household user as number one, saying the household users who are domiciled in the rural area prior to January 1 of '86, in other words, as our population expands in the state, that we put a cap on that domicile out there as the preference user?

HORN: I think what Congress clearly intended was instead of making a legislative or legal declaration of what was rural and what was not by establishing fixed dates, as I said earlier, they rejected both ceilings and a ten-year limitation over how you would fix customary and traditional

use, I think an approach like that may well run afoul of the federal requirements because it is a declaratory approach rather than a fact-based approach. I think what Congress wanted was to, basically, have certain criteria that were flexible and then let the facts as they applied to the criteria drive the determinations of what's rural and what's not, what's in and what's out. I think that to put any type of a fixed date in would probably put us afoul of federal requirement.

SENATOR COGHILL: Should we not take a stronger look, then, at putting some of the definitions that you've indicated were part of the federal legislative history as to rural area, customary and traditional, and all of the ramifications that the federal legislation used as their history for the legislation. Shouldn't that possibly be in our definition so that it is very clear?

HORN: I think that, you know, obviously, you all have a choice and that is that you've got a definition of rural area to track very closely with the intent of Congress that is expressed in the legislative history. Obviously, that statutory provision could go farther and be more specific, and I think it is your choice whether or not you put the specificity in the legislation or if it is more appropriate to leave the, that degree of specificity to the regulatory agency, in this case, the Department of Fish and Game.

SENATOR STURGULEWSKI: In addition, Mr. Secretary and Senator Coghill, I would like to point out the section by section analysis which does accompany the bill. It does go into some background on domicile, on rural, and gives at least some of that information.

SENATOR HALFORD: Speaking, again, about the definition of rural, what if our definition were as stated in page 4 of the bill but also added: "not connected by the state-maintained contiguous surface highway system. The communities listed in the congressional records as definitely rural, none of those are connected. Is that the kind of a standard that may be a legitimate means of determining both rural and the availability of alternative resources, by access and so forth?

HORN: I think for the department to accept a definition of that type in the statute, we would have to have a fairly extensive factual record accompany the state law that we would then be able to look to to see that the state in enacting this of general applicability with a fairly

specific declaratory definition in it so we could say that this definition meets up with the facts and the kind of facts Congress wanted the state and the federal government to be considering so that without that type of very solid factual analysis accompanying the bill, and my understanding is that you don't have committee reports the way the Congress does, that without it, it would be very hard for us to accept that type of a declaratory statement. Now, we would need the facts to go with it. Now, the State Board of Fish and Game in my recollection is correct in 1982 to adopt a regulation much like that, but in the process, tended towards a lot of information about how they came to that conclusion, and we could accept it, not because of the declaration, but because of the facts.

SENATOR HALFORD: You accepted that and it was within the certified plan that was approved and operational under the Department of the Interior, was it not?

HORN: Yes, my recollection is that they did have that regulation.

SENATOR HALFORD: If, for example, that was provided and based upon the findings of fact that were included in the legislation, it would then be permissible, probably.

HORN: We certified it in '82 and the facts haven't materially changed at least in the direction of some of those communities moving in a rural as opposed to an urban direction. We probably could, but it would require us to have those findings of facts accompanying the measure.

SENATOR HALFORD: The current status under Alaska law under Madison is that, basically, all Alaskans who need it, have a subsistence preference. The conflict with that in the federal law is that there has to be a tier above that which says that all rural subsistence users before you get into the subgroup of rural dependent, subsistence users.

HORN: Well, it's not all rural. It's rural and customary and traditional use. I think that's an important distinction that needs to be made. Yes, the problem was that when you create this group, Section 803 says to establish this category of rural, customary and traditional subsistence users. Those are the areas and those are the people who are supposed to get the preference. Of course, the difficulty with Madison is that Madison permits urban residents to qualify to get into this particular box. That's violative of 803.

SENATOR HALFORD: So, the problem is that there is no distinction between rural and non-rural subsistence users?

HORN: Under the present state law in the wake of Madison, that is correct.

SENATOR HALFORD: Is there any prohibition in the federal law in providing that there be a distinction between rural and non-rural subsistence users and thereby maintain the current framework of Madison?

HORN: From the federal perspective, once the State of Alaska has, basically, provided for the 803 group and taken care of the rural, customary and traditional users, how the state cares to array all other user groups and whatever preference they want is immaterial institutionally (wise) to the federal government. Our obligations are very focused, just to the 803 group. When you take all the other user groups, personal users, urban subsistence, non-rural subsistence, commercial fishing, sport, trophy, non-resident, you array that whole list of users out there, how the state cares to array those users in any other order is totally immaterial to us. I mean that our obligations don't speak to that at all.

SENATOR HALFORD: The state then could maintain the condition of Madison as long as it has provided some distinction between rural and non-rural subsistence users in the framework of existing law and the Madison decision?

HORN: It would have to, basically, ensure that first, the priority of the preference went to the rural, customary and traditional users, and then, of course, the 804 subgroup in case there wasn't enough to take care of that particular group. Then, basically, a line was drawn. That is all that the federal government's interests relate to. That is all that Title 8 directs us to look at. We are not interested in meddling in any form in what the state cares to do once it takes care of those two. If you want to put other subsistence folks second, or personal users third, or commercial fourth, or sports fourth, I mean, you pick the pecking order, whichever. That pecking order is immaterial to the Interior Department of the federal government.

SENATOR HALFORD: A final question on implementation of a federal program. We tend to look at that in the worst case scenario. What would happen in southeast Alaska, for example, if there were no legislation passed? What would federal management entail in southeast Alaska?

HORN: In a hypothetical sense, I've never really looked at Southeast, and I'd have to go talk to my good friends from the Forest Service, but I'll try to give you at least my first impression. I'd like to attach lots of caveats because I haven't talked to the Forest Service, and they are the federal land manager, by and large, in Southeast. Essentially, related to fisheries, we'd have to identify what the rural, customary, and traditional communities were and what their level of use and subsistence uses were on particular fish runs, and then we would have to set up a regulatory regime that would ensure that those particular groups get the subsistence level of fish that they need. If that required us to preempt in large degree some of the state commercial fish regulations or other commercial fishing regulations or other sport fishing regulation to ensure that the subsistence fish got up the rivers for the villages, uh, you know, we basically would have to start meddling in the salmon fishery management around here.

SENATOR HALFORD: With regard to southeast Alaska, do you see that as actually happening? I mean the upriver communities and these questions, do you see them applying in southeast Alaska?

HORN: I have to presume that the state program had categorized a number of the villages in southeast as being rural, customary and traditional communities. I've never looked at the facts to decide whether or not I would agree with that categorization, but let's assume we accepted the way the state has made the current classification. We would have to take regulatory steps to make sure that those identified communities got, essentially, what they needed, or what they customarily and traditionally used. If that required us to intervene and start meddling in some of the commercial fishery management, we may well have to do that.

SENATOR HALFORD: There has been virtually no implementation under either program in Southeast.

SENATOR STURGULEWSKI: I would like a little more discussion, if we could. 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 real basic one. It's one that's really important to a lot of Alaskans, and I'd like more information on the record regarding that.

HORN: Well, in Congress, during the development of Title 8, there was considerable discussion about how should a subsistence program 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 welfare workers to go into 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 that would be such a nightmare and such a headache to go with this community system, a residency-based system, not withstanding 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), but 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 factor 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.

SENATOR HALFORD: This may be an unanswerable question, but with regard to all of these provisions that seem to be a problem in terms of state equality, is there any chance that Congress is ever going to look again at their _____ policy with regard to Alaska and possibly recognize the dangers.

HORN: I'm hardly the fellow to ask that question. There has been very little inclination in Congress to look at any amendments. With the Alaska Lands Act, you know, major effort was made on behalf of the delegation and the administration to change and come up and liberalize the sport-hunting rules and by expanding preserves, and I think we barely got that out of committee. The general issue of amending the Alaska Lands Act in any major fashion -- I don't think the prospects, in my personal opinion, don't remain, aren't very, very good at the present time. Whether or not Congress in the future will have ever the stomach to tackle Title 8 is a question that I'm really not in a position to answer now.

SENATOR HALFORD: So, if in fact, the state used a needs criteria based on the existing and long standing subsistence licenses that have been in the books for many years in the state, the Congress would come to the aid of the rural resident of employee of DOT (Department of Transportation) making $90,000 a year with a varied differential and enforce the _____ against the rest of the people of Alaska?

HORN: I don't think it is Congress coming to the rescue. If the law is now on the books, it has been on the books for five and a half years, and we're in the position, obviously, of having to uphold and enforce that law notwithstanding the difficulty and personal heartburn that may cause for many of us, but it's an obligation that we have and we will discharge it. Not because we want to, no because it's a threat, just because we have not choice. If, obviously, folks don't think Title 8 is the best approach, they need to petition their elected members in the United States Congress to see if it may be changed.

SENATOR STURGULEWSKI: Are there other questions of Secretary Horn?

I want to thank you very much for a very complete statement and answers, and I think there were good questions on behalf of the committee.

(End of Secretary Horn's appearance before the committee)

SENATOR STURGULEWSKI; I just want to thank you very much for very complete and standard answers, and I think there were good questions on behalf of the committee. The issue is now before the committee. As you know, this has had a long process in the Senate. Senator Abood did a considerable amount of work on this bill over the legislative interim and during the session. We have had the issue

before us and consultation with many, many people on the issue as well as public hearings. It seems to me that this issue needs to, if at all possible, move forward. There are other committees of referral. One of the things that has been pointed out to me is that if we are to have a bill in place, it is going to have to go through the regulatory process. Regulations will have to be developed by it. I think we need to, if at all possible, go into the summer with a bill in place. I wish that the bill could go forward with no amendments. I know that is not practical, so what I shall do is to call upon Senator Fischer. If there are to be any amendments considered, I want to be sure that everybody had a copy of, first of all, the 3/4/86 draft which is before the committee and that you have copies of the amendments that are being discussed. I would like to point out that Mr. Kelso, Deputy Commission of Fish & Game, is in the audience as well as Larry Spengler from the Attorney General's office in case there are questions about any of the amendments.

Committee stood at ease briefly while copies of Senator Fischer's amendments were handed out.

SENATOR STURGULEWSKI: (after calling meeting back to order) We have before everyone a copy of proposed amendments by Senator Fischer.

SENATOR FISCHER: Draft version I am working from is marked Hein is in the upper corner and underneath his name is REV in brackets. There are two amendments, and I ould like to move Amendment #1.

SENATOR FISCHER went on to explain the Madison decision, discussing tier 1 and tier 2 use. In the bill before the committee, tier 1 use is repealed. In effect, the resident under current law who has the ability to take fish and game for personal use over commercial and sports uses would lose that preference. Amendment #1 does not necessarily preserve personal use as a priority over all other uses except subsistence, but it does establish personal use as a full and legitimate category. The bill before the committee only mentions personal use in passing. In this amendment, those who don't have the preference rights under subsistence would be able to participate in the taking of fish through personal use.

SENATOR FISCHER went through the individual subsections of the amendment. The emphasis in subsection (d) is on fair and reasonable opportunity for each category of use, including personal use. Again, subsection (e) recognizes the three categories of personal use, sport, and commercial fishing with the board establishing criteria. The criteria

listed in (e) don't necessarily apply to all decisions in any species of fish or fish stock in all places of Alaska but to particular kinds of allocation decisions.

SENATOR FISCHER said the point in listing those criteria is that where there are allocation decisions to be made, such criteria will be taken into account. For example, the Copper River area has been heavily used for personal use as well as commercial purposes. These are objective criteria established before the use decisions are made.

SENATOR FISCHER stated that the objective is to make what is now a subsistence bill, a subsistence and personal use bill.

SENATOR ABOOD said the rest of the amendment after the first sentence of subsection (e) is superfluous due to the words: the criteria may. The amendment could be made more mandatory, but the use of the word may suggests that they don't have to use the criteria.

SENATOR FISCHER agreed with Senator Abood; however, the board may only deal with one of these factors and should not necessarily have to go through a checklist. The list establishes a clear legislative intent, however, and should be left in the amendment.

SENATOR HALFORD said the language of this amendment has to be taken into context under the Madison decision which does provide a priority for personal users. By passing this, the committee says they're going to consider it, but by passage of the bill, those people lose the priority they have under Madison.

SENATOR FAHRENKAMP said the bill puts a lot of responsibility on the board. She supports the concept behind the amendment but suggests that "shall consider one or all of" be used instead of the word "may" in order to make sure they will use the criteria.

SENATOR ELIASON stated that the bill is comparatively simple and will satisfy the requirements of the Department of the Interior. He suggests that the issues of the amendment should be addressed at another time.

SENATOR FISCHER agrees this is a simple bill that an average person can understand and is the type of bill that should be put through.

SENATOR FAHRENKAMP stated that the bill does not deal with personal use at all and that Anchorage, Fairbanks and Juneau are completely eliminated from the fisheries. She believes that the amendment is easily understandable.

SENATOR ELIASON felt that the definition does cover what Sen. Fahrenkamp was talking about and that the community he lives in will be covered by it, that those people will be allowed to get a personal use permit. However, Sen. Fischer says the problem does not exist in Sen. Eliason's community but does exist on the Copper River, the Yukon River, the Kenai, and Cook Inlet. There are many communities where this is not an issue.

SENATOR ZHAROFF felt that the issue may get too complicated. On page 4 of the bill, lines 22 and 23, personal use is defined.

SENATOR FISCHER said that what comes next is Amendment #1, which gives residents a preference for the taking of game for personal and family consumption.

SENATOR HALFORD said that the simplicity questions can be taken care of by deleting all but subsection (d) of the amendment.

SENATOR FISCHER discussed the fact that is it important to have a good balance between commercial, sport, and personal use taking of fish.

SENATOR HALFORD said that the language as originally proposed by Sen. Fischer says to provide fair and reasonable opportunity for which is broad enough to provide a lot of latitude with regard to the board's actions.

SENATOR COGHILL stated that he liked the amendment that Sen. Fischer is proposing and prefers the long version because it sets out the issues as to personal use. The bill takes care of the federal requirement, but the personal use program has to be addressed and this is the proper place to address it. Moreover, he likes the second amendment even better but would vote for the first, shorter amendment, if necessary.

SENATOR ZHAROFF stated that the issue of subsistence tends to polarize the state. The main part of the bill addresses the essence of the problem, the federal concern, but the amendment creates groups of people and will complicate everything again. It's necessary to lets the boards of fish and game function on their own.

Sen. Fischer does not want to divide the state on this issue. He has worked on the amendment for almost a year with the idea of diffusing some of the problems. There are a lot of people who depend on personal use that this bill does not address. The purpose of the amendment is to make sure that all segments of the population have a fair, reasonable opportunity to take fish.

SENATOR ELIASON said the board of fish will not ignore the definition of personal use in the bill.

SENATOR HALFORD asked if he should offer his amendment to the amendment. The answer is no, to vote on the amendment itself first.

SENATOR FISCHER asked if this would be a good time to close the meeting and tackle the vote at the next meeting.

SENATOR COGHILL stated he had three or four more amendments to bring before the committee.

The committee meeting adjourned until next Monday.

Kie / Frank

FEB 4 1986

TESTIMONY OF JANIE LEASK, PRESIDENT OF THE ALASKA FEDERATION OF NATIVES, BEFORE THE SENATE STATE AFFAIRS COMMITTEE ON THE COMMITTEE SUBSTITUTE FOR HB 288

Mr. Chairman, members of the committee, my name is Janie Leask. I am president of the Alaska Federation of Natives. The board of directors of AFN is composed of a representative of each of the thirteen Native regional corporations formed under the Alaska Native Claims Settlement Act - a representative of each of the twelve Native regional nonprofit associations - and twelve representatives of IRA councils and other village organizations.

On behalf of AFN, I would like to express our appreciation for the opportunity to testify this morning on the Senate State Affairs Committee substitute for House Bill 288.

As you are aware, Alaska is unique in that it is the only one of the fifty states in which the health, safety, and general well-being of such a significant number of residents is dependent upon the continued harvest of fish, game, and other wild renewable resources for personal and family consumption. The economy of rural Alaska is dependent upon the continuation of these uses.

In 1978 the Alaska legislature recognized this reality by enacting the state subsistence law. The law requires the

Board of Fisheries and Board of Game to adopt regulations which afford subsistence uses a priority in situations in which the harvestable surplus of a fish stock or game population is not large enough to safely accommodate a harvest for all uses. In 1980 the Congress established a federal subsistence priority which operates in similar fashion.

In 1982 a small, but vocal, group of Alaskans who had opposed enactment of the 1978 law obtained enough signatures to place an initiative to repeal the law on the general election ballot. As a result, the subsistence issue was thoroughly debated during the months preceding the 1982 election. And by an overwhelming margin, urban and rural Alaskans joined together to vote against the initiative and in favor of retaining the subsistence priority.

Throughout the debate on the subsistence repeal initiative, all Alaskans - both those who supported the 1978 law and those who opposed it - assumed that the subsistence priority was limited to hunting and fishing by residents of rural Alaska. No one thought the 1978 law provided a subsistence priority for those of us who live in Anchorage and Alaska's other large urban centers.

However, early last year the Alaska Supreme Court decided that that was what the 1978 legislature had intended. Madison v. Alaska Department of Fish and Game the Court held that once a customary and traditional use of a particular fish stock or game population had been

established in a particular area, all Alaskans - whether they live in Anchorage or Tuluksak - must be afforded a subsistence priority over other user groups.

The Governor and the members of the the Board of Fisheries and Board of Game immediately recognized that implementation of the Madison decision would seriously disrupt the normal hunting and fishing activities of urban Alaskans. As a result, Governor Sheffield asked the legislature to amend the 1978 law to limit the identification of subsistence uses of fish and game to hunting and fishing by residents of rural Alaska.

The House of Representatives held a series of statewide hearings on the subject and passed a bill to limit the identification of "subsistence uses" of fish and game to hunting and fishing by rural Alaskans.

Unfortunately, the Senate took no action prior to the adjournment of the 1985 legislative session.

Urban Alaskans suffered the consequences. The Board of Game was compelled to implement the Madison decision by establishing so-called Tier II subsistence hunts from which most urban hunters were excluded. Although sport fisheries on the Kenai Peninsula were not similarly disrupted, it was only because no one attempted to fish for salmon with set nets in rivers usually devoted to rod and reel fishing. However, several weeks ago criminal charges were dismissed against a person caught snagging salmon on a Kenai Peninsula river. This decision established the precedent that

snagging and set net fishing for Cook Inlet salmon stocks normally harvested by sport fishermen in freshwater rivers is protected by the Madison subsistence priority.

In addition to the disruption which the Madison decision has caused to normal hunting and fishing activities, because the state subsistence priority is no longer limited to hunting and fishing by rural Alaskans, Assistant Secretary of the Interior William P. Horn has informed the State of Alaska that its subsistence management program is no longer in compliance with the federal regulatory standards set forth in title VIII of the Alaska National Interest Lands Conservation Act. If the State program is not brought back into compliance with title VIII, the Board of Fisheries and Board of Game must begin adopting hunting and fishing regulations pursuant to federal - rather than state - law. And should they refuse to do so, the Secretary of the Interior will be compelled to adopt his own subsistence regulations.

Mr. Chairman, the events of 1985 have provided ample evidence that the 1978 statute should be amended. The question is how. The simplest way to solve the problems created by the Madison decision and bring the 1978 statute into compliance with ANILCA is to limit the definition of "subsistence uses" to hunting and fishing by <u>rural</u> Alaskans.

Last session individuals who have long been opposed to <u>any</u> subsistence priority attempted to convince legislators who represent urban districts that urban Alaskans oppose a

rural subsistence priority. The House rejected this argument - and for good reason.

A statewide poll recently conducted by Hellenthal and Associates indicates that 60 percent of the Alaskans surveyed support a rural subsistence priority, including a significant majority of Alaskans who live in Anchorage and other urban areas. A copy of the statewide subsistence poll is attached to my written testimony. The poll is consistent with the vote of the people in 1982. The vast majority of Alaskans believe that the subsistence way of life in rural Alaska should be protected by state law - and that the best way to do so is to establish a rural subsistence priority.

Mr. Chairman, the legislature should enact acceptable subsistence legislation this session which contains the rural subsistence priority which all Alaskans support. However, if it does not, it is important to note that it is the residents of urban, not rural, Alaska who will again suffer the consequences. Native and non-Native Alaskans will continue to be protected by the federal rural subsistence priority.

Because the Senate State Affairs Committee substitute has only been available for public review and comment for a few hours my comments on sections of the bill dealing with matters other than the definition of "subsistence uses" must be of a somewhat cursory nature. However, during AFN's review of previous drafts many provisions appeared to

establish state regulatory standards inconsistent with the federal regulatory standards set forth in ANILCA.

Don Mitchell has had an opportunity to review the new bill and I would like for him to present AFN's comments on the technical aspects of the latest draft.

ALASKA PUBLIC OPINION RESEARCH

SURVEY

ALASKAN FEDERATION OF NATIVES (AFN)

DECEMBER 1985

Hellenthal & Associates, Inc.

ALASKA PUBLIC OPINION RESEARCH SURVEY

DECEMBER 1985

Prepared for

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The research and studies forming the basis for this report were conducted pursuant to a contract between Alaskan Federation of Natives and Hellenthal & Associates, Inc. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

INTRODUCTION AND METHODOLOGY

This report presents an analysis of a survey of Alaska statewide adults. The survey measured properties of Alaskan residents' demographics and attitudes toward subsistence. Research typically involves estimating the characteristics of a designated population. Because of the costs of conducting a census of all items in a population, and the adequacy of sample results, sample statistics were used to make statistical inferences concerning population parameters.

Five hundred and fifty five (555) Alaskan adults were interviewed between November 14th and 22nd, 1985. Interviewing was conducted by telephone on a random digit basis. All Alaskan adults who are accessible by telephone, had an equal chance of being interviewed.

The sample used for this survey was stratified by geographic areas. The following number of interviews were conducted by geographic region: Southeast (House Districts 1 through 4) = 25; Cordova, Valdez, Kenai Penninsula (House Districts 5,6, and 7) = 99; Anchorage (House Districts 8 through 15) = 204; Mat-Su and Greater Fairbanks (House Districts 16 and 17) = 100; Fairbanks (House Districts 18 through 21) = 100; and Rural (House Districts 22 through 27) = 26. The results presented in this report were weighted to reflect the actual population of each geographic region.

At a 95% confidence level, the empirical proportions presented in this report can be projected, within plus or minus 4.16%, to the entire Alaskan population of adults — aged 18 and over. This means one can be 95% sure that the frequencies reported in this survey are within 4.2% of the true Alaskan adult population proportions.

The following is a presentation of certain specialized tables concerning Alaskan adults' perception of subsistence.

2200 VANDERBILT CIRCLE • ANCHORAGE, ALASKA 99508 • (907) 276-1001

QUESTIONNAIRE:

SUBSISTENCE, POLITICAL AND GENERAL

FREQUENCIES

ALASKA STATEWIDE PUBLIC OPINION RESEARCH SURVEY

December 1985

HELLENTHAL & ASSOCIATES, INC.
2200 Vanderbilt Circle
Anchorage, Alaska 99508
(907) 276-1001 or
277-2315

Hello, I am_____from HELLENTHAL & ASSOCIATES. We are conducting a State-wide public opinion research survey. Your telephone number was randomly selected. The questions I need to ask will take only 8 to 10 minutes. All of your responses will be completely confidential. (PAUSE AND PROCEED)

S1. Is this telephone number _____? (IF NO, TERMINATE WITH, "I'm sorry, I dialed the wrong number.")

S2. Is this a residence in which you live? (IF NO, TERMINATE INTERVIEW WITH, "I'm sorry, I need to talk with someone at a residence.")

S3. Are you 18 years old or older?

IF YES, THEN PROCEED TO QUESTION #1

IF NO, THEN ASK .....

Is there anyone home who is 18 years old or older?

IF YES, THEN ASK .....
May I speak with them? (PROCEED TO QUESTION #1 OR TERMINATE AND NOTE ON TELEPHONE CALL RECORD SHEET)

IF NO, THEN ASK .....
When will someone be home who is 18 or older? (TERMINATE AND NOTE ON TELEPHONE CALL RECORD SHEET)

1. What is the closest major intersection to your residence? (GET AS MUCH DETAIL AS POSSIBLE. LABEL EAST-WEST AND NORTH-SOUTH STREETS ON THE ANSWER SHEET AND PLACE AN 'X' IN THE PROPER QUADRANT.)

ASK IN ANCHORAGE AND FAIRBANKS ONLY
Do you live North or South of this intersection?
(ANCHORAGE: DOWNTOWN = NORTH; RABBIT CREEK = SOUTH)

Do you live East or West of this intersection?
(ANCHORAGE: MOUNTAINS = EAST; INLET = WEST)

AREA OF STATE	FREQUENCY	PERCENT
Southeast	81	14.6%
Valdez, Kenai, S. Anchorage	59	10.6%
Anchorage	224	40.4%
Mat-Su, Greater Fairbanks	50	9.0%
Fairbanks	76	13.7%
Rural	65	11.7%

HOUSE DISTRICT	FREQUENCY	PERCENT
One	21	3.9%
Two	14	2.5%
Three	11	2.0%
Four	35	6.2%
Five	33	6.0%
Six	11	2.0%
Seven	15	2.7%
Eight	43	7.7%
Nine	25	4.5%
Ten	30	5.3%
Eleven	25	4.6%
Twelve	25	4.6%
Thirteen	22	3.9%
Fourteen	25	4.6%
Fifteen	29	5.2%
Sixteen	43	7.8%
Seventeen	7	1.2%
Eighteen	17	3.1%
Nineteen	7	1.3%
Twenty	34	6.2%
Twenty-one	18	3.2%
Twenty-two	7	1.2%
Twenty-three	6	1.1%
Twenty-four	8	1.4%
Twenty-five	8	1.4%
Twenty-six	22	3.9%
Twenty-seven	15	2.7%

2. Are you presently registered to vote in the State of Alaska?

REGISTERED TO VOTE	FREQUENCY	PERCENT
Yes	147	80.5%
No	108	19.5%

3. Are you registered to vote as a ..... (IF THEY ARE NOT REGISTERED TO VOTE, ASK "If you were to register to vote, would you register as a .....")

PARTY AFFILIATION	FREQUENCY	PERCENT
Democrat,	120	21.6%
Republican,	145	26.1%
Libertarian, or did you indicate	17	3.0%
No Party Affiliation (Non-Partisan)?	273	49.3%

4. In 1982, three years ago, did you vote in either the August 24th Primary or November 2nd General State Elections?

VOTE IN 1982 ELECTIONS	FREQUENCY	PERCENT
Yes	362	65.2%
No	193	34.8%

5. In 1984, last year, did you vote in either the August 28th Primary or November 6th General State Elections?

VOTE IN 1984 ELECTIONS	FREQUENCY	PERCENT
Yes	373	67.3%
No	182	32.7%

6. Do you consider yourself to be .....

RESPONDENT'S IDEOLOGY	FREQUENCY	PERCENT
1. Very Liberal	16	3.0%
2. Liberal,	112	20.2%
3. Moderate,	237	42.7%
4. Conservative, or	172	31.0%
5. Very Conservative	18	3.2%
	(MEAN = 3.112)	

7. Would you say that you generally are .....

INTEREST IN CAMPAIGNS	FREQUENCY	PERCENT
1. Very interested,	119	21.4%
2. Somewhat interested, or	319	57.6%
3. Not very interested in political campaigns?	117	21.4%
	(MEAN = 1.997)	

8. I am going to read to you a list of names of organizations. Please tell me whether your feelings toward each of them is VERY POSITIVE, POSITIVE, NEUTRAL, NEGATIVE, or VERY NEGATIVE — or if you don't know what they are. Are your feelings toward _____ (FILL IN ORGANIZATION) very positive, positive, neutral, negative, or very negative — or don't you know what it is?

ORGANIZATION	4 VERY POSITIVE	3 POSITIVE	2 NEUTRAL	1 NEGATIVE	0 VERY NEGATIVE	WHO?	MEAN
Alaskans for Sensible Fish and Game Management	7.3%	36.2%	17.2%	4.2%	0.9%	34.3%	2.682
Alaska State Department of Fish and Game	14.0%	51.5%	20.8%	9.2%	2.3%	2.2%	2.672
Oil Companies in Alaska	10.6%	50.0%	29.3%	7.2%	1.2%	1.7%	2.626
Alaska Sports Fisherman Association	8.2%	44.9%	21.3%	8.4%	0.7%	16.6%	2.616
Alaskans for Equal Hunting and Fishing Rights	9.4%	38.0%	19.2%	6.9%	1.9%	24.7%	2.612
Alaska Outdoors Council	6.9%	25.1%	15.2%	4.8%	0.9%	47.2%	2.611
Rural Alaska Community Action Program or RuralCap	3.0%	22.4%	19.3%	3.2%	0.3%	51.8%	2.512
Alaska Native Foundation (ANF)	7.1%	32.8%	28.2%	10.1%	1.7%	20.1%	2.418
Alaskan Federation of Natives (AFN)	6.1%	30.1%	32.1%	10.1%	1.4%	20.3%	2.370
Womens' Political Groups, such as NOW, in Alaska	5.5%	34.1%	30.2%	12.4%	3.1%	14.7%	2.311
United Tribes of Alaska (UTA)	4.6%	20.5%	28.3%	9.5%	0.6%	36.6%	2.298
The Republican Party in Alaska	4.6%	28.0%	53.9%	10.0%	1.9%	1.6%	2.238
The Democratic Party in Alaska	1.9%	26.3%	52.1%	13.4%	3.4%	2.9%	2.101
Unions in Alaska	4.4%	23.3%	29.1%	27.5%	11.0%	4.6%	1.818
The Alaska Association of White Men	1.5%	7.4%	10,6%	10.6%	6.0%	63.9%	1.663

9. There is presently a bill before the Legislature that defines subsistence use as providing a priority for rural Alaskans, over urban Alaskans, in the taking of fish and game for personal consumption as food, clothing, fuel, or tools. Do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?

PRIORITY FOR RURAL ALASKANS	FREQUENCY	PERCENT
Favor	315	56.7%
Oppose	203	36.5%
DON'T KNOW	38	6.8%

10. Do you favor or oppose Alaskan Natives being allowed to regulate fish and game in their own areas?

NATIVES REGULATE IN OWN AREAS	FREQUENCY	PERCENT
Favor	222	40.4%
Oppose	269	48.4%
DON'T KNOW	64	11.6%

11. Do you favor or oppose Alaskan Native efforts for tribal self-government?

TRIBAL SELF-GOVERNMENT	FREQUENCY	PERCENT
Favor	266	48.0%
Oppose	195	35.1%
DON'T KNOW	94	16.9%

12. Do you favor or oppose Alaskan Native efforts for sovereignty?

NATIVE SOVEREIGNTY	FREQUENCY	PERCENT
Favor	160	28.8%
Oppose	282	50.9%
DON'T KNOW	113	20.3%

13a. Think now about the overall quality of hunting and fishing in Alaska during the last three years. Do you think the quality of hunting and fishing in Alaska has improved, stayed the same, or gotten worse over the past three years?

QUALITY OF HUNTING/FISHING	FREQUENCY	PERCENT
Improved	75	13.6%
Stayed the Same	236	42.5%
Gotten Worse	244	43.9%

13b. (IF "WORSE", ASK .....) Which of the following reasons do you think are most responsible for this change for the worse?

REASONS	FREQUENCY	PERCENT
There are more fishmen	186	33.5%
There are more hunters	179	32.2%
There are fewer animals	140	25.3%
There are more outside trophy hunters	137	24.6%
There are more restrictions on where one can hunt	135	24.3%
There are more restrictions on where one can fish	135	24.3%
There are fewer fish	100	18.0%

14a. Do you feel there is enough fish and game in Alaska for everyone to go hunting and fishing for whatever amount they want, or do you feel there should be regulations limiting the amount of fish and game any individual can take?

NON-REGULATION VS REGULATION	FREQUENCY	PERCENT
Whatever Amount They Want	28	5.0%
Regulations Limiting Amount	515	92.7%
DON'T KNOW	12	2.2%

14b. If a fish stock or game population is not large enough to allow everyone to fish or hunt, should rules limiting the amount of fish and game people can take be based on .....

REASONS	FREQUENCY	PERCENT
The customary and traditional uses of fish and game for personal consumption?	337	60.7%
Income or economic status of the household?	240	43.2%
Rural residency?	247	44.5%
How much people depend on fish and game?	402	72.5%
A person's race?	28	5.1%

15. Alaska's fish and game resources are used in three ways: subsistence use which is personal consumption by rural Alaskans for food, clothing, fuel, or tools; sports and recreational use; and commercial use. Please tell me which of these fish and games uses is most important for Alaska? How about 2nd most important? And least (3rd) important?

FISH AND GAME USES	1ST	2ND	3RD	DON'T KNOW	MEAN
Subsistence	47.7%	29.5%	20.8%	2.0%	1.725
Sports and Recreation	12.6%	31.6%	52.9%	2.8%	2.415
Commercial	37.9%	36.0%	23.4%	2.7%	1.851

16. How important would you say subsistence hunting and fishing by rural Alaskan residents for personal consumption is to the economies of rural communities? Would you say it is very important, somewhat important, neither important or unimportant, somewhat unimportant, or very unimportant?

IMPORTANCE OF SUBSISITENCE	FREQUENCY	PERCENT
Very Important	275	49.6%
Somewhat Important	166	29.9%
Neither Important or Unimportant	39	7.0%
Somewhat Unimportant	36	6.5%
Very Unimportant	16	2.9%
DON'T KNOW	23	4.1%

17. There has been some discussion in Alaska concerning subsistence fishing and hunting. Some people believe, if there is not enough fish or game for all Alaskan residents, a priority for the taking of fish and game should be given to rural Alaskans. Other people believe subsistence is not that important anymore and that all Alaskan residents should be treated the same. Do you think rural Alaskan residents should be given a priority or do you think all Alaskan residents should be treated the same?

RURAL VS ALL RESIDENTS	FREQUENCY	PERCENT
Rural Alaskan Residents	265	47.8%
All Alaskan Residents	275	49.5%
DON'T KNOW	15	2.7%

18. Some people say it is fair for rural subsistence uses of fish and game to be considered more important than commercial and recreational uses of fish and game? Do you think it is fair or not fair for rural subsistence uses to be considered more important than commercial and recreational uses?

RURAL VS OTHER USES	FREQUENCY	PERCENT
Fair	301	54.3%
Not Fair	225	40.6%
DON'T KNOW	28	5.1%

19. Now I am going to read you a short series of statements. Please tell me if you STRONGLY AGREE, MILDLY AGREE, MILDLY DISAGREE, OR STRONGLY DISAGREE with each of the following statements: (IF AGREE OR DISAGREE SAY, "Is that strongly agree/disagree or just mildly agree/disagree?")

STATEMENTS	1 STRONGLY AGREE	2 MILDLY AGREE	4 MILDLY DISAGREE	5 STRONGLY DISAGREE	3 DON'T KNOW	MEAN
In Alaska there are people who need to hunt and fish in order to live	55.0%	35.8%	6.0%	2.7%	0.4%	1.656
In Alaska the supply of fish and game is limited and no Alaskan should be allowed to catch all the fish or take all the game they want	55.8%	27.6%	9.0%	4.1%	3.5%	1.780
People in Rural Alaska are more dependent on fish and game than Urban Alaskans	39.8%	40.0%	12.3%	4.1%	3.7%	2.010
Both Alaska natives and Alaska non-natives need to hunt and fish in order to live	32.5%	38.1%	19.3%	8.4%	1.7%	2.329
Not providing a subsistence priority for rural Alaskans harms those who want to live off the land	18.3%	37.0%	28.9%	6.1%	9.7%	2.675
Not providing a subsistence priority for rural Alaskans harms rural people who live off the land to the benefit of urban sports fishermen	16.5%	35.6%	25.4%	6.5%	16.0%	2.697

STATEMENTS (CONTINUED)	1 STRONGLY AGREE	2 MILDLY AGREE	4 MILDLY DISAGREE	5 STRONGLY DISAGREE	3 DON'T KNOW	MEAN
Rural Alaskans <u>should</u> have a priority to fish and hunt over Urban Alaskans	24.9%	28.7%	24.8%	16.4%	5.2%	2.790
<u>Not</u> providing a subsistence priority for rural Alaskans only invites the federal government to come into Alaska to regulate fish and game on federal land in Alaska	16.0%	29.2%	26.2%	11.1%	17.5%	2.872
All Alaskans are equal and no Alaskan should have a hunting and fishing priority over any other Alaskan	22.4%	27.6%	30.6%	15.8%	3.7%	2.899
<u>Not</u> providing a subsistence priority for rural Alaskans is a direct attack on Alaska tradition and Native Alaska Culture	17.9%	27.0%	30.6%	14.6%	9.7%	2.972
Unimproved land owned by Native Corporations should <u>remain</u> excempt from local property taxes	12.6%	23.0%	31.8%	20.9%	11.8%	3.253
Alaska natives receive a greater share of State Revenues than they should	10.1%	13.6%	36.0%	16.2%	24.0%	3.347
Alaska natives take more fish and game than they really need	9.2%	20.3%	27.7%	23.7%	19.1%	3.364
Those groups and people presently fighting subsistence laws are partially, at least, racially motivated against Alaskan Natives	6.3%	22.0%	29.5%	22.9%	19.4%	3.407
Alaska natives, in this day and age, no longer need to fish and hunt in order to survive	6.1%	19.6%	39.1%	32.1%	3.2%	3.714
Improved land owned by Native Corporations <u>should be</u> exempt from local property taxes	5.6%	10.4%	33.9%	38.0%	12.1%	3.883

20. Now that you have heard some of the reasons for and against providing a subsistence priority for rural Alaskans. Let me ask you again, do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?

PRIORITY FOR RURAL ALASKANS #2	FREQUENCY	PERCENT
Favor	338	60.9%
Oppose	178	32.1%
DON'T KNOW	39	7.0%

21. Do you know any rural Alaska residents who live off the land by fishing and hunting?

KNOW ANYONE LIVES OFF LAND	FREQUENCY	PERCENT
Yes	290	52.2%
No	265	47.8%

22. Have you ever lived in rural, remote, primarily native areas of Alaska?

LIVED IN RURAL ALASKA	FREQUENCY	PERCENT
Yes	189	34.0%
No	366	66.0%

23. During the past 12 months, how many times did you, or someone else in your household, go hunting or trapping for game?

HUNTING LAST 12 MONTHS	FREQUENCY	PERCENT
1 to 3 Times	110	19.7%
4 to 10 Times	79	14.2%
11 or More Times	80	14.4%
NO HUNTER IN HOUSEHOLD/NONE	288	51.7%

24a. During a typical 12 month period or year, how many times do you, or someone else in your household, go hunting or trapping for game?

HUNTING TYPICAL 12 MONTHS	FREQUENCY	PERCENT
1 to 3 Times	123	22.2%
4 to 10 Times	92	16.6%
11 or More Times	102	18.4%
NO HUNTER IN HOUSEHOLD/NONE	237	42.8%

24b. Typically, do you, or someone else in your household hunt or trap .....

GAME	FREQUENCY	PERCENT
Duck or Geese?	126	22.7%
Moose, Caribou, bear, sheep, goat, Ptarmigan, rabbit, fox, etc.?	264	47.6%

24c. Typically, when you, or someone else in the household, goes hunting or trapping, do you hunt or trap .....

AREAS	FREQUENCY	PERCENT
In the Matanuska-Susitna Borough Anchorage or Chugach Mountain area?	117	21.1%
On the Kenai Peninsula?	100	18.0%
In the Fairbanks or Brooks Range area of Northern Alaska?	94	16.9%
In Southeast Alaska?	84	15.1%
In Western Alaska or west of the Alaska Range?	66	11.9%
In Kodiak or the Aleutians Islands?	58	10.5%
In the Copper River, Wrangell, or Valdez area?	54	9.7%

25. During the past 12 months, how many times did you, or someone else in your household, go fishing?

FISHING LAST 12 MONTHS	FREQUENCY	PERCENT
1 to 5 Times	147	26.4%
6 to 10 Times	72	12.9%
11 to 20 Times	94	16.9%
21 or More Times	130	23.4%
NO FISHERMEN IN HOUSEHOLD/NONE	113	20.4%

26a. During a typical 12 month period or year, how many times do you, or someone else in your household, go fishing?

FISHING TYPICAL 12 MONTHS	FREQUENCY	PERCENT
1 to 5 Times	139	25.1%
6 to 10 Times	92	16.5%
11 to 20 Times	110	19.7%
21 or More Times	142	25.4%
NO FISHERMEN IN HOUSEHOLD/NONE	74	13.3%

26b. Typically, when you, or someone else in the household, goes fishing, do you fish .....

AREAS	FREQUENCY	PERCENT
On the Kenai Peninsula?	248	44.7%
In the Matanuska-Susitna Bourough, Anchorage or Chugach Mountain area?	197	35.5%
In Southeast Alaska?	127	22.8%
In the Fairbanks or Brooks Range area of Northern Alaska?	97	17.4%
In the Copper River, Wrangell, or Valdez area?	73	13.2%
In Kodiak or the Aleutians Islands?	62	11.1%
In Western Alaska or west of the Alaska Range?	59	10.6%

27. In 1971, the U.S. Congress passed a law which set up village and regional corporations whose stock is owned only by Alaska natives. Under the current law, in 1991, village and regional corporation stock may be bought by non-natives. Alaska natives want to ammend the law so that the native shareholders of each corporation, by a majority vote, may decide whether the corporation's stock can be sold to non-natives after 1991. Do you favor or oppose amending the law to allow village and regional corporation shareholders to decide whether stock can be sold to non-natives after 1991?

AMENDING STOCK LAW	FREQUENCY	PERCENT
Favor	357	64.4%
Oppose	156	28.1%
DON'T KNOW	42	7.5%

28. What type of residence do you live in? Is it a.....

HOUSING TYPE	FREQUENCY	PERCENT
Single family,	358	64.6%
Apartment, or a	86	15.4%
Duplex,	50	9.1%
Mobile home?	32	5.7%
Zero lot line,	11	2.0%
Condominium,	10	1.7%
Townhouse,	8	1.5%

29. Does someone in your houshold own your home, or do you rent it?

EQUITY STATUS	FREQUENCY	PERCENT
Own	373	67.2%
Rent	182	32.8%

30. In what year were you born? (COMPUTED TO AGE BY SUBTRACTING FROM 85)

AGE OF RESPONDENT	FREQUENCY	PERCENT
18 - 24	74	13.4%
25 - 29	91	16.4%
30 - 34	93	16.8%
35 - 39	91	16.5%
40 - 49	113	20.4%
50 plus	92	16.6%

(n = 555)
(MEAN = 37.603)
(MEDIAN = 35.034)

31. How many total years and months have you lived in Alaska?

ALASKAN RESIDENCY	FREQUENCY	PERCENT
1982 - 1985	87	15.7%
1976 - 1981	129	23.3%
1967 - 1975	144	26.0%
Before 1967	194	34.9%

(n = 555)
(MEAN = 16.400)
(MEDIAN = 12.967)

32. How many total years and months have you lived in the _____ area? (FILL IN AREA CALLING AND WRITE NUMBER OF YEARS AND MONTHS ON ANSWER SHEET)

LOCAL RESIDENCY	FREQUENCY	PERCENT
1982 - 1985	160	28.9%
1976 - 1981	149	26.8&
1967 - 1975	124	22.3%
Before 1967	122	22.0%

(n = 555)
(MEAN = 11.766)
(MEDIAN = 7.330)

33. Are you, or is any member of your household (living at home), a veteran?

VETERAN IN HOUSEHOLD	FREQUENCY	PERCENT
Yes	250	45.1%
No	305	54.9%

34. Are you, or is any member of your household (living at home), a member of a union?

UNION MEMBER IN HOUSEHOLD	FREQUENCY	PERCENT
Yes	182	32.8%
No	373	67.2%

35. Are you married, separated, divorced, widowed, never married and living with another adult, or never married and living alone?

MARITAL STATUS	FREQUENCY	PERCENT
Married	370	66.7%
Divorced	67	12.1%
Never Married and Living with Another Adult	63	11.3%
Never Married and Living Alone	35	6.4%
Widowed	11	2.0%
Separated	8	1.4%

(COMPUTED FROM MARITAL STATUS AND GENDER QUESTIONS)

MARITAL STATUS BY GENDER	FREQUENCY	PERCENT
Married Males	185	33.2%
Married Females	185	33.4%
Single Males	110	19.8%
Single Females	75	13.5%

(COMPUTED FROM AGE, CHILDREN, GENDER, AND MARITAL STATUS QUESTIONS)

FAMILY STATUS	FREQUENCY	PERCENT
Mature Family	127	22.9%
Young Family	101	18.2%
Mature Couple	97	17.4%
Young Single	76	13.8%
Adult Single	57	10.2%
Single Parent	52	9.3%
Young Couple	45	8.1%

36. Do you or does anyone in your household (living at home) work for the federal, state or local government? IF YES, ASK, "Which level of government? Is it the ....."

GOVERNMENT EMPLOYEE	FREQUENCY	PERCENT
NO GOVERNMENT EMPLOYEE	319	57.4%
State, or	135	24.3%
Federal,	56	10.2%
Municipal Government?	45	8.1%

The last few questions are being collected purely for statistical purposes.

37a. How many total people, including children and adults, live in your household?

HOUSEHOLD SIZE	FREQUENCY	PERCENT
One	68	12.2%
Two	164	29.5%
Three	118	21.2%
Four	122	22.0%
Five or More	84	15.1%

(n = 555)
(MEAN = 3.079)
(MEDIAN = 2.392)

37b. Of the people in your household, living at home, how many are adults — aged 18 and older?

NUMBER OF ADULTS	FREQUENCY	PERCENT
One	87	15.6%
Two	361	65.1%
Three	85	15.4%
Four or More	22	3.9%

(n = 555)
(MEAN = 2.082)
(MEDIAN = 1.528)

37c. How many are children or adolescents under 18 years old?

CHILDREN IN HOUSEHOLD	FREQUENCY	PERCENT
NONE	275	49.5%
One	111	20.0%
Two or More	169	30.4%

(n = 555)
(MEAN - ALL HOUSEHOLDS = 0.997)
(MEDIAN - ALL HOUSEHOLDS = 0.025)
(MEAN - HOUSEHOLDS WITH CHILDREN = 1.976)
(MEDIAN - HOUSEHOLDS WITH CHILDREN = 1.266)

38. How many total years of education have you completed? (FORMAL ATTENDANCE IN SCHOOL) (EIGHTH GRADE = 8; HIGH SCHOOL = 12; TRADE SCHOOL = 13; COLLEGE GRADUATE — BA OR BS = 16; MASTERS DEGREE = 18; LAWYER, DOCTOR, PH.D = 19)

YEARS OF EDUCATION	FREQUENCY	PERCENT
12 Grade or Less	194	34.9%
1 - 2 Years College	170	30.6%
3 - 4 Years College	124	22.3%
Post Graduate	68	12.2%

(n = 555)
(MEAN = 13.941)
(MEDIAN = 13.055)

39. Are you seasonally employed, annually employed, unemployed and looking for work, not looking for work, or retired?

EMPLOYMENT STATUS	FREQUENCY	PERCENT
Annually Employed	341	61.5%
Seasonally Employed	74	13.3%
Not Looking for Work	66	11.9%
Retired	39	7.0%
Unemployed and Looking for Work	35	6.4%

40a. How many individuals in your household are presently working fulltime 35 or more hours per week? How many part-time, 34 or less hours?

(COMBINES WAGE EARNERS COMPUTED FROM THE PRECEEDING TWO QUESTIONS)

TOTAL WAGE EARNERS	FREQUENCY	PERCENT
Under One	52	9.4%
One	185	33.4%
One and One-half	77	14.0%
Two	176	31.6%
Over Two	65	11.6%

(n = 555)
(MEAN = 1.545)
(MEDIAN = 1.259)

41a. Including only those living at home, what was your total household income for 1984 before taxes and other deductions were made? Please tell me the figure to the nearest thousand dollars.

41b. We don't need the exact dollar figure; could you tell me which of these broad categories it falls in...

Less than 16,000 dollars,
Between 16,000 and 25,000 dollars,
Between 26,000 and 35,000 dollars,
Between 36,000 and 45,000 dollars,
Between 46,000 and 55,000 dollars,
Between 56,000 and 65,000 dollars,
Between 66,000 and 75,000 dollars, or
More than 75,000 dollars?

(COMPUTED INCOME FROM THE PRECEEDING TWO QUESTIONS)

1985 HOUSEHOLD INCOME	FREQUENCY	PERCENT
$ 0 - $15,999	73	14.5%
$16,000 - $25,999	67	13.3%
$26,000 - $35,999	74	14.6%
$36,000 - $45,999	93	18.5%
$46,000 - $65,999	96	19.1%
$66,999 or More	101	20.0%

(n = 504)
(MEAN = $46,132)
(MEDIAN = $39,889)

(COMPUTED FROM WAGE AND INCOME QUESTIONS)

INCOME PER WAGE EARNER	FREQUENCY	PERCENT
$ 0 - $15,999	133	26.4%
$16,000 - $25,999	116	23.0%
$26,000 - $35,999	104	20.7%
$36,000 - $49,999	80	15.9%
$50,000 or More	71	14.0%

(n = 504)
(MEAN = $30,595)
(MEDIAN = $25,777)

42. Is your telephone number.....

TELEPHONE LISTING	FREQUENCY	PERCENT
Listed or	483	87.0%
Unlisted	72	13.0%

43. SEX.....

GENDER OF RESPONDENT	FREQUENCY	PERCENT
Male	295	53.1%
Female	260	46.9%

THIS COMPLETES THE SURVEY, THANK YOU VERY MUCH FOR HELPING US — GOODBYE

SUBSISTENCE PRIORITY FOR RURAL ALASKANS

BY

POLITICAL AND GENERAL DEMOGRAPHICS

SUBSISTENCE PRIORITY	FREQUENCY	PERCENT
FAVOR	338	60.9%
OPPOSE	178	32.1%
DON'T KNOW	39	7.0%

DEMOGRAPHICS	n	FAVOR	OPPOSE	DON'T KNOW	TOTAL % OF ADULTS
AREA OF STATE: (Row %)					p = 0.0190
Valdez-Kenai-S. Anc	59	59.3%	33.7%	7.0%	10.6%
Anchorage	224	60.2%	34.4%	5.4%	40.4%
Mat Su/Grtr Fbks	50	54.2%	39.9%	5.9%	9.0%
Fairbanks	76	47.9%	43.0%	9.1%	13.7%
Southeast-Rural Alaska	146	71.7%	19.7%	8.6%	26.3%
REGISTERED TO VOTE: (Row %)					p = 0.4858
Yes	447	59.9%	33.3%	6.8%	80.5%
No	108	64.8%	27.4%	7.8%	19.5%
PARTY AFFILITATION: (Row %)					p = 0.0007
Democrat	120	73.8%	19.4%	6.9%	21.6%
Republican	145	66.1%	31.4%	2.5%	26.1%
Libertarian	17	63.5%	29.9%	6.6%	3.0%
Independent	273	52.3%	38.3%	9.4%	49.3%
VOTED IN 1982, NOVEMBER: (Row %)					p = 0.2295
Yes	362	59.0%	34.6%	6.4%	65.2%
No	193	64.4%	27.6%	8.0%	34.8%
VOTED IN 1984, NOVEMBER: (Row %)					p = 0.1290
Yes	373	58.1%	34.8%	7.1%	67.3%
No	182	66.7%	26.6%	6.8%	32.7%
IDEOLOGY OF RESPONDENT: (Row %)					p = 0.0461
Liberal	128	70.5%	23.4%	6.1%	23.2%
Moderate	237	59.4%	32.0%	8.6%	42.7%
Conservative	190	56.3%	38.3%	5.5%	34.2%
INTEREST IN STATE CAMPAIGNS: (Row %)					p = 0.7837
Very Interested	119	56.4%	36.5%	7.0%	21.4%
Somewhat Interested	319	61.3%	31.5%	7.2%	57.6%
Not very Interested	117	64.3%	29.4%	6.3%	21.0%
ADULT MARKET SHARE		60.9%	32.1%	7.0%	100.0%

Addendum to Statement by Jim Kowalsky for the Rural Alaska Resources Association to the State Affairs Committee, Alaska State Legislature, Anchorage, Alaska on August 27, 1985.

Amend Title XVI to Authorize Regional Fish & Game Councils

An examination of Title XVI will demonstrate that the Alaska State Legislature has not addressed Regional Fish and Game Councils. It has, on the other hand, specifically addressed the system of local fish and game advisory committees. Notwithstanding this omission, the State of Alaska has created a system of regional fish and game councils by regulation only.

This combined system of local advisory committees, regional councils and game and fisheries boards gives the people of Alaska a major voice in fish and game management. This system is unequalled anywhere else in the nation. It would seem an oversight that the Legislature has overlooked the opportunity to authorize the States six regional councils by statute.

It also would seem that, if the Alaska Legislature is going to go through the task of revising the statute so as to make it complete that it might as well deal with all the necessary corrections at this time so as to avoid having to come back to the issue again yet one more time in the future.

Among the most compelling arguments in the Senate and, ultimately the House in a free Conference Committee, to add the authorization of regional fish and game councils to any legislative amendments to Title XVI likely are:

1) Regional fish and game councils, made up as they are of chairpersons of all the states fish and game advisory committees or their designees be they rural or urban, do increase and make complete the public participation element in the process of establishing fish and game regerlations - in otherwords, here urban and rural people get together and have a voice; and

2) the Legislature should take steps now to avoid having to come back yet a third time to fix the state fish and game statute.

Another reason for action on this matter exists:

3) Federal law, ANILCA, (PL 96-487 Dec. 2, 1980) Title VIII, Sec. 805,"Local and regional participation" states:
   (a) "-- the state shall establish -
   (3) a regional advisory council in each subsistence resource region.

Section 805 continues to set forth the requirements for the composition

and authorities of regional councils, and authorizes the Secretary of the Interior to establish such councils and local advisory committees. But Sec. 805 (d) states

> 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 consisted with, and which provide for the definition, preference and participation specified in, sections 803, 804, and 805 ---- (emphasis added)

On one hand critics of the request to amend to include regional councils may point to the fact that the State has provided for regional fish and game councils since before 1980 by regulation (if not by statute). However, I could argue, so has the state made certain subsistence provisions by regulation only, not by statute. This approach lacks a statuatory foundation in both instances - subsistence preference and also regional fish and game councils.

I submit to you that the cure is simple, should lack all the controversy associated with subsistence preference, gives a voice to Alaskans, and, to take this action now will save having to deal with it later, a third time.

Regional councils should be added to any amendment package to Title XVI under consideration by the Senate and the full Legislature.

Thank you for considering these views.

I will be brief. Today is May 1st. We have exactly one month until the date set by the Department of Interior for federal takeover of the management of our fish and game. A federal task force composed of the B.I.A., Parks, B.L.M., the Forest Service, and the Fish and Wildlife Service has been formed to oversee the federal takeover; a team of regulation writers from the various federal agencies has been assembled from around the country.

Anyone who believes that federal takeover is an empty threat is engaging in wishful thinking. I realize that there are those who feel that a lasting solution to the subsistence crisis will require a change in federal law. I would point out there are ongoing private lawsuits challenging the federal law. There is nothing about passing a law that complies with the federal law that precludes court challenges or legislative attempts to change federal law. Both of these things, however, are may take long periods of time with very uncertain results.

One of the main reasons we became a state was to control our own resources. To pass a bill that gives part of that away makes no sense. When Assistant Secretary Horn was here he testified that the Resources CS did comply with federal law and that a version that included economic need criteria would not comply. I would like to distribute to you a letter from Mr. Horn that confirms that the Resources CS does comply and the excerpt from Mr. Horn's testimony where he discussed need. If this committee decides to advance a version of the bill that includes an economic criteria I want to be certain

If the Resources CS is advanced, either here or on the floor, I would welcome an amendment to delete the administrative appeals section. This section is innocuous but may not fit under the title.

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} 130% Federal minimum
need in the Judiciary bill.

TESTIMONY

BY THE

HONORABLE DON W. COLLINSWORTH

COMMISSIONER OF THE

ALASKA DEPARTMENT OF FISH AND GAME

BEFORE THE

STATE SENATE COMMITTEE ON STATE AFFAIRS

ANCHORAGE, ALASKA

AUGUST 27, 1985

Mr. Chairman, my name is Don Collinsworth, and I am the Commissioner of the Alaska Department of Fish and Game. I appreciate the opportunity to be able to testify before your committee today.

Mr. Chairman, the last time I met with your committee I made an appeal to you to take legislative action to amend the state's subsistence law. I advised your committee at that time that there was no administrative or regulatory solution which could be undertaken by the administration or the Boards of Fisheries and Game to solve the problems which we perceived would develop as a result of the Alaska Supreme Court's decision in Madison and the Court of Appeals' decision in Eluska. I advised you that the only solution to avoid disruption in the existing uses and patterns of use in fish and game was a legislative amendment to the state's subsistence law. I pointed out that the state's subsistence law must be amended to allow the Boards of Fisheries and Game the flexibility to continue to regulate fisheries and hunts as they had since the passage of the state subsistence law, but prior to the Madison and Eluska court decisions, and that it was our belief that the law would have to be amended in order not to lose state management on federal lands under the provisions of ANILCA.

I would like to present to you for the record a chronology of events leading to the emergency fish and game regulations which have resulted in considerable public consternation.

On February 22 of this year, the Alaska Supreme Court's decision in the Madison case changed the way the Boards of Fisheries and Game could regulate subsistence hunting and fishing.

The supreme court ruled in Madison that the state law (statute) would not allow the Boards of Fisheries and Game the flexibility to continue to regulate fishing and hunting based on the criteria that the boards had developed and believed to be fair and reasonable.

The Department of Fish and Game pointed out that serious disruptions to established hunting and fishing use patterns would result, and that neither the boards nor the Department of Fish and Game has the authority to overcome these problems without legislation. Accordingly, on March 13, 1985, legislation was introduced by the administration which would have given the boards the flexibility to regulate as they had prior to the supreme court decision.

The Boards of Fisheries and Game met in late March and early April. The boards recognized that serious problems lay ahead unless the authority they had exercised previously was

restored. Neither board felt comfortable making the extensive regulatory changes necessary in order to meet the standards announced in Madison without the opportunity for public comment. The Board of Game wished to leave in place the permit drawings and limited registration hunts for one more season.

However, on April 12, 1985 (after the Boards of Fisheries and Game had adjourned), the Alaska Court of Appeals ruled that because the Board of Game had not adopted specific regulations governing subsistence hunting, a "subsistence defense" could be used to block prosecution for some violations of existing regulations.

In effect, the Eluska decision required the Game Board to adopt separate subsistence regulations consistent with Madison or face unenforceability of many regulations.

The Court of Appeals also interpreted the supreme court opinion in Madison to mean that the current statutes are not adequate to allow the boards or the Department of Fish and Game to significantly impair subsistence for any Alaskan until they have first closed all sport and commercial fishing or hunting on a particular fish stock or game population.

On May 4, the House passed CSHB288 (Jud), 52 days after being introduced. The Legislature adjourned on May 13, without completing action on the House-passed bill.

On May 22, 1985, state Chief Prosecutor Daniel Hickey wrote a memorandum to Commissioner Robert Sundberg and me establishing guidelines for enforcement personnel and prosecuting attorneys in light of the Eluska decision. Mr. Hickey concluded that unless the Legislature took action, certain specific regulatory steps were necessary in order for normal enforcement and prosecution to continue.

With respect to fishing regulations, the Department of Law advised the Commissioner of Fish and Game "to exercise his authority under 5 AAC 01.015 and the authority delegated to him by the Board of Fisheries and to issue subsistence permits for taking salmon in areas where subsistence harvests have been historically authorized and conducted." I consulted with the Board of Fisheries and initiated the required emergency regulations on May 28, 1985.

With respect to hunting, Mr. Hickey explained that specific subsistence regulations consistent with Madison and Eluska were necessary. Until regulations were adopted which complied with Eluska, guidelines would have to be followed which would sharply limit state prosecutions of hunting violations.

In response to the Eluska decision and Chief Prosecutor Hickey's guideline memorandum, the Board of Game convened June 10, 1985, in emergency session to ensure that hunting regulations would continue to be fully enforceable.

Attorney General Norman Gorsuch met with the board and advised them what steps were necessary in order to comply with the Madison and Eluska decisions. These are the rules as explained by the Department of Law:

> Under Eluska, the Game Board must adopt separate subsistence hunting regulations consistent with Madison, or the "subsistence defense" can be used and many regulations will be unenforceable.
>
> Under Madison, subsistence hunting means hunting by any Alaskan for food, shelter, fuel, clothing, tools, transportation, customary trade, barter or sharing.
>
> Unless sustained yield would be jeopardized, subsistence hunting must be authorized on any game population that has been hunted in the past and used for these purposes.
>
> Because Alaska law requires that meat be salvaged from most game hunted in Alaska, these populations have been

documented to be taken for food. This includes species like sheep, goats, and bison.

If subsistence hunting of a game population must be restricted (that is, "significantly impaired") to protect the resource, then nonsubsistence uses (nonstate resident hunting) must be eliminated first.

If, after nonresident hunting has been eliminated, and subsistence hunting on a game population must still be restricted (significantly impaired) to protect the resource, then the board must use the three criteria listed in AS 16.05.255(b) to determine how hunting opportunities are to be distributed among Alaskans. These criteria are:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

The Board of Game concluded that it was essential to have enforceable regulations and therefore took the following steps to comply with the court decision.

The practical results of the board's emergency actions in June include the following:

1. Separate subsistence and general hunting regulations were adopted; in the process, approximately 450 regulations were evaluated and amended or readopted.

2. Hunting opportunities in many areas of the state are open to both residents and nonresidents.

3. Hunting opportunities for some species in certain areas are open to Alaska residents only (Tier I).

4. Tier II standards were applied to distribute hunting opportunities for certain species in certain areas where more Alaskans wish to hunt than can be accommodated while maintaining sustained yield.

The Board of Game adopted emergency regulations in June which will become "permanent" approximately the first of October.

The board has scheduled these regulations for review and further action at its November meeting; comment from the advisory committees and other members of the public is invited.

The Board of Game took only those actions they believed necessary under the court decisions and to protect wildlife resources; the board used Tier II standards only when they concluded there was no effective alternative.

The board had previously used general permit drawing hunts and limited registration hunts to allocate hunting opportunity in situations where more people wished to hunt than could be accommodated.

The board would have used the same system this year if changes had not been necessary because of the Madison and Eluska decisions.

Before the Madison decision, both the Board of Fisheries and the Board of Game had interpreted "subsistence" narrowly; as a result, use of Tier II standards had not been necessary.

Under the boards' approach, even if some resource circumstances were to require the use of Tier II standards, the category of users affected by Tier II would be much narrower, and urban hunters would have been virtually unaffected.

Tier II standards were applied to a large number of hunts only because Madison overturned the boards' interpretation of "subsistence uses" and greatly broadened the "subsistence" category. Consequently, many more situations

resulted in which people who now qualified for subsistence hunting were competing for limited game resources.

Tier II standards will also be applicable to subsistence fishing, although in most areas the problem is likely to be less immediately acute than in hunting; however, where circumstances warrant, the three criteria (dependence, local residency, alternative resources) must be applied.

Mr. Chairman, in my opening remarks I mentioned a state rights issue, retention of state management. Without amendment to the state subsistence law, state management of Alaska's fish and wildlife is in jeopardy on all federal lands (about 60 percent of the land area) and associated waters if the state is out of compliance with federal law; this may include species which move through or onto these lands and waters even if they do not remain there throughout their life cycles (including virtually all anadromous fish and a large proportion of the state's wildlife).

The department believes that loss of state management authority would be detrimental, both to proper management of Alaska's resources and the Alaskan users of these resources.

Mr. Chairman, rather than speculate about what the federal government may or may not do, I would suggest you may want

to invite a representative of the Department of Interior to address your committee.

Mr. Chairman, the administration believes that there should be four key elements of any new subsistence legislation.

1. It must be constitutional.

2. It must be consistent with federal law so the state can retain management.

3. It must be enforceable.

4. It must provide reasonable opportunities for all uses: commercial, recreational, personal use, and subsistence.

Experience with the Board of Game emergency regulations underscores the need for a solution which meets all four of these standards.

In summary, Mr. Chairman, the two court decisions have radically changed the way the boards and the department may do business. The current law does not provide the boards the authority they need to regulate hunting and fishing in the fair and reasonable manner as they had in the past.

Neither the boards nor the department have the authority to remedy the situation.

We appeal to you again, Mr. Chairman, to take legislative action to return to the boards the authority to provide for all uses. The board system is a good one and it can work.

We also appeal to you, Mr. Chairman, and all Alaskans to work together to solve this problem in the spirit of cooperation.

Remarks to the State Affairs Committee of the Alaska State Senate Concerning Subsistence, Anchorage, Alaska, August 27, 1985.

My name is Jim Kowalsky. I speak today as chairman of the Rural Alaska Resources Association, or as we refer to it "R.A.R.A." Our board of directors is made up of representatives of each of ten regional non-profit Native corporations, and also of the Native village of Tyonek and the North Slope Borough. I am employed by the Tanana Chiefs Conference, Inc. as director of its subsistence program. R.A.R.A. is a statewide subsistence advocacy organization.

I wish to make one major point Mr. Chairman, and it is a point which I feel is being missed or which is becoming obscured in this debate, and it is or should be the main consideration of this committee and of the State Senate as they consider any legislative amendments to the state's subsistence law. The point is that the only thing that really matters in this debate to our Alaskan people who live in the far flung, remote rural communities of our state is that they have the opportunity to feed themselves, their families, and their communities - including the elderly, those who are handicapped, who are ill and/or too young, or otherwise unable to hunt or fish.

The animals and the fish are the mainstay of the economy of rural Alaska. Harvesting these resources is an economic activity and it is the only major economic activity in which rural Alaskans generally have any real confidence. On the other hand confidence in the cash economy is limited, not strong, not secure. Generally there is little cash, very few jobs. In some communities there have, at times, been no jobs. Coastal communities in many cases have a richer resource base than do Interior communities, and in some cases may have more seasonal jobs associated with commercial fishing or perhaps in the timber industry. By contrast Interior communities have less resource base.

But in any case no matter how each of you or others in our urban communities choose to discuss or debate subsistence solutions,the economic realities for our rural Alaska communities remains a fact of Alaskan life. This is a compelling and a major issue in the equation which we all seek - whatever local wealth exists in rural Alaska exists as natural harvestable renewable fish and wildlife, and the confidence to harvest these to support human life perpetuates this economic base. I should urge you to consider that there is now available a sizeable body of literature which very competently documents these socio-economic realities of rural Alaska's communities.

Mr. Chairman, I would respectfully like to make several suggestions to the committee:

1) Pass the Governor's proposed amendment to the existing subsistence statute. Return the system to what it was in past years, a system perhaps far from perfect, but one which protects the relative handful of rural people who may need the protection this amendment would provide from time to time, but will also allow Anchorage and other urban hunters to participate in, say, the Nelchina Caribou hunt for example. Few rural people like the Tier II subsistence hunt process either. Nikolai may be the one exception in the Interior where local people are able to hunt bison for the first time.

2) Don't put the rural subsistence economy on a lottery or drawing system. Can you imagine having your own opportunity to actually feed your family and community placed in a drawing, on a system of chance?

3) Don't attempt to devise legislation which will make subsistence into a welfare system which would for example, weed out and prevent a specific rural hunter from engaging in his "employment' just because he might

have a cash income higher than most others in his community. This hunter likely provides meat for a large family plus elderly or disabled community residents who may exist in substantial numbers and for whom few other reliable sources of meat or fish exist. Let your legislation reflect the fact of rural Alaskan life which is that communities subsist as communities, but that individuals do not subsist. Also, remarks urging your committee to adopt standards which consider a subsistence priority only be given to a community or individual at the point when they reach the poverty or even starvation level should not be followed. The assumptions made by the advocates of such standards are incorrect. Subsistence is a support system, not a last ditch life support system to which a dying patient is to be hooked onto just before death. A subsistence family and community ideally is a happy, healthy, prosperous people, not a people down and out, standing in the last ditch bread line waiting for the crumbs of a welfare handout.

To conclude, allow me to again emphasize that the subsistence economic system must remain a central or anchor point to your deliberations. In familiar cash flow terms, the rural communities which I attempt to characterize generally range from poor to very poor; but in terms of harvest of renewable resources, rural communities are not to be considered as poor. Rather, the consideration should be that the harvest, the actual physical act of going out to harvest, is the economic system of rural Alaska, it is the employment.

I believe this committee and the Alaska Legislature and the Administration generally do have an obligation to give this economic system the protection that is necessary to allow rural communities the confidence and the best opportunity possible to provide for and to help support themselves. I respectfully must

remind you that you have gone to enormous, far, far-reaching ends to protect, encourage and foster the economy and the economic system and opportunities of most other, if not all other sectors of the Alaskan population.

Thank you for hearing my testimony.

SENATE RESOURCES COMMITTEE OBSERVER-WITNESS SIGN-UP SHEET

DATE: 2/26/86 SPONSOR: Senate Resources

SUBJECT(S): SCS for CS for HB 288

NAME	REPRESENTING	ADDRESS	PHONE		Witness		
01 Roberta Booher	AK Outdoor Council	Juneau	789-2399		✓		
01 Arnold Mohlheim	North Pac Fish RRR	Eng Fish Bay	881-2231		✓		
01 Tim Kowalsky	Tanana Chiefs Conf	201 1st Ave	Fbks 452 8251		✓		
01 Verita Zilys	Rur AL CAP	POB 200908 Anch 99520	271-2511		✓		
Fred Brimmer	Tyonek Village	Tyonek	—				
Edward Gamble Sr.	City of Tyonek	PO Box 159 Tyonek 99682	583-3653				
Lilally R. Franks Sr.	Tyonek Community		583-3653				
01 Dennis Kelso	ADF&G	P.O. Box 3-2000 Juneau	465-4100		✓		
01 Larri Scogler	Dept. of Law		465-3600		✓		

May 1, 1986

Announcement of Senate Resources Committee Meetings

Friday	May 2	1:00 - 3:30	Butrovich Room

HB 407	Use of, and certain reports and records concerning game animals
SB 485	Alaska Research Development Endowment
SJR 49	Constitutional amendment creating Alaska Research Development Endowment
HB 492	Sport fishing from commercial vessels
SJR 50	Incidental catch of high-value fish stocks within the U.S. exclusive economic zone
HB 635	Establishing Willow Creek State Recreation Area
SB 467	Relating to the operation of campgrounds

Monday	May 5	1:30 - 3:30	Butrovich Room

HB 605	Shuyak State Game Refuge
SJR 38	Federal tax on imported oil
HB 693	Alaska Research Policy

Wednesday	May 7	1:30 - 3:30	Butrovich Room