

SUBSISTENCE

CORRESPONDENCE

- file 2 -

MEMORANDUM

TO: Jack
FROM: Linda *Linda*
DATE: August 6, 1985

Mary Halloran, Rodger Painter and I met this afternoon with Denny Kelso, Jim Ayers and Larri Spengler for an update on subsistence.

Legal Services filed a petition lawsuit in federal court last winter on behalf of Lime Village, saying that the moose and caribou regulations were inadequate to meet their subsistence needs. Taking the advice of the Department of Law, the suit was stayed while they petitioned the Board of Game to make changes, which the Board did, giving them more animals. However, when Eluska came along, Legal Services took that to mean that they need not abide by bag limits and seasons, so the petition was amended. The lawsuit maintains the Boards are bound by federal standards.

AFN recently filed three petitions (attached), one with the Boards of Fisheries and Game and two with the Secretary of the Interior, stating that the state is not in compliance with ANILCA. The petitions say that since the state is out of compliance with federal standards, the federal standards supersede state law, and the Boards are required to adopt regulations consistent with ANILCA. If the Boards do not act, the petitions ask the DOI to adopt regulations superseding those of the Boards. The joint boards are scheduled to address the AFN petitions at their November meeting. Interior has no required set time to respond to the petition, but likely will do so before November. If DOI accepts AFN's petition, it means they wouldn't have to take over management, but instead would turn the question back to the state, by asking the Boards what they're going to do about it.

This preemption process would bypass the legislature, which did not act to amend state law. If the Boards agreed that federal standards supersede state standards, they could decide they have the authority to return things to the way they were before Madison, which is what AFN and, now, other groups and individuals in Anchorage have been asking for (see attached news clippings).

Larri gave us a copy of her July 12 response to Bill Horn, DOI, regarding the question of whether the state is out of compliance with ANILCA. Essentially, the letter finesses the question, by saying that the Boards haven't had time to go through their whole procedure, including public comment, and so the process isn't complete yet.

Enclosures:

- AFN petitions
- AFN letter to you regarding petitions
- Recent news clippings
- AG's response to Dept. of Interior

cc Subsistence Committee members

July 17, 1985

Senator Arliss Sturgulewski
2957 Sheldon Jackson
Anchorage, Alaska 99508

Dear Senator Sturgulewski,

Thankyou for the information letter dated June 1985.

As you have stated there are many issues facing the Legislature next year. In light of recent claims of impropriety in the govenor's office I believe the folowing months will place great demands on the Legislature to provide the leadership necessary to gain back the confidence of the Alaska electoral.

I have always believed the one over-riding obligation of an elected body is the protecion of citizen rights and the promotion through legislative action a doctrine of justice and equality. In 1978 the Alaska Legislature failed to meet this fundamental responsibility.

New regulation concerning wild game management was placed in the statutes which has created havoc with proper game management concept, divided Alaska into a two class citizenship and completly dismisses the Alaska Constitution with regard to equality of access to the finite resource of fish and game.

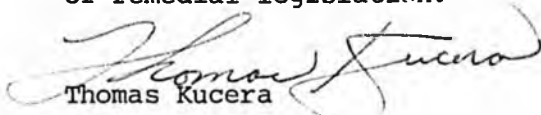
Recent court decisions based on the state subsistence law have clouded the controversy further, forcing the Alaska State Game Board to address a great problem in a limited way. It will be impossible for the Game Board to make policy and regulation with out adding more fuel to the fire.

I do not believe the Legislature in 1978 realized the full impact and consequence of their decision to implement the language of the subsistence law. We now have fish and game management decisions made by judges instead of professionals, such confusion in the law that admitted poachers go unpunished and a complete break down of an effective wild life protection system.

The situation we are now in can only be rectified by legislation that will allow the good stewardship of our game resource that we had prior to 1978. I also realize that this would be in conflict with language found in the Alaska National Interest Lands Act-d.2. These statutes in ANILCA concerning priority hunting and fishing rights have never been challenged by the State of Alaska. It is my strong conviction that if the State opposed any attempt by the Federal Government to regulate wild life with in the state boarder the Federal Government would back-off. In all states, since the concept of wild life management was recognized, the established policy is that resident wild life is best managed by individual states. All states would have an active interest in any litigation resulting from Alaska's opposition.

It will take courage and a test of leadership to correct this bad piece of legislation. Special interest groups that lobbied for the subsistence law in Juneau and Washington DC are still with us and unfortunately are the most vocal and seem to get the most press.

I would encourage you, Senator Sturgulewski, to consider my comments and if you find merit in them, take an aggressive role next January in the development of remedial legislation.

A handwritten signature in dark ink, appearing to read "Thomas Kucera", is written over the typed name.

Thomas Kucera
8605 Swiss Place
Anchorage, Alaska 99507

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

July 8, 1985

The Honorable Jack Fuller
Chairman
House Interim Committee on Subsistence
P. O. Box 689
Nome, AK 99762

Dear Representative Fuller:

Enclosed is a packet of background materials regarding recent actions by the Board of Game to bring hunting regulations in conformity to court decisions in Madison and Eluska. These materials include:

- Item A- summarizing the actions taken by the Board of Game during its June emergency meeting;
- Item B- a list of the hunts open for non-state residents and those hunts which have been closed to non-state residents;
- Item C- the draft regulations for implementing the three Tier II criteria and the associated point system for evaluating applications for Tier II hunts;
- Item D- draft Tier II permit application and instructions;
- Item E- additional background on the need for emergency actions by the Boards of Game and Fisheries.

I hope this information will be helpful. Please free to call if you need additional information.

Sincerely,



Don W. Collinsworth
Commissioner

Enclosure

Replacement for A & B

PERMIT HUNTS 1985
EMERGENCY MEETING — ALASKA BOARD OF GAME

Meeting between June 10 and 21, the Alaska Board of Game rewrote approximately 450 of the state's hunting regulations to comply with two recent court decisions. To comply with *State v. Eluska*, the board created separate subsistence hunting regulations. To comply with *Madison v. ADF&G*, the board established three basic regulatory situations:

TIER I and GENERAL HUNT - This situation exists when the game resource is abundant enough that all who wish to hunt may participate in the harvest.

If the board finds that subsistence uses are not substantially impaired:

- nonsubsistence uses may still be accommodated
- residents and nonresidents will be able to hunt
- the hunting regulations will appear in both the subsistence and general hunting booklets

TIER I - ^{Only -} This situation exists when harvest opportunity must be limited to Alaska residents. Under the Madison decision all Alaska resident hunters may qualify as subsistence hunters.

If the board finds that subsistence uses are substantially impaired:

- nonsubsistence uses must be eliminated
- other regulatory changes may be made to alleviate the impairment

If the board then finds that such changes alleviate the impairment:

- the hunt remains open to all Alaska residents but is closed to nonresidents

TIER II - This situation exists when not all resident hunters can participate and still maintain the sustained yield of the game population.

If the board finds that after making the above changes, subsistence uses are still substantially impaired:

- hunter participation must be limited based on 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.

Alaskans who wish to participate in Tier II hunts will have to complete a questionnaire that measures these three criteria for each Tier II hunt they are interested in.

The Tier II hunts, by and large, represent some of the most popular hunts in the state. In most cases, these hunts were previously conducted through random permit drawings or first-come/first-served registrations. This change will affect many Alaskans who may already have applied for a permit or had planned to register.

These changes affect approximately 60 different hunts. Perhaps the most difficult decisions were those affecting species that are not commonly thought of in terms of subsistence uses (bison, sheep, goats and brown bears). The current statute does not allow the board to treat these animals differently from caribou, moose or deer.

Every effort will be made to conduct hunts at the times authorized by the board. Administrative difficulties with changing the way permit hunts are conducted may force the department to delay some of the earliest hunting seasons.

The emergency regulations which the board adopted will be in effect for 120 days. The regulations will be circulated for public comment and may be made permanent so that there will be no lapse in regulation prior to the fall Game Board meeting. In November and January, the board will hold public hearings in Anchorage so that the advisory committees, regional councils, and others can provide additional comments.

HUNTS AVAILABLE TO ALL HUNTERS

A recent decision by the Alaska Supreme Court prompted major revisions in the allocation of big game resources in Alaska. The system of registration and drawing permit hunts previously used to decide who could harvest which animals was largely set aside in favor of a ranking system that gives priority to subsistence use by residents. This means that non-residents must be eliminated from some popular hunts. Those hunts which still allow both resident and non-resident hunters to harvest animals are listed below.

Species	Game Management Unit/Hunt No.	Comments
Black Bear	1-3, 5-7, 9, 11-26	General season—no changes
Brown Bear	1-7 8 All hunts 8 Hunts 201-226 9C Hunt 251 9D Portion 10, Hunt 235 11-21, 22A 22B & 22E, Hunt 280 23, Hunt 281 24 & 26A, Hunt 282 25, Hunt 292-294 26A & 26C, Hunts 285, 287 26B, Hunt 286	General season Nonresident with registered guide by registration permit Drawing permit for nonresident accompanied by resident within the second degree of kindred General season by registration permit General season Registration permit General season Drawing permit Drawing permit Registration permit Drawing permit Drawing permit Registration permit
Bison		No nonresident hunting
Caribou	9, 16, 17, 19C & 18 North of Yukon 10, Hunt 550 12 & 20D North of Alaska Hwy. and 20E 19A, 19B, 19C, 19D 20A, portion 20B, 21, 22A, 22B, 23, 24, 25C, 26A, 26B 20F 25A, 25B, 25D, excluding west fork of Dall River, and 26C	General season Registration permit Nonresidents limited to early season and bag limit of one Nonresidents limited to early season and bag limit of one General season, part of Unit is closed General season Nonresidents limited to early season Bag limit reduced
Deer		General season—no changes

Species	Game Management Unit/Hunt No.	Comments
Moose	1A and portion of 1B 1B, Thomas Bay 1C, except Berner's Bay 5A, Nunatak Bench 5B & 6B 6A, 6D, 7 (excluding River), 9A, 9B, 9C, 9E, 11, 12, 14B and 13A portion west of Lake Louise Rd. 14A, 14C (remainder) & 15A Kenai NWR 15A (remainder), 15C, 16A, & 15B remainder 14A, 14C (portion), 15A Kenai NWR west 16B Kalgin Island 16B (remainder), 17B (remainder), 17C, 18 (remainder) 17B Mulchatna River, 19A, 19B, 19C, 20A, 20B (portion), 20C, & 20D 20F, 21A, 24 21B, 21C, 21D, 21E, 23, 25A, 25B, 25C, 25D (except 25D west), 26 22B, 22C, 22D, 22E	General season Registration permit Registration permit Registration permit Registration permit General season Nonresidents limited to one bull General season Nonresidents limited to one bull Registration permit Nonresidents limited to early season General season Nonresidents limited to early season General season General season for one bull—registration permit for antlerless
Elk	8, Hunts 702, 751	Registration permit
Mountain Goat	1-5, Hunts 801-817 8, Hunts 871, 873, 874, 876 6, Hunt 879 7, Hunts 830, 833, 836, 839, 840, 842, 844, 845, 846, 847, 852 11, 14, 15B, Hunt 854 15C	Registration permit Registration permit Registration permit Registration permit Registration permit Registration permit
Muskoxen		No nonresident hunting

Sheep

NOTICE

This summary of the status of hunts for 1985 is extracted from regulations of the Board of Game. It may not be complete. It does not contain many of the regulations which apply to these hunts. Please refer to Alaska Game Regulations, permit hunt supplements or an office of the Department of Fish & Game for further specific information relating to permit conditions, seasons and bag limits, and other appropriate regulations.

PERMIT HUNTS — 1985

Species	Unit	Hunt No.	Permit Hunt Type	Subsistence	General	Further Information
Bison	11	406	Tier II	X		Chitina
	11	450	Registration	X		Copper River
	19	451	Tier II	X		Farewell
	20D	403&404	Tier II	X		Delta bulls, cows
Brown Bear	8	201-226	Drawing	*	X	Kodiak
	8	Unknown	Registration	*	X	Nonresidents with guides S. Kodiak Island
	8	250	Registration	X	X	N. Kodiak Island
	8	250	Registration	X	X	Afognak Island remainder Unit 8
	8	NEW	Registration	X		April 1-15, special subsistence regulations apply, Kodiak
	9C	251 F&S ^b	Registration	X	X	Naknek River
	9D	252 F&S	Registration	X	X	Cold Bay
	10	235 F&S	Registration	X	X	Unimak Island
	22	280 F&S	Drawing	NPR	X	Units 22B, 22C, 22D, 22E
	23	281 F&S	Drawing	NPR	X	Western Brooks Range
	24	282 F&S	Registration	X	X	Unit 24 North
	24, 26A	290	Registration	X	X	Gates of the Arctic
	25A	292 F&S	Drawing	NPR	X	Unit 25A East
	25A	293 F&S	Drawing	NPR	X	Unit 25A Central
	25A	294 F&S	Drawing	NPR	X	Unit 25A West
	26A	284 F&S	Registration	X		Unit 26A East
	26A	285 F&S	Drawing	NPR	X	Unit 26A West
	26B	286 F&S	Registration	X	X	Central North Slope
	26C	287 F&S	Drawing	NPR	X	Arctic NWR, North Slope
Caribou	7	501	Tier II	X		Kenai Mountain Herd
	10	550	Registration	X	X	Adak Herd
	11	510	Tier II	X		Mentasta Herd
	13, 14B	515, 562	Tier II	X		Nelchina
	20A	570	Tier II	X		Central Western 20A
	20D	530	Tier II	X		Macomb
Deer	4	630	Registration	X	X	Angoon Area Jan. 1-31
Elk	8	702	Registration	X		Raspberry Island
	8	750	Registration	X	X	Afognak, part of
	8	751	Registration	X		Southwest Afognak
Goat	1A, 1B	801	Registration	X	X	Southern Southeast Mainland
	1C	802	Registration	X	X	Antler-Eagle River
	1C	803	Registration	X	X	Remainder of 1C
	1D	805	Registration	X	X	Haines Area
	1D	806	Registration	X	X	Remainder of 1D
	4	815	Registration	X	X	Baranof
	5A, 5B	817	Registration	X	X	Yakutat
	6D	830	Registration	X		Tiger Glacier
	6	879	Registration	X	X	Cordova
	6D, 7, 15B	839, 840, 842, 844-847, 852, 854, 857-865	Registration	X	X	Kenai West, Prince William Sound
	7, 15B	831, 834, 835, 843, 855	Tier II	X		Selected areas, Kenai
	8	872	Tier II	X		Kodiak, Crown Mountain
	8	871, 873, 874, 876	Registration	X	X	Kodiak
	11	880	Registration	X	X	Copper River-Wrangell Mountains
	14	866-870	Registration	X	X	Anchorage Area

KEY—Hunt No. = as hunt number appears in current hunt supplement
NPR = no permit required.

F = fall hunt S = spring hunt
* = subsistence opportunity provided in new April 1-15 hunt.

PERMIT HUNTS — 1985

Species	Unit	Hunt No.	Permit Hunt Type	Subsistence	General	Further Information
Moose	1B	955	Registration	X	X	Thomas Bay
	1C	901	Tier II	X		Berner's Bay
	1C	956	Registration	X	X	1 C except Berner's Bay
	1D	959	Tier II	X		Haines
	5A	960	Registration	X	X	Nunatak Bench
	5A	961	Tier II	X		Yakutat Forelands
	5B	962	Registration	X	X	Malaspina Forelands
	6B	966	Registration	X	X	Martin Bay
	6C	967, 968	Tier II	X		West Copper River Delta
	7, 14C	910, 911	Tier II	X		Placer River, Twenty-mile
	9C	972	Registration	X		Naknek River Drainage
	13	913	Tier II	X		Any size bull moose, Nelchina
	14A	919, 920	Tier II	X		Matanuska Valley, East and West
	14C	923	Tier II	X		Ft. Richardson, late hunt
	14C	924	Hunt cancelled			
	14C	978	Tier II	X		Anchorage M.A.
	14C	974	Tier II	X		Eagle River
	14C	975	Tier II	X		Eklutna
	14C	925, 927, 928	Tier II	X		Knik River, Ship Creek, Peters Creek
	15A	929	Tier II	X		Unit 15A West, cow hunt
	15B	930-939	Tier II	X		Unit 15 B West, "five areas, ten hunts"
	16B	980	Registration	X	X	Kalgin Island
	16B	981	Tier II	X		Beluga River North
	16B	982	Tier II	X		Beluga River South
	17B, 17C	983	Registration	X		Early bulls, upper Mulchatna
	20B	985	Tier II	X		Minto Management Area
	21D	988	Registration	X		Galena Area late season
	22B	992	Registration	X	X	Eastern Seward Peninsula cows
	22D	991	Registration	X	X	Central Seward Peninsula cows
	22E	990	Registration	X	X	Western Seward Peninsula cows
	25D	994	Tier II	X		Unit 25D West
Muskoxen	18	1001F	Drawing	X		Nunivak bulls
	18	1003S	Drawing	X		Nunivak bulls
	18	1060F	Registration	X		Nunivak cows
	18	1061S	Registration	X		Nunivak cows
	18	1070	Registration	X		Nelson Island
	26	1007	Registration	X		26C ANWR
Sheep	12, 13, 20	1102	Tier II	X		Tok Management Area
	12, 13, 20	1150	Hunt Cancelled			
	13, 20	1103, 1104	Tier II	X		TMA ewes
	14A	1110	Tier II	X		Delta Controlled Use Area
	14C	1130-1135	Tier II	X		Matanuska Valley ewes
	14C	1160	Registration	X	X	Chugach State Park, early
	20D, 20E	1106-1108	Tier II	X		Chugach State Park, late
	23	1185	Registration	X		20D North, 20E except Glacier Mountain
	24, 26A, 26B	1191	Registration	X	X	Either sex, Noatak area
	25A, 26C	1190	Registration	X		Gates of the Arctic
						Arctic NWR, late season

NOTICE

This summary of the status of permits hunts for 1985 is extracted from regulations of the Board of Game. It may not be complete. It does not contain many of the regulations which apply to these hunts. Please refer to Alaska Game Regulations, permit hunt supplements or an office of the Department of Fish & Game for further specific information relating to permit conditions, seasons and bag limits, and other appropriate regulations.

**Season Dates and Number of Permits
for Tier II Hunts**

Area	Season Dates	No of Permits
MOOSE		
Berner's Bay	Sept. 21-Oct. 21	15
Haines 1(D)	Sept. 21-Oct. 6	45
5(A) except Nunatak Bench	Oct. 15-Nov. 15	200
6(C)	Sept. 21-Oct. 21	20 Male
		20 Antlerless
Placer R./20-Mile	Sept. 21-Oct. 10	40 Male
		20 Antlerless
13 except part of 13A	Sept. 21-Sept. 30	200
14(A) Cows	Sept. 21-Sept. 30	400
Ft. Richardson	Dec. 1-Feb. 28	50
Anch. Mgmt. Area	Nov. 1-March 31	up to 30
Eagle R. & Eklutna Mgmt Area	Sept. 21-Oct. 17	up to 200
Remainder 14(C)	Sept. 21-Oct. 17	50
15(A) Cows	NO SEASON	up to 100
15(B)	Sept. 26-Oct. 17	50
16(B) South	Dec. 1-Jan. 31	up to 75
16(B) North	Dec. 1-Jan. 31	up to 75
20(D) Minto	Sept. 21-Oct. 5	60
	Jan. 10-Feb. 28	
25(D) West	Sept. 21-Oct. 10	
	Dec. 1-Dec. 10	60
	Feb. 18-Feb. 28	
CARIBOU		
Nelchina	Sept. 21-Sept. 30	up to 1,800
	Jan. 1-Feb. 28	
Mentasta	Sept. 21-Sept. 30	up to 350
Kenai Mts.	Sept. 21-Nov. 15	up to 200
20(A)	Sept. 21-Dec. 31	200
20(D) South	Sept. 21-Sept. 30	140
BISON		
Chitina	Sept. 21-Nov. 30	12
Fairwell	Sept. 21-Oct. 31	40
Delta	Oct. 7-March 31	15 Bulls
		40 Cows

GOATS

Crown Mt.—Kodiak	Oct. 1-Oct. 31	20
7 & 15	Oct. 1-Oct. 31	16—five areas

SHEEP

14(A) Ewes	Aug. 20-Sept. 27	10
14(C) Chugach State Park	Aug. 25-Sept. 20	120
Tok Mgmt. Area	Aug. 20-Sept. 27	120
Delta Mgmt. Area	Aug. 20-Sept. 27	150
20E & D	Aug. 20-Sept. 27	12—3 areas

Schedule of Events—Tier II Hunts

Sheep

Hunt supplement ready for printing	July 5
5,000 supplements (4 pages each) ready for mailing	July 10
Mail/deliver to all F&G offices and selected vendors	July 20
Available to public—9 days	July 29
Deadline for receipt by ADF&G of applications	August 5
Time to score applications	August 6
Select winners	August 7-8
List of permit winners sent to Fairbanks, Tok, Glennallen, Delta, Palmer, Soldotna	August 8
Send permits	August 9
Hunters receive permits	August 12-19

Season opens -August 20

All Other Species

Tier II and I newspaper and applications ready for printing	July 9
50,000 papers, 110,000 applications ready for mailing	July 15
Mail/deliver to all vendors and F&G offices	July 24
Available to public—10 days	August 5
Deadline for our receipt	August 12
Time to score applications	August 22
Select winners	August 26
Send permits	Sept. 5
Hunters receive permits	Sept. 15
Season open no earlier than - Sept. 21	

DRAFT REGULATIONS FOR TIER II

06/12/85

5 AAC 92.XXX. PRIORITY FOR SUBSISTENCE HUNTING. (a) After nonsubsistence uses of game have been eliminated, and the board finds it necessary to restrict further the taking of game to assure that a game population and its sustained yield are maintained, or to assure the continuation of subsistence uses of a game population, permits will be allocated to individuals scoring highest according to the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood, as indicated by past participation and degree of dependency;

(2) local residency, as indicated by the location of one's domicile and distance to the hunting area; and

(3) availability of alternative resources, as indicated by the presence of other fish and game resources authorized and available for harvest in the hunting area, or in other areas reasonably accessible to the individual, and financial circumstance.

(b) The board will establish a point system for ranking hunting permit applicants for each criterion set out in (a) of this section. Permits will be issued to the highest ranked applicants up to the maximum level of participation the board authorizes for each hunt. Applicants with equal scores shall be selected by random drawing.

5 AAC 92.XXX. POINT SYSTEM FOR CUSTOMARY AND DIRECT DEPENDENCE. A maximum of 30 points will be given an applicant for past participation in a hunt and degree of dependence based on the following schedule:

(1) 1 point for each year the applicant harvested an animal from the population. A maximum of 10 points will be given.

(2) Up to 20 points for degree of direct dependence on the noncommercial harvest of the population for the principal means of support (primary food source) of the applicant:

(A) great dependence, 20 points;

(B) moderate dependence, 15 points;

(C) slight dependence, 10 points;

(D) no dependence, 0 points.

5 AAC 92.XXX. POINT SYSTEM FOR LOCAL RESIDENCY.

(a) A maximum of 30 points will be given based on an applicant's domicile according to the following schedule:

- (1) zone 1: 30 points;
- (2) zone 2: 20 points;
- (3) zone 3: 10 points;
- (4) zone 4: 0 points.

(b) Except as provided in (c) of this section:

- (1) zone 1 means the hunting area;
- (2) zone 2 means outside the hunting area, but within the GMU(s) containing the hunting area;
- (3) zone 3 means in GMUs adjacent to the GMU(s) containing the hunting area;
- (4) zone 4 means in other GMUs.

(c) When the board determines that the zones set out in (b) would treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource, the board will, by regulation, modify the boundaries of the zones.

5 AAC 92.XXX POINT SYSTEM FOR AVAILABILITY OF ALTERNATIVE RESOURCES. A maximum of 30 points will be given to an applicant for availability of alternative resources based on the following schedule:

(1) Availability of fish and game resources in the applicant's hunting area, or other reasonably accessible area:

(A) greatly available: 0 points;

(B) moderately available: 5 points;

(C) slightly available: 10 points;

(D) not available: 15 points.

(2) 15 points will be given if the applicant's financial circumstance is not adequate to purchase non-wild resources as a reasonable alternative to taking the game.

PERMIT APPLICATION FOR TIER II HUNTS
[A SEPARATE FORM MUST BE FILLED OUT FOR EACH TIER II HUNT]

1. NAME: _____
Last First Middle Initial

2. MAILING ADDRESS: _____
P.O. Box/Street

City/Town State Zip

3. ADDRESS WHERE YOU LIVE (Primary Residence/Domicile*)

Street or Property Description

City/Town or Closest Community

(* See 5 AAC _____) NOTE TO SUE -- put definition in instructions

4. LIST THE HUNT NUMBER FROM THE EMERGENCY SUBSISTENCE PERMIT HUNT SUPPLEMENT FOR THE HUNT YOU WISH TO APPLY FOR: [LIST ONLY ONE] HUNT NUMBER: _____

OR

5. IF YOU ARE UNABLE TO PROVIDE THE HUNT NUMBER, PLEASE LIST THE TYPE OF ANIMAL YOU WISH TO HUNT (caribou, moose, etc.) & THE GAME MANAGEMENT UNIT, SUBUNIT, OR AREA DESCRIBED IN THE CURRENT GAME REGULATIONS:

Animal

Game Management Unit, Subunit, or Area

6. WHICH OF THE FOLLOWING DESCRIBES WHERE YOUR PRIMARY RESIDENCE/DOMICILE IS LOCATED? [CHECK ONLY ONE]

- ☐ a. I live within the hunt area (see instructions).
- ☐ b. I live within the same game management unit(s) as the hunt for which I am applying, but do not live within the hunt area.
- ☐ c. I live in a game management unit immediately adjacent to the game management unit in which the hunt is held.
- ☐ d. I live in an area not described in a, b, or c.

7. You may be given one point for each year you legally killed an animal(s) in this hunt (same species of animal in the same area as the hunt you are now applying for). A maximum of 10 points may be claimed.

PLEASE LIST THE YEARS IN WHICH YOU LEGALLY KILLED AN ANIMAL(S) IN THIS HUNT.

19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__

8. HOW DIRECTLY DEPENDENT ARE YOU ON HUNTING THIS GAME POPULATION AS A PRINCIPAL MEANS OF SUPPORT FOR YOURSELF AND/OR YOUR FAMILY? (Principal means of support means that harvesting this animal is important because the harvest of wild resources is the primary way you feed yourself and/or your family.) [CHECK ONLY ONE]

1. ☐ Greatly dependent 3. ☐ Slightly dependent
2. ☐ Moderately dependent 4. ☐ Not dependent

9. FOR YOUR USUAL HUNTING AREA HOW AVAILABLE ARE OTHER KINDS OF BIG GAME AND/OR FISH WHICH ARE REASONABLE SUBSTITUTES FOR ANIMAL LISTED IN THIS APPLICATION ?

1. ☐ Not available 3. ☐ Moderately available
2. ☐ Slightly available 4. ☐ Greatly available

10. IS YOUR INCOME LARGE ENOUGH TO PURCHASE FOOD AND OTHER ITEMS AS REASONABLE ALTERNATIVES TO TAKING WILD FISH AND GAME? [CHECK ONLY ONE]

☐ YES ☐ NO

(Please keep in mind your assets, debts, family or household size, and other obligations. "Reasonable alternatives" are things which can be used instead of wild fish and game.)

11. I AM AT LEAST TWELVE (12) YEARS OLD AND QUALIFY FOR A RESIDENT ALASKA HUNTING LICENSE.

☐ YES ☐ NO

For Tier II caribou hunts, no more than 2 individuals from a single household may apply. For other Tier II hunts, no more than 1 individual from a single household may apply.

12. WHICH ONE OF THE FOLLOWING STATEMENTS APPLIES TO THIS APPLICATION? [CHECK ONLY ONE]

☐ a. This application is for caribou hunting. No more than two members of my household are applying for this permit.

☐ b. This application is not for caribou hunting. I am the only member of my household applying for this permit.

WARNING: Making false statements on this application is a class A misdemeanor, punishable by a fine of not more than \$5,000 and/or imprisonment of not more than one year.

CERTIFICATION

I, _____, do hereby certify that all of the information contained in this application is complete, true and correct to the best of my knowledge. I further acknowledge that I am responsible for the truthfulness of the information.

SIGNED: _____ DATE: _____

Telephone Number

7/1 11:3
DRAFT 7/1

INSTRUCTIONS FOR SUBSISTENCE HUNTING
PERMIT (TIER II) APPLICATION AND CERTIFICATION

This form is both an application and a certification regarding how you meet the three criteria for participating in a Tier II subsistence hunt. The Tier II hunts are listed in a special Subsistence Hunting Permit newspaper, available through Department of Fish and Game offices.

Conditions

- ° Submit a separate application and affidavit for each species and area you want to hunt.
- ° Only one member of your household may apply for each hunt, except for caribou. For caribou, two members of your household may apply for the same hunt.
- ° Only those applications which are complete, accurate, and signed will be considered.
- ° A \$5.00 fee is charged for each hunt application for species other than bison and muskox. A \$10.00 application fee is required for bison and muskox.

7/1 11.5 00

Questions 1, 2, and 3: give your full name, mailing address, and place of domicile, which is the location of your primary residence. Evidence of domicile includes, but is not limited to, such factors as where you have claimed your place of residence for other government purposes, where you are registered to vote, where you own, rent, or lease residences or businesses, and which governments you pay taxes to. If your home does not have a street address, please give enough information to help locate it, such as name of road, milepost, etc.

Question 4: Enter the hunt number. Hunt numbers are described in the new Subsistence Hunting Permit newspaper. If you do not know the hunt number, you can answer Question 5 which asks you to name the species and and location that you want to hunt.

Question 6: Check the box which describes where your primary residence (domicile) is in relation to the location of the hunt for which you are applying. Please refer to the Subsistence Permit newspaper for a list of the relevant Game Management Units.

Question 7: List the years in which you or another member of your household previously killed an animal of the same species in the same area as the hunt for which you are applying.

Question 8: Rate how dependent for food your household is on taking the animal for which you are applying. There are four

7/1 F13 -J

categories of dependence. You should use the following guidelines in answering this question: (1) category a, if your household is greatly dependent on this animal as a principal means of support; (2) category b, if your household is moderately dependent on this animal; (3) category c, if your household is slightly dependent on this animal; and (4) category d, not dependent, if your household does not normally consume meat from animals from this population.

Question 9: Check the box which indicates the degree of availability to you of alternative sources of wild animal meat. Alternatives include other game species or fish which are at least as accessible to you as the Tier II animal for which you are applying, and which could reasonably substitute for it. A reasonable substitute means that your household has access to and could legally harvest an equivalent amount of meat from one or more of the alternatives. Use the following guidelines in answering this question: (1) category a, not available, if none of the animal meat which this animal represents could be substituted; (2) category b, slightly available, (3) category c, moderately available, and (4) category d, greatly available, if other game or fish in areas accessible to you are abundant and can be legally taken.

Question 10: Indicate whether or not your household's income is enough to purchase substitutes for the animal you want to hunt.

Substitutes include alternative foods from domestic animals as well as alternative sources for other animal products which are necessary for your household's well being.

Question 11: asks if you are at least 12 years old and qualify for a resident Alaska hunting license. You must have resided within the State of Alaska for at least one year to qualify. If you cannot answer yes to this question, you should not submit your application because it will not be considered.

Question 12: asks to verify that you are the only member of your household to apply for a permit for this species, except if the species is caribou. For caribou, two members of your household may apply.

Checklist

Have you enclosed your application fee?

Have you filled in the correct hunt number?

Have you responded accurately to all questions?

Have you signed and dated the certification?

* * * * * Mailing Instructions * * * * *

(yet to be determined)

Don V. Collinsworth, Commissioner

ITEM E

Public Communications
Box 3 - 2000
Juneau, Alaska 99802
(907) 465-4113



Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

MAY 29, 1985

GAME BOARD SCHEDULES EMERGENCY MEETING

JUNEAU--The Alaska Board of Game will convene in Juneau for an emergency session beginning June 10, 1985, to adopt emergency regulations providing for subsistence hunting. Without such regulations, Chief Prosecutor Daniel Hickey has concluded that his staff would be unable to prosecute some hunting violations successfully.

In a May 22, 1985, memorandum, the chief prosecutor advised the department that emergency regulations are needed in order to ensure enforceability of all game regulations, some of which cannot be enforced currently. The Department of Law further explained that the board must take these actions because of recent decisions in Madison v. Department of Fish and Game, ____ P.2d ____, Op. No. 2911 (Alaska February 22, 1985) and State v. Eluska, ____ P.2d ____, Op. No. 210 (Alaska App. April 12, 1985). Because the Legislature has not yet enacted corrective legislation, the Department of Law has noted that the board must now provide subsistence hunting regulations for every game population which has been hunted by Alaska residents for food.

-MORE-

The combined effect of both cases will eventually require the board to change current harvest management extensively. Perhaps the most significant problem the board must address at this meeting will be permit and registration hunts. Although the current random drawing and first-come/first-served type distribution methods for harvest opportunity are no longer legally acceptable, the board will have a great deal of difficulty finding an appropriate feasible alternative. Any alternative must be consistent with the three criteria contained in the current statute and discussed by the Supreme Court in Madison: 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 meeting will begin at 8:30 a.m. in the Conference Room at the ADF&G headquarters office at 1255 West 8th Street, Juneau. The meeting is open to the public, but, due to the emergency nature of the meeting, public testimony will not be taken. The emergency regulations will be effective for 120 days, and if they are later considered for submission as permanent regulatory changes, public comment will be solicited.

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Don W. Collinsworth, Commissioner

Public Communications
Box 3 - 2000
Juneau, Alaska 99802
(907) 465-4113



Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

MAY 23, 1985

EMERGENCY SUBSISTENCE SALMON REGULATION TO BE ISSUED

JUNEAU--In response to a memorandum from the Department of Law, the Department of Fish and Game has begun issuing emergency regulations to provide subsistence fishing permits for locations not open under current regulations.

Chief Prosecutor Dan Hickey has advised the ADF&G that emergency regulations are necessary because of recent judicial decisions in Madison v. ADF&G and State v. Eluska and because the Legislature has not yet enacted corrective legislation. Without such regulations, the Chief Prosecutor has concluded that his staff would be unable to prosecute successfully some subsistence fishing violations.

The emergency regulations, which will incorporate the requirements specified by the Department of Law, will ensure full enforceability of all fishing regulations in Cook Inlet and throughout the state.

Under these emergency regulations, permits will be issued to Alaska residents for subsistence salmon net fishing in Cook Inlet, if that fishing had previously been authorized by state subsistence regulations and the depart-

-MORE-

ment's records indicate that such fishing actually occurred. The permits will indicate locations and times when subsistence fishing will be allowed, gear specifications, and bag limits.

Rod and reel fishing is defined in Alaska statutes as sport fishing and thus no subsistence permits will be issued for fishing with rod and reel gear.

No Cook Inlet subsistence salmon permits will be issued for fishing during May, since no state regulations have ever allowed subsistence fishing during that month.

Violators of sport, commercial, personal use, or subsistence regulations will be cited by ADF&G personnel and by officers of the Fish and Wildlife Protection Division, Department of Public Safety.

#####

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
PUBLIC COMMUNICATIONS SECTION
P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000

Don W. Collinsworth, Commissioner

Public Communications
Box 3 - 2000
Juneau, Alaska 99802
(907) 465-4113



Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

May 16, 1985

Hunting Regulations Delay Announced

JUNEAU--The Alaska Department of Fish and Game has announced that the hunting and trapping regulations books normally issued by July 1 each year will not be available until late in the summer.

The recent Madison and Eluska court decisions have forced an unanticipated session of the Alaska Board of Game to consider emergency regulations designed to bring the state into compliance. The board will begin its emergency session on June 10 in the Conference Room of the Fish and Game Building, 1255 W. 8th St., in Juneau.

Although the meeting is open to the public, no public testimony or comments will be taken. Once the board has drafted emergency regulations, they will be circulated for public review and written comment.

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Alaska Board of Game
#85-38-GB

Findings on Madison Requirements

April 4, 1985

The Board of Game has examined the legal principles set out by the Alaska Supreme Court in Madison v Alaska Department of Fish and Game, No. 7410. That decision requires substantial reallocation of game resources among Alaskans, in part because the board will no longer be able to use permit drawings to determine which Alaskans can hunt for food.

Before Madison, the board under the subsistence law had been providing reasonable opportunities for subsistence hunting by Alaskans living in rural areas or communities. The board was also providing hunting opportunities for other Alaskans and non-state residents, through general open hunts, registration hunts with unlimited permits, registration hunts with a specified number of permits, and permit drawing hunts.

After Madison, if a game population has been hunted by Alaskans for food, subsistence hunting must be allowed, unless the resource would be jeopardized. All Alaskans are eligible for subsistence hunting, and non-state residents may also be allowed to hunt. However, if the situation will not allow everyone to hunt with an equal legal opportunity, then non state residents may not participate.

Under Madison, the board at that point must determine which Alaskans have the opportunity to hunt based on three criteria contained in AS 16.05.255(b):

- (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 approximately 164 permit drawing hunts, which operate on chance, and the eleven registration permit hunts with a limited number of permits, which are distributed to applicants in the order in which they apply, do not distribute the opportunity to hunt based on the three criteria, and therefore must be restructured.

While the current random drawing or first-come, first-served system must be replaced by systems based on the three criteria,

April 4, 1985

the board must not act arbitrarily and must assess the significance of available information in order to act reasonably under the statute and the Madison mandates. At this time, the Department of Fish and Game, Division of Game, can supply information on the community of residence of people applying for drawing permits in the state, and the Division of Subsistence has a library of approximately 120 technical papers on the use of fish and game by people in various communities and areas in the state. However, the task of synthesizing those two bodies of data and of analyzing their significance in relation to the three criteria will be very expensive and time consuming; the department cannot adequately prepare such material within a few weeks for presentation to the board. Any decision on how to modify these hunts beyond April 7, 1985 will come too late to implement changes in time for the 1985 season. Specifically, it takes up to five days to create a "mock-up" of the two permit papers. At the printer, design and proofing take from 5 - 10 days. Printing and distributing supplements to the regional offices takes three days; distribution of supplements and applications to approximately 800 vendors and department field offices takes about five days to complete. One week must be allowed for mail delivery, thus requiring between 25 - 30 days before information is available to the public. It is expected that the permit applications will be available on or about April 30, 1985, with an application deadline of May 31, 1985 for the fall hunts. It requires up to 6 weeks (or until about July 13) to complete the computerized drawing and mail permits to those whose applications are drawn. The earliest permit seasons presently begin August 10 for some caribou and sheep seasons, thus presuming mailed permits may take at least a week to be delivered, permittees have only about 20 days to prepare for season openings.

Therefore the board finds that the following approach is the most reasonable way to address this problem.

The board requests that the Commissioner of Fish and Game take the first step required by Madison and by delegation to adopt regulations eliminating non-state residents from permit drawing hunts and registration hunts with a specified number of permits. This should not be done for brown bear, Dall sheep or mountain goats, however, since present information indicates that except for sheep in certain identified situations such as the Noatak area of GMU 23 and the north slope of the Arctic Wildlife Range (GMU's 25 and 26) these species are primarily pursued for trophy or recreational purposes.

Secondly, the board hereby calls for proposals from the public on all permit drawing hunts and registration permit

April 4, 1985

hunts with a specified number of permits for the fall/winter 1985 board meeting. The board also calls for proposals to define the three criteria identified in the statute. During the intervening time, the department is requested to synthesize and analyze the available information, keeping in mind the three criteria which the statute specifies be used to distribute opportunities to hunt: dependency, local residency, and available alternative resources.

Public testimony on how those criteria could be used by the board will be taken at the meeting. The board encourages the advisory committees and regional councils to discuss this subject and to report on those discussions at the board meeting.

It is very important that it be understood that after Madison, if a game population is hunted primarily for food by Alaskans, and if everyone cannot be allowed the same legal opportunity to hunt primarily for food, random permit drawings are not authorized by the statute. Instead, the board must employ the three criteria, and must consider factors that correlate to them, such as miles between the user's residence and the game population, income levels, previous participation in harvest of resources and other less easily quantifiable data.

Before Madison, the uses which the board had provided for as subsistence were those of residents in rural areas and communities, a much smaller group than all Alaskans. Before Madison, other uses could be accommodated, as well, and the board relied heavily on drawing permit hunts to distribute opportunities for other Alaskans to hunt a particular game population. Now that regulatory tool is not available, and as a result many Alaskans who will have a low priority when evaluated under the three criteria will not even have a chance to participate in many hunts. Additionally, non-state residents must be eliminated from many hunts.

Brenda Johnson, Chairman
Alaska Board of Game

Adopted 04/04/85
Anchorage, Alaska

MEMORANDUM

State of Alaska

to: Ron Jolin, Chairman
Joint Boards of Fish and Game

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4100

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

SUBJECT: Management Issues
Arising From the
Madison Decision

INITIAL ASSESSMENT

As you requested, my staff has completed an initial assessment of the Madison decision's implications for fish and wildlife management. This memorandum uses the Cook Inlet, Naknek River, and Copper River fisheries as examples, but Madison also affects existing Board of Fisheries regulations for Angoon and Lake Iliamna-Lake Clark and existing Game Board regulations for permit hunts.

Although the Game Board has not applied the eight criteria in the same way the Board of Fisheries has, Department of Law has said that the Game Board may be unable to continue providing permit hunts restricted to particular communities unless guided hunting and hunting by non-residents have already been eliminated. Further the legal analysis concludes that Madison may require the Game Board to discontinue non-state-resident and guided hunting for all permit hunts.

Department of Law and the management divisions are continuing to analyze Madison impacts and more information will be developed. However, this memorandum is intended to alert you to some of the anticipated area impacts.

COOK INLET/KENAI RIVER/SUSITNA RIVER SALMON

Testimony and data presented to the Board of Fisheries indicate that within the last 20-30 years, almost every part of Cook Inlet, including Knik Arm and Turnagain Arm, has been open to subsistence set-net fishing for salmon (Braund, 1980). The open season for fishing varied from location to location, as well as through time, but included the period May through September. Until 1978, 50 fathoms of net could be used in many areas. Species harvested in these set-net fisheries included primarily kings, sockeye, and coho.

As Anchorage and the Kenai Peninsula grew, subsistence salmon seasons were gradually restricted until only small areas remained open for very short periods with limited gear. Since 1980, subsistence fisheries have been authorized in very limited areas for residents of Tyonek, English Bay, and Port Graham only.

The impacts of the Madison decision on existing Cook Inlet fisheries depend on how many people decide to participate, and where and when they

fish, which makes it difficult for us to precisely assess immediate or long term effects. At a minimum, however, we would expect to see an increase in the gill net harvest of west side and Susitna River king salmon, since any Alaskan will be able to participate in the Tyonek district subsistence king fishery. This fishery begins in May, and has limits of 70 kings per household. Presently, this fishery is restricted to persons domiciled in Tyonek, and on average, 2,000 kings have been harvested annually.

It is impossible to predict how much new effort would occur, but any significant increase in this fishery will require compensating reductions in the expanding sport fishery of the Susitna drainage. This, of course, would mean reductions in seasons, bag limits, or even closures of certain areas to fishing if the subsistence harvest grows substantially.

In addition, the Kenai Peninsula subsistence net fisheries which existed in the late 1970s, and which have been closed since 1980, may have to be reopened to all Alaskans. This would include set net fisheries on king, sockeye, and coho stocks which enter all of the Kenai Peninsula drainages. King and coho stocks, which are already the focus of major allocation conflicts between sport and commercial users, will now have to be shared with another user group, which will have a priority. Additional harvest restrictions on sport and commercial fisheries in Cook Inlet may have to be imposed either before the fishing season or in-season as we determine whether escapements are being achieved.

Because of recent regulatory constraints, past harvests are a poor indicator of the potential demand for subsistence fishing in Cook Inlet. Further, recorded harvests probably underestimate the actual historical subsistence harvest due to inadequate catch reporting systems. If accessible beach areas are opened to net fishing, we would expect a substantial interest, similar to that in the Copper River dip net fishery. One indicator of this demand is the fact that participation in the Cook Inlet subsistence fishery increased from less than 100 people to more than 1,300 between 1977 and 1980, before the Board adopted the regulations restricting subsistence use. An additional indicator of demand are the requests the Fisheries Board has received from people wanting to fish with nets in Knik Arm and other parts of Cook Inlet.

In an extreme scenario, the Board could be required by a court to authorize subsistence fishing wherever it has occurred in Cook Inlet, Turnagain Arm, and Knik Arm, throughout the summer, by any Alaskan. The Madison decision clearly states that sport and commercial uses must be eliminated before subsistence uses can be restricted. Therefore, it seems unlikely that the Board or department could impose subsistence harvest limits or quotas to ensure that commercial and sport uses could continue.

In summary, we see major demands being imposed upon the department for in-season monitoring and management of all harvests to ensure adequate escapements in Cook Inlet. We also see the potential for confusion and controversy over Cook Inlet salmon management escalating and making it more complex.

NAKNEK RIVER SALMON

The Naknek River is currently open to subsistence fishing only by residents of the Maknek and Kvichak river drainages. This regulation was adopted in 1981 because of concern about growth in the Naknek subsistence salmon fishery by other Alaskans. From 1976 to 1980, participation and king harvests in the Naknek subsistence fishery doubled as more people learned about the fishery and came to the Naknek-King Salmon area to take part in it.

The Board, local residents, and sport fishermen all became concerned that this growing harvest was beginning to affect the allocation of the Naknek River's limited king salmon stocks. By restricting the fishery to local residents, the Board of Fisheries was able to allow continued development of the Naknek sport fishery on kings, which has become increasingly significant to guides and transportation services. By creating a personal use sockeye fishery on the Naknek, the Board was able to accommodate non-local fishing demand and shift it to more abundant species.

The Madison decision appears to open the Naknek net subsistence fishery again to all residents of the state. If significant effort occurs, it seems quite likely that restrictions will have to be imposed on the sport fishery in order to ensure king salmon escapement.

COPPER RIVER/PRINCE WILLIAM SOUND SALMON

Historically, Copper River sockeye have been harvested by commercial fishermen in Prince William Sound, residents of the Copper Basin and other interior communities, as well as Fairbanks and Anchorage residents. With population growth and increased publicity, the Chitina dip net fishery grew dramatically; harvests more than tripled from 1980 to 1983. Additionally, many urban dip net fishermen preferred to fish the early portion of the Copper River run, which posed potentially severe management problems for early run sockeye. About 50 percent of the Copper River run passes through the commercial fishery district in the first two to three weeks of the season, which means any management decisions to restrict the fishery must be made on very short notice.

As subsistence harvests increased in the 1970s, the board began restricting fishwheel and dip net harvests in the Copper River. In 1984, the board examined subsistence dip net and fishwheel fisheries in the Copper River. It authorized subsistence fishing for Copper Basin residents. Harvest by the subsistence fishery was predicted to be approximately 20,000 salmon and individual bag limits could go as high as 500. The board then established a personal use fishery for people who did not reside in the communities identified as having subsistence uses. The personal use fishery had bag limits of 15 salmon for individuals and 30 for households. The total catch was limited to 60,000 sockeye plus twenty-five percent of any excess escapement. The in-river sport fishery was predicted to harvest approximately 5,000 sockeye and the Prince William Sound commercial drift gill net fishery was managed to provide for these known harvest and escapement levels.

Under Madison, the Fisheries Board may have difficulty in predicting harvest levels for the Copper River fishwheel and dip net fishery, due to uncertainty about how many people will participate and how many fish they will take. Additional management problems are posed by the timing of the sockeye run and the heavy dip net harvest, which occurs on the early part of the run. These considerations seem to require more conservative management of the Prince William Sound commercial fishery.

In summary, we see a number of complex management issues arising from the Madison decision. Regulation specialists for Commercial Fisheries and Game Divisions are presently identifying the specific regulatory options which the Boards could address for the upcoming season.

MEMORANDUM

State of Alaska

TO: Ron Jolin, Chairman
Joint Boards of Fish and Game

DATE: March 15, 1985

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TELEPHONE NO: 465-4100

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As Anchorage and the Kenai Peninsula grew, subsistence salmon seasons were gradually restricted until only small areas remained open for very short periods with limited gear. Since 1980, subsistence fisheries have been authorized in very limited areas for residents of Tyonek, English Bay, and Port Graham only.

The impacts of the Madison decision on existing Cook Inlet fisheries depend on how many people decide to participate, and where and when they

Hon. Don Collinsworth, Commissioner
Department of Fish and Game
File No. 366-375-85

May 23, 1985
Page 6

cc: Steve Pennoyer
Dennis Kelso
Jim Ayers
Lew Pamplin
Steve Behnke
Beth Stewart
Dick Logan
Ken Parker
ADF&G

Norman Gorsuch
Ron Lorensen
Dan Hickey
Liza McCracken
Department of Law

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In addition, the Kenai Peninsula subsistence net fisheries which existed in the late 1970s, and which have been closed since 1980, may have to be reopened to all Alaskans. This would include set net fisheries on king, sockeye, and coho stocks which enter all of the Kenai Peninsula drainages. King and coho stocks, which are already the focus of major allocation conflicts between sport and commercial users, will now have to be shared with another user group, which will have a priority. Additional harvest restrictions on sport and commercial fisheries in Cook Inlet may have to be imposed either before the fishing season or in-season as we determine whether escapements are being achieved.

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In an extreme scenario, the Board could be required by a court to authorize subsistence fishing wherever it has occurred in Cook Inlet, Turnagain Arm, and Knik Arm, throughout the summer, by any Alaskan. The Madison decision clearly states that sport and commercial uses must be eliminated before subsistence uses can be restricted. Therefore, it seems unlikely that the Board or department could impose subsistence harvest limits or quotas to ensure that commercial and sport uses could continue.

In summary, we see major demands being imposed upon the department for in-season monitoring and management of all harvests to ensure adequate escapements in Cook Inlet. We also see the potential for confusion and controversy over Cook Inlet salmon management escalating and making it more complex.

NAKNEK RIVER SALMON

The Naknek River is currently open to subsistence fishing only by residents of the Naknek and Kvichak river drainages. This regulation was adopted in 1981 because of concern about growth in the Naknek subsistence salmon fishery by other Alaskans. From 1976 to 1980, participation and king harvests in the Naknek subsistence fishery doubled as more people learned about the fishery and came to the Naknek-King Salmon area to take part in it.

The Board, local residents, and sport fishermen all became concerned that this growing harvest was beginning to affect the allocation of the Naknek River's limited king salmon stocks. By restricting the fishery to local residents, the Board of Fisheries was able to allow continued development of the Naknek sport fishery on kings, which has become increasingly significant to guides and transportation services. By creating a personal use sockeye fishery on the Naknek, the Board was able to accommodate non-local fishing demand and shift it to more abundant species.

The Madison decision appears to open the Naknek net subsistence fishery again to all residents of the state. If significant effort occurs, it seems quite likely that restrictions will have to be imposed on the sport fishery in order to ensure king salmon escapement.

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As subsistence harvests increased in the 1970s, the board began restricting fishwheel and dip net harvests in the Copper River. In 1984, the board examined subsistence dip net and fishwheel fisheries in the Copper River. It authorized subsistence fishing for Copper Basin residents. Harvest by the subsistence fishery was predicted to be approximately 20,000 salmon and individual bag limits could go as high as 500. The board then established a personal use fishery for people who did not reside in the communities identified as having subsistence uses. The personal use fishery had bag limits of 15 salmon for individuals and 30 for households. The total catch was limited to 60,000 sockeye plus twenty-five percent of any excess escapement. The in-river sport fishery was predicted to harvest approximately 5,000 sockeye and the Prince William Sound commercial drift gill net fishery was managed to provide for these known harvest and escapement levels.

Under Madison, the Fisheries Board may have difficulty in predicting harvest levels for the Copper River fishwheel and dip net fishery, due to uncertainty about how many people will participate and how many fish they will take. Additional management problems are posed by the timing of the sockeye run and the heavy dip net harvest, which occurs on the early part of the run. These considerations seem to require more conservative management of the Prince William Sound commercial fishery.

In summary, we see a number of complex management issues arising from the Madison decision. Regulation specialists for Commercial Fisheries and Game Divisions are presently identifying the specific regulatory options which the Boards could address for the upcoming season.

ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 1A • Anchorage, Alaska 99501 • Phone 907-274-3611



August 12, 1985

Representative Jack Fuller
Chairman
House Interim Committee on Subsistence
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Representative Fuller:

As you know, the continuation and protection of reasonable opportunities for the taking of fish stocks and game populations for subsistence uses is one of the Alaska Federation of Native's (AFN) major priorities. The focus of AFN's concern is the reality that, unlike Alaskans who live in our large urban centers, Alaskans - both Native and nonNative - who live in the bush are uniquely dependent upon the harvest of fish stocks and game populations for their sustenance. For that reason AFN has supported the enactment of both state and federal legislation which ensures that the Alaska Board of Fisheries and Board of Game adopt fishing and hunting regulations based upon a regulatory standard which recognizes that Alaskans who live in the bush and Alaskans who live in the cities are dissimilarly situated with respect to their dependence upon fish stocks and game populations for personal and family consumption.

The core of this regulatory approach has two components: recognition that "subsistence uses" of fish stocks and game populations are activities limited exclusively to Alaskans who live in the bush, and a priority for "subsistence uses" over competing consumptive uses in situations in which the harvestable surplus of a particular fish stock or game population is not large enough to safely sustain a harvest by all fishermen or hunters without violating sustained yield principles.

In 1978 the Alaska Legislature and in 1980 the United States Congress enacted legislation which instructs the Board of Fisheries and Board of Game to adopt fishing and hunting regulations consistent with this regulatory approach. Sadly, a small, but vocal, group of urban sportsmen who adamantly oppose the public policy embodied in the 1978 and 1980 statutes obtained the requisite number of signatures to place a referendum to repeal the 1978 state

Jack Fuller
August 12, 1985
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statute on the 1982 general election ballot. The referendum was overwhelmingly rejected by the electorate.

The election campaign which preceded the 1982 vote was extremely emotional for Alaskans who worked both for and against the referendum. However, although they may frequently have thought that there was little common ground between the two sides, in fact all parties were in substantial agreement with respect to an important and fundamental issue. Regardless of their views as to whether the 1978 statute was appropriate public policy, all parties both explicitly and implicitly agreed that the 1978 statute established a priority for "subsistence uses" of fish stocks and game populations which was limited to Alaskans who live in the bush. However the taking of fish stocks and game populations by urban fishermen and hunters for personal and family consumption might best be regulated in the public interest, such takings were not "subsistence uses".

Subsequent to the defeat of the 1982 referendum, the Board of Fisheries and Board of Game made considerable progress in implementing the 1978 statute in a fair and just manner. As AFN and other involved groups had argued from the beginning, adopting regulations which ensure that the unique dependence of rural fishermen and hunters is protected does not necessitate a substantial restriction on fishing and hunting opportunities previously allocated to urban Alaskans.

Unfortunately, the boards' progress in implementing the 1978 statute was abruptly arrested and the quiet which had descended around the subsistence issue since the 1982 election was shattered last February when the Alaska Supreme Court issued its decision in Madison v. Alaska Department of Fish and Game. In a narrow ruling the Court held that it could find no evidence in the legislative history of the 1978 statute to support the conclusion that the legislature had intended to limit "subsistence uses" to rural fishermen and hunters.

As attractive to some urban fishermen and hunters as it might appear in the abstract, the Madison decision has caused as much hardship and regulatory havoc for urban Alaskans as it has for Alaskans who live in the bush. As a result of the decision urban gill net fishermen must now be afforded a priority over urban rod and reel fishermen competing for access to Cook Inlet salmon stocks. Similarly, the decision requires the Board of Game to adopt regulations pursuant to title 16 which allocate access to finite game populations among urban sport hunters based upon three criteria (local residency, dependence on the

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population as a mainstay of livelihood, and availability of alternative resources) which were originally intended to differentiate among rural hunters in the rare circumstance (such as the crash of the western arctic caribou herd) in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest even by rural hunters. Application of these criteria to allocate harvest opportunities among urban hunters makes little sense and frequently produces a harsh, unjust and unnecessary result.

In an attempt to prevent occurrence of precisely the situation in which both urban and rural hunters and fishermen now find themselves, last session Governor Sheffield sent both houses of the Alaska Legislature legislation to cure the Madison decision. The Governor's bill simply proposed that the definition of "subsistence uses" in title 16 be amended to make clear on the face of the statute that "subsistence uses" were uses limited exclusively to Alaskans who live in the bush. The Alaska House of Representatives held a series of statewide hearings on the issue and passed a substitute for the Governor's bill which, had it been passed by the Senate prior to adjournment, would have provided the Board of Fisheries and Board of Game adequate regulatory authority under state law to continue to implement the 1978 statute in the manner they had prior to the Madison decision.

Regrettably, for reasons best known only to itself, the Senate adjourned without taking action on the House bill. The Board of Fisheries and Board of Game then proceeded to adopt regulations for the 1985 fishing and hunting seasons based upon the regulatory standard set forth in the 1978 state statute as interpreted in the Madison decision. Since, for the reasons previously explained, the Madison regulatory standard makes little sense in concrete application, the boards' regulations have caused considerable hardship for rural fishermen and hunters; the statute was originally intended to benefit and even more hardship for urban hunters who were previously allocated hunting opportunities by lottery rather than the three criteria. Even more regrettably, regardless of the hardship which the Senate's refusal to act responsibly has caused, and will continue to cause, for both rural and urban fishermen and hunters, it is unlikely that the Senate will pass the House bill during the 1986 legislative session.

For that reason AFN recently filed three administrative rulemaking petitions - one with the Board of Fisheries and Board of Game and two with the Secretary of the Interior - copies of which

Jack Fuller
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are enclosed. The petitions allege that in 1980 the Congress asserted its jurisdiction to establish the regulatory standard pursuant to which the Board of Fisheries and Board of Game are required to adopt regulations governing the taking of fish stocks and game populations for "subsistence uses", that in the interest of comity between the federal and state governments the Congress afforded the Alaska Legislature an opportunity to amend title 16 to establish a state regulatory standard consistent with the federal regulatory standard, that as a result of the Madison decision and the Senate's failure to pass the House bill the legislature has not enacted a regulatory standard consistent with the federal standard, that, consequently, the federal regulatory standard set forth in sections 803 and 804 of the Alaska National Interest Lands Conservation Act (ANILCA) supersedes the flawed regulatory standard set forth in title 16, and, henceforth, that the Board of Fisheries and Board of Game are required to adopt regulations governing the taking of fish stocks and game populations for "subsistence uses" pursuant to secs. 803 and 804 of ANILCA rather than title 16. The petitions also request that if after being afforded a reasonable opportunity to do so, the boards fail to adopt regulations pursuant to the federal regulatory standard, then secs. 804 and 806 of ANILCA require the Secretary of the Interior to adopt regulations superseding regulations adopted by the Board of Fisheries and Board of Game insofar as such regulations may attempt to regulate the taking of fish stocks and game populations for "subsistence uses" as that term is defined in section 803 of ANILCA.

The AFN Board of Directors has taken this action with the most extreme reluctance. AFN supports the State of Alaska's continued regulation of hunting and fishing. Consequently, the necessity of invoking congressional authority because of the Alaska Senate's failure to act in a timely and responsible fashion is a sad and regrettable occurrence. But the reasonable management of Alaska's fish stocks and game populations for the benefit of all Alaskans - both rural and urban - Native and nonNative - is too important to the health and well-being of all of the citizens of our state to allow the present regulatory confusion and its attendant hardship to continue unabated.

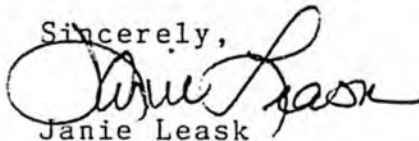
Jack Fuller

August 12, 1984

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If you have any questions about the AFN petitions or if I can be of any further assistance to you and the members of the committee during your consideration of this important issue, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janie Leask".

Janie Leask

President

Alaska Federation of Natives



Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

July 15, 1985

TO: All Legislators

FROM: Representative Peter Goll *Peter Goll*
Chairman, House Special Committee on Fisheries

SUBJECT: Subsistence Fishing Update

At the mid-point in the 1985 salmon season, subsistence fishing activity across the state had experienced moderate increases, according to the Alaska Department of Fish and Game (ADF&G). No major displacements of sport and commercial fishing has occurred to date, although a late coho gillnet fishery on the East Side Beaches of the Kenai Peninsula is expected to cut into sport catches.

ADF&G has decided to open several long-dormant subsistence fisheries in Southeast, and several other systems are under consideration for later openings. Initial interest in the reopened fisheries was minimal. The Department also had closed a sport fishery on Prince of Wales Island to protect an important local subsistence fishery experiencing weak returns.

On the legal front, the state has been sued by a Homer resident who wants hook-and-line salmon fishing classified as a subsistence activity. Two of the Madison litigants also have threatened to file separate actions against the state, but had not gone to court by early July.

SOUTHEAST--ADF&G had issued about 1,900 subsistence fishing permits for Southeast by July 1, a moderate increase over previous years. However, peak fishing periods in Southeast's most important subsistence fisheries had yet to occur. ADF&G has reopened the Taku and Stikine Rivers to subsistence net fishing for sockeyes. The Taku has been closed to subsistence fishing since 1977 and the Stikine was last open in the late 1960s.

Both river systems support relatively small but important commercial gillnet and sport fisheries, but the initial impacts were expected to be minimal. ADF&G had issued 52

permits to Juneau residents for the Taku by early July, but no catch data was available. The department reported low interest for subsistence fishing in the Stikine with only about 10 permits issued.

ADF&G will open Fish Creek in Juneau to subsistence fishing for pink salmon later in July and is considering opening Montana Creek for subsistence fishing for cohos in August. Both rivers, which are on Juneau's road system, have been closed to subsistence net fishing for many years.

In response to a request by local residents, ADF&G closed sport fishing for sockeyes in Klawock on July 1 because of weak runs. Subsistence gillnet fishing in Klawock has been closed on the weekends to reduce pressure from non-local residents who travel to Prince of Wales Island from Ketchikan via state ferry to fish the river. Further restrictions may be imposed if the returns don't improve.

COPPER RIVER--High water and lagging escapements have produced poor fishing for dipnetters on the Copper River. ADF&G reports that 3,800 dipnetting permits had been issued and a catch of 22,000 sockeyes had been recorded by the end of the first week in July. Dipnetting had been opened seven days a week, but catches were poor at an average of two fish a day per fisherman.

Commercial fishing on the Copper River Flats was closed on July 8 until further notice because of the lagging escapements. A catch of 860,000 fish had been reported at that point, falling below the pre-season forecast of 1 million to 1.4 million fish.

Sonar counts of sockeye escapements into the Copper River were improving in early July, but department officials were unsure if the improved counts would bring the dipnet catch up to the goal of 60,000 fish or allow additional commercial fishing.

COOK INLET--The subsistence fishing issue in Cook Inlet has been relatively quiet, although there are some signs of impending problems. ADF&G reports no sudden increases in subsistence fishing activity. Interest by non-local residents in the Tyonek subsistence gillnet king salmon fishery was minimal, and the effort level in other open subsistence fisheries was relatively stable.

Sockeye catches in the personal use dipnet fishery in the Kasilof River were reported to be good and no surges in the

Subsistence Update
Page 3
July 15, 1985

number of participants have been observed. Catches in the personal use sockeye gillnet fishery near the Kasilof also was strong, with a reported catch of 10,000 fish.

The Board of Fisheries has approved a subsistence gillnet fishery on the East Side beaches on a late coho run. The board had identified up to 30,000 fish as available for harvest in the fishery. A harvest of that magnitude probably will result in sharp reductions of sport fishing on the late coho stocks, according to ADF&G.

ADF&G had turned down a request by Kenai resident Gene Madison, one of the primary litigants in the Madison lawsuit, for a gillnet fishery for king salmon on the East Side beaches. In early June, Madison had threatened a lawsuit to force the department to open the fishery, but nothing had been filed by early July.

Kenai resident Andy Johnson, another of the Madison litigants, also was threatening a lawsuit in early July unless ADF&G allowed subsistence gillnet fishing on the East Side beaches for sockeyes. As of July 12, Johnson had yet to submit a petition outlining his request to the department, but he was reported to be in the process of preparing a petition for submittal.

A Homer resident, Tom Brown, has filed a suit seeking to force ADF&G to include rod-and-reel fishing under its subsistence fishing definitions. State regulations currently classify rod-and-reels as sport fishing gear, which fails to include this type of fishing under the subsistence priority. The state had not responded to the Brown lawsuit as of July 12.



Official Business

Alaska State Legislature

Senate

ARLIS - THIS Resolution
is very interesting to
read but I would
recommend against
cosponsoring. MCL

Senator Paul A. Fischer

Pouch V
State Capitol
Juneau, Alaska 99811

February 22, 1985

Subject: Resolution requesting U.S. government to reassert jurisdiction over five Alaskan islands and to pay the State of Alaska compensation for damages from their loss.

Dear Colleagues:

Next Thursday, February 28th, Senator Ferguson and myself will be introducing the attached joint resolution which we hope you will wish to join as a co-sponsor.

The resolution does the following:

1. Asserts and reasserts the claim of the State of Alaska to Wrangel, Herald, Henrietta, Jeannette and Bennett Islands and their surrounding valuable continental shelf as an integral part of Alaska.
2. Requests the federal government to do the same with regard to sovereignty.
3. Asks compensation and restitution to the State of Alaska and its people for loss of this territory resulting from the neglect of the United States to protect American lives, property and soil.
4. Urges the Governor to take legal action before the Foreign Claims Settlement Commission, the U.S. Court of Claims or legal forums as may be appropriate.

The legal basis and historical grounds supporting our claim to these islands is set forth throughout the whereas clauses of the resolution. Further material is available upon request from my office. I am also attaching a map locating the islands for your information.

Cordially,

A handwritten signature in cursive script that reads "Paul".

Paul A. Fischer

WASHINGTON FEBRUARY 1963

Azimuthal Equidistant Projection
SCALE 1:8,721,000
1 CENTIMETER = 87 KILOMETERS OR 1 INCH = 138 MILES

0 100 200 300 400 500
KILOMETERS
0 100 200 300 400 500
STATUTE MILES

Scheduled Air Service ✈ Glaciers ❄ Swamps 🌿
Cold Currents → Warm Currents → Prevailing Winds →

Elevations, Depth Curves, and Soundings in Meters

PERMAFROST

Ground remaining below 0°C for at least two years, called permafrost, impedes development along Arctic shores. Any structure built on it is subject to collapse if the permafrost melts. Record depths for permafrost have been measured in Siberia (11,494 m) and in Alaska (1,550 m).

THE POLES

The North Pole pinpoints the north end of the earth's axis of rotation. It has no relation to the magnetic pole, the spot that draws a compass. First discovered in 1831 on Boothia Peninsula, the magnetic pole has since moved across the Canadian archipelago and is now near Ellef Ringnes Island. The geomagnetic pole, located north of Qanaaq (Thule) in Greenland, is the north end of the axis of the geomagnetic field that surrounds earth as the magnetosphere. Within 23 degrees of the geomagnetic pole, auroras frequently occur.

Pack ice responds to prevailing winds and to major ocean currents. It drifts in two major patterns, completing full circuits in two to four years. Tablelike slabs about 10 m thick and up to 700 sq km in area—larger than some Caribbean nations—sometimes break away from the northern edge of the Ellesmere Island ice shelf. These ice islands float slowly in erratic clockwise circles around the North American side of the Arctic Ocean until they disintegrate or move into the Atlantic. Many survive for 30 years. Today the Soviet Union maintains year-round manned research stations on twice ice islands. Each year hundreds of much smaller bergs break off—calve—from Greenland and Canadian glaciers and move southward into the North Atlantic shipping lanes. A few survive for three years and travel 4,000 km, some as far south as the Azores. After the sinking of the Titanic in 1912, leading maritime nations formed the International Ice Patrol to monitor icebergs and to study polar currents and iceberg dynamics.

Islands here are remnants of a continuous land link between Asia and North America that may have provided a bridge for ancestors of America's indigenous peoples starting at least 40,000 years ago. In 1648 a Russian captain, Semyon Ivanovich Dezhnev, made the first recorded passage through the Bering Strait, establishing the separation of Asia and North America.

BEAUFORT SEA OIL

Since oil was discovered on Alaska's North Slope in 1968, further exploration has indicated that perhaps North America's richest new petroleum deposits lie offshore in the Beaufort Sea. Part of a sedimentary basin extending from the Queen Elizabeth Islands to the Brooks Range, Canada's Mackenzie Bay may harbor 9 billion barrels of oil, while U. S. offshore deposits may exceed 7 billion. Exploitation will be expensive and difficult, since steel-crushing ice floes require that offshore islands be built for drilling rigs. While the U. S. would be able to retrieve its oil with the Trans-Alaska pipeline, Canada is considering various methods, including use of ice-breaking tankers.

1 IN THE SENATE

BY P.FISCHER AND FERGUSON

2 SENATE JOINT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Requesting the Government of the United
6 States to reassert jurisdiction over
7 Wrangel Island, Herald Island, Henrietta
8 Island, Jeannette Island, and Bennett
9 Island together with the surrounding
10 outer continental shelf within the
11 American waters of the Chukchi Sea and
12 the East Siberian Seas and to pay the
13 State of Alaska compensation for damages
14 from their loss.

15 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

16 WHEREAS Alaskans and other Americans remain justifiably grateful for
17 the fortitude shown by Captain Thomas Long and the crew of the whaling bark
18 Nile from New London, Connecticut who, on August 14, 1867, were the first
19 to confirm the existence of a 1,740 square mile island in the Chukchi Sea;
20 and

21 WHEREAS Wrangel Island, named by Captain Long after the former gover-
22 nor of Russian Alaska Baron Ferdinand Petrovich von Wrangel, is located
23 some 270 miles northwest of Cape Lisburne, Alaska and is larger than the
24 State of Rhode Island; and

25 WHEREAS Captain Long was the first to sight and to describe Wrangel
26 Island, the first recorded landing on the island occurred August 12, 1881
27 when Captain Calvin L. Hooper, commander of the Bering Sea Patrol, a divi-
28 sion of the U.S. Treasury Department and as such, the de facto governor of
29 Alaska, landed at Clark River on the eastern coast of Wrangel Island and,

1 with his fellow officers and John Muir (who later founded the Sierra Club)
2 raised the American flag and took possession of the island in the name of
3 the United States; and

4 WHEREAS Captain Hooper was engaged in a Congressionally sponsored
5 effort to rescue the Jeannette, a vessel engaged in Arctic research that
6 was locked in ice floes and subsequently lost and therefore Captain Hooper
7 had the authority to claim Wrangel Island for the United States; and

8 WHEREAS Wrangel Island became a part of the United States by right of
9 confirmed discovery and first possession and, later, a permanent settle-
10 ment; and

11 WHEREAS Wrangel Island and its nearby satellite island Herald Island
12 were placed by the United States Coast and Geodetic Service within the
13 District and later Territory and State of Alaska in publications from 1900
14 through 1977; and

15 WHEREAS the De Long Islands of Henrietta, Jeannette, and Bennett were
16 first discovered in the East Siberian Sea, were claimed, and named by U.S.
17 Navy Commander George W. De Long during his 1879 - 1881 expedition into the
18 Arctic who, with his crew, died when their ship was crushed and sunk by ice
19 floes; and

20 WHEREAS the first permanent settlement on Wrangel Island occurred when
21 the American ship Silver Wave landed a party on the island on September 13,
22 1921, and raised the American flag over the island under the direction of
23 Captain Jack Hammer; and

24 WHEREAS the party from the Silver Wave landed with provisions for only
25 six months as they stated that they planned to sustain themselves by hunt-
26 ing; and

27 WHEREAS the relief vessel in 1922 was blocked by ice floes; and

28 WHEREAS when the relief vessel Donaldson arrived on August 23, 1923,
29 the only survivor of the 1921 expedition was an Eskimo seamstress named Ada

1 "Blackjack" Johnson, who died just a few years ago in Alaska; and

2 WHEREAS a new party led by Charles Wells of Uniontown, Pennsylvania
3 continued settlement on Wrangel Island; and

4 WHEREAS on May 13, 1924, Secretary of State Charles Evans Hughes
5 stated that the American Lomen Brothers were the proprietary owners of
6 Wrangel Island; and

7 WHEREAS on August 20, 1924, the Soviet gunboat Red October landed on
8 Wrangel Island, took Wells and the other Americans by force, and told them
9 that they were being returned to Alaska; and

10 WHEREAS notwithstanding their promises, they took the Americans to
11 Vladivostok and confiscated the pelts that the American trappers had accu-
12 mulated during the 12 bitter months on the island; and

13 WHEREAS the Americans who survived their ordeal in Vladivostok were
14 released following the intervention of the American consul at Harbin,
15 Manchuria but Charles Wells and two residents of Alaska died while detained
16 by the Soviet government; and

17 WHEREAS the residents of Alaska who survived their ordeal in Soviet
18 Siberia were all from Golovin Bay, Alaska and they survived notwithstanding
19 the severe physical and emotional trauma resulting from the assault, kid-
20 napping, false imprisonment, theft of property together with other vio-
21 lations of American and Alaska law by the agents of the Soviet regime; and

22 WHEREAS after seizing Wrangel Island, the Soviet government proceeded
23 to seize more American soil by occupying the nearby and defenseless Herald
24 Island; and

25 WHEREAS the Soviet government subsequently asserted a spurious claim
26 to the American De Long Islands of Henrietta, Jeannette, and Bennett; and

27 WHEREAS these illegal acts by the Soviet government interrupted 57
28 years of peaceful use of these islands by American seamen, herders, and
29 hunters; and

1 WHEREAS the Soviet occupation of what they refer to as Ostrova De Long
2 is an affront to all Americans, is an insult to the memory of their brave
3 discoverer, and a source of embarrassment to the United States Navy, which
4 memorializes his memory at the Naval Academy in Annapolis; and

5 WHEREAS the soil of all five of these American islands and their
6 surrounding continental shelf has been held by military force in contra-
7 vention of international law and by conduct that is contrary to what is
8 recognized as proper by civilized nations; and

9 WHEREAS the Soviet government has typified its uncivilized conduct by
10 establishing forced labor camps on Wrangel Island as reported in testimony
11 before the U.S. Senate Judiciary Committee in January 1973; and

12 WHEREAS it has been reported that Wrangel Island was the last known
13 imprisonment of Raoul Wallenberg, the Swedish Consul in Budapest, Hungary
14 at the end of World War II who was arrested by Soviet forces and who was
15 responsible for saving the lives of thousands of European Jews from the
16 Nazi Holocaust; and

17 WHEREAS this conduct on American soil has continued in defiance of
18 American law as well as in defiance of the international rules of conduct
19 resulting from the Nuremberg war crime trials after World War II; and

20 WHEREAS the continuing trespass by the Soviet government deprives the
21 State of Alaska and its people of their fundamental right to use the
22 islands of Wrangel, Herald, Henrietta, Jeannette, and Bennett together with
23 the surrounding continental shelf and its valuable resources; and

24 WHEREAS unlike the governments of Canada and Great Britain, the United
25 States has never surrendered its claims of sovereignty over these islands;
26 and

27 WHEREAS the State of Alaska does not believe that agreements between
28 the United States and the Soviet Union, whether they be secret or other-
29 wise, can affect American claims to these islands until they have been

1 ratified by the United States Senate;

2 BE IT RESOLVED by the Alaska State Legislature that the Government of
3 the United States assert and reassert American sovereignty over Wrangel
4 Island, Herald Island, and the De Long Islands of Henrietta, Jeannette, and
5 Bennett, their resources, and their territorial shelf in behalf of the
6 American people; and be it

7 FURTHER RESOLVED that the Government of the United States make satis-
8 factory compensation and restitution to the State of Alaska and its people
9 for the loss of this territory resulting from the neglect of the United
10 States Government to protect American lives and property when the lands
11 were seized in 1924; and be it

12 FURTHER RESOLVED that the State of Alaska asserts and reasserts its
13 claim to Wrangel Island, Herald Island and the De Long Islands of
14 Henrietta, Jeannette, and Bennett and their surrounding continental shelf
15 as an integral part of the State of Alaska; and be it

16 FURTHER RESOLVED the Governor of the State of Alaska is requested to
17 initiate appropriate legal claims for relief before the U.S. Foreign Claims
18 Settlement Commission, the U.S. Court of Claims or other legal forums of
19 the United States as may be appropriate.

20 COPIES of this resolution shall be sent to the Honorable Ronald
21 Reagan, President of the United States; to the Honorable George P. Shultz,
22 Secretary of State; to the Honorable George Bush, Vice-President of the
23 United States and President of the U.S. Senate; the Honorable Thomas P.
24 O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the
25 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
26 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
27 tion in Congress.



United States Department of the Interior

NATIONAL PARK SERVICE

ALASKA REGIONAL OFFICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

L7019 (ARO-ONR)

12 FEB 1986

Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgulewski:

It is our understanding that the Senate State Affairs Committee recently amended and forwarded Bill No. 288 (State Subsistence Bill) to your Committee on Natural Resources. The National Park Service, as you might suspect, has a special interest in this legislation. It is our hope that a bill can be devised to put the state back in compliance with Alaska National Interest Lands Conservation Act (ANILCA) and, perhaps, resolve some other issues related to subsistence as well.

It is in this context that we offer to you and your committee the attached suggestions and comments. Please keep in mind that these suggestions and comments are coming from one federal agency, the National Park Service, and we are not attempting to speak for others.

The underlined phrases indicate suggested wording and the "Discussion" portions are intended to provide you with our rationale for the suggested wording. Additionally, we are attaching some of the Congressional Legislative History associated with Sections 803-804-805 of ANILCA which might be of particular interest and assistance to you and other committee members.

Your task is complicated and, as you know, there is a minimum amount of time in which to act. If the National Park Service can be of assistance to you during the legislative process, please do not hesitate to call upon us.

Sincerely,

Boyd Evison
Regional Director
Alaska Region

Enclosures

Proposed Wording (Amendments) to Bill No. 288
As Passed by Senate
State Affairs
Committee

Page 1: Sec. 3 AS 16.05.255(a)

(10) regulating sport hunts and subsistence hunts and commercial trapping and sport trapping and subsistence trapping as needed for the conservation, development and utilization of game, nongame and fur bearer species.

Discussion: The Bill should specifically address the different types of trapping as with fishing and hunting; i.e., subsistence hunting, sport hunting, commercial fishing, sport fishing, personal use fishing, subsistence fishing. Need to similarly address commercial trapping, sport or recreational trapping and subsistence trapping. Bill No. 288 does not currently.

Some wording in ANILCA's legislative history highlights the different forms of trapping (page 307, Senate Report No. 96-413).

"In allowing trapping to continue within preserves, it was not the intent of the Committee to allow exploitative forms of commercial trapping to occur. The intent of the Committee is to allow individual Alaskans to continue to operate their own trap lines within the preserves, even though those individuals might not qualify as subsistence users. The Committee clearly does not intend that the preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the trapping operation. The Secretary, through the National Park Service is expected to monitor trapping operations within the preserves and the associated wildlife populations and issue appropriate regulations to insure that exploitive forms of trapping do not take place and that there is no substantial or permanent harm to the wildlife population."

Page 2: Sec. 4 AS 16.05.253

(b) Consistent with sustained yield, sound management, the maintenance of healthy fish stocks, game populations and furbearer populations and consistent with varying management objectives, policies and legal authorities of the different federal conservation system units, the boards shall determine:

Discussion: The various policies, authorities and directives of the various land managers may require different interpretations and application of the "healthy population" concept. See Discussion for Sec. 4 AS 16.05.258(i).

Page 2: Sec. 4 AS 16.05.258

(b) (1) whether the subsistence needs of an area can reasonably be met,
and,

(b) (2) whether adequate quantities of fish stocks and animal populations exist to allow for additional harvest by sport hunters/fishermen, commercial trappers.

Discussion: (1) and (2) would need to be reworded to discount use of word "surplus"...There is NO surplus in Parks, for example.

Page 2: Sec. 4 AS 16.05.258

(c) The boards shall adopt subsistence fishing, subsistence hunting and subsistence trapping regulations for each stock and population where subsistence needs of an area can be reasonably met under (b) (1) above. Subsistence uses shall be accorded a preference over other consumptive uses, and the regulation shall provide a reasonable opportunity to satisfy subsistence uses for the permanent rural residents domiciled in the rural area, and may provide opportunities to satisfy other consumptive uses based upon the health of the fish stock or animal population as defined consistent with the management objectives for the area's fish stock or animal population. (Management objectives as dictated by either the federal or state land managing agency.)

If it is necessary to restrict subsistence fishing, subsistence hunting, or subsistence trapping in order to assure sound management or protect subsistence fishing, subsistence hunting or subsistence trapping, then the preference shall be limited, and the boards, in conjunction with the recommendation of the regional council representing the affected area, shall distinguish among subsistence users, by applying the following criteria:

Discussion: The National Park Service feels that use of the term "surplus" in this section will prove to be misleading in the future and should, therefore, be stricken from usage in the law.

The Senate Committee Report No. 96-413, pages 268-270, provided some clarification of the Congressional intent for Section 803 and 804 of ANILCA. These discussions indicate that the Regional Councils are to provide recommendations to the State's rule-making authorities on issues concerning subsistence preference. Therefore, the National Park Service believes the above wording concerning the Regional Councils is appropriate in the state's subsistence law.

Page 2: Sec. 4 AS 16.05.258

(c) (2) Permanent, local, rural residency.

Discussion: should refer to local rural residency as being local to the hunt area or the particular herd or species area in question and be a Permanent, 12 month per year resident of the area. See Discussion for Sec. 9 AS 16.05.940(31).

3: Sec. 6 AS 16.05.258

(3) (b) availability of alternative, wild, subsistence resources.

Discussion: There have been lengthy discussions in the past (by the Board of Game and ADF&G), on whether or not Congress intended this to mean the availability of super markets. We believe it to mean wild resources and not the availability of a village grocery store! Clarification in the state statute at this time may save time and money later.

Page 3: Sec. 4 AS 16.05.258

(i) The boards, after consultation with the Alaska Department of Fish and Game, shall adopt regulations defining sound management principles, sustained yield, healthy populations of fish, game and fur bearers and customary and traditional. The boards shall adopt (for federal conservation system units) regulations defining sound management principles, healthy and natural, and healthy populations of fish, game and furbearers as provided by the Department of Interior.

Discussion: This portion of law needs to address the differences that exist between USEWS, BLM, NPS, and the State in the definition of healthy populations. These differences must be reflected in the establishment of hunting, fishing and trapping seasons and bag limits.

"The Committee (pg. 233, Senate Report No. 96-413), recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretation and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and manipulation of the components of the ecosystem."

"...the Committee substituted language to clarify that nothing in the subsistence management and use title is intended to permit the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with "the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations of fish and wildlife. The reference to "natural and healthy population" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation units (pg. 235 Senate Report No. 96-413).

Page 5: Sec. 8 AS 16.05.940

Discussion: This section refers to the phrase "customary and traditional" but the bill fails to define the phrase. The National Park Service feels that the bill should incorporate the procedures for determination as outlined by the Joint Boards of Fisheries and Game, i.e., Part 8 - Subsistence Hunting, Fishing, and Trapping; Chapter 99 -

Subsistence Uses; Article 1 - General Provision; 5 AAC 99.010 (see attached).

Page 6: Sec. 9 AS 16.05.940(31)

Discussion: The concept of "Local residency" is not a clear one. Residency itself is rather clear - it generally means the place where one lives and works as distinguished from a place of temporary sojourn. Local may be defined as meaning not general or widespread, having a definite spatial form or location, or relating to a specific place. Rural means relating to the country and implies a sharp contrast to urban. Taken together, the three words mean a place where someone resides permanently, living and working and carrying out the activities of life within a non-urban setting but within a limited or definite spatial location or geographical area.

The National Park Service suggests that the State Subsistence Law take a similar approach to defining "rural area" or "local rural resident" as ANILCA, i.e., identify those areas or communities that are not rural. Anchorage, Fairbanks, Juneau, or Ketchikan are not considered rural by ANILCA. The State Subsistence Law should identify these same areas and direct the Boards of Fisheries and Game to add areas or communities to the list as additional areas or communities become urbanized and thus, no longer rural. The residency issue appears to have been adequately dealt with on page 5, Section 9, AS 16.05.940(28), but "local" is not mentioned in the bill. The National Park Service is, for example, restricted by law to only allow subsistence use by local residents. The House Congressional Record, November 12, 1980 (H 10542) states: "ALL National Park System areas which allow subsistence are authorized to allow it for local residents only."

If the State's subsistence law, in providing subsistence preference during times of shortages, limits the subsistence harvest to "local rural residence", persons domiciled away from the immediate area or animal population would not be permitted to participate in that specific area or harvest. This appears to be necessary to comply with Section 804 of ANILCA.

Page 6: Sec. 9 AS 16.05.940(32)

Discussion: This section defines "subsistence hunting". The National Park Service feels that "subsistence trapping" should similarly be defined.

The National Park Service believes that some of the legislative history associated with Sections 803 - 804 - 805 of ANILCA may provide helpful insights to the state legislation as deliberation continues on the state's subsistence bill. As such, we have attached a copy of the Senate Report No. 96-413 on those portions dealing with Section 803-805.

HOUSE

DRAFT HEIN 2/3/86

BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 288 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the taking of fish and game for
subsistence and personal use; and providing for an
effective date."

→ B.F. - problem with title
U.F.

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

* Section 1. AS 16.05.251(a)(6) is amended to read:

(6) classifying as commercial fish, sport fish, personal
use fish, subsistence fish, or predators or other categories essential
for regulatory purposes;

* Sec. 2. AS 16.05.251(a) is amended by adding new paragraphs to read:

(12) designating and regulating special fishing areas,
including personal use areas, trophy management areas, catch-and-
release areas, and children's fishing areas, and designating stocks in
those areas for which special management is appropriate;

(13) regulating commercial, sport, subsistence, and personal
use fishing as needed for the conservation, development, and utiliza-
tion of fisheries.

* Sec. 3. AS 16.05.255(a) is amended by adding a new paragraph to read:

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

domestic animals
as defined by law

* Sec. 4. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall identify the
fish stocks and game populations, or portions of stocks and

1 populations, that are customarily and traditionally take
2 the subsistence economy and culture of the area in which
3 located. *defense to include ()*

4 (b) Consistent with sustained yield, *remove* sound management, and
5 maintenance of healthy fish stocks and game populations, the board,
6 shall determine

7 (1) whether there exists a harvestable surplus of the
8 stocks and populations identified under (a) of this section; and

9 (2) how much of the surplus is needed to provide a reason-
10 able opportunity to satisfy the subsistence uses of those stocks and
11 populations.

12 (c) The boards shall adopt subsistence fishing and subsistence
13 hunting regulations for each stock and population for which a harvest-
14 able surplus is determined to exist under (b)(1) of this section. If
15 a surplus is not sufficient to accommodate all consumptive uses of the
16 surplus, but is sufficient to accommodate subsistence uses of the
17 surplus, then subsistence uses shall be accorded a preference over
18 other consumptive uses, and the regulations shall provide a reasonable
19 opportunity to satisfy subsistence uses of the surplus, and may pro-
20 vide opportunities to satisfy other consumptive uses of the surplus.
21 If it is necessary to restrict subsistence fishing or subsistence
22 hunting in order to assure (sound management or protect) future subsis-
23 tance fishing or subsistence hunting, then the preference shall be
24 limited, and the boards shall distinguish among subsistence users, by
25 applying the following criteria: *impr. pt. use vs users*

26 (1) customary and direct dependence on the fish stock or
27 game population as the mainstay of livelihood;

28 (2) local residency; and

29 (3) availability of alternative resources.

and the affected Federal Agencies

~~delete~~ (f) In making allocation decisions the boards may apportion subsistence use among species, stocks, and populations that are similar and reasonably available.

(h) Active duty military personnel, while stationed in the state for more than 30 days, are eligible to fish, hunt, or trap on military installations and facilities in the state under 10 U.S.C. 2671 to the same extent as other nonsubsistence users.

Sec. 16.05.259. ADMINISTRATIVE APPEALS. (a) The Board of Fisheries and the Board of Game, acting jointly, may establish by regulation an appeal procedure for persons aggrieved by the adoption or repeal of a subsistence or personal use regulation.

* Sec. 5. AS 16.05 is amended by adding a new section to read:

1 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a pro,
2 the taking of fish or game in violation of a statute or regul,
3 is not a defense that the taking was done for subsistence uses.

4 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

5 (c) The Board of Fisheries and the Board of Game may adopt
6 regulations providing for the issuance and expiration of subsistence
7 permits for areas, villages, communities, groups, or individuals as
8 needed for authorizing, regulating and monitoring the subsistence
9 harvest of fish and game. The boards shall adopt these regulations
10 when the subsistence preference requires a reduction in the harvest of
11 a fish stock or game population by nonsubsistence users.

12 X (d) With the assistance of the department, the boards shall
13 provide reasonable public notice of the following information to users
14 of a group, community, village, or area subsistence permit:

15 (1) the terms of the permit;

16 (2) the fish stocks and game populations authorized to be
17 taken under the permit;

18 (3) the subsistence use areas covered by the permit.

19 X (e) The Board of Fisheries and the Board of Game may use village
20 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
21 Native Claims Settlement Act) and community, postal, media, or other
22 services appropriate for providing notice under (d) of this section.

23 X (f) The commissioner shall administer subsistence permit pro-
24 grams that may be established. The commissioner may appoint state
25 employees or other persons to take applications and issue permits and
26 tags. A person appointed by the commissioner may administer oaths for
27 permit and tag applications. The commissioner or the appropriate
28 board may require a report from persons using a permit concerning the
29 time, manner, and place of taking fish and game, the kinds and

quantity taken, and other information helpful in administering the fish and game resources of the state. Except for state employees, a person appointed by the commissioner under this subsection is entitled to compensation of \$50 per year or \$1 for each permit or tag issued, whichever is greater.

* Sec. 7. AS 16.05.940(22) is amended to read:

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

* Sec. 8. AS 16.05.940(23) is amended to read:

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

* Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

(28) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence of having had a permanent home in a particular location for the preceding 12 consecutive months

1 or other evidence acceptable to the boards of fisheries a.

2 (29) "fish stock" means a species, subspecies, a
3 grouping or other category of fish manageable as a unit;

4 (30) "game population" means a group of game animals
5 single species or subgroup manageable as a unit;

6 (31) "rural area" means a community or area of the state in
7 which the noncommercial, customary, and traditional taking and use of
8 fish or game for personal or family consumption is a significant
9 characteristic of the economy of the community or area;

10 (32) "subsistence hunting" means the taking of, hunting for,
11 or possession of game animals by a resident domiciled in a rural area
12 of the state for subsistence uses by means defined by the Board of
13 Game.

14 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

15 * Sec. 11. This Act takes effect June 1, 1986.

**PART 8.
SUBSISTENCE HUNTING, FISHING, AND TRAPPING**

**CHAPTER 99.
SUBSISTENCE USES.**

**ARTICLE I.
GENERAL PROVISIONS**

§ AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PRACTICES. (a) In applying a subsistence priority, the boards will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) Each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) Each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

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

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near or reasonably accessible from the user's residence;

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

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

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving, customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community for purposes of subsistence uses may include specific villages or towns, with a historical preponderance of subsistence users, and in addition encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for subsistence taking of fish or game resources in amounts sufficient to provide the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained yield basis.

(e) Each board will, in its discretion adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting nonsubsistence harvest before subsistence uses are restricted. If all available restrictions for nonsubsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who:

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained yield basis.

by Congress by the Alaska Native Claims Settlement Act to protect and provide for continued subsistence uses by Alaska Natives and other rural residents, and is based upon the constitutional authority of Congress over Native affairs and its authority under the Property Clause and the Commerce Clause. The committee also has determined that the protection of the subsistence way of life and the fish and wildlife populations upon which that lifestyle depends necessitates the establishment of an administrative structure which enables rural residents with personal knowledge of local conditions and requirements to have a meaningful role in the regulations and management of fish and wildlife and subsistence uses on the public lands.

Section 802: Policy

Based upon the findings in the preceding section, three basic policies have been established which shall guide the activities of the Federal government and the State on the public lands: that the utilization of the public lands is to cause the least adverse impact possible upon rural residents who depend upon subsistence uses for their economic and physical well-being and cultural vitality; the nonwasteful subsistence uses of fish, wildlife and other renewable resources, e.g., berries, timber, grasses, shall be the first priority consumptive use of such resources on the public lands, and when or where it is necessary to restrict the taking of such resources, taking for nonwasteful subsistence uses shall be given preference over other consumptive uses; and that the successful management of subsistence resources and activities requires long term cooperation between adjacent landowners and managers, including appropriate State and Federal agencies, Native corporations, and other nations.

Section 803: Definition

The committee has adopted a definition of "subsistence uses" based on the definition of that term set forth in section 15, ch. 151 SLA 1978 (A.S. 16.05.940) of the Alaska Statutes. In turn, the State definition was modeled on section 703 of the House bill. "Subsistence uses" are defined as the customary and traditional use in Alaska of fish, wildlife and other renewable resources for direct personal or family consumption, for the making and selling of handicraft articles from the non-edible by-products of fish and wildlife taken for direct personal or family consumption, and for customary trade, barter, or sharing for personal or family consumption. The definition of "family" recognizes extended family patterns common to all of Alaska's Native cultures. "Family" includes any person living in a household on a permanent basis as well as those persons living outside the household who are related by blood, marriage or adoption (legal or equitable). "Barter" means the exchange or trade of fish or wildlife, or their parts, for other fish or wildlife, or their parts, or for other food or nonedible items other than money if the exchange is of a limited and noncommercial nature. This definition of "barter" recognizes that in many rural villages the subsistence diet must be supplemented with other foods which may be available from the village store and other sources, and that the limited noncommercial barter of subsistence resources for nonedible items is an essential element of the rural subsistence lifestyle. The definition of "subsistence uses" is intended to include all

Alaska residents who utilize renewable resources for direct or family consumption.

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. The factors of local residency, economic dependence, and availability of alternative resources have been included in section 804 rather than in the definition. Although a truly comprehensive definition of "subsistence uses" must include a mix of those factors, the committee has determined that they should be incorporated through appropriate action by the State rulemaking authority in conjunction with the recommendations of the regional councils established pursuant to section 805 to implement the subsistence preference set forth in section 804. Sections 803-805 are intended to establish a dynamic process for the regulation of subsistence resources and uses which will enable rural people to participate in the decisionmaking process of the State rulemaking authority in the inclusion of the local residency, economic dependence, and availability of alternative resources factors into the definition of "subsistence uses" on a case-by-case basis to meet the needs of a particular management situation in a particular area.

Section 804: Preference for Subsistence Uses

This section requires both the State and the Federal government to accord nonwasteful subsistence uses a preference over the taking of such resources for other purposes on the public lands. Although the committee recognizes that only rarely will the failure to adequately provide for the preference result in the threat of literal starvation, in many instances the failure to obtain fish to dry for winter use or fresh meat to supplement other foods can engender considerable individual, community and cultural trauma and hardship. Consequently, this section envisions that governmental action affecting subsistence resources and uses shall be undertaken in a manner which adequately provides for the preference on an ongoing basis and not only when critical allocation decisions may be necessary because a particular subsistence resource may be threatened with depletion, so long as such action is conducted in a manner which is consistent with the protection of the continued viability of fish and wildlife populations which may be affected by such action. If a particular fish or wildlife population (e.g. salmon, moose or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the State rulemaking authority. However, if the continued viability of a particular population or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons, the State rulemaking authority, in conjunction with the recommendations of the regional council representing the affected area, is required by this section

to establish regulations which restrict the taking of such population to Alaska residents engaged in subsistence uses.

If "subsistence uses" must be further restricted to protect the continued viability of the population or to ensure the satisfaction of rural subsistence needs, the State rulemaking authority, in conjunction with the recommendations of the regional council, must limit such uses to local residents of the affected area, or, if necessary, only those local residents with the most customary and direct dependence on the population as the mainstay of livelihood and with the least access to alternative food supplies. In the latter situation, the committee believes that in making such difficult allocation decisions, the State rulemaking authority, in conjunction with the recommendations of the regional council, should endeavor to utilize the special knowledge of local conditions and requirements of the local advisory committees within the affected region. This section also requires the Secretary of the Interior and the Secretary of Agriculture to give subsistence uses preferential consideration in their management activities on the public lands which directly relate to the taking of fish and wildlife, and to take appropriate action to protect such uses and the continued viability of fish and wildlife populations upon which the continuation of such uses depend.

Section 805: Local and Regional Participation

The committee has determined that the opportunity for rural residents of Alaska with personal knowledge of local conditions and requirements to participate effectively in the management and regulation of subsistence resources on the public is important in order to assure both the continued viability of fish and wildlife populations of national importance and the ability of rural people engaged in a subsistence lifestyle to continue to do so. Although the State has indicated that it intends to provide greater support to its existing local advisory committees and establish a system of regional councils throughout the rural areas of the state which will have a major role in the State rulemaking authority's establishment of seasons, bag limits and the provision of the preference for subsistence uses in their respective areas, the State still is in the process of establishing such a system. Section 805 implements section 801(5) by requiring the Secretary of the Interior to establish a regional council, and if necessary a local committee, system on the public lands if within one year from the date of enactment of this Act the State has not yet established a system for local and regional participation which satisfies the requirement of this section.

The State system of local and regional participation shall be in compliance with the requirements of this section and the Secretary shall not establish local committees or regional councils if the State: (1) divides the public lands into at least six regions. The number and boundaries of the regions must be sufficient to assure that regional differences in subsistence uses are adequately accommodated.

However, it is the intent of the Committee that the number and boundaries of the regions be established in a manner which does not permit the large urban population centers to dominate the regional council system and exercise control over the regulation of subsistence resources in the rural areas; (2) strengthens the existing State local

fish and game advisory committee system by adequate committee activities, assigning appropriate staff and distributing support data to the committees, and encouraging the committees to work closely with the regional councils to develop a reconstruction strategy for the management of subsistence resources within the region and recommendations concerning policies, standards, guidelines, and regulations to implement the strategy; (3) establishes a regional council within each region composed of residents of the region with duties and responsibilities analogous to those set forth in section 805(a)(3), and assigns staff and distributes available support data to the councils; and (4) provides by statute or regulation that recommendations made by the regional councils to the State rulemaking authority concerning the taking of fish and wildlife populations on the public lands within their respective regions for subsistence uses shall be considered by the authority during the course of its administrative proceedings.

The rulemaking authority may choose not to follow a recommendation if it determines that based on the evidence presented during the course of the administrative proceedings of the board the recommendation 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 the authority makes such a determination and chooses not to follow the recommendation it shall set forth the factual basis and the reasons for its decision.

So long as the State is in full compliance with the requirements of this section, the Secretary of the Interior shall reimburse the State for reasonable costs relating to the operation of the local committees and the establishment and operation of the regional councils. Such reimbursement may not exceed 50 per centum of such costs in any fiscal year, and total payments to the State shall not exceed the sum of \$5,000,000 in any one fiscal year.

If the Secretary determines, one year after the date of this Act and after notice and hearing, that the State is not in full compliance with the requirements of this section, he shall establish a regional council system, and if necessary a local committee system, on the public lands pursuant to the requirements of this section. In performing this monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands the Secretary of the Interior and the Secretary of Agriculture shall be guided by the annual report and advice of the regional councils established by the Secretary of the Interior pursuant to this section, and shall follow such advice unless he determines in writing that such evidence is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs.

Section 806: Federal Monitoring

This section requires the Secretary of the Interior to monitor the State's provision of the preference for subsistence uses on the public lands including, in consultation with the Secretary of Agriculture, units of the National Forest System. Such monitoring responsibilities should include ongoing communication and cooperation between Federal land and resources managers and Alaska Department of Fish and



APR 25 1986
From the desk of:
Senator Mitch Abood
Alaska State Legislature

Hi McKie,
Mitch thought
you would like
this.
Catharine

✓ get this to Sen. Shultz ^{Committee}

RECEIVED
APR 14 1986

Kai

(Signature)

April 10, 1986

Hello Mitch:

Please find enclosed, copy of proposed amendment to ANSCA, memorandum dated August 22, 1985 from resource procurement agents (attys), plus support data that clearly shows true intent of proposed amendments.

I'm sure you are aware we have been working overtime to alert America and inform Alaskans to stop these amendments!!

Our efforts is starting to pay off, and before we are done our Congressional delegation will wish they had never introduced these proposed amendments. (Its going to really hit the fan)

Mitch, I request the Senate pass a resolution clearly spelling out they don't support Amendment Sec 7C and etc to assist our efforts.

I realize this proposed resolution will cause some problems for Senate organizational structure however its so extremely important to have this Senate resolution the Senators should stand and be counted.

Your consideration will truly be appreciated.

Have a good day
Sam E. McDowell
Concerned American
336 E. 23rd Ave
Anchorage Alaska
99503

PS: There is a meeting in Youngs Committee in WashDC on April 17th and we are sending our atty and etc!

Ph# 907-272-6605

** See pages 2 + 3
Re: 7C proposed
Amendment.*

** Please read entire
memorandum.*

MEMORANDUM

DATE: August 22, 1985

TO: AVCP and Calista Corporations

FROM: Lare Aschenbrenner and Bob Anderson

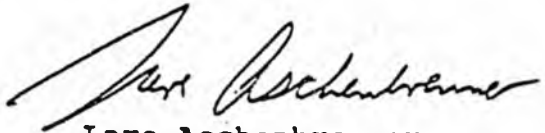
RE: Draft legislation to implement A.F.N. Special Convention Resolution 35 and provide certain additional protections for Native land ownership, priority Subsistence rights and Tribal powers of self-government.

As you are aware the Draft legislation which is attached was developed in consultation with the 1991 Committees of the AVCP and Calista Corporation during this past summer. It originated, however at the conclusion of the AFN Convention last October when it became apparent that the eight AFN Resolutions, although necessary and appropriate, failed to cover a number of vital 1991 issues including protection of Native subsistence rights and tribal powers of self-government. In addition the AFN Resolutions failed to adequately protect Native land ownership in the case of Native Townsite, Municipal Corporation as well as IRA and Traditional Council lands. In early 1985 several attorneys familiar with the Alaska Native Claims Settlement Act and Indian Law issues formed a Working Group for the purpose of responding to widespread concerns voiced by the Native Community with respect to the gaps left by the eight AFN Resolutions. (This group was composed of private attorneys David Case and Lloyd Miller, Alaska Legal Services attorneys Robert Hickerson, Don Cooper, Jim Bamberger and Heather Grahame, and Bob Anderson and Lare Aschenbrenner of the Native American Rights Fund.)

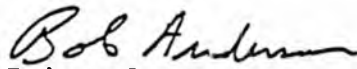
The result of this effort (with certain omissions and modifications) became AFN Resolution 35 at the AFN Special Convention in March 1985. Although there is considerable disagreement as to what the convention intended, as you are aware Resolution 35 in its final written form was never formally adopted, but rather submitted "to the villages for their consideration and review" by AFN Resolution No. 8. AFN has since declined to draft legislation implementing Resolution 35 or apparently to give it any further consideration.

Our group of attorneys therefore proceeded to draft such legislation for the use of Native Village Councils and other organizations in their consideration of 1991 legislative options.

The initial draft was revised on a number of occasions, most recently following our meeting with your respective 1991 committees in Bethel. If further questions arise with respect to the meaning of the proposed legislation we will be pleased to respond.



Lare Aschenbrenner



Bob Anderson

Proposed Legislation - Discussion Draft - Revised 8/15/85

Congress finds and declares that --

- (a) The Alaska Native Claims Settlement Act, Pub. L. 92-203, was intended to achieve a fair and just settlement of all aboriginal land claims of Alaska Natives in conformity with the real economic and social needs of Alaska Natives and with maximum participation by Natives in decisions affecting their rights and property;
- (b) In 1971 Congress decided that the way to effectuate the settlement was through Alaska corporations that would receive land and money distributed under the settlement while providing for a transition period for the Alaska Natives;
- (c) Implementation of the settlement has required adaptation to corporate structures foreign to Native culture;
- (d) Implementation of the settlement, especially the land selection process for Native corporations, was considerably more complex, expensive and time consuming than originally anticipated by Congress in 1971, with the consequence that the value of that settlement to the Alaska Native people was substantially diminished;
- (e) The start-up costs for Native corporations formed under the settlement far exceeded Congress' estimate in 1971, further diminishing the value of that settlement to the Alaska Native people;
- (f) The continued value of the settlement as a source of permanent benefit to future generations of Alaska Natives should not be jeopardized through taxation or other forms of involuntary disposition;
- (g) The longstanding policy and moral obligation of the United States to the Native people of Alaska requires that those protections afforded to other Native Americans in the settlement of their just claims have equal application to the Native people in Alaska.
- (h) To further the Federal Policies of Indian self-determination and Tribal self-government it is essential to remove all impediments to cooperation and mutual assistance between State and Tribal governments;

- (i) The Alaska Native Claims Settlement Act was intended to settle Alaska Native Aboriginal Land Claims and was not intended to enlarge, diminish or in any way affect the scope of any governmental powers of Alaska Native Tribes;
- (j) The Federal Policy of Tribal-self-determination would be furthered by affording Alaska Native Tribes the option of removing their lands from the protective coverage of the Indian Non-Intercourse act and in lieu thereof providing similar protections for Tribal ownership without the paternalistic supervision of the Congress and the Department of the Interior which the Non-Intecourse Act presently entails;
- (k) Alaska Native Tribes should be afforded the same rights and privileges as Indian Tribes elsewhere in the United States;
- (l) In order to reduce or eliminate costly and protracted litigation, further the Federal policies of Tribal self-government and self-determination and protect the priority subsistence rights of Alaska Natives, it is necessary to define the territorial jurisdiction of Alaska Native Tribes.

SPECIAL AFN RESOLUTION 84-35, Paragraphs 1, 2 and 3 provides:

- 1. No provisions of ANCSA should be construed as enlarging, diminishing or any way affecting the scope of any governmental powers of Alaska Native Tribal governments.
- 2. All inherent governmental powers and all provisions of the 1934 Indian Reorganization Act, as amended, which as of the date of passage of ANSCA, applied to Alaska Native Tribes (including groups of Indians, Eskimos or Aleuts), shall continue in full force and effect thereafter notwithstanding Section 704(a) of the Act of October 21, 1976 (which repealed Secretarial authority to proclaim new reservations).
- 3. No provision of ANCSA shall be construed as abridging in any way the governmental powers of Alaska Native Tribes, either over their members or over any areas of Indian Country (as defined in 18 U.S.C. 1151) within their respective jurisdictions.

Explanation

State officials have long contended that the passage of ANSCA somehow terminated or at least greatly reduced the Governmental power of Alaska Native Tribes. The above three paragraphs would eliminate the State's contention. With the exception of the provision reinstating secretarial authority to proclaim new reservations of Paragraph 2, all three of these paragraphs reaffirm the status quo of Tribal government as it existed prior to the enactment of ANCSA. These provisions may be incorporated into ANCSA by adding a new paragraph following 43 U.S.C. 1601(c).

Proposed Legislation

Amend Section 1603 by adding the following subparagraph:

(h) No provision of this act shall be construed as enlarging, diminishing or in any way affecting the scope of any governmental powers of Alaska Native Tribal governments, including inherent governmental powers and powers exercised under the Indian Reorganization Act of 1934, as amended by the Act of May 1, 1936, nor as abridging in any way the governmental powers of Alaska Native Tribes either over their members or over any areas of Indian country as defined in 18 U.S.C. 1151 within their respective jurisdictions.

SPECIAL AFN RESOLUTION 84-35, Paragraph 4 provides:

4. No provision of ANSCA or any law shall be construed as in any way impairing the authority of the Secretary of the Interior, at the request of a Native Tribe, community or individual, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465 as amended, to acquire any interest in lands in Alaska in the name of the United States in trust for the benefit of the Native Tribe, community or individual for which the land is acquired.

Explanation

The Department of the Interior has taken the position that ANSCA revoked the Secretary's Authority to accept Alaska Native Tribal land in trust. This paragraph reverses that interpretation and expressly reaffirms Secretarial authority to accept land in trust in Alaska. It also is related to the last clause of paragraph 2 of this resolution which would clarify the authority of the Secretary to establish new or add to existing Indian reservations in Alaska. These provisions may be incorporated into law by amending Sections 5 and 7 (25 U.S.C. 465 and 467) of the 1934 Indian Reorganization Act.

Proposed Statutory Language

Amend Section 465 by adding the following language after the word including and before the word "reservations" the following: "including" before the word "trust". As amended, the first paragraph of Section 465 would read as follows:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including any lands within any state and any trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

Amend Section 467 to replace the period following the word "reservations" in the final proviso with a colon and add the following language:

"PROVIDED FURTHER, that the provisions of this paragraph shall be fully applicable within any state notwithstanding the repeal of Section 2 of the Act of May 1, 1936 (49 Stat. 1250, in Section 74(a) of the act of October 21, 1976.

AFN SPECIAL RESOLUTION 84-26, Paragraph 4 provides:

4. As applied in Alaska, the term "dependent Indian community" as used in 18 U.S.C. 1151 shall include all areas within the traditional Tribal boundaries of those Alaska Native villages made eligible for certain benefits pursuant to Sections 11, 14(h)(2), 14(h)(3) of 16 of ANCSA and shall also include all other Alaska Native communities. Such communities shall include all lands within their boundaries regardless of land ownership, including but not limited to all townsite lands, allotments, village corporation lands, restricted townsite lots, core townships, municipal lands and private lands.

Explanation

This provision is intended to clarify the meaning of "dependent Indian community" in Alaska for purposes of determining the scope and extent of Native Tribal powers. In broadest terms, it ties a "dependent Indian community" to the "traditional Tribal boundaries" of all Alaska Native villages entitled to lands under various provisions of ANCSA. It also includes the traditional Tribal boundaries of "all other Alaska Native communities", thereby including such places as Wrangell

and Petersburg which were not defined as villages in ANCSA. In reciting the villages eligible for ANCSA benefits, however, it omits villages which elected to take lands under Section 19. Although these villages are also included within Section 11, in order to eliminate any doubt, Section 19 is specifically included in describing the lands of the villages which are to be considered Indian Country. An amendment to 18 U.S.C. 1151 is the most logical way to incorporate this provision into law.

Proposed Statutory Language

Amend 18 U.S.C. 1151 by adding after the comma following the word "state" in clause (b) the following: "including in Alaska all townsite lands, allotments, village corporation lands, restricted townsite lots, core townships, municipal lands and private lands within the traditional boundaries of those Alaska Native villages made eligible for certain benefits pursuant to Sections 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92-203) and such lands within the traditional boundaries of all other Alaska Native communities". As amended, the revised statute would read as follows:

Except as otherwise provided in Sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means . . . (b) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, including in Alaska all lands within the traditional boundaries of those Alaska Native villages made eligible for certain benefits pursuant to sections 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement act (P.L. 92-203), and all lands within the traditional boundaries of all other Alaska Native communities including, without limitation in both categories, all townsite lands, allotments, village and regional corporation lands, restricted townsite lots, core townships, municipal lands and private lands, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

SPECIAL AFN RESOLUTION 84-35, Paragraph 5 provides:

5. In addition to any other provision for the protection of Native lands, Alaska Native Tribes shall have the option of retaining land in complete Tribal governmental ownership and control, to be held in trust for the benefit of Tribal members subject to such protections as the Tribe deems appropriate, including tax exemptions and freedom from execution for payment of debts.

Explanation

This paragraph contemplates something similar to the traditional trust protections without placing legal title in the United States. Instead, any protections and restrictions which may apply are selected by the Tribe, which holds fee simple title. The fact that land is owned in fee simple by a Tribe makes the Non-Intercourse Act, 25 U.S.C. section 177, applicable, so that conveyance may not occur without congressional approval. Accordingly, it is necessary to waive those protections and limitations for Tribes to have complete freedom to choose the terms under which their land is held. Governments wishing to hold land in fee with the substantial protections of that act, however, should not automatically lose such protections.

The IRA would be amended to include section 476a which will give Native governments the freedom to waive application of 25 U.S.C. section 177, and select, through general election, the terms under which its land is held. To further the idea that the Tribe holds land in trust for its members, alienation of Tribal lands would require approval by two-thirds of all members authorized to vote in Tribal elections.

Proposed Statutory Language

Add a new section to the Indian Reorganization Act 25 U.S.C. section 476a, as follows:

Lands acquired by Alaska Native Tribes in villages made eligible for certain benefits pursuant to Sections 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92-203) may be removed from the protection of the Indian Non-Intercourse Act, 25 U.S.C. section 177, upon affirmative vote of two-thirds of those eligible to vote in tribal elections. The election shall be called and monitored by the Secretary of the Interior within 60 days of a request by the governing body of the Tribe or upon a petition signed by one-third of those eligible to vote in tribal elections. Upon certification by the Secretary of the Interior of the affirmative results of such election the Native Tribe shall hold such land in

fee simple. Land held in fee simple by the Tribe may not be alienated absent approval by two-thirds of those eligible to vote in Tribal elections. The ballot removing application of the non-intercourse act may include protections desired to preserve the land for the use and benefit of Tribal members. Such protections may include: (1) freedom from execution on any judgment rendered against the Tribe; (2) freedom from real property taxes by the State of Alaska, or any political subdivision of the State; and (3) immunity from adverse possession and similar claims based upon legal theories of estoppel or the passage of time.

SPECIAL AFN, Resolution 35, Paragraphs 6 and 7 provide:

6. All land conveyed to a village or urban corporation, group, or Native individual pursuant to the Alaska Native Claims Settlement Act shall be exempt from all forms of state or local taxation, from condemnation by State or local authorities, from any claims of adverse possession or other claims based upon the passage of time, and from any form of judgment execution.

7. All income earned, or dividends distributed from the income earned, either from the development of lands conveyed to a village or urban corporation, group, or Native individual pursuant to ANCSA, or from the investment of funds paid under ANCSA, shall be exempt from all forms of State or local taxation and all forms of State or local taxation [sic] and all forms of judgment execution.

Explanation

Both provisions relate to issues of tax immunity, and the core concept behind each provision is borrowed from the ordinary state of affairs involving Indian property in which neither the property nor income earned from such property may be taxed. ANCSA provides immunity from taxation for corporate lands for twenty years if the lands are not developed or leased to third parties.

ANCSA § 21(d), 43 U.S.C.A. § 1620(d) currently deals specifically with the taxation of real property interests conveyed under ANCSA, and also sets forth the 20-year exemption period for undeveloped lands. Since the provisions quoted above would in essence replace the limited property tax exemptions set forth in § 21(d), it would seem most appropriate to implement these provisions by repealing all of existing § 21(d) and placing in lieu thereof the following language.

Proposed Language

ANCSA Section 21(d), 43 U.S.C. 1620(d) is amended to read as follows:

- (1) All lands and interests therein conveyed, pursuant to this chapter, to a Native individual, Native tribe, Native Group, Village or Regional Corporation or corporation established pursuant to section 1613(h)(3) of this title shall be entitled from the date of conveyance to immunity from --
- (A) adverse possession and similar claims based upon legal theories of estoppel or the passage of time;
 - (B) real property taxes by the United States, the State of Alaska, or any political subdivision of the State;
 - (C) judgment resulting from any claim based upon the laws of bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;
 - (D) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native individual, Corporation or Native Group or any officer, director or stockholder of any such Corporation or Group; and
 - (E) condemnation by the United States, the State of Alaska, or any political subdivision of the State; Provided, That the immunities provided for in this paragraph shall be in addition to those immunities or other benefits to which such land or interest therein may be entitled under the Alaska National Interest Lands Conservation Act.
- (2) All land and interest therein conveyed, pursuant to this chapter, to a Native individual, Native Group, village or Regional Corporation or corporation established pursuant to section 1613(h)(3) of this title, and all income earned or dividends distributed from income derived from such real property interests (including all rents, royalties, profits and other revenues or proceeds derived from such property interest) shall be exempt from all forms of federal, state and local taxation until such time as such land and interests therein are no longer owned by Native individuals, Native Tribes, Native Groups or Native Corporations.

- (3) All income earned or dividends distributed from income earned on funds distributed to a Native individual, Native Tribes, Native Group, Village or Regional Corporation or corporation established pursuant to section 1613(h)(3) of this chapter shall be exempt from all forms of federal, state and local taxation.
- (4) "Native Tribe" means all Alaska Native Villages made eligible for certain benefits pursuant to Section 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92.203).

SPECIAL AFN, Resolution No. 35, Paragraph 8 provides:

8. All dividends distributed by an ANCSA corporation to a Native shareholder, and all other forms of compensation or benefits received by a Native under ANCSA, shall be disregarded in determining the eligibility of that shareholder or the shareholder's household for assistance under the Food Stamp Program, the Social Security Act, or other state, federal, or federally-assisted programs.

Explanation

Subsection (b) of section 29, 43 U.S.C. 1626(b), sets forth the specific rule regarding the Food Stamp program, directing that "any compensation, remuneration, revenue or other benefit received by any member of such household under this chapter shall be disregarded" in determining that household's eligibility to participate in the Food Stamp Program. Although this language is unobjectionable, the language of Clause 8 of Resolution No. 33 suggests that this subsection should be enlarged specifically to refer to other governmental programs as well. Accordingly, it is recommended that ANCSA-S 29, 43 U.S.C. 1626, be amended.

Proposed Legislations

ANCSA Section 29(b) 43 U.S.C. 1626(b) is amended to read as follows:

- (b) In determining the eligibility of any household or individual Native to participate in the Food Stamp Program, assistance under the Social Security Act, or financial assistance or other benefits available under any other Federal or federally assisted program otherwise available to the Native people of Alaska as citizens of the United States and of the State of Alaska, any compensation, remuneration, revenue, dividend, stock, land, or other benefit received by

any household or any member of such household under this chapter, including any dividend or land received from such individual's Native Corporation or Native Group organized under this chapter, shall be disregarded and shall not be considered as a resource or otherwise utilized as a basis for making such determinations.

(Note that the Distribution of Judgment Funds Act, 25 U.S.C. 1401 et. seq. as amended in 1983, provides a similar exemption: "Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other federal or federally-assisted program". 25 U.S.C. 1408.)

SPECIAL AFN RESOLUTION 84-35, Paragraph 9 provides:

9. Alaska Native Tribes shall retain complete jurisdiction to regulate hunting and fishing by all persons within those areas traditionally used by Tribal members for subsistence hunting and fishing. The State of Alaska shall only have jurisdiction over rural Native subsistence hunting and fishing in so far as necessary to conserve species of fish and wildlife.

Explanation

This paragraph is designed to clarify the authority of Alaskan Tribal governments to regulate subsistence hunting and fishing. Since the authority of Tribal governments in this regard is unclear at this time, this amendment may actually expand those powers.

Placing the amendment is somewhat difficult. An amendment could be made to either ANCSA or Title VIII of ANILCA. Although a reasonable argument could be made that the amendment should be placed in Title VIII, the better view is that it should be placed in ANCSA. The amendment relates to retained sovereignty over those hunting and fishing rights extinguished by ANCSA. Title VIII of ANILCA is concerned with a transfer of fish and wildlife management from the federal government to the state government and a user preference for "rural residents". That title mentions neither Native sovereignty, village or regional corporation land, nor Native hunting and fishing rights. Since ANCSA at least deals with Native hunting and fishing rights as well as village and regional corporation land, the amendment is better placed in ANCSA.

The best resting place for the amendment appears to be ANCSA's "Miscellaneous Provisions" section. 43 U.S.C. § 1621. Placed here, the amendment can be read as recognizing that Tribal governments have exclusive jurisdiction to regulate hunting and fishing in areas used by their Tribal members for those lands transferred under ANCSA to village and regional corporations.

REVISION OF 43 U.S.C. § 1621

Proposed Legislation

Amend § 1621 of the Alaska Native Claims Settlement Act by adding the following language:

(m) Notwithstanding any provision of this Act or any other law, Alaska Native Tribes shall retain exclusive jurisdiction to regulate hunting, fishing and trapping in Indian Country, including lands transferred to Village or Regional Corporations pursuant to this Act. Provided: that the State or the Federal Government may assume jurisdiction over such hunting, fishing, and trapping if necessary to conserve, in a given geographic area, a species of fish or wildlife which is endangered or is in imminent danger of becoming endangered. Rules and regulations promulgated pursuant to this authority shall be limited to those necessary to ensure that the species does not become extinct or endangered.

SPECIAL AFN, Resolution No. 35, Paragraph 10

10. The secretary of [the] Interior shall be directed to undertake a comprehensive audit to determine the extent to which funds distributed to the Alaska native Fund were expended by ANCSA Corporations in the form of costs of litigation relating to the implementation of ANCSA and start-up costs, including the cost of organizing ANCSA Corporations and implementing the provisions of ANCSA. Congress shall thereafter appropriate funds, together with interest, sufficient to reimburse such corporations for such costs.

Explanation:

This provision of Resolution No. 35 seeks to restore to Alaska Natives the full value of the settlement negotiated in 1971. The clause reflects a widely-held perception that due to the complexity of the Settlement Act, the ambiguities in the Act

left unresolved by Congress, and the particularly severe "start-up" costs incurred by the ANCSA corporations in adapting a rural subsistence based Native culture to corporate forms, substantial portions of the settlement were lost. The clause also reflects an understanding that Congress never anticipated that these costs would be paid out of the Alaska Native Fund (or income generated from ANCSA land), and had not intended for the value of the settlement to be burdened by such costs.

In order to implement this provision of Resolution No. 35 it will be necessary to add a new section to ANCSA.

Proposed Legislation

Add a new section to 43 U.S.C. 1601 et seq. as follows:
The Secretary of the Interior shall, within two years from the date hereof and in consultation with each Native group or corporation organized pursuant to this Act, complete a comprehensive audit of all funds distributed pursuant to this Act to Native groups, Village or Regional corporations, or corporations organized pursuant to section 14(h)(3) of this Act, solely for the purpose of identifying what portion of such funds were expended by each such group or corporation (1) in establishing its entitlement to receive land under this Act, (2) in making (or seeking to make) its selection and securing (or seeking to secure) conveyance of lands under this Act, and (3) in securing (or seeking to secure) its entitlement to revenues under this Act, expressly including, but not limited to revenues under sections 7(i) or 7(j) of this Act. Within two years from the date hereof the Secretary shall submit to the congress a report setting forth the results of his audit and, for each Native group or corporation referred to herein, specifying the sums, if any, identified pursuant to this subsection. These sums shall then be paid, together with interest payable on such sums from the date of expenditure by the corporation or group to the date of payment to the corporation or group, Provided, That interest shall be paid on the basis of a semi-annual computation from the date of receipt of the proceeds by the United States to the date of payment with simple interest at the rate determined by the Secretary of the Treasury to be the rate payable on short-term obligations of the United States prevailing at the time of payment, And provided further, That moneys for such payments have been appropriated by Congress. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

In large part the language in the second half of this section is borrowed from language already used by Congress in an earlier provision of ANSCA dealing with the escrow of revenues generated from ANSCA lands prior to conveyance. See Act of January 2, 1976, §2, 89 Stat. 1146, as amended, 43 U.S.C. 1613 note.

SPECIAL AFN RESOLUTION 84-35, Paragraph 11 provides:

11. Lands subject to reconveyance under ANSCA 14(c)(3) shall be available for reconveyance to Alaska Native Tribal entities. Townsite trustee lands shall also be reconveyed to the appropriate Alaska Native Tribal entity.

Explanation

In order to make 14(c)(3) lands available for reconveyance to Alaska Native Tribes, we propose an amendment to 43 U.S.C. § 1613(c)(3). The amendment, in effect, creates something like a right of first refusal in favor of village Tribal governments. We also include here an amendment to 43 U.S.C. § 1613(c)(4) which provides a similar scheme for airports and adjacent lands.

When Tribal governments receive these lands it will be important that the Tribes have a voice in resource development questions. To accommodate this need, we propose an amendment to 43 U.S.C. § 1613(f) which will require Tribal consent for subsurface development by Regional Corporations.

REVISION OF 43 U.S.C. § 1613(c)(3)

Proposed Legislation

Amend 43 U.S.C. 1613(c)(3) as follows: (3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided That upon request of the local Native Tribe, the Village Corporation shall convey to the Native Tribe or to the United States in trust for the Native Tribe title to the surface estate in those lands that would, by operation of this section, otherwise be transferred to the Municipal Corporation or to the State in trust for any Municipal Corporation established in the Native

village in the future; Provided further, That the amount of lands to be transferred to the Municipal Corporation or in trust, or directly to the Native Tribe shall be no less than 1,280 acres unless the Village Corporation, [and] the Municipal Corporation or, the State in trust, or the Native Tribe, or the United States in trust for the Native Tribe, can agree in writing on an amount which is less than one thousand two hundred and eighty acres: Provided further, That any net revenues derived from the sale of surface resources harvested or extracted from lands reconveyed pursuant to this subsection shall be paid to the Village Corporation by the Municipal Corporation or the State in trust: Provided, however, That the word "sale", as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Municipal Corporation or the State in trust, nor shall it include the issuance of free use permits or other authorizations for such purposes, and: Provided further, that where the land is transferred to the Secretary in trust for a Native Tribe, or directly to the Native Tribe the requirement that revenues derived from the sale of surface resources harvested or extracted from lands be paid to the Village Corporation shall not apply.

(4) the Village Corporation shall convey to the Federal Government, State, [or to the appropriate] Municipal Corporation, or, upon request of the local Native Tribe, to the United States in trust for that Native Tribe, or directly to the Native Tribe, title to the surface estate for existing airport sites, airway beacons, and other navigation aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways;

REVISION OF 43 U.S.C. § 1613(f)

Proposed Legislation

Amend 43 U.S.C. 1613(f)(3) as follows: (f) PATENTS TO VILLAGE CORPORATIONS FOR SURFACE ESTATES AND TO REGIONAL CORPORATIONS FOR SUBSURFACE ESTATES; EXCEPTED LANDS: MINERAL RIGHTS, CONSENT OF NATIVE TRIBE AND VILLAGE CORPORATIONS. When the Secretary issues a patent to a Village Corporation for the surface estate in land pursuant to subsections (a) and (b), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the

National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in subsection 12(a)(1): Provided, that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native Village shall be subject to the consent of the [Village Corporation] local Native Tribe where that Native Tribe is the owner of said lands. As to all other lands in the Native village, consent of the Village Corporation shall be required.

TOWNSITE LANDS

Explanation

Under present law, Native townsite lands which were unoccupied as of October 21, 1976 (the date on which the Townsite Acts were repealed) whether subdivided (Klawock v. Gustafson) or not (Aleknagik Natives Ltd. v. Hodel), are to be transferred to the municipal government for the village in which the townsite lands are located. Paragraph 11 of Special AFN Resolution 84-35 directs that these lands are to be transferred to "the appropriate Native Tribal entity". The proposed new section 739 of Title 43 accomplishes this purpose. First, for those communities for which no municipal corporation exists (e.g., Port Graham) or is not presently functioning (Akiachak), the local Tribal governments may have that land transferred to the United States in trust for them, or obtain it in fee. Second, for those villages which have functioning municipal governments, this section allows those governments to decline the transfer of townsite lands from the townsite trustee. In such a case, the local Tribal-government will be allowed to have the land transferred to the United States in trust for it, or to the Tribe in fee.

Proposed Legislation

Add a new section 43 U.S.C. § 739 entitled: Transfer of Unoccupied Townsite Lands in Unincorporated Villages.

Notwithstanding section 703(a) of the Act of October 21, 1976, Pub. L. 94-579, 90 Stat. 2789, lands remaining unoccupied as of October 21, 1976 in a townsite established pursuant to section 3 of the Act of May 25, 1926, Ch. 379, 44 Stat. 629 (formerly codified at 43 U.S.C. § 735), whether subdivided or not, shall, at the request of the local Native Tribe for the village in which such townsite lands are located, be transferred to the United States in trust

for said Native Tribe or to said Native Tribe in fee, provided that no Municipal Corporation organized under the laws of the State of Alaska has been established or is presently functioning in the village in which such townsite lands are located: Provided further, that where a Municipal Corporation organized under the laws of the State of Alaska has been established and is presently functioning in the village in which the unoccupied townsite lands are located, and where said Municipal Corporation declines to accept transfer of the unoccupied townsite lands, such lands shall, at the request of the local Native Tribe for the village in which the townsite lands are located, be transferred to the United States in trust for said Native Tribe or to such Tribe in fee.

SPECIAL AFN RESOLUTION '84-35, Paragraph 12 provides:

12. Notwithstanding any provision of the State of Alaska's constitution or laws, the State of Alaska may negotiate and enter into intergovernmental compacts with Alaskan Tribes for any lawful purpose and may enact legislation specially directed to Alaskan Tribes and their members.

Explanation

The State of Alaska contends that it would violate the Equal protection, Public purpose and Local Government provisions of the Alaska Constitution for the State to deal with Native Tribal Governments on a Government to Government basis or single out Tribes or their members for special treatment. The Proposed legislation would eliminate the grounds upon which this contention is based. The legislation would expressly authorize the special treatment of Alaskan Natives and therefore, under the Supremacy clause of the federal constitution would over ride the State's contrary position.

Proposed Legislation

25 U.S.C. § 476 is amended by the addition of the following subparagraph:

(i) Notwithstanding any provision of the constitution of the State of Alaska, the State may negotiate and enter into intergovernmental Agreements with Alaska Native Tribes and single out such Tribes or their members for special treatment for any lawful purpose. The term 'Alaska Native Tribe' includes all Alaska Native Villages made eligible for certain benefits pursuant to Sections 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92-203).



Public Law 92-203
92nd Congress, H. R. 10367
December 18, 1971
DECLARATION OF POLICY

Sec. 2. Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

There is a short paragraph in *Village Journey* by Judge Tom Berger (page 163) which carries great potential for change in the way fish, game and other resources have been managed in Alaska. The words are not fancy; however, their meaning has prompted an outcry among people who oppose a greater degree of self-determination for Alaska Natives:

"Simply put, the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal

The Act Says

Void This

Berger Says

Impliment This

____ CONGRESS

____ SESSION

H.R. 4162
S 2065

** Don Young*
(Original signature of Member)

Insert
title
here


To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act and for other purposes.

See Sec #10, page #28
See Sec 7, page #26

IN THE HOUSE OF REPRESENTATIVES

_____, 19____

Insert
sponsor's
names
here


Mr. Don Young (for himself), and Mr. Udall

A BILL

- 1 *Be it enacted by the Senate and House of Representatives of the United*
- 2 *States of America in Congress assembled,*

Sec. 1. Congress finds and declares that --

(a) The Alaska Native Claims Settlement Act, was enacted to achieve a fair and just settlement of all claims by Natives and Native groups based on aboriginal land claims in a manner consistent with the real economic and social needs of Alaska Natives, including maximum participation by Native people in decisions which affect their rights and property;

(b) The corporate model adopted by the Alaska Native Claims Settlement Act is frequently ill-adapted to the reality of life in many Alaskan native villages and to traditional native cultural values.

(c) Although the Congress mandated that the settlement be implemented rapidly and without litigation, the complexity of the land conveyance process and frequent and costly litigation has delayed the implementation of the settlement and significantly diminished its value;

(d) Providing Alaska Natives maximum participation in decisions affecting their rights and property necessitates that the Alaska Native Claims Settlement Act be amended to provide the shareholders of each Native corporation an opportunity to implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including, but not limited to, an opportunity to decide the manner in which Alaska Natives born after December 18, 1971, should participate in the settlement and whether the business corporation is the most appropriate entity to hold legal title to lands conveyed in partial settlement of aboriginal claims;

(e) Providing Alaska Natives maximum participation in decisions affecting their rights and property further necessitates that the Alaska Native Claims Settlement Act be amended to continue restrictions on the transfer of stock of Native corporations until such time as the shareholders of a corporation may vote to terminate such restrictions;

(f) Both the Alaska Native Claims Settlement Act, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Commerce Clause to regulate Indian affairs.

Sec. 2. Section 3 of ANCSA [43 U.S.C. §1602] is hereby amended by the addition of the following additional subsections:

(n) "Native common stock" means the stock of a Native Corporation issued pursuant to subsections 7(g)(1) and (3) of this Act which carries or initially carried with it the rights and restrictions provided for in section 7(h).

(o) "Descendant of a Native" means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity.

Sec. 3. Section 7(q) of ANCSA [43 U.S.C. §1606(g)] is hereby amended by (i) numbering the existing subsection paragraph (1)

and adding the word "Native" after the words "number of shares of" and before the words "common stock" and adding the words "Native common" after the words "one hundred shares of" and before the word "stock" and (ii) adding the following paragraphs:

(2)(A) Notwithstanding any other provision of this Act in addition to any other existing authority, if authorized by amendment to its articles of incorporation after the effective date of this act, any Regional Corporation may issue such shares of stock divided into such classes and series within classes, with such preferences, limitations and relative rights, including, without limitation, dividend rights, voting rights, liquidation preferences, and rights to share in distributions made to stockholders under subsections (j) and (m) of this section, as may be provided in its articles of incorporation or an amendment thereto. Notwithstanding any provision of state or other federal law, such shares may be subject to inalienability restrictions not in excess of the restrictions provided for in paragraph (1) of section 7(h), as provided in the articles of incorporation or an amendment thereto. Notwithstanding any provision of state or other federal law, issuance of one or more classes of such stock may be restricted to (i) Natives who have reached the age of sixty-five or (ii) any other identifiable group of Natives, provided, that such group is defined in terms of general applicability, and is not in any way defined by reference to a place of residence, family or position as an

officer, director, employee of a Native Corporation or shareholder of a Native Corporation other than the issuing Corporation. Any such shares of stock may be issued to holders of Native common stock or others for such consideration as may be permitted by law.

(B) Any amendment to the articles of incorporation of a Regional Corporation which permits the issuance of classes and series of stock other than Native common stock shall specify the maximum number of shares that may be issued in any such class or series, and the maximum number of votes that may be held by shares of such class or series. During any period in which the restrictions on alienation of Native common stock are in effect no stock may be issued under this section to a group of individuals composed only of employees, officers and/or directors of the Native Corporation. If such amendment permits the issuance of classes or series of stock which, when issued, singly or in combination, may cause the outstanding shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Native Corporation, the stockholders of such corporation shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment. In no event may shares of stock other than Native common stock be issued more than thirteen months after the date of stockholder vote

authorizing the issuance of such stock if, upon the issuance of such stock and as a result of such issuance, the outstanding shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) will represent less than a majority of the voting power of all stock in the Regional corporation: Provided, That the restriction set forth in this sentence shall be of no further force or effect if shares of stock have been lawfully issued pursuant to this paragraph which have caused the shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Regional Corporation or if the restrictions upon alienation of Native common stock provided for in paragraph (1) of section 7(h) have expired or been terminated by vote of the stockholders.

(C) Notwithstanding the issuance of additional shares of stock or a new class of stock pursuant to this paragraph, the Regional Corporation shall continue to apply the ratio last computed under subsection (m) before the effective date of this Act for purposes of distributing funds under subsection (j) and (m). If shares of different classes or series have been issued pursuant to this paragraph to the class of stockholders who, prior to the effective date of this Act were the class of stockholders holding non-village stock ("non-village stockholders"), distributions payable under subsections (j) and

(m) shall be made with respect to such classes or series in accordance with the rights, if any, of each class or series to share in such distributions as provided in the articles of incorporation or any amendment thereto and, if so provided in the articles of incorporation or an amendment thereto, the right to share in such distributions may be established as a right or security separate from any other shares issued to such non-village stockholders. Common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in Section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and reservations are in effect with respect thereto.

(3) Notwithstanding any provision of federal or state law to the contrary and in addition to any other existing authority, if authorized by an amendment to the articles of incorporation, a Regional Corporation may issue up to one hundred shares of additional Native common stock to:

- (A) Natives born after December 18, 1971;
- (B) Natives who have attained the age of sixty-five; and
- (C) Natives who were eligible for enrollment pursuant to section 5 but who were not so enrolled.

for no consideration or for such consideration and upon such terms and conditions as may be specified in the amendment to the articles of incorporation or in the resolution or resolutions

providing for the issuance of such stock adopted by the board of directors pursuant to authority expressly vested in it by the articles of incorporation: Provided, That the issuance of additional shares of Native common stock or other stock pursuant to this subsection shall have no effect on the division and distribution of revenues pursuant to subsection (i) of this section.

Sec. 4. Section 7(h) of ANCSA [43 U.S.C. §1606(h)] is further amended to read as follows:

(1) Except as otherwise provided in paragraphs (3) and (4) of this subsection, Native common stock of a Regional Corporation issued pursuant to subsections (g)(1) and (3) of this section shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that until the termination of the restrictions by the shareholders under paragraph (2) of this subsection such Native common stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, treated as an asset in a bankruptcy estate, or

otherwise alienated, whether such Native common stock is held by Natives or descendants of Natives or by persons who are neither Natives nor descendants of Natives: Provided, That such limitation shall not apply to transfers of Native common stock if and to the extent that any such transfers are made to Natives or to descendants of Natives pursuant to a court decree of separation, divorce or child support or by a stockholder who is a member of a professional organization, association, or board which limits the availability of that stockholder to practice his profession because of holding stock issued under this chapter.

(2) The restrictions on the alienation of Native common stock described in paragraph (1) shall continue indefinitely until such time as the shareholders of a Regional Corporation vote to terminate such restrictions. Except with respect to Bristol Bay Native Corporation and any village corporation in the Bristol Bay region, which may by resolution of its board of directors adopted within one year after the effective date of this act elect to follow the procedures set forth in section 7b, a vote on the question of whether to terminate restrictions on the alienation of Native common stock, including a vote by any such corporation if it does not solely elect, shall be conducted pursuant to the following procedure:

(A) On or before December 18, 1991, or at any time thereafter, the shareholders of a Regional Corporation may vote whether to terminate the restrictions on alienation described in

paragraph (1). In conducting the vote, the board of directors of the Regional Corporation shall have the option of seeking shareholder approval either of a resolution determining that such restrictions be continued or of a resolution that such restrictions shall be terminated. Continuation of the restrictions on alienation for such period of time as the shareholders may approve is hereby authorized.

(B) If the shareholders reject a resolution that the restrictions on alienation be continued, such restrictions shall be terminated in the manner described in subparagraph (D). In the event that the shareholders reject a resolution that the restrictions be terminated, such restrictions shall be extended for an indefinite period, subject to the provisions of subparagraph (C).

(C) A resolution adopted pursuant to this paragraph shall be considered to be an amendment to the Articles of Incorporation of the Regional Corporation for purposes of paragraph (6) of this subsection. Adoption of a resolution to continue the restrictions on alienation or rejection of a resolution to terminate such restrictions shall not preclude the shareholders of the Regional Corporation from later approving a resolution to terminate the restrictions.

(D) A resolution to terminate restrictions on the alienation of Native common stock shall state the date or describe the specific events upon which the restrictions will

terminate if the resolution is approved. If a resolution to continue such restrictions is defeated, the shareholders may also adopt a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate. If a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate is not adopted, the restrictions shall terminate one year from the date of the vote disapproving the resolution to continue such restrictions. On the date of termination all Native common stock previously issued shall be deemed cancelled, and shares of stock of the appropriate class shall be issued to each stockholder share for share, subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

(3) Upon the death of any holder of Native common stock, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy; Provided, That in the event that stock is transferred to a person not a Native or a descendent of a Native, the Regional Corporation shall have an option to purchase such stock, Provided further, That this paragraph shall not restrict the devise or intestate disposition of any shares of Native common stock of a Regional Corporation whose shareholders have amended the articles of incorporation to remove the limitation on

alienation of such stock otherwise imposed by paragraph (1) of this subsection.

(4) Notwithstanding any other provision of this section, the Regional Corporation may, if authorized by an amendment to its articles of incorporation, purchase, and for that purpose its shareholders may sell, any or all shares of its Native common stock then issued and outstanding with payment out of unreserved or unrestricted earned surplus of the corporation, or, if there is no earned surplus, out of its net profits for the fiscal year in which the purchase is being made and the preceding fiscal year except when the corporation is unable to pay its debts as they become due in the usual course of business; in determining such net profits, the net profits derived from the exploration or liquidation of timber resources and subsurface estate may be determined without consideration of depletion of those assets resulting from lapse of time, consumption, liquidation or exploration of those assets. Shares of stock purchased pursuant to this paragraph shall become nonvoting treasury stock, or may be cancelled by the Regional Corporation in accordance with law.

(5) The lapse of the right to vote in the holder of Native common stock upon a transfer to him by inheritance or otherwise prior to the effective date of this Act may be restored by the adoption of an amendment to the articles of incorporation to such effect: Provided, That such voting rights may be restored only

with respect to shares of Native common stock held by a Native or a descendant of a Native.

(6) Notwithstanding any provision of Alaska law, other than those provision which relate to proxy statements and proxy solicitations and except as otherwise provided in section 7b --

(A)(i) Any amendment to the articles of incorporation of a Regional Corporation authorized by this subsection or subsection (g) of this section, a transfer of assets made pursuant to section 7a, and a resolution described in paragraph 2(C) of this subsection or subparagraph (B) of this paragraph shall be approved in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual or a special meeting of shareholders;

(b) A written or printed notice setting forth the proposal or a summary of the changes to be effected, or the proxy statement if one is required under subclause (a) of this clause shall be given to each shareholder of record entitled to vote not less than fifty (50) nor more than sixty (60) days before the date of the meeting, either personally or by mail;

(c) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposal and it shall be approved if it receives the affirmative votes required under clause (ii).

(d) A number of proposals may be submitted to the shareholder sand voted upon at one meeting.

(e) With respect to any amendment of the articles of incorporation of a Regional Corporation authorized by this subsection or subsections (g)(1) and (g)(3) of this section, the effect of which would be to end the restrictions on alienation for all classes of stock in the corporation, if the holders of at least one third of the outstanding shares of Native common stock entitled to be voted petition the board of directors to adopt and submit to a vote of the shareholders a resolution to make that amendment to the articles of incorporation, the board of directors shall adopt the resolution and submit it to a vote of the shareholders as provided for in subclauses (a)-(d) of this clause: Provided, that a person or group seeking to obtain signature on such a petition shall, no less than ten (10) days before starting to obtain such signatures, file a written statement with the board of directors and the state agency having jurisdiction over proxy statements and solicitations, which statement shall contain no materially false or misleading statement or omission with respect to the proposed amendment, shall disclose the identity or identities of the person or persons organizing the effort to obtain signatures on the petition, and shall also fairly and fully disclose the nature and efforts of the proposed amendment if it is adopted; Provided, further, that if, after ten (10) days from such filing of the statement, there is no judicial or administrative order than in effect which directs that corrections be made to the statement or

enjoins the solicitation of shareholders' signatures on the petition, then shareholders may begin to be solicited to sign the petition, and a copy of the statement shall be given to each shareholder before that shareholder is solicited to sign the petition.

(ii) In order for an amendment to the articles of incorporation, land transfer or resolution to be approved pursuant to this paragraph, the proposal must be voted upon by at least 51 per centum of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote at least 50 per centum of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per centum of the shares voted, or both to approve any such proposal;

(iii) Any other amendment to the articles of incorporation not specified in clause (i) of this subparagraph shall be approved in accordance with the articles of incorporation, by-laws or applicable law.

(B) If the results of a shareholder vote under paragraph (2) of this subsection is the extension of restrictions against alienation, a stockholder who voted against the extension or in favor of the termination of restrictions, as the case may be, may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholders of the Regional Corporation adopt a resolution

expressly providing for such right. Except as otherwise provided in subparagraph (D), the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

(C) The stockholders of a Regional Corporation who adopt a resolution pursuant to subparagraph (B) of this paragraph may also provide in such resolution that the Native common stock restrictions for the same period then applicable to the stock) or that the value of the land or any interest therein received by the Regional Corporation pursuant to this chapter, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the Regional Corporation.

(D) The stockholder of a Regional Corporation who adopt a resolution pursuant to subparagraph (B) of this paragraph may also provide in such resolution that payment to a dissenting shareholder shall be made by the corporation through issuance to such shareholder of a non-negotiable debenture in the principal amount of the payment due, which debenture shall be secured

either by a payment bond issued by an insurance company or financial institution, by the deposit in escrow of securities or property having a fair market value equal to at least 125% of the face amount of the debenture, or by a lien upon the real property interests of the corporation other than lands or any interest therein which are committed by the corporation to Native traditional or cultural uses and, in the case of Regional Corporation, its timber resources and subsurface estate. The debenture shall bear interest, payable semiannually, beginning as of the date of the corporation elected to extend stock restrictions at the rate applicable on such date to obligations of the United States having a comparable maturity. The principal amount of the debenture and any undistributed interest shall be payable at any time at the option of the corporation or, if not so called, shall be paid to the former shareholder, or his heirs, on December 18, 1991, or, if the stock restrictions otherwise would have expired on a later date, then on such date or five (5) years after the date of the election, whichever first occurs.

(7) If the results of a shareholder vote under paragraph (2) of this section or subsection (a) of section 7b is the removal of restrictions on alienation otherwise imposed by paragraph (1) of this subsection, the Regional Corporation may nevertheless, prior to the termination of such restrictions, impose any restrictions upon Native common stock permitted under applicable law as well as --

(A) the denial of voting rights to any holder of Native common stock who is not a Native or a descendant of a Native, and

(B) the granting to the corporation, or to the corporation and a stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's Native common stock (whether issued before or after the adoption of the restriction) prior to the sale or transfer of such stock (other than a transfer by inheritance) to any other party, including a transfer in satisfaction of a lien, writ or attachment, judgment execution, pledge or other encumbrance.

Sec. 5. ANCSA is further amended by adding a new section to read as follows:

SEC. 7a. (a)(1) A Native corporation may convey some or all of its assets, including title to the surface and/or subsurface estate of land, or any interest therein, to a qualified transferee entity for no consideration or for such consideration as its shareholders may approve.

(2) A qualified transferee entity is an entity organized pursuant to or recognized by state or federal law which --

(A) has a membership composed of persons whose interest in the entity is not transferable;

(B) provides membership in the entity for every person who holds Native common stock in the Native Corporation making the

transfer of assets on the day before the date of such transfer, which membership shall terminate at such stockholder's death; and

(C) In addition to the persons described in paragraph (B) of this subsection, accepts as new members only Natives and descendants of Natives.

(3) in addition to the authority and powers vested in such entity by state or federal law, a qualified transferee entity is authorized to --

(A) limit its membership to Natives and descendants of Natives, except as provided in subsection (2)(B) of this subsection,

(B) distribute cash or other assets to its members, except that such entity shall not convey fee title to land, or any interest therein, except to the extent authorized or required by sections 14(c) and 21(j) of this Act, and

(C) exchanges and/or interests therein pursuant to the provisions section 22(f) of this Act and Section 1302 (h) of the Alaska National Interest Lands Act.

(b) A conveyance of assets pursuant to this section must be approved by a prior vote of the shareholders and shall be subject to such terms and conditions as the shareholders may approve.

(c) Section 21(d) of this Act shall continue to apply to land, or any interest therein, conveyed by a Native Corporation to a qualified transferee entity pursuant to this section.

(d)(1) An asset subject to section 7(i) of this Act conveyed pursuant to this section shall remain subject to section 7(i) to the same extent such asset would have been subject if the conveyance had not occurred.

(2) A Regional Corporation shall not convey assets subject to section 7(i) of this Act pursuant to this section to more than one qualified transferee entity. Prior to receiving a conveyance of an asset subject to section 7(i), a qualified transferee entity shall agree in writing to be bound by the provisions of the agreement date June 29, 1982, among and between the parties to the Aleut Corp., et al. v. Arctic Slope Regional Corp. et al., (Civ. Act. A75-53 D. Ak.) and to waive its sovereign immunity, if any, with respect to any claims arising under section 7(i) or this subsection. The Regional Corporation, or in the case of its dissolution another single entity designated by its shareholders or the United States District Court, as appropriate, shall be responsible for administering the provisions of both section 7(i) and the aforementioned agreement dated June 29, 1982, with respect to all assets subject to section 7(i) conveyed by such corporation pursuant to this section.

(3) Subsequent to the conveyance of an asset subject to section 7(i) by a Regional Corporation, such asset shall continue as security for the payment by such Corporation, or its successor entity, of all revenues which the Corporation is obligated to

distribute to other Regional Corporations pursuant to section 7(i).

(e)(1) If a shareholder vote described in subsection (b) approves a conveyance by a Native Corporation of an asset pursuant to this section, a stockholder who voted against the conveyance, may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholder of the Native corporation adopt a resolution expressly providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

(2) A resolution described in paragraph (1) of this subsection may also provide that the Native common stock of such Native Corporation shall be valued only as restricted stock (having the same restrictions for the same period then applicable to the stock) or that the value of the land, or any interest therein, received by the Regional Corporation pursuant to this Act, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native

common stock to be purchased from such stockholder by the Regional Corporation.

Sec. 6. ANCSA is further amended by adding a new section to read as follows:

Sec. 7b. (a) If the Bristol Bay Native Corporation or any village corporation located in the Bristol Bay region so elects pursuant to section 7(h)(2), a vote on the question of whether to continue restrictions on the alienation of Native common stock shall be conducted pursuant to the following procedures:

(1) On or before December 18, 1991, the shareholders of the corporation shall vote on whether to extend the restrictions on alienation of Native common stock described in section 7(h)(1) for such period, not less than twenty (20) years nor more than fifty (50) years, as the Native common stockholders may approve by the adoption of an amendment to the articles of incorporation to that effect. In the event restrictions upon stock alienation are extended pursuant to this paragraph, the corporation may elect before the expiration of such extension period, or any successor extension period, further to extend the restrictions for such additional period, not less than twenty (20) years nor more than fifty (50) years, as the Native common stockholders shall approve in like manner.

(2) If the corporation does not conduct a vote pursuant to paragraph (1) or if the shareholders defeat a resolution that the

restrictions on alienation be continued, the shareholders SHALL adopt a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate. If a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate is not voted upon or approved, the restrictions shall terminate one year from the date of the vote disapproving the resolution to extend such restrictions or on December 18, 1991, whichever later occurs. On the date of termination all Native common stock previously issued shall be deemed cancelled, and shares of stock of the appropriate class shall be issued to each stockholder share for share, subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

(3) Notwithstanding any provision of Alaska law, other than those provisions which relate to shareholder rights of petition and to proxy statements and proxy solicitations --

(A) Any amendment to the articles of incorporation of the corporation authorized by this section, section 7(g) and section 7(h)(4) and (5), a transfer of assets made pursuant to section 7a, and a resolution described in paragraph (2) of this subsection of paragraph (2) of subsection (b) shall be approved in the following manner:

(i) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual or a special meeting of shareholders;

(ii) A written or printed notice setting forth the proposal or a summary of the changes to be effected shall be given to each shareholder of record entitled to vote not less than fifty (50) nor more than sixty (60) days before the date of the meeting, either personally or by mail;

(iii) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposal and it receives the affirmative votes required under subparagraph (B).

(iv) A number of proposals may be submitted to the shareholders and voted upon at one meeting.

(B) In order for an amendment to the articles of incorporation, land transfer or resolution to be approved pursuant to this paragraph, the proposal must be voted upon by at least 51 per centum of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50 per centum plus one of the shares voted:

Provided, That the stockholders may require a minimum vote of more than 51 per centum of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per centum of the share voted, or both, to approve any such proposal.

(C) Any other amendment to the articles of incorporation not specified in subparagraph (B) of this paragraph shall be approved in accordance with the articles of incorporation, bylaws or applicable law.

(b)(1) If the result of a shareholder vote under subsection (a) of this section is the extension of restrictions against alienation, a stockholder who voted against the extension may demand and receive payment from the corporation for the fair value of all of his or her shares. Unless longer periods of time are authorized in the by-laws of the corporation the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed to the extent such right is made available pursuant to this subsection.

(2) The stockholders of a corporation may adopt a resolution, concurrent with the vote authorized under subsection (a), which provides that, in the event dissenters' rights are exercised, the Native common stock shall be valued only as restricted stock (having the same restrictions for the same period made applicable to the stock by the vote) or that the value of the land or any interest therein received by the corporation pursuant to this Act, as amended, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the

corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the corporation.

(3) The stockholders of a corporation who adopt a resolution pursuant to paragraph (2) of this subsection may also provide in such resolution that payment to a dissenting shareholder shall be made by the corporation through issuance to such shareholder of a non-negotiable debenture in the principal amount of the payment due, which debenture shall be secured either by a payment bond issued by an insurance company or financial institution, by the deposit in escrow of securities or property having a fair market value equal to at least 125% of the face amount of the debenture, or by a lien upon the real property interests of the corporation other than lands or any interest therein which are committed by the corporation to Native traditional or cultural uses and, in the case of Bristol Bay Native Corporation, its timber resources and subsurface estate. The debenture shall bear interest, payable semi-annually, beginning as of the date of the corporation elected to extend stock restrictions at the rate applicable on such date to obligations of the United States having a comparable maturity. The principal amount of the debenture and any undistributed interest shall be payable at any time at the option of the corporation or, if not so called, shall be paid to the former shareholder, or his heirs, on December 18, 1991, or, if the stock

restrictions otherwise would have expired on a later date, then on such date or five (5) years after the date of the election, whichever first occurs.

Sec. 7. ANCSA is further amended by adding a new section to read as follows:

Sec. 7c. Nothing in this Act shall be construed as enlarging or diminishing or in any way affecting the scope of any governmental authority of a federally recognized tribe, traditional Native council or Native council organized pursuant to the Indian Reorganization Act, as amended, or any right, privilege or immunity of Alaska Natives as Native Americans in their relationship with the Government of the United States.

Sec. 8. Section 8(c) of ANCSA [43 U.S.C. §1607(c)] is amended to read as follows:

(1) The provisions of sections 7(g), (h) and (o) and section 7b of this Act relating to Regional Corporations shall apply in all respects to Village Corporations, Urban Corporations and Native Groups; except that (A) audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate; and (B) subject to the provisions of paragraph (2) of this subsection, restrictions on the alienation of Native common stock of such corporations, inchoate rights

thereto and any dividends paid or distributions made with respect thereto shall continue after December 18, 1991.

(2) The restrictions on alienation of Native common stock of Village Corporations, Urban Corporations and incorporated Native groups may be removed by the adoption of an amendment to the articles of incorporation to such effect:

Provided, That a shareholder vote on an amendment calling for the removal of such restrictions may be held once before December 18, 1991, and, if such amendment shall not be adopted, subsequent votes on a like amendment may be held not more frequently than at annual intervals after December 18, 1991: Provided further, That stockholder votes to amend the articles of incorporation of a Native corporation pursuant to this paragraph shall be held in accordance with the provisions of subsections 7(h)(2) and (6) or section 7b, as the case may be, except that the form of a resolution concerning restrictions on alienation must be a resolution to terminate such restrictions and a village corporation may decide, in accordance with the provisions of subsection 7(h)(6)(B) to grant dissenting rights to shareholders who vote in favor of such a resolution which does not pass.

Sec. 9. Section 14 of ANCSA [43 U.S.C. §1613] is amended to add the following new paragraph:

(i) Authorization for conveyance of subsurface to village entities.

(1) A Regional Corporation may convey any subsurface estate owned by such corporation to a village entity which acquired and still owns the surface estate pursuant to this Act.

(2) Notwithstanding any conveyance under this paragraph the Regional Corporation shall receive the 30% of the revenues from the development of the subsurface estate it would have retained had there been no such conveyance.

(3) Any conveyance under this paragraph shall be subject to the provisions of subsections 7a(b)-(e) as if the village entity were a qualified transferee entity. The document or documents effecting such conveyance shall be recorded by the Regional Corporation, together with copies of subsections 7a(b)-(e) and this subsection, in the land records of the appropriate recording district.

(4) The village entity to which any subsurface estate is conveyed pursuant to this subsection may not convey or otherwise transfer all or any part of such subsurface estate to any other entity without the express consent of the transferor Regional Corporation.

Sec. 10. Section 21(d)(1) of ANCSA [43 U.S.C. §1620(d)(1)] is amended to read as follows:

All land and interests therein conveyed, pursuant to this Act, to a Native individual, Native Group, Village or Regional Corporation or corporation established pursuant to section

14(h)(3) of this Act shall, so long as such land and interests therein are not developed or leases to third parties or are used solely for the purposes of exploration, be entitled from the date of their conveyance to immunity from --

(A) adverse possession and similar claims based upon legal theories of estoppel;

(B) real property taxes by any governmental entity, including federal, state or local;

(C) judgment resulting from any claim based upon the laws of bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally; and

(D) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native Group or any officer, director or stockholder of any such Corporation or Group:

Land to which this paragraph applies shall not be considered developed solely as a result of the construction, installation or placement upon such land of any structure, fixture, device or other improvement intended to enable, assist or otherwise further the subsistence or other customary or traditional uses of such land: Provided further, That the immunities provided for in this paragraph shall be in addition to those immunities or other benefits to which such land or interests therein may be entitled under the Alaska National Interest Land Conservation Act: and Provided further, That the immunities provided for in this

paragraph shall not apply to any judgment in any action at law or equity or to any arbitration award arising out of any claim regarding revenue sharing under section 7(i); and Provided Further, That land to which this paragraph applies and land which is conveyed pursuant to section 7a of this Act as amended shall be subject to condemnation for public purposes in accordance with the provisions of applicable State law.

Sec. 11. Subsection 21(f) of ANCSA [43 U.S.C. §1620(f)] is amended by deleting "Until January 1, 1982," and replacing such language with "Until such time as the limitation upon alienation of Native common stock has been removed pursuant to section 7(h)(2) and section 7b of this Act."

Sec. 12. Section 28 of ANCSA [43 U.S.C. §1625] is amended by replacing the final clause of the first sentence, "through December 31, 1991," with the following:

...through the earlier of the day after (i) the date on which the corporation (1) issues (other than by descent or devise) any shares of stock which will not be issued solely to Natives or descendants of Natives or to entities established for the sole benefit of Natives or descendants of Natives or (ii) the date on which the corporation removes the limitation on alienation of Native common stock as provided for in section 7(h)(2) and section 7b of this Act.

After the next sentence, add the following:

For the purpose of determining the applicability of the registration requirements after such date of the Securities Exchange Act of 1934 (48 Stat. 74), as amended, holders of Native common stock shall be excluded from the calculation of the number of shareholders or record pursuant to section 12(g) thereof. The provisions of the Investment Company Act of 1940 shall not, in any event, apply to any corporation organized pursuant to this chapter until January 1, 2001, at the earliest.

Sec. 13. Section 10 of ANCSA [43 U.S.C. §1611] is amended by adding the following new subsection:

(c) The United States District Court for the District of Alaska is hereby vested with exclusive original jurisdiction over any action challenging the constitutionality of sections 7a, 7(g), 7(h), 8(c) and 8(i) of this Act. Such action shall be heard and determined by court of three judges as provided in 28 U.S.C. §2284 with a direct appeal from any final judgment to the United States Supreme Court. If the United States District Court should determine that any of the aforementioned sections violate the Fifth Amendment to the United States Constitution, in fashioning appropriate relief, the Court shall not enter a money judgment against the United States, it being the express intention and direction of Congress that in no circumstances

shall the enactment of this Act result in any liability on the United States.

Sec. 14. Section 30(b) of ANCSA [43 U.S.C. §1627 (b)] is amended to delete the phrase "prior to December 19,1991" and insert in lieu thereof the phrase "while the Native common stock of all corporations subject to such merger or consolidation remains subject to restraints on alienation."

Sec. 15. Section 27 of ANCSA [43 U.S.C. §1628] is amended to read as follows:

The provisions of this Act, as amended are severable. If any provision of the Act is determined by a Court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision.

Sec. 16. Section 29 of ANCSA [43 U.S.C. §1626] is amended to insert the phrase "II", including any stock issued under Section 7(9)(2) or (3) to Natives who have attained the age of sixty-five and any dividends thereon," after the phrase "under this chapter" in subsections (a) and (b).

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

A 2065. A bill to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the act, and for other purposes; in the Committee on Energy and Natural Resources.

ALASKA NATIVE LAND CLAIMS SETTLEMENT
AMENDMENTS

• Mr. MURKOWSKI. Mr. President, today, I am cosponsoring with Senator STEVENS, legislation to amend the Alaska Native Claims Settlement Act of 1971, which for purposes of brevity, I shall call ANCSA.

For many in this Congress, the date 1991 looms because it is the target date for a balanced budget mandated by Gramm Rudman Hollings. For Alaska's Natives, the date 1991 presents an additional challenge: continued Native land ownership.

The importance of land to Alaska's Natives should not be understated. They inhabit many of the most remote parts of Alaska, parts that are only accessible by air or by water. Most still live a subsistence existence owing to their traditional lifestyles and cultural values, their isolation, and high food costs in rural Alaska.

Since the Treaty of Cession and prior to adoption of ANCSA in 1971, the Federal Government has recognized the rights of Alaska's Natives to land. In the late 1960's and early 1970's, due to increased development and population pressures, Congress and the Natives began negotiations and hearings on how to resolve Alaska Native land claims.

The result was passage of landmark legislation of how Congress deals with Native Americans. Congress and the Natives rejected establishing new reservations in Alaska. The course selected was Native equity ownership in Native corporations.

Under the act, Alaska Natives were established in 12 regional corporations and over 200 village corporations. These corporations received through a complex land conveyance formula, portions of a 44 million acre land entitlement and of a cash settlement of \$902.6 million as compensation for extinguished land claims.

Individual Natives enrolled in regional and/or village corporations and

received 100 shares of stock as their individual share of the settlement—their share of the land. This stock is restricted, or not saleable, until 1991, 20 years after passage of the act. The purpose of the restrictions was to enable the Native corporations time to form and become economically self sufficient in order that they may distribute dividends and other benefits to their Native shareholders.

Yet, as 1991 looms ahead, many Native corporations still have not received ANCSA land entitlements. Many corporations continue to struggle and have not realized the benefits of ANCSA. Implementation of the act has been fraught with litigation and delays. Moreover, adjustment to the corporate structure from a traditional subsistence life style is a major one for the corporate entity is frequently ill-adapted to the traditional Native life styles. Concern within the Native community is that the Natives will lose control of their land through corporate failure and through the sale of stock in 1991.

In response to this concern, for over 2 years, the Alaska Federation of Natives (AFN), the largest statewide Native organization, has held village workshops, town meetings, and conventions to discuss the issues raised by 1991 and to establish solutions. This process culminated in a special convention held in Anchorage in March of 1985. The choice made was to amend ANCSA to reflect the individual needs for the various villages and regions. At this convention, eight resolutions were adopted and enjoyed broad and often unanimous support by the AFN delegates. These resolutions are significant, for they represent a consensus of the Native community statewide on how to address the 1991 issues. These resolutions are the basis for the legislation we have before us today.

This legislation is in the spirit of 1971, the spirit of self-determination. It reflects the diversity of the Alaska Natives, for it is a package of options from which each Native corporation can select to determine land and stock ownership. For the record, I will briefly outline the major 1991 issues and how this bill addresses them:

STOCK RESTRICTIONS

Under current law, in 1971, Native stock would automatically be canceled and new stock would be issued to existing shareholders that is saleable on the open market. This legislation,

automatically continues the stock restrictions in 1971 and allows for each corporation to vote to continue or discontinue stock restrictions. It also allows that the Bristol Bay Native Corporation and villages in its region require its corporation to take a mandatory vote on the question of stock alienation.

TRANSFER OF ASSETS TO A NEW ENTITY

If Natives determine the corporate structure does not fit their needs, this legislation gives the option for a village or a regional corporation to transfer their assets to a qualified terrestrial entity.

DISSIDENTS RIGHTS

This deals with the question of how to deal with those shareholders who vote against the majority in motions to continue stock restrictions and to transfer corporate assets to a qualified transferee entity. The legislation gives the corporations the option of allowing dissenters rights.

NEW STOCK FOR ELDER AND NATIVES BORN AFTER 1971

Natives born before 1971 were eligible to enroll in Native corporations, with the assumption that Native stock will be passed down to descendants. However, some corporations would like to issue additional stock to Natives born after 1971 and to elders. This legislation gives corporations that option.

AUTOMATIC LAND BANK PROTECTION

The Alaska National Interest Land Conservation Act authorized a land bank into which corporations could deposit undeveloped lands to protect them from adverse possession and taxation. Excessive administrative delays has slowed the implementation of the land bank. This bill addresses the bureaucratic delay problem by granting automatic land bank protection for undeveloped lands.

Mr. President this legislation does not try to reinvent the wheel with respect to Alaska Native land claims. This legislation "fine tunes" ANCSA so that it gives Native options as to how they can continue to manage their ANCSA assets. It does not establish any new relationship between the Federal Government and Alaska's Natives nor does it or should it attempt to resolve the questions relating to sovereignty or Indian country Alaska. The legislation does not and should not address subsistence game management and use in Alaska. It has been drafted with the cooperation of

the Alaska Federation of Natives and the State of Alaska. The Department of the Interior has been fully briefed on these issues and has been repeatedly asked for its comments.

Mr. President, the Alaska Native community has presented to the Alaska delegation solutions backed by a consensus of the Alaska Native. To ensure maximum participation by Alaskans in the development of this legislation, I plan to hold a series of workshops in rural Alaska villages to discuss this bill. In addition, I have received confirmation that the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands will hold hearings in Alaska on this bill.

Mr. President, in 1971 Congress passed the Alaska Native Claims Settlement Act. While I and many of my colleagues in the U.S. Senate were not here at that time, I believe we need to work for the success of the settlement. This legislation is designed to meet this goal, and I look forward to working with Alaskans and my colleagues toward successful passage of this legislation.

• Mr. STEVENS, Mr. President, I am happy to join Senator Murkowski in introducing a package of amendments to the Alaska Native Claims Settlement Act (ANCSA) of 1971. As my colleague points out in his opening statement, many Native corporations have been plagued with problems that Congress did not foresee at the time of ANCSA's enactment. In large part, these problems are attributable to the Federal Government's slowness in implementing ANCSA.

I believe that as a matter of basic fairness, Congress must respond to the concerns that Alaska Natives have expressed about the future of their land settlement in connection with the 1991 provisions of ANCSA. We must make sure that the Government keeps the promises made to the Natives in 1971.

The Alaska Federation of Natives (AFN), which has played a key role in protecting the interests of Alaska Natives for many years, has worked long and hard to develop a package of amendments to ANCSA that deals with the problems posed by 1991. I commend AFN for its dedication and perseverance.

The bill we are introducing today parallels, in most respects, the recommendations that AFN has made. I want to emphasize, however, that this bill is the starting point of the legislative process, not the end product. We plan to subject the bill to extremely close scrutiny in the hearing and markup process. We intend to listen closely to the comments of all individuals whose interests would be affected by the bill.

Mr. President, resolving the problems of 1991 and ensuring the success of the 1971 Alaska Native land claims settlement is in the best interest of all Alaskans and all Americans. I hope that we will be able to move expeditiously on this bill this session.

ALASKA NATIVE CLAIMS SETTLEMENT ACT

HON. DON YOUNG

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 6, 1988

Mr. YOUNG of Alaska. Mr. Speaker, I am introducing legislation today to provide for necessary amendments to the Alaska Native Claims Settlement Act which will clarify future land and stock ownership rights under the act. I am pleased that the distinguished chairman of the Committee on Interior and Insular Affairs has joined as cosponsor of this legislation.

Under the terms of ANCSA, corporate shares in Alaska Native corporations become fully alienable at the conclusion of a 20-year period following enactment. As this deadline draws near, there has been a great deal of concern in Alaska Native communities that the unfettered sale of stock could well result in the loss of lands used by Native people of Alaska for hundreds if not thousands of years.

To address this concern, this legislation would provide for the continuation of restrictions contained in ANCSA, as amended, unless an individual Native corporation takes certain specified actions to eliminate or modify the sale restrictions. Dissenter's rights are provided where the corporation elects to continue stock restrictions. In addition to clarification of corporate share ownership rights, the bill provides for land ownership protections.

Mr. Speaker, many individuals and groups in Alaska have spent a great deal of time and effort over the past 2 years in developing the basis for this legislation. Through a series of village meetings, workshops, and special conventions, Alaska Natives have deliberated long and hard and made many difficult decisions which resulted in proposals to Congress. The Alaska Federation of Natives is to be commended for their efforts to develop a consensus among many individuals, villages, and groups in a difficult and complex area of the law.

I believe the consensus in the Alaska Native community provides us with a good starting point and will serve as a focus of attention on necessary changes in ANCSA. There will be hearings in Alaska and Washington, DC on this legislation. It is my hope that we will be able to enact needed amendments to ANCSA during the current session of Congress.

For these reasons, I urge my colleagues to support this legislation.

Request Public Hearings
Help — Stop
Stevens Murkowski Young
Proposed Amendments to ANSCA
H.R. 4162 S 2065

- A Terms of Settlement act.
- B Resolution #35, and Youngs comment.
- C Judge Berger comment and suggestions.
- D Proposed Additional Amendments.
- E A.F.N. support for Tribal Control of Alaska resources and etc.
- F Proof, Congressman Young allowed Governor Sheffield and Native representatives to be the only ones allowed to testify at August 9th Anchorage meeting! (Youngs Close door Policy)
- G Re: Financial Status of some Native Corporations.
- H Additional data re: proposed Sovereignty and etc.
- * Cover sheet shows what will happen to Alaska resource management if TC Amendment passes!



Public Law 92-203
92nd Congress, H. R. 10367
December 18, 1971

An Act

85 STAT. 688

To provide for the settlement of certain land claims of Alaska Natives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Alaska Native Claims Settlement Act".

Alaska Native
Claims Settle-
ment Act.

DECLARATION OF POLICY

SEC. 2. Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(c) no provision of this Act shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States Government, to make a study of all Federal programs primarily designed to benefit Native people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of the date of enactment of this Act;

(d) no provision of this Act shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlement involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;

(e) no provision of this Act shall effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10 of the United States Code except as specifically provided in this Act;

70A Stat. 457;
76 Stat. 904.

(f) no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act; and

(g) no provision of this Act shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89-136, the Public Works and Economic Development Act of 1965, as amended, shall be interpreted to include lands granted to Natives under this Act as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

79 Stat. 552.
42 USC 3121
note.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

(d) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

(e) "Public lands" means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

(f) "State" means the State of Alaska;

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;

(h) "Person" means any individual, firm, corporation, association, or partnership;

(i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

(k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 6; and

(l) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 17.

4d USC
prec. 21 note.

DECLARATION OF SETTLEMENT

SEC. 4. (a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

Prior land
conveyances,
aboriginal
titles and
claims,
extinguishment.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

ENROLLMENT

SEC. 5. (a) The Secretary shall prepare within two years from the date of enactment of this Act a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. Any decision of the Secretary regarding eligibility for enrollment shall be final.

(b) The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c), a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to subsection 7(a) shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to—

(1) the region where the Native resided on the 1970 census date if he had resided there without substantial interruption for two or more years;

(2) the region where the Native previously resided for an aggregate of ten years or more;

(3) the region where the Native was born; and

(4) the region from which an ancestor of the Native came: The Secretary may enroll a Native in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established pursuant to subsection 7(c). If such region is not established, he shall be enrolled as provided in subsection (b). His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else.

ALASKA NATIVE FUND

SEC. 6. (a) There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

(1) \$162,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:

(A) \$12,500,000 during the fiscal year in which this Act becomes effective;

(B) \$50,000,000 during the second fiscal year;

(C) \$70,000,000 during each of the third, fourth, and fifth fiscal years;

(D) \$40,000,000 during the sixth fiscal year; and

(E) \$30,000,000 during each of the next five fiscal years.

(2) Four percent interest per annum, which is authorized to be appropriated on any amount authorized to be appropriated by this paragraph that is not appropriated within six months after the fiscal year in which payable.

(3) \$500,000,000 pursuant to the revenue sharing provisions of section 9.

Fund expenditures for propaganda or political campaigns, prohibition. Penalty.

(b) None of the funds paid or distributed pursuant to this section to any of the Regional and Village Corporations established pursuant to this Act shall be expended, donated, or otherwise used for the purpose of carrying on propaganda, or intervening in (including the publishing and distributing of statements) any political campaign on behalf of any candidate for public office. Any person who willfully violates the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than twelve months, or both.

Distribution.

(c) After completion of the roll prepared pursuant to section 5, all money in the Fund, except money reserved as provided in section 20 for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to section 7 on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized.

REGIONAL CORPORATIONS

SEC. 7. (a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

- (1) Arctic Slope Native Association (Barrow, Point Hope);
- (2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);
- (3) Northwest Alaska Native Association (Kotzebue);
- (4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);
- (5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);
- (6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);
- (7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);
- (8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);
- (9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);
- (10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);
- (11) Kodiak Area Native Association (all villages on and around Kodiak Island); and
- (12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Alaskan Treaty - 1986?

The following resolution was presented at a convention of the Alaskan Federation of Natives and was co-sponsored by the Alaskan Native Brotherhood and United Tribes of Alaska.

The word is that a bill to consider this resolution is currently under consideration by Congress and is expected to be voted on soon.

Congressman Young of Alaska was quoted in the June/-July issue of the AFN Newsletter as saying "as amendments are drawn up, we have to take into consideration the possibility of outside influences on the legislation. It (the legislation) has to be drawn carefully so that it is only referred to the interior committee on the house side.

AFN SPECIAL CONVENTION RESOLUTION NO. 35

WHEREAS, Alaska Natives should have the option to determine whether or not village lands including townsite lands should be reconveyed to tribes rather than state-chartered municipalities; and

WHEREAS, the State of Alaska has construed its constitution so as to preclude the State from dealing with Alaska tribes on a government-to-government basis.

NOW THEREFORE BE IT RESOLVED by the Alaska Federation of Natives in Convention assembled, that the Convention endorse the concept that ANCSA should be amended to provide that as a threshold matter ANCSA and any amendments thereto are and shall continue to be Indian legislation.

BE IT FURTHER RESOLVED that Alaska Natives, acting through their village corporations, traditional tribal councils or their Indian reorganization Act Councils shall have the option to adopt any of the following provisions.

1. No provision of ANCSA should be construed as enlarging, diminishing or in any way affecting the scope of any governmental powers of Alaska Native tribal governments.

2. All inherent governmental powers, and all provisions of the 1934 Indian Reorganization Act, as amended, which as of the date of passage of ANCSA, applied to Alaska Native tribes (including groups of Indians, Eskimos or Aleuts), shall continue in full force and effect thereafter notwithstanding Section 704(a) of the Act of October 21, 1976 (which repealed Secretarial authority to proclaim new reservations).

3. No provision of ANCSA shall be construed as abridging in any way the governmental powers of Alaska Native tribes either over their members or over any areas of "Indian Country" (as defined in 18 U.S.C. 1151) within their respective jurisdictions.

4. No provision of ANCSA or any other law shall be construed as in any way im-



A Native Role In Resource Management

by Vernita J. Zilys, Director
Subsistence & Natural Resources

There is a short paragraph in *Village Journey* by Judge Tom Berger (page 163) which carries great potential for change in the way fish, game and other resources have been managed in Alaska. The words are not fancy; however, their meaning has prompted an outcry among people who oppose a greater degree of self-determination for Alaska Natives:

"Simply put, the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal lands and waters. There are precedents that have been successful elsewhere."

Berger goes on to cite several examples of Native co-management of resources. Included are treaty fishing rights in the state of Washington which allow Washington Indians to take up to fifty percent of "the harvestable catch" of salmon in waters covered by the treaties; the James Bay Agreement of 1975 which provides that the Inuit of Northern Quebec should exercise jurisdiction over hunting, fishing and trapping of certain wildlife and fish; and the Western Arctic Claim of 1984.

These agreements have something in common: they all recognize that Natives have a right to jurisdiction over resources that do not necessarily live on Native lands, especially resources which they have "always used." For Alaska Natives who have, since statehood and before, become used to the idea that other people (including state and federal agencies) manage fish and game, even on Native-owned lands, what Berger says is startling. For people who do not recognize or accept the concept of even limited Native sovereignty, what he says is outrageous.

How outrageous is this concept? I thought it would be neat to look at one of the examples Berger cites and see for myself whether Native management of fish and game is so far-fetched. I read "The Western Arctic Claim" (the Inuvialuit Final Agreement), which was signed on July 25, 1984.

The Inuvialuit people are Eskimos of the Northwest Territories, next-door neighbors, friends and relatives of the Inupiat people of Alaska. There are people in Aklavik and Inuvik who are related to people in Barrow, Kaktovik and Fort Yukon. Though now politically separated by the United States/Canada boundary, these people are united by

blood. They continue to visit each other regularly, often trade resources, and hunt and fish together. During a trip to five villages in the Northwest Territories in April 1985 with representatives of the International Porcupine Caribou Commission, I witnessed touching reunions between IPCC Alaskan members and their Canadian relatives and long-time friends.

Although those reunited share family names, relatives in common, and have traditionally hunted, fished and gathered the same resources, there is a very real difference in the degree to which each Native group is given a voice in the management of fish and game. Even a brief reading of the Western Arctic Claim tells any reader that the Canadian Inuit have learned a good lesson from the Alaska Native Claims Settlement Act. Their agreement contains pages and pages of stipulations that assure the Inuit do not merely "participate" in resources management, but enjoy harvesting rights far beyond those of their neighbors to the west, Alaskan Inupiat.

For example, the position of the Canadian territorial government with respect to allocation of resources is about 180 degrees opposite to the state of Alaska. One little clause of the Western Arctic Claim, barely two lines long, says it all: 12.(41) (d) states, "the allocation of the Inuvialuit quotas amongst themselves shall be the responsibility of the Inuvialuit."

In case you are wondering how that clause translates from the abstract acceptance of the ability of Natives to allocate fish or game, to the practical exercise of such a right, we should now take a look at how polar bear are managed on either side of the U.S./Canada border.

In the United States, polar bear are included in the Marine Mammal Protection Act. According to this federal law, polar bear are managed by the federal government until and if the state government should decide to apply to take over management of polar bear or the other nine species of marine mammals covered by the NMMA. According to the Act, Alaska Natives have exclusive rights to hunt polar bear — they are exempt from the part of the Act that prohibits the hunting of polar bear.

However, it is the federal government that decides how many polar bear can be taken in a given season, and the federal government that decides which communities will get which amount of the federal quota. In addition, there are severe restrictions on the way in which polar bear can be used. Alaska Natives who take a polar bear for subsistence cannot sell the hide as a rug because they are told this is not a traditional use of the hide. They may cut up the hide and make handicrafts and sell those.

In Canada, the Northwest Territorial government works directly with the Inuvialuit Game Council to decide together how many polar bear can be taken without hurting the total population. Once this decision is made jointly, the government steps out of the picture, and the IGC decides

(continued on page 7)

Native Role in Resource Management (continued from page 6)

which of the communities included in the Western Arctic Claim can hunt polar bear and how many each can take.

An Inuvialuit hunter also has the right to decide whether he will take the polar bear for subsistence, or guide a non-Native on a sports hunt. This is important because either way, the Native appears to win; he can take the bear for subsistence and sell the whole hide as a rug (receiving perhaps \$2,000 in Canadian dollars), or cut it up to make handicrafts, or keep it for himself. Or, he can choose to conduct a sports hunt, charging a non-Native up to \$15,000 Canadian, and still keep the meat because most non-Natives do not eat polar bear meat.

The Canadian system of joint fish and game management with a strong decision-making role for the Inuvialuit is impressive. It obviously took many years of negotiations, but the document that outlines the Western Arctic Claim clearly defines the right of the Inuvialuit to have a say about every aspect of their lives, from subsistence to land use planning, to who should benefit from their claim in the future. They have made good use of their advantage over Alaska's Natives, that is, they have examined the Alaska Native Claims Settlement Act and included the best parts, while rejecting

I am sure that Tom Berger knew how his recommendations would be met in Alaska. But the recommendations are the only ones he could possibly have arrived at, given the strong expressions of dissatisfaction we find echoing through the transcripts of the hearings he held in the villages and in Anchorage. The courage with which he incorporated these recommendations into his report of the findings of the Alaska Native Review Commission must be matched by the courage it will take for Alaska Natives to pursue their implementation.

Of all of the recommendations contained in Chapter 7 of *Village Journey*, the brief paragraph I quoted at the beginning will be most important. It is imperative that Alaska Natives hold closely their right as aboriginal occupants of Alaska's lands and original users of fish, game and other Alaskan resources to maintain ourselves physically, culturally and economically, now and in the future. As Berger stated in his book, "Native governments are also essential if Native peoples are to defend subsistence. The State of Alaska is unable to defend Native subsistence; municipalities will not do it and the corporations cannot do it."

Yup'it Nation pushes for legislation to clarify tribal government laws

February 15th, a nine-man delegation from the Yukon Kuskokwim Delta will journey to Washington D.C. to begin lobbying for amendments to various Indian laws which would further clarify tribal government rights and powers.

This decision was the result of a two-day "Wangkutnek Aulukelkarpuk" (Self-Determination) Conference held in Akiachak January 17th and 18th by the Yup'it Nation. The conference was attended by approximately 100 people from 21 tundra villages.

The purpose of the conference was to provide information, gain support and provide opportunity for discussion and clarification of Resolution 35. This resolution was defeated for inclusion in the 1991 legislation by AFN in 1984, and was placed in committee for study at this year's convention. The intent of Resolution 35 is to strengthen tribal government through clarification, and reaffirm the Secretary of the Interior's authority to accept land into trust for Alaskan Natives, among other things.

As a result of the Yup'it Nation's Conference, a nine-member Board of Trustees was selected to act as a working committee to lobby the United States Congress for passage of Resolution 35 legislation. Other plans of action will be to gather support from within the region first, and then to inform and gather support from other tribes in the state. A media campaign to inform people of the issues

will be launched. Support for the efforts of the Yup'it Nation to proceed was expressed by Dalle Sambo of the Inuit Circumpolar Conference, who will assist with fund-raising to finance the push.

The nine men who will go to Washington D.C. in February to begin and open up the lobbying effort are: Joshua Phillip, Noah Andrew, Owen Ivan, Martin Ivan, Mike Williams, Sam George, Willie Kasayulie, Moses Peter, and Andrew Alexei. William Lomack may go too. Upon the group's return from Washington D.C., a special convention will be held by the Association of Village Council Presidents in Kasigluk in mid-March for the group to report the results of their trip.

At the conference, considerable time was given to a thorough explanation and discussion of the proposed legislation which would protect the land, fish and game resources and tribal government rights. David Case, an attorney knowledgeable in Indian Law; two Native American Rights Fund attorneys, Lare Ashenbrenner and Bob Anderson; Willie Kasayulie as facilitator/interpreter; Carl Jack, interpreter; and Tom Richards from AVCP, went over the legislation point by point explaining what the purpose of each amendment was intended to accomplish, what it would change and why. Questions and comments were then accepted from the audience.

A brief synopsis of the major points of the proposed legislation follow:

6. Tribal Control of Fish and Game. The proposed legislation would clarify the authority of Alaskan Tribal governments to regulate subsistence hunting and fishing. The powers would be expanded so that the amendment could be read as recognizing that Tribal governments have exclusive jurisdiction to regulate hunting and fishing in areas used by their Tribal members for those lands transferred under ANCSA to village and regional corporations.

7. Getting Back ANCSA Money Lost to Legal Fees. This provision of Resolution 35 seeks to restore to Alaska Natives the full value of the settlement negotiated in 1971. The clause reflects a widely held perception that due to complexity of the Settlement Act, the ambiguities in the Act left unresolved by Congress, and the particularly severe "start up" costs incurred by the ANCSA corporations in adapting a rural subsistence based Native culture to corporate forms, substantial portions of the Settlement were lost.

*See Comments
by ADA DEER on page 3*

1. Protection of Tribal Government Rights. Language in the proposed legislation would clear up any contention that the passage of ANCSA terminated or reduced the governmental power of the Alaska Native tribes.

2. Placing Land in Trust. The Secretary of the Department of Interior takes the position that ANCSA revokes the Secretary's authority to accept Alaska Native tribal land into trust. This proposed amendment would expressly reaffirm the Secretarial authority to accept land into trust in Alaska. It also clarifies the authority of the Secretary to establish new, or add to existing, Indian reservations.

3. Defines the Area Over Which Tribal Governments Have Authority. This provision is intended to clarify the meaning of "dependent Indian community" in Alaska for purposes of determining the scope and extent of Native tribal powers.

4. Tribal Control of the Land Without Federal Interference. This proposed amendment contemplates something similar to the traditional trust protections without placing legal title in the United States. Instead, any protections and restrictions which may apply are selected by the Tribe.

(continued on page 3)

8. Land For Tribal Governments. This would give something like a first right of refusal to tribal

government, as well as provide tribes a voice in the resource development of the land.

9. Townsite Lands. Under present law, Native townsite lands which were unoccupied as of October 21, 1976, whether subdivided or not, are to be transferred to the municipal government for the village in which the townsite lands are located. The proposed change would direct that these lands be transferred to "appropriate Native tribal entity."

10. State of Alaska Recognition of Tribal Sovereignty. "Notwithstanding any provision of the State of Alaska's Constitution or laws the State of Alaska may negotiate and enter into intergovernmental compacts with Alaska tribes for any lawful purpose and may enact legislation specially directed to Alaska tribes and their members."

which holds fee simple title. The fact that land is owned in fee simple by a tribe makes the Non-Intercourse Act, 25 W.S.C., Section 177, applicable, so that conveyance may not occur without congressional approval. Accordingly, it is necessary to waive those protections and limitations for tribes to have complete freedom to choose the terms under which their land is held.

A section of the Indian Reorganization Act would be amended to further the idea that the tribe holds land in trust for its members; alienation of tribal lands would require approval by two-thirds of all members authorized to vote in tribal elections.

5. Protecting the Land from Loss Through Taxation or Debt. This provision relates to issues of tax immunity and the core concept behind each of the provisions is borrowed from the ordinary state of affairs involving Indian property, in which neither the property nor income earned from such property may be taxed.

1-27-86
by Patti Harper

For the Tundra Times

A fledgling regional coalition of village governments called the Yupiit Nation is spreading its wings. At a recent three-day Wangkutnek Auluklerkarput (Self-determination) Conference, board representatives from the Kuskokwim River villages of Akiachak, Akiak and Tuluksak voted to take their tribal government cause to Congress.

Chief of the organization, Willie Kasayulie, said he expects to make his first flight to Washington, D.C. for that purpose in mid-February.

That means congressmen will be hit with two different messages next month. The Alaska delegation is expected to introduce legislation in early February which incorporates proposed amendments by the Alaska Federation of Natives (AFN) to the Alaska Native Claims Settlement Act (ANCSA).

Those amendments seek to insure Native control over ANCSA corporations and lands. AFN President Janie Leask said negotiations will begin soon with Department of Interior officials in an attempt to win support from the Reagan administration for the AFN-backed legislation. Leask said she doesn't think lobbying for tribal government interests will hinder AFN's efforts.

"I don't see that as conflicting with 1991 unless somebody tries to tie it to 1991," she said.

But almost certainly some of the tribal governments' suggestions will

Yupiit Nation

(Continued from Page One)

relate to the 1991 legislation. Kasayulie and other tribal government advocates plan to push for acceptance in Congress of recommendations by Alaska Native Review commissioner Thomas Berger and of proposals to strengthen tribal governments grouped in AFN resolution 35, which was presented but never adopted at an AFN convention.

Resolution 35 draft legislative language seeks recognition of tribal authority over Indian country and fish and game management, as well as having land allocated by ANCSA to municipal governments turned over to tribal governments. A vote at the AFN October Convention to refer Resolution 35 to a special committee for review killed an expected floor fight over whether it should be sent to Congress with other AFN proposed amendments, but that only added fuel to the charges of supporters who claim that AFN refuses to hear their concerns. The village participants of the Yupiit Nation Conference fiercely expressed their anger.

Leask concedes that in the rush to protect Native corporations from the hazards of 1991, such as loss of control of Native corporations and land

to non-Natives through the then-possible sale of stock, perhaps tribal concerns may not have gotten the attention they deserve. But she thinks there's plenty of time for that — after the already developed 1991 legislation is law.

Kasayulie disagrees. Though he sits on AFN's committee considering Resolution 35, he thinks Congress needs to hear what tribal governments have to say now. He hopes the decision to lobby separately for tribal governments will bring AFN to a more supportive stand.

"I hope they take it seriously enough to work something out to support each other, but that's up to AFN to decide," he said.

"I really feel it was settled at the convention," Leask said of whether to include Resolution 35 proposals in AFN's 1991 package.

Though AFN wants to sit on tribal government issues until 1991 legislation is passed, the Inuit Circumpolar Conference (ICC) stands ready to help. At the Yupiit Nation Conference, ICC Special Assistant Dalee Sambo pledged that ICC is willing to assist efforts to pass legislation that embraces Thomas Berger's recommendations, "and that most importantly reflect the will of the community and what the people of the villages want."

"More power to the Yupiit Nation!" she said.

The Yupiit Nation was loosely formed in 1984 with the writing of a

AFN SPECIAL CONVENTION RESOLUTION NO. 35 (PAGE THREE)

c Alaska Native tribes shall retain complete jurisdiction to regulate hunting and fishing by all persons within those areas traditionally used by tribal members for subsistence hunting and fishing. The State of Alaska shall only have a jurisdiction over rural Native subsistence hunting and fishing in so far as necessary to conserve species of fish and wildlife.

Setting a goal of tribal self-government

As readers of this column are aware, the Alaska Federation of Natives has expended the majority of its time and effort over the past few years on two principal issues: protection of Native lands and the preservation of subsistence in the Bush.

Lately, however, a third issue, closely related to land and subsistence, has become increasingly important. And that is the issue of tribal self-government in the villages. Tribal self-government is simply the power — the inherent right — of Native American tribes to make and enforce their own laws over their own members, and in some cases, over non-members, within the tribe's territorial jurisdiction.

Tribal self-government is a fact of political life in many states in the Lower 48. In Alaska, it is the right of Natives — as Natives — to govern themselves. This right descends from thousands of years of traditional practice which predates the Alaska Native Claims Settlement Act (ANCSA) of 1971, Alaska statehood, and the existence of the United States.

Tribal self-government is often confused with the concept of sovereignty, which basically means the capacity to act as a government and to resist the impositions of other governments. The words "sovereignty" and "tribal self-government" are often used interchangeably, although the one ("sovereignty") is obviously more volatile and elicits more of an



by
Janie
Leask

emotional response from the average citizen. When the majority of Alaska Natives say we want to be sovereign, we mean we want to govern ourselves, to regain control of our own lives and communities.

We have reason to be concerned.

What has occurred all across rural Alaska during the 20th Century is the steady erosion of local control. In some ways, villagers' rights to self-government and their responsibility to take care of themselves have been usurped by external forces. In other ways, we have given up our rights and responsibilities in return for perceived benefits. But the net effect has been the same. Laws, bureaucracies and services consistently break down the community's ability to take care of itself and dictate what our people may do and may be . . . and the pressure is unrelenting.

A reassertion of tribal self-government is perceived by many village people as

one answer to shield them from external political and economic forces over which they have little or no control.

Above all, we want to protect the land. Our fears of loss of the land are bound up in ANCSA and the problems of 1991 which have been endlessly discussed: corporate stock, taxation, business failures, corporate values, dissenters' rights, etc. For many Natives, the answer to all of this is to transfer ANCSA assets, particularly village lands, out of corporate hands and into tribal ownership. They want it protected from external taxation and other threats of loss, and they want to be able to use it and other surrounding lands for continuation of traditional subsistence practices.

Apart from land and subsistence, Natives want to reassert local control over their own family and tribal members. A good example of this concern relates to the welfare of Native children.

When, for some reason, a Native child is taken away from home, he or she is often placed in an urban, non-Native foster home.

While this may be in the best interests of the child in the short-term, many question the removal and suggest that strengthening the capacity of the village and the extended family to care for the child locally would be more effective. Again, local control and local responsibility equate with local government — of, by, and for Native people who want to

deal with their own problems in more traditional ways.

In response to the increased interest in tribal self-government as a viable alternative to the ANCSA corporate structure, and in response to a resolution passed by the delegates attending last year's convention, the AFN board recently appointed a Committee on Tribal Governments. The Committee, composed of 11 members representing regional Native non-profit associations, regional and village ANCSA corporations, IRA and traditional governments, and the United Tribes of Alaska, met for the first time this past week. The group plans to research the current status of tribal governments in Alaska and the Lower 48 and to present its strategy and recommendations to the AFN Convention next October.

The work will not be easy. But the importance of it should not be underestimated. Without a thorough look at political and legal strategies to halt the steady erosion of local control, who can say if villages will exist tomorrow? That may mean little or nothing to some non-Natives, but for Native people, it is the core of our concern for the land, for the fish and game, and for our future survival.

Janie Leask, an Alaska Native, is president of the Alaska Federation of Natives.

F

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

August 9, 1985 OVERSIGHT HEARING - 9:30 AM to NOON

Egan Civic and Convention Center
555 West Fifth Avenue
Anchorage, Alaska

WITNESSES

*Note:
only Native rep-
resentatives allowed
to testify!*

1. Governor William Sheffield, accompanied by Mr. Emil Notti, Commissioner of Community and Regional Affairs and Ms. Sandra Borbridge, Special Assistant
STATE OF ALASKA

ALASKA FEDERATION OF NATIVES (AFN)

2. Mr. Charlie Johnson, Chairman
3. Mr. Spud Williams, Chairman of the Human Resources Board
4. Mr. Ivan Gambell, Village Steering Committee Representatives
5. Ms. Janie Leask, President

ALASKA NATIVE REVIEW COMMISSION

6. The Honorable Thomas R. Berger

PANEL OF ELDERS

7. Mr. Walter Soboleff, Village Elder*
8. Mr. Al Grant, Village Elder

VILLAGE CORPORATION PANEL

9. Mr. Larry Merculieff, Tangdusix (Aleut)
10. Ms. Viola Burgess, Chairman, Haida Corporation
11. Mr. Myron Naneng, Sea Lion (Calista)

REGIONAL CORPORATION PANEL

12. Mr. Byron Mallott (Sealaska Corp.)
13. Mr. Don Nielsen (Bristol Bay Native Corp.)
14. Mr. Morris Thompson (Doyon Limited)

VILLAGE GOVERNANCE PANEL

15. Mr. Andy Hope, Administrator, Sitka Community Association
16. Mr. Willie Kayasulie, Akiachak
17. Mr. Sheldon Katchatag, United Tribes of Alaska

F

WITNESSES

2:00 pm to 4:00 pm

NATIVE NON-PROFIT PANEL

1. Mr. Gordon Pullar, President, Kodiak Area Native Assoc. (KANA)
2. Mr. Caleb Pungowiyi, President, Kawerak, Inc.
3. Mr. Ed Thomas, Tlingit-Haida Council

YOUTH PANEL

4. Kermit LaBelle
5. James LaBelle, Jr.

to be accompanied by their Father, Mr. Jim LaBelle

OTHERS

6. Mr. Daniel Alex, President, Alaska Native Land Mangers Assoc.
7. Mr. Andy Johnson, President, Salamantoff Native Assoc.
8. Mr. Roy Roehel, Chairman & President, Chugach Native Corp.
9. Mr. Will Mayo, Sub-Regional Liaison Officer, Tannana Chiefs Conference (TCC)
10. Mr. Dave Lacey, representing Stevens Village
11. Mr. Dewey Skan, representing Klawock IRA Council
12. Mr. Frank Miller, Board of Directors, Takotna Village
13. Mr. Jonathon Soloman, Second Chief, Village of Fort Yukon
14. Mr. Franklin Madross, Sr., Traditional Leader, Kaltag Village
15. Ms. Jacqueline Guzialek, President, Cook Inlet Tribe, accompanied by
Mr. Charlie Edwardson
16. Mr. Richard Kito, Petersburg Indian Association, accompniaed by Mr.

Victor Gunthrie

* *Congressman Don Young, refused the right
of Sam E. Mc Dowell to testify at these hearings.
Congressman Young should be held account-
able for his actions!!!*

Alaska's legislators discuss 1991 issues during convention

On March 28, 1985, delegates to the AFN Special Convention on 1991 were able to listen to Senators Ted Stevens and Frank Murkowski and Congressman Don Young discuss 1991 issues live, via audio/video satellite transmission. Senator Stevens, the senior members, noted the key positions held by members of the Alaska delegation and the roles they will play in the 1991 legislature process. Senator Murkowski is a member of both the Senate Energy and Natural Resources Committee and Senate Select Committee on Indian Affairs, while Congressman Young is on the House Interior and In-

sular Affairs Committee.

Senator Murkowski stressed the points that the Native community must have a consensus on 1991 and that ANCSA amendments must be well drafted to assure that they won't be subject to extended litigation. One big concern of Congress will be minority shareholder rights ("dissenters' rights"). The federal government does not want to expose itself to potential litigation, and Congress will want assurance that there will be no federal liability to compensate dissenters. Senator Murkowski concluded by telling the delegates that the only way ANCSA legisla-

tion can pass Congress is to have it clean, meaning that it must be relatively free of constitutional and legal problems, that it must be uncluttered by extraneous issues and that there must be a Native consensus behind it.

Congressman Young informed the delegates that "...as amendments are drawn up, we have to take into consideration the possibility of outside influences on the legislation. It (the legislation) has to be drawn carefully so that it is only referred to the Interior Committee on the House



U.S. Sen. Frank Murkowski



U.S. Sen. Ted Stevens

"...there must be a Native consensus behind it."

side. Remember, we have got ourselves, in the past, into some very difficult situations by not carefully drafting legislation when it was first introduced."

Senator Stevens started his discussion by re-enforcing the idea of consensus. "It is essential that you reach an agreement...in any way that demonstrates a real understanding of the process we all face." Additionally, said Stevens, "I hope what you do is presented in a positive way to Congress. Congress did the best

it could do in 1971; that was the first time that Congress ever settled claims such as were presented by your people... There still are many members here who participated in 1971 events that led to the Land Claims Act, and I hope that you approach them constructively, without being critical of Congress, in terms of what was done then, but seeking help for what we would like to do to deal with the 1991 problems."

The Senator concluded by saying that "subsequent generations will look at what you do here with as critical an eye as you now look at what went on in 1971."

At the close of the 40-minute transmission, all the members of

the delegation thanked the Convention. Congressman Young struck a final note of realism by stating that issues of ANCSA and 1991 only effect Alaska and that, as a consequence, there needs to be an education process for the more than 300 members of the House of Representatives who were not around in 1971 and who have no knowledge of what Congress should do.

One Convention delegate, summed up the reaction of many to the topics discussed by Alaska's Senators and Congressman: "I'm glad these guys were frank with us. The process of getting a bill through Congress isn't going to be easy."

AFN President, board members, at work in D.C.

AFN President Janie Leask, accompanied by several Board members and other representatives, visited Washington, D.C. on May 22 and 23 in order to keep key Congressional and ad-

ministration officials informed on what is happening with 1991 issues. The delegation consisted of John Schaeffer, NANA; Roger Lang and Chris McNeil, Sealaska; Nick Jackson,

AHTNA; Don Mitchell and Ken Bass, AFN Attorneys; Steve Silver, a Washington attorney for BBNC, also participated in many of the discussions.

The trip provided a valuable perspective to AFN's legislative strategy: what Alaska Natives believe to be the critical issue (1991) is not considered an important topic in Washington. Congress has its own priority issues and timelines, and the Native community of Alaska will have to fit its interests around several major problems of nationwide significance.

The AFN delegation formally requested that the House Interior and Insular Affairs Committee hold public hearings on ANCSA and 1991 in Alaska during August, a time when members of the Committee will be touring the state. The House trip to Alaska is not solely for the purpose of holding these hearings. The Committee will also conduct meetings on environmental and development topics and will conduct inquiries into the Red Dog Mine, timber harvest in the Tongass National Forest and management of the Arctic National Wildlife Refuge. (See Important Update, Page 4, for more information on the format of the August hearings).

During their last day in the

Capital, the AFN representatives met with Alaska's congressional delegation. Ms. Leask pointed out that Natives all across the state want to play an active role in the development of 1991 solutions and in the amendatory legislation submitted to Congress. The House hearing will not allow that kind of broad participation.

"Congress has its own priority issues and timelines..."

due to the fact that it is scheduled in August, in Anchorage, for one day only. In response to this concern, the AFN delegation requested that the Senate schedule a number of meetings in Alaska villages and regional centers during the Congressional recess in November. Senators Stevens and Murkowski were supportive of this idea and will make themselves available, according to the schedule of their duties in

Washington. The testimony received by Alaska's Senators will then be submitted as part of the record for the formal Senate hearings in Washington next year. This method was previously used in the D-2 legislation and worked well.

The six rural locations recommended by AFN for the Senate meetings in Alaska are Bethel, Dillingham, Nome, Kotzebue, Hoonah and Tanacross. These regional centers were selected to give village shareholders the maximum opportunity to voice their views.

The AFN delegation also met with representatives of Senators Malcolm Wallop, Wyoming; James McClure, Idaho; Mark Andrews, North Dakota; Bennet Johnson, Louisiana; and John Melcher of Montana. These Senators will be key players on the Senate Natural Resources Committee and Senate Select Committee on Indian Affairs. Each Senator's staff was briefed on 1991 issues and legislation.

Deputy Under Secretary of the Interior Bill Horn met with the AFN group and covered the topics of subsistence, 1991 and the 1985 Report. The AFN delegation concluded its Washington, D.C. trip by attending House hearings on the NANA land exchange.

Hodel

(Continued from Page Three)

state law and rural interests will be endangered in the 1990's when the Alaska State legislature will be controlled by Anchorage. AFN concluded 1991 discussions by asking for Secretary's support in amending ANCSA.

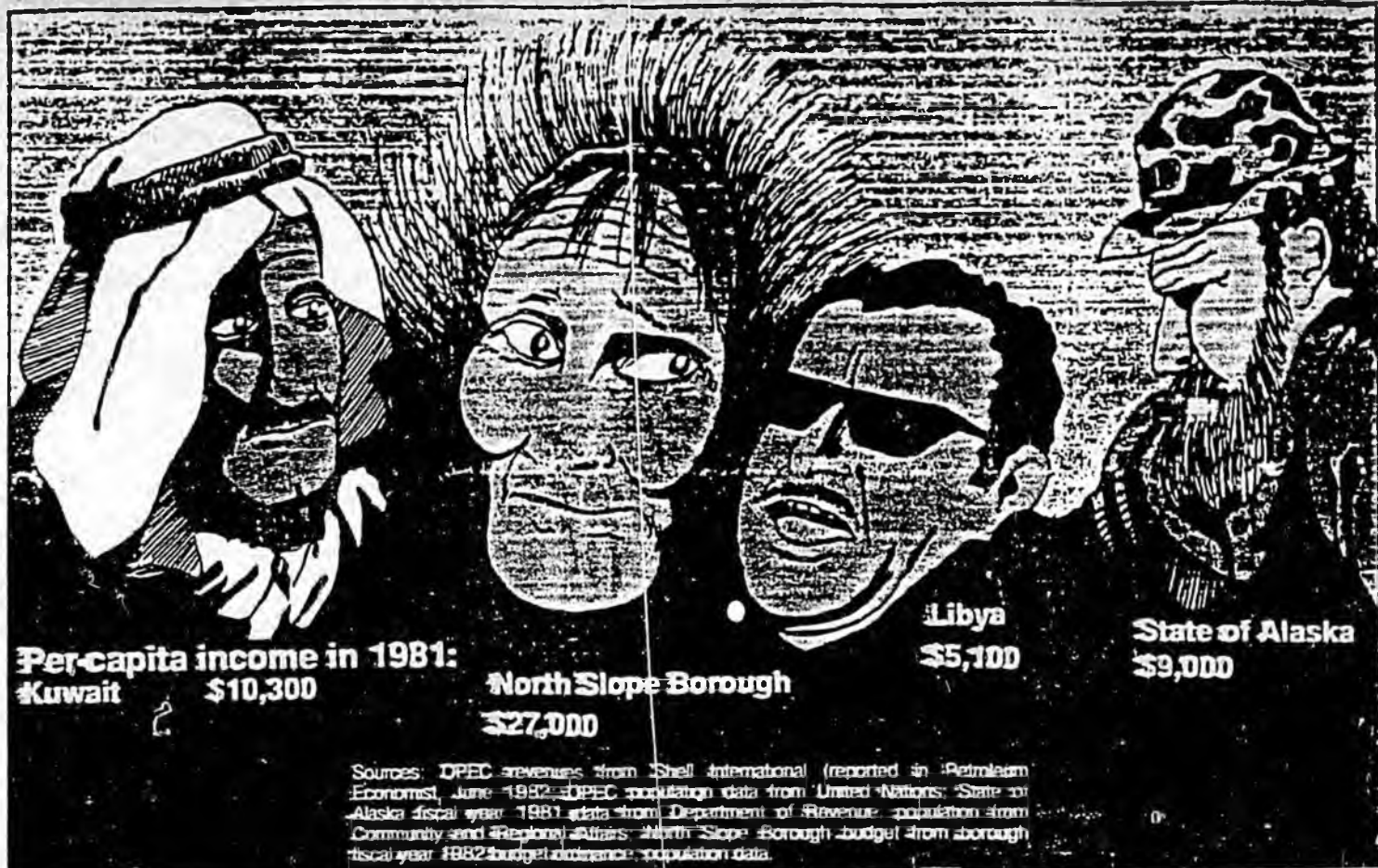
The current issues surrounding the subsistence priority was discussed with Secretary Hodel in detail. AFN representatives described the subsistence related problems within the State and asked for support to ensure that the people most dependent on fish and game get first priority to it. Secretary Hodel told the group that the Department of Interior preferred that the State of Alaska take action to comply with federal regulations on subsistence priorities. The Secretary stated that if the State of Alaska does not comply within a specific amount of time, the federal government will step in as the government is mandated to by law.

Another issue discussed was

the non-escrowed funds being held by federal agencies. The funds are revenues from oil, gas and mineral sales from lands owned by Native corporations. Sixty to seventy percent of these revenues are shareable under ANCSA Section 7(i) and 7(j). In 1980, Section 1411 of the Alaska National Interest Conservation Act directed the federal government to account for these funds which amount to \$18 million, and make payments, with interest, to the appropriate corporations.

Secretary Hodel responded that he would work to ensure the corporations were distributed the funds that are rightfully theirs.

The indecision of the Department of Interior to approve the Eagle IRA Constitution was briefly discussed. Secretary Hodel spoke to the fact that IRA's were not a simple issue and he was reluctant about creating additional tribal governments in Alaska. AFN representatives reaffirmed their position that the federal government is required to approve new IRA consultations or work with Native groups to make appropriate changes.



Anchorage Daily News/Peter Dunlap-Shohl

A \$1 billion borough

Money flows like oil in the North Slope Borough

By DON HUNTER
Daily News reporter

BARROW — From a cubby-hole office in a weathered, blue two-story building at the edge of the Arctic Ocean, the mayor of the 7,500 residents of the North Slope Borough directs a financial empire that dwarfs the ambitions of any other local government in Alaska.

It's a billion dollar empire, one that shot up from the ice of the far North over a dozen years of power politics, nurtured by visions of a social Utopia and fueled by the same crude oil bonanza that underwrites permanent fund dividends, highway construction and dam building across the state.

The North Slope's wealth leaves a legacy in which the borough — in the fiscal year beginning July 1 — will spend about 32 times as much to operate local government for each of the 7,552 residents living there as the Municipality of Anchorage will spend to operate the local government of 204,000 residents in 1983.

Most of the borough's operating expenses — more than \$240 million next year, compared to less than \$200 million this year in Anchorage — are dedicated to payments on nearly \$1 billion of bonds sold to finance capital construction projects.

To date, the North Slope Borough has sold \$987 million of general obligation bonds. The current capital projects budget now being reviewed by the borough assembly — if adopted in large part as proposed — would cause that figure to escalate to more than \$1.5 billion.

Hundreds of capital projects ranging from sewers to satellite

INSIDE

- Bush senator pushes for more money for borough. Page A-12
- North Slope mayor builds his election war chest. Page A-12

era communications facilities have been or are scheduled to be built. A public housing project underway for the past five years now totals \$232 million. With that money, the borough is building homes at costs ranging from \$200,000 to more than \$600,000 for rent to residents in Barrow and the outlying villages of Nuiqsut, Anaktuvuk Pass, Kak-tovik, Pt. Hope, Wainwright and Atkasuk.

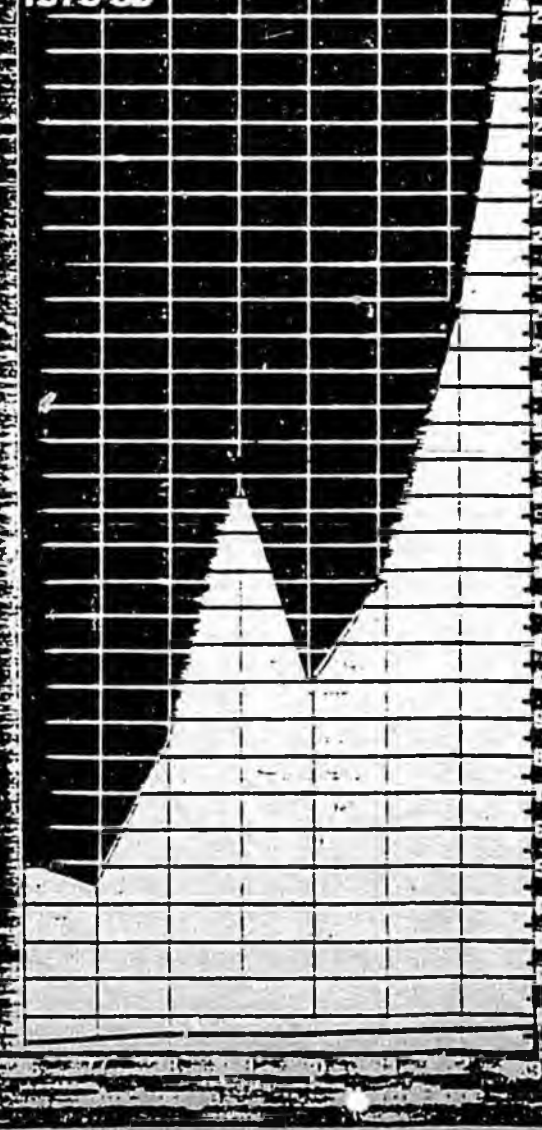
The money — and the money to be made on the North Slope — have attracted dozens of construction companies, architectural and design firms, and "arrangers" men who, like powerful lobbyist Lew Dischner and financial adviser Robert DuPere, had personal ties to the late borough Mayor Eben Hopson predating the borough's incorporation in 1972, and like Alex Miller, the lobbyist for multi-millionaire Neil Berg's Alaska International family of transportation and construction companies.

Dischner and his firm, Trust Consultants, have been employed by the borough throughout its existence. The relationship has proved lucrative to both sides. Last year, Trust Consultants took home \$169,000 in lobbying fees from the North Slope. A partner in the lobbying firm, former state legislator Marty Farrell, works as general counsel to the borough.

Predominant among the con-

See Page A-13. NORTH SLOPE

Comparing per capita spending in operating budgets 1976-83



North Slope Borough is awash with money and officials who aren't afraid to spend it

Continued from Page A-1

struction companies at work on the North Slope is the Washington-based H.W. Blackstock Co. Blackstock's presence on the slope began early in the capital building boom, borough officials say, when Hopson was searching for construction companies that would assure a maximum number of borough residents would be put to work and Blackstock devised a way to prefabricate housing structures in Washington and ship them to the borough, where they would be assembled by local residents. The firm's president is a well-known Seattle businessman Kenneth Rogstad, a former chairman of the King County Republican Party and a long time — and influential, according to reports — friend of President Reagan.

The relationship no doubt assists in the direct access the borough's current mayor, Eugene Brower, says he has to U.S. Secretary of Interior James Watt.

In addition to its share of the public housing program, Blackstock also acts as a purchasing agent for the borough on other construction projects, acquiring materials and supplies.

The money to be made in the borough has carried over to internal politics. In a statement filed with the Alaska Public Offices Commission, Brower, who does not run for election again until 1984, reported receiving some \$57,000 in contributions on one day last December. Nearly all were the maximum \$1,000 donations allowed by state law, and the vast majority were from companies or individuals — in Alaska, Washington state and Texas — that do business on or with the North Slope.

While the borough's enormous construction program may be well intentioned, it is not always well planned or well executed. For example, a \$24 million high school planned five years ago to serve some 200 Barrow students is currently budgeted at \$71 million. Virtually complete, it will open its doors next fall, but the expected operating costs have caused concern, and some observers say privately that the school cost may approach \$100 million.

Borough officials concede that the escalation is striking, but they say construction in arctic conditions is a still-evolving science and point to the experience of the trans-Alaska oil pipeline, originally estimated to cost about \$900 million and completed at more than \$8 billion.

Reviews of the borough's annual financial reports, bond prospectuses, capital and operating budgets disclose other examples of eyebrow-raising expenditures: Among them an advance payment of \$406,000 to a company called Jen-Air Inc. during 1981 and in previous years. The advance payment was to be credited against future borough air travel. But, according to a borough financial statement, borough attorneys believed "anticipated service is not feasible and the amounts prepaid for services to be provided by Jen-Air Inc. are not currently collectible." The deposit, according to the financial statement, was written off as of June 30, 1982.

(1)

The North Slope Borough combines opposites, a vast, harsh landscape of 88,281 square miles stretching from Canada to the Bering Sea. The expanse is interrupted only by seven villages and the boomtown capital, Barrow. The largest — in sheer acreage — local government in the United States, it numbers only 7,500 permanent residents.

But it is also the wealthiest of governments. Borough officials anticipate a tax base of \$10 billion in the coming fiscal year — a level that roughly equals the assessed value of taxable property in Anchorage. The North Slope's future is grounded in an ancient treasure tapped only in the last half-dozen years.

Oil.

The commodity fuels virtually everything in the borough, from the five Orion transit buses that traverse the icy streets of Barrow and Pt. Hope to a unique new sewer system that may cost as much as \$300 million to build. The

Where did the money go?

The following outlines the purposes and the total bonds sold from 1975 to June 30, 1982.

PURPOSE	BONDS SOLD
Station and service center facilities	\$171 million
Roads and related facilities	\$66.7 million
Housing facilities	\$131.7 million
Water facilities	\$64.97 million
Sewage treatment facilities	\$64.1 million
Airport and terminal facilities	\$18.875 million
Urban development projects	\$8.53 million
Light, power and heating systems	\$27.15 million
Public safety facilities	\$31.8 million
Sanitary facilities	\$62.87 million
Communications	\$3.1 million
Health facilities	\$3.3 million
Library/cultural facilities	\$7 million
Administrative facilities	\$3.5 million
TOTAL	\$664.2 million

taxes it produces has enabled the North Slope Borough to embark on a building program probably unmatched by any other local government, anywhere.

From a relatively humble \$150 million capital projects budget in 1972, the year the borough incorporated, the ambitions of borough officials have escalated ten fold, to the current plan totaling more than \$1.5 billion.

The borough's ability to market such enormous amounts of bonds is based in the wording of a 1973 tax law that allows local government officials to exceed normal tax ceilings to repay bond debts. It means that normally conservative bond buyers are willing to accept the long-term debts of the North Slope Borough because they are, in the words of one observer, backed "by the full faith and credit of the oil companies" whose energy investments directly or indirectly underwrite better than 90 percent of borough spending.

The remark is a play on the phrase commonly used in the legalese of municipal bonds — a guarantee that the bonds are backed by the "full faith and credit" of the taxpaying residents and businessmen of a given community. It is given as an assurance that residents are willing to pay increased taxes to pay back the debt.

But it also underscores another critical factor in North Slope spending. Because the normal check on government expenditures — taxpayer caution about commitment to additional taxes — is diminished by the overwhelming proportion of oil property-tax support, borough voters in effect have given the North Slope Borough a virtual blank check. The significant increases in North Slope spending don't directly affect the oil industry, which pays a flat tax to the state. The revenues from that payment then are distributed among the various cities and boroughs in which oil pipeline property is located — Valdez, Fairbanks and the North Slope.

The ready availability of oil-supported tax revenues also has undoubtedly stimulated spending in Valdez and Fairbanks, but to a much lesser degree. As of July 1, 1981, Valdez had marketed \$76.8 million of bonds, and the debt averaged \$23,437 for each Valdez resident. At the same time, the North Slope had sold \$454.2 million in bonds. The average debt of North Slope residents was \$63,990.

Today, even those figures pale.

Growth in operating budgets

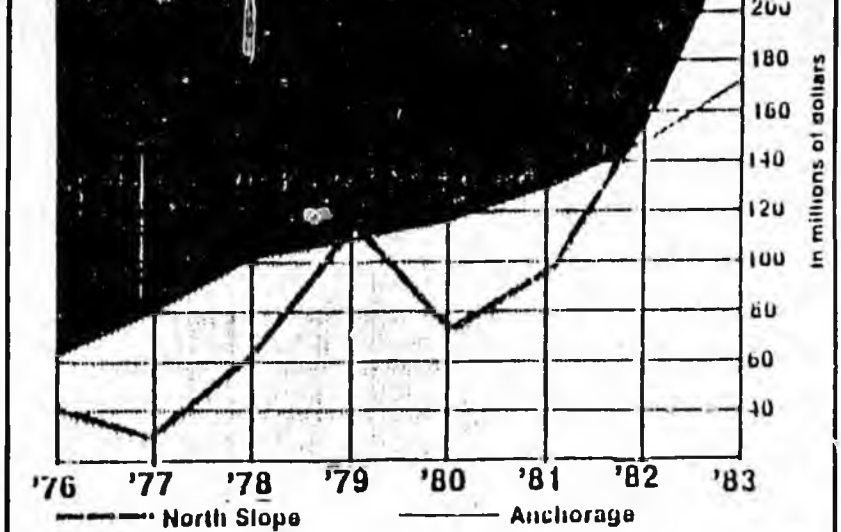


Chart: Daily News staff department

To date, the North Slope Borough has marketed more than \$750 million of bonds. Borough officials have invited bids on another \$200 million in bonds that could sell any day, bringing the total to nearly \$1 billion. Figures for Jan. 1, 1983, show the borough's debt amounted to an average of \$81,936 per resident. If translated to the current court-approved population figure for the North Slope — about 7,550 — the average for each resident soars to more than \$126,000. In contrast, current figures for Anchorage, according to municipal finance officials, show outstanding bonded indebtedness from the sale of general obligation bonds of about \$353 million. The average debt of Anchorage's 201,000 residents comes to \$1,726.

Created only 10 years ago, in the birthing pangs of arctic oil development, the men and women in control of the North Slope Borough have undertaken an unprecedented social and economic revolution. Schools and sewers and satellite communications, in the space of a decade, have appeared in a frosty soil that in all preceding history had supported precious little beyond the rude basics of survival.

Much of what has been accomplished in the North Slope Borough in the last five years of oil financed construction already is being redone. The seven-member borough assembly is reviewing the latest version of a capital spending program for the fiscal year beginning July 1. Among the items: renovation or, in at least one case, replacement of buildings to house electrical generation facilities in the borough's seven villages.

The same proposed capital spending plan includes some \$529 million of projects yet to go to voters. If authorized and sold, those bonds would bring the borough's indebtedness to more than \$1.5 billion.

Because the borough has unlimited power to levy taxes to repay bonds, its bond debt is as secure as the oil industry's interest in the petroleum wealth of the North Slope.

But the prospect of a multi-million dollar debt remaining when the oil industry winds down North Slope operations in the next 10 to 20 years concerns some lawmakers and state officials, who point out that the state might have to step into the gap to prevent a North Slope default on its bonds. Such a development, they say, could have devastating consequences on the ability of other Alaska towns to market bonds.

State mistakes cost millions

Native corporation got oil, gas worth as much as \$500 million

By RONNIE CHAPPELL
Daily News reporter
© 1985 Anchorage Daily News

Mistakes by state officials executing a land swap 10 years ago have cost the state at least \$35 million in oil and gas revenues, an examination by the Daily News reveals.

The cost of these oversights by state resource managers is growing by \$5 million or more a year, and one day may exceed \$500 million.

In response to inquiries by the Daily News, state officials have begun looking for ways to recover the lost oil and gas lapd and revenue. They also are drafting new land disposal rules designed to prevent the kind of errors that resulted in:

- The transfer of 11 valuable state-owned leases on the Kenai Peninsula to Cook Inlet Region Inc., the Anchorage-area Native regional corporation.

- The loss to CIRI of nearly half the state's ownership interest in one of the largest gas fields in the United States.

- The conveyance of more than 2,000 acres in the Cannery Loop gas field without knowing that it was worth \$50 million to \$120 million. Today, because of increases in the price of natural gas, the land could be worth \$300 million to \$720 million.

- The overlooking of a section of the Alaska Native Claims Settlement Act that allowed CIRI to take a third of state revenue from two known oil and gas fields.

The land CIRI has obtained is among the most valuable in Alaska. Over the past five years, the company has grown into a financial powerhouse that earns millions of dollars a year, and pumps millions more into 11 other Native regional corporations.

The engine of CIRI's success is the oil and gas income unwittingly turned over by the state.

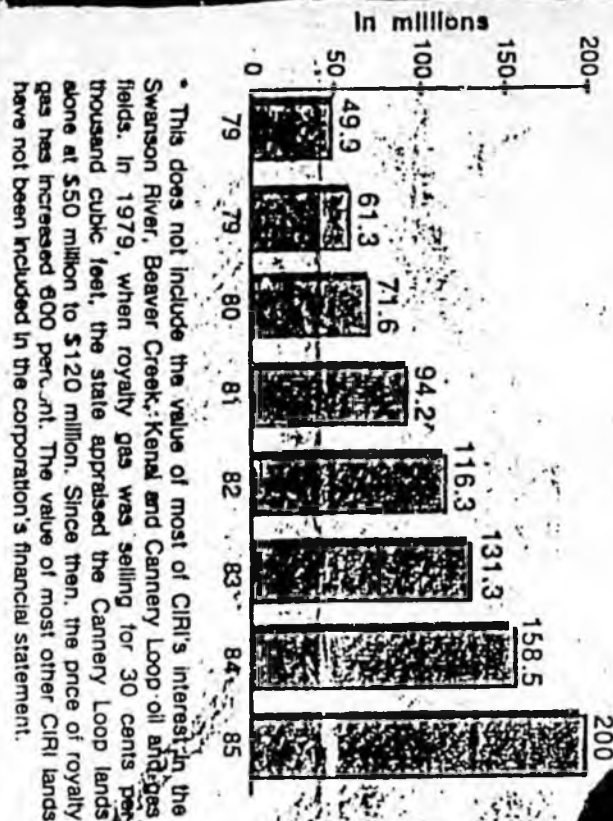
Under federal law, the state receives 90 percent of all oil and gas royalties from federal land in Alaska. Under that system, the state once earned up to \$7 million a year from the Swanson River oil field.

CIRI used the land trade to take a 35.1 percent cut of the income from Swanson River. The state's share fell from 90 to 58.4

percent; the federal government gets 6.5 percent.

The loss to the state was even greater in the Kenai gas field, one of the largest in the country. The field heats most of Anchorage, supplies raw material for a world-class fertilizer plant and fuels the only liquified natural gas export facility in the U.S.

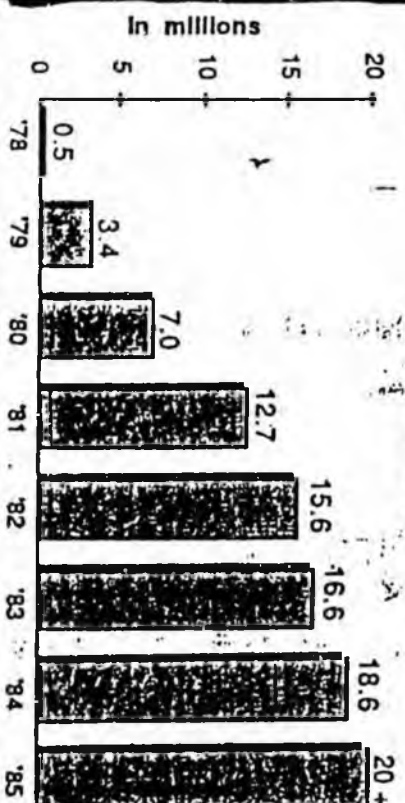
Before 1976, the state collected more than 90 percent of the royalty income from the Kenai field. Through the land trade, CIRI acquired 65 percent, worth more than \$10 million a year beginning in 1986, and the state share fell to 31.5 percent, with the balance going to the federal government.



FOR COOK INLET REGION INC.

THE FINANCIAL PICTURE

NET INCOME



Cook Inlet Region, Inc. (CIRI) will receive over \$31 million of its share of back royalties as the state, federal government and CIRI reach settlement with Enstar Natural Gas Company. Seventy percent of this windfall will be shared with the other twelve Native regional corporations, along with the 6,000 plus stockholders in CIRI. CIRI president Roy Huhndorf said, "The settlement with Enstar will not generate any large amount of user fees, maybe an increase of \$3 to \$4 per month and about a total of around \$50 a year."

Native firms pay top executives well

Northland News, Fairbanks, Alaska, December 1985-15

ANCHORAGE (AP)—The top officials of at least seven of Alaska's 13 regional native corporations are earning more than \$100,000 a year.

Cook Inlet Region Inc. and Sealaska Corp. lead the pay parade, each with five executives making more than \$100,000. Arctic Slope Regional Corp. and Doyon Ltd. each paid three executives more than \$100,000.

At the Fairbanks-based Doyon Ltd., executive vice president Peter McMahon made \$165,662, acting chief operating officer Millard Stiles, \$140,625 and president Ben Katz, \$125,000.

Katz has since been fired and replaced by Morris Thompson, who is

earning \$95,000 a year.

The Aleut Corp. had two employees over the century mark, and a third very near it, while Chugach Natives Inc. and Bristol Bay Native Corp. each had one.

Roy Huhndorf, president of the Anchorage-based Cook Inlet Region Inc. was the top-paid corporate official at \$184,627, including bonuses and profit sharing.

CIRI vice president George Kriste was second on the statewide list at \$171,237. Other top earners at CIRI were vice presidents Lance Anderson (finance) \$119,340, Carl Marrs (business operations and development) \$112,607 and Frank Klett, \$110,291.

Archie Kovanen, vice president and chief operating officer, led the list for the Juneau-based Sealaska Corp. at \$168,658. Insurance and benefits added \$37,751.

Sealaska's president and chief executive officer Byron Mallott made \$123,288, plus insurance and benefits of \$44,709.

The presidents of Sealaska subsidiaries also were among the best paid. Victor Horgan Sr., of Ocean Beauty Seafoods, was paid \$157,533, plus insurance and be-

nefits of \$21,274; William Troy of Pacific Western Lines, \$126,812, plus \$17,481; and Dennis Purviance of Alaska Brick Co., \$125,000, plus \$17,300.

Conrad Bagne was paid \$127,249 as chief of operations for the Barrow-based Arctic Slope Regional Corp. Chairman Edward Hopson Sr. made \$115,734 and president Jacob Adams made \$109,598.

Senior vice president John

Carpenter made \$109,820 at the Aleut Corp., while President Agafon Krukoff Jr. made \$100,149, followed by Richard Brown, vice president of finance at \$99,081.

H. Noble Dick, president of the Bristol Bay Native Corp., made \$100,588, plus benefits of \$10,966. Chet Ross, president of Chugach Natives Inc. made an even \$100,000.

The top paid executives at the other five were:

- Bering Straits Native Corp.: Charles Johnson, \$86,913;
- Calista Corp.: Nelson Angapayk, \$77,700, plus benefits of \$9,619
- NANA Regional Corp.: John Schaeffer, \$71,000;
- Koniag Inc.: Charles Winegarden, \$50,000;
- 13th Regional Corp.: Kurt Engelstad, \$48,000, plus \$11,000 deferred.

Cook Inlet Communications Corporation, a JV of Cook Inlet Region Inc. (CIRI), Whitcom Communications Inc. and Pain Webber, has just offered \$114 million in bonds and notes to finance the purchase price of \$170 million for TV station WTNH, an ABC affiliate in New Haven, from Capital Cities Communications Inc. This will be CIRI's second venture into eastcoast broadcasting.

Task force prepares report on sovereignty

by Mary Scarpinato
Times Writer

Gov. Bill Sheffield may be advised to test Alaska native sovereignty issues in court — and aid both sides in the issue by collecting information on the subject. That is one recommendation that could come out of the governor's Task Force on Federal, State and Tribal Relations after a 1½-year study.

Federal officials and congressional leaders have not helped much in attempting to settle controversial sovereignty issues, according to a recently published draft report of the task force. The task force is a 14-member panel of both native and government experts. A final report is due in December.

This task force study, and separate inquiries by Canadian jurist Thomas Berger and the U.S. Department of Interior, are considered the three major investigations of late into Alaska native issues.

While Berger's report recommended an expansion of the practical application of sovereignty rights in Alaska, the Interior report is not expected to favor expanded sovereignty.

The governor's task force may urge Sheffield to bring "a series of test cases" on native sovereignty, or self-government,

issues. The draft report said that by such filings Sheffield could work with, not against, Alaska natives also who want sovereignty questions settled in a legal forum.

Regarding Alaska's congressional delegation, the draft report criticized its three members for refusing to play a role toward the resolution of the growing sovereignty debate here.

Despite the delegation's repeated claims that sovereignty matters must be settled between natives and the state, the draft report cites the U.S. Constitution's designation of Congress as the authority over all Indian and native affairs.

The sovereignty movement here is basically a call for native villages and tribes to be able to govern their local communities and surrounding areas with little or no interference from the state, much like the situations on Indian reservations in the Lower 48.

Alaska natives claim they are guaranteed certain self-government rights under federal law and treaty.

But the sovereignty call is met by opposition from some state officials and others.

The opposition argument says: Natives' political rights in Alaska are the same as non-na-

tives, such as to vote in state elections and hold state office. Therefore, native properties and activities here fall under state regulation, just as those of non-natives.

"In recent years, the intensity of the public debate between the proponents and opponents of these two diametrically opposed positions has substantially increased," according to the draft report.

The federal government has not stepped into the fray on behalf of either side. At times, the draft says, federal officials and federal law seem to regard Alaska natives the same as Indians of the Lower 48. Yet, at other times, they do not.

One state assistant attorney general was quoted in the draft, saying: "The federal government does not speak with one voice. From our perspective, what we see is confusion in the (federal) law."

According to the draft, the task force might also suggest that natives leaders and state legislators together request that Congress clarify its laws on state and native jurisdictions or that the Interior Department develop some formal legal opinions on these matters.

AFN urges sovereignty movement not to ignore the political realities

by Mary Scarpinato
Times Writer

A "strong dose of political realism" was urged on delegates at United Tribes of Alaska's second annual convention.

The message came from what many consider UTA's political and philosophical rival in this state — Alaska Federation of Natives.

UTA, the leader of the native sovereignty (or self-government) movement here, was reminded of considerable federal government opposition already aligned against some of its emerging stands.

AFN President Janie Leask also proposed a working alliance between the state's two most prominent native activist organizations in an effort to amend the Alaska Native Claims Settlement Act (ANCSA).

She noted when she addressed UTA's Thursday convention session here that both organizations share major complaints with ANCSA.

"Although we can agree on the problems, the solutions will be limited by political and economic facts and events which take place outside the native community," she cautioned.

When ANCSA was passed in 1971, it awarded 44 million acres to Alaska natives and placed this land under the ownership of corporations with all natives alive then enrolled as shareholders.

AFN is pushing amendments primarily aimed at

providing additional financial protections against these corporations' failures or takeovers.

UTA is primarily pushing for the transfer of land assets to local native governments for further protection — a transfer that can be accomplished without federal approval, according to UTA.

But Leask noted that the federal government is a formidable force and it has already let it be known that proposals by both AFN and UTA to keep native lands and land income tax free forever is unacceptable.

"Despite President Reagan's assurances of government-to-government relationships and support of tribes, there is little evidence from the behavior of bureaucrats that his assurances will be put into practice in Alaska," she said.

And while other federal officials have said that they will not necessarily oppose land ownership transfer to native governments, Leask reported they have said they will oppose any declaration of this land as "Indian country" with all special governmental privileges this status entails.

It was not a "desire to do justice" that won the original ANCSA awards from the federal government and Washington, D.C., powerbrokers, according to Leask. It was instead powerful interest groups' need to settle land claims arguments so the 900-mile trans-Alaska pipeline could be built.

The Kaltag Native Council approved a measure "to reassert jurisdiction on minor criminal offenses committed within the boundaries of the village" but will leave enforcement of felonies to the state. The village is forming a tribal court and drafting a comprehensive tribal code of criminal laws, and is seeking help from the Tanana Chiefs Conference. According to Second Chief Clasker Nikolai they have built their own jail and already had a constitution written down from "way back". How the state of Alaska will deal with this unruly situation is awaiting judgement. This process called retrocession occurs on an Indian reservation, but according to Jake Lestenkopf of the Bureau of Indian Affairs, "I don't know if the village has the capability of saying, 'Listen state, we don't like what you're doing here. Come on in feds.'" The Alaska State Troopers have a resident village public safety officer who is to enforce the law in Kaltag.

United Tribes of Alaska (UTA) is continuing to develop a legislative proposal package of its own for amendments to the Alaska Native Claims Settlement Act — despite warnings that federal lawmakers don't want to get involved in a dispute among Alaska's Native factions. UTA contends that the Alaska Federation of Natives is unqualified to speak on behalf of Alaska's Natives, but that Alaska's tribal governments should be dealing with federal lawmakers. The UTA amendments are much broader and center around returning Native lands to tribal governments. The cover hunting and fishing rights to tribal government guarantees to land conveyance. UTA will be aided in their congressional presentation by Ada Deer, a Menominee from Wisconsin who led the Menominee fight to win restoration of 234,000 acres of reservation land.

United Tribes of Alaska (UTA) attorney Lloyd Miller indicated to the Anchorage press that UTA's money troubles would be eased by funds from the Bureau of Indian Affairs (BIA). However, BIA official, Timothy DeAsis said BIA's procurement process just does not made such funding available. He indicated that most of the villages were recipients of the bureau's 104(a) self-determination grants and that those grants would cover a tribal member for travel and per diem expenses involved in attending statewide meetings and conventions.

Hi-Lites of Native Business

December 15, 1985

Mitch:

I suggest you
read the attached and
you will see what type
of problems Sec 7C amend-
ment will cause in Alaska

Sam

10/11/77 *John* *84*
I am Verna Lawrence of Sault Ste Marie, Michigan. I am of Indian descent and am an elected City Official and have held this office for 8 years. I am elected by the citizens at large in the Community. I speak to you from personal experience, as I have been involved in various aspects of the Indian issue.

I appreciate the opportunity to address the members of your group attending this session on "Unraveling the Native American Rights Issue." I understand that there are quite a few liberals among your membership. That's fine. I used to be a liberal myself, until my experiences on the Indian issue. Do you know the definition of a conservative? It's a liberal who has been mugged!! That's what happened to me!!

When I became involved in the Indian issue, I was shocked to discover the "MEDIA SILENCE" which prevailed. It was nearly impossible to get ANY information on the Indian problems. We had to dig for facts, and often ran into a brick wall. To say that the news media was reluctant to print anything reflecting on the Indian is an understatement. Unfortunately, it is still true to a great extent, that the Indian issue with all its various and widespread problems is NOT being discussed publically. The problems will never be solved until they are examined objectively, honestly, and with an open mind, free of any accusation of racial bias and free from the "Great American Guilt Syndrome."

In our particular case, City of Sault Ste Marie vs Andrus, we were before our time. There is no doubt in my mind that the decision will be overturned one day and our efforts will be vindicated. In my opinion, there was no due process given by the Government to the City, and the Reservation was established for a Tribe who

was recognized through the political process instead of the accepted procedures. There are NO full blood Indians on the Sault Ste Marie Reservation. In fact, the whole Tribe is composed of dilute bloods and the blood quantum of the so called Chief is rumored to be only 3/16! This is a violation of the 1934 Indian Reorganization Act which requires a Chief to be at least one-half Indian. No Government agency reacted to a protest of this violation, which is a typical government response to an Indian problem....It is characterized as an "Internal Tribal Problem" outside government intervention.

Indian Treaties were written as an agreement between a State or the Federal Government with and for the full blood Indians ONLY. Any benefits (including Fishing) given to the half-blood Indians were definitely requested by the full bloods. Today Governments are dealing with dilute bloods and IF there are no longer any full blood Indians, than the Treaty guarantees NO LONGER APPLY and the Treaties should be abrogated!!

Blood quantum should be standard for every Tribe and set by the Federal Government, after thorough and impartial research of blood lines. At present, Tribes can certify their own quantum. In the State of Michigan we have people who are 1/32 Indian blood degree fishing with an Indian Fishing Card!!! They are 1 part Indian and 31 parts something else!! In addition, the original Indian fished for food to feed his family. The sophisticated methods that make it possible to rape lakes and streams were not available when Treaties were written, and this ability was not the intent of the Government when Treaties were written.

New Indian Reservations are being created. One was established within the corporate boundaries of the City of Sault Ste Marie, Michigan

without the consent of City residents. Reservation residents may vote in every election and receive every social service benefit, yet pay NO taxes. Reservations exist on taxpayer dollars, yet are Sovereign Nations. The definition of Sovereign is; "Supreme in power or authority", "Having independent authority", "Power to govern without external control", "Supreme political power in a State". Even though Reservations are dependent Sovereign States, they are exempt from Freedom of Information laws and the Open Meetings Act. Loss of personal freedoms can occur, as Reservation residents are not governed under the U.S. Constitution, as the Tribal Constitution takes precedence. That means that Reservation residents are deprived of the protection of our Constitution and further no State or local Government has any control over that land or what occurs on that land. There is a loss of jurisdiction, as codes and ordinances do not apply and cannot be enforced. Reservation businesses pay NO property taxes and can operate in unfair competition with private enterprise. Party stores selling non-taxed items, gas, cigarettes and liquor. In Cities where Reservations exist in close proximity. Checkerboarding may occur when individual Indians put their land in trust to avoid Municipal taxes and local codes and ordinances. Tolls have been placed on roads within Reservation boundaries in Western States. Casino gambling, Bingo not subject to State Law, polluting Industries, unfair business competition-subsidized by taxpayers, control of our natural resources, such as coal reserves and water. Water is our most precious resource and it belongs to all of us.

No benefits should be granted or denied on the basis of race. Surplus food in our area is distributed to needy Indians only!!

All other people are excluded. Don't white and black people starve the same?? When Federal dollars are given to Tribes, advertisements are inserted in our local paper which state "Native American preferred". I resent this statement, anyone born in the United States IS and SHOULD be considered Native American!! This is a prime example of reverse discrimination!!

Because I disagreed with the policies of the Federal Government and opposed the creation of an Indian Reservation within the Corporate boundaries of Sault Ste Marie, Michigan, I was harassed by the Justice Dept., the F.B.I., and the Tribal attorney who was allied with Legal Services. My personal safety was threatened by telephone calls and, at a Congressional Hearing on Indian Fishing, at which I testified, a guard was assigned to protect me. I opposed the so-called Indian person with only 1/32 Indian blood degree receiving the benefits of Indian Fishing when Treaty Rights were granted to full bloods ONLY!!

In the State of Michigan, the fishing resource is being controlled by Indian Tribes which let dilute blood members fish under the guise of Indian Fishing. The State of Michigan spent over two million dollars of taxpayer dollars to fight the case, but bungled it when they did not hire a specialist in Indian law. Through the State's ineptness in handling the case and the maneuvering of the Tribes to see that the case was awarded to ULTRA LIBERAL Judge Noel Fox, this once great State resource is in jeopardy. This suite was initiated by Legal Services in Sault Ste Marie, Michigan.

Problems are spreading at an alarming rate all over the United States. The Onieda Tribe in Green Bay and DePere Wis. is claiming 65,000 acres of private homes, prime farm land, business and Airport properties, and the Industrial Park. In Seneca Falls N.Y. the Cuyuga Tribe is ~~claiming~~^{claiming} 65,000 acres of Public Lands. The Tribes are encouraged in these assaults on the American taxpayer by federally funded agencies, Justice Dept., Interior Dept., Legal Services Corp., Ford Foundation, ~~and~~^{AND} various church organizations which have NO idea how their money is being spent. And then to protect themselves the U.S. taxpayer must pay again and again as problems escalate. Soon the financial burden is beyond the ordinary person or a small community. In LacDuFlambeau Wis., a Tribe is attempting to tax non-Indian businesses. This is taxation without representation, and if my memory is correct, there was a war fought over this issue!!

Unfortunately, Indian culture has been dead for years due to intermarriage and the adopting by Indians of a more comfortable and progressive lifestyle. No Indian person today would forsake his automobile, indoor plumbing, central heat, grocery stores, schools, health care, and on and on. Of the Indians in our area, no one speaks the Indian language or lives by the old customs and few remember the old ways. The Indian person must live today in the modern world, with education, skills and a job to survive with dignity. This is NOT what the Tribes want to hear, as to ~~acknowledge~~^{Acknowledge} the truth would destroy their power base and source of Government funds. But remember, it is NOT in the best interest of the Tribe that the individual Indian be independent. If they were to become self sufficient and self supporting, contributing members of society, the Tribe COULD NOT use them in the head

count for Federal Funds.

Reservation life is a prime example of unworkable socialism and is a lesson in despair, where individuals are entirely lacking in hope and where drugs, alcoholism, and suicide are rampant. The U.S. Public Health which supervises Indian Health, has not yet addressed the number one health problem of the Indian.... Alcoholism!! In my opinion, Reservations are a form of genocide, where intelligent human beings are exiled for a lifetime and conditioned to be totally dependent on the handout from taxpayers. This is NOT a situation which affords the individual satisfaction, respect, or dignity.

The Indian person HAS TO INSIST on the Educational or skill benefits they are entitled to at a blood quantum of one-quarter to insure they are prepared to enter the job market with proper training so that they will develop some self confidence and belief in their own ability to provide for themselves and their dependents by holding a steady job.

Since Tribal Leaders are too GREEDY for money and power and too self serving to view the problems objectively and in the best interest of the Indian person and ^{are not} ~~are not~~ willing to curtail their unceasing and excessive demands on the taxpayer for money, it stands to reason that Congress MUST review the problem and abrogate the Treaties as the ultimate solution to the problem. My question is, how can the U.S. Government have a Treaty with a U.S. citizen??

As a solution to the many problems facing the States and

the whole Nation on the Indian issue, two areas MUST be addressed by the U.S. GOVERNMENT;

1. Indian Blood Degree, (quantum)

At present, anyone can declare themselves Indian, Congress MUST determine who is an Indian and set a definite quantum for ALL Tribes. The minimum quantum should be one-quarter for ALL benefits with NO exceptions.

2. Treaty Rights;

Treaty Rights were granted to full bloods ONLY. If the TREATIES no longer apply, then the Treaties should be abrogated, the full bloods paid off, the Reservations abolished, and these Americans assimilated into their rightful place in society. I am an advocate of full rights and responsibilities for ALL citizens!!

In closing, I challenge you to report on the Indian issues and how they affect our resources in a fair and objective manner, without being swayed or intimidated by feelings of guilt. Anyone who has traced their ancestry can find inequities in past history which they could apply to themselves, if they choose to wallow in self pity. You and I ARE NOT RESPONSIBLE for what happened in the early 1800's and should NOT let ourselves be swayed back into the "POOR INDIAN SYNDROME" or the Indian problems will NEVER be solved in the United States.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 3, 1986

The Honorable Edward J. Gamble, Sr.
Mayor of Angoon
P. O. Box 189
Angoon, AK 99820

Dear Mayor Gamble:

Thank you for sending me a copy of your letter about pending subsistence legislation. As you point out, the customary and traditional use of fish and wildlife is very important to rural Alaskans. That is why I introduced HB 288 last year. I also felt that it was very important that the state meet the requirements of ANILCA Title VIII so that we can continue to manage our resident fish and wildlife.

Like you, I appreciate the fact that the Senate Resource Committee substitute for HB 288 is a major improvement from earlier Senate versions. It comes much closer to my original bill in meeting the conditions that I believe are necessary for an acceptable subsistence bill, including being constitutional, enforceable, complying with federal law, and giving the boards flexibility to provide fairly for all uses of fish and wildlife. The bill is now in the Senate Judiciary Committee, chaired by Senator Pat Rodey. I am hopeful that the Senate will take prompt action.

I also understand the concerns that you raise about regulations and permits. I feel that both the bill I introduced and the Senate Resources version give the Boards of Fisheries and Game the direction and flexibility they need to protect traditional uses. Once a bill passes, it will be extremely important for you and your community to work closely with the boards to ensure that appropriate regulations for subsistence hunting and fishing are adopted.

Mayor Gamble

-2-

April 3, 1986

Thank you for expressing your views on this important subject.

Sincerely,

Bill Sheffield
Governor

cc: Senator Arliss Sturgulewski
Commissioner Don W. Collinsworth



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

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

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

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

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

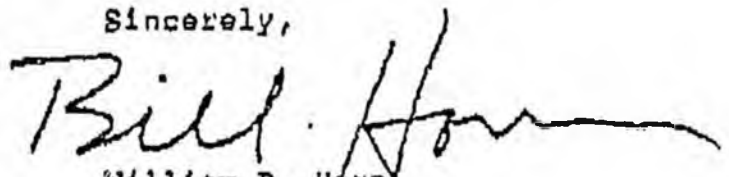
This course of action is further justified due to the fact that it appears unlikely that any adverse impact on rural subsistence users will occur during the grace period. The State subsistence program will continue to ensure that the Title VIII class of rural subsistence users are able to hunt, trap,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

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

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

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

Sincerely,



William P. Horn
Assistant Secretary
Fish and Wildlife and Parks

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



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

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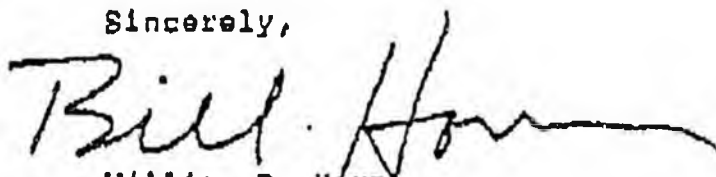
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Sincerely,



William P. Horn
Assistant Secretary
Fish and Wildlife and Parks

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

Many of us believed that the question of subsistence rights in rural Alaska was settled with the election of 1982. Since that time, a Supreme Court opinion has opened the question again. Today, a bill is locked up in the Alaska Senate which would again insure subsistence priority for rural Alaskans. I am writing to urge your assistance in helping pass this important law.

The question of subsistence priority is more than one of access to our state's fish and game. It is a question of our state's responsibility to assist in maintaining cultural distinctions which predate most Alaskan's arrival here by thousands of years. It is the responsibility of all of us to protect the rights of Alaskans who depend on fish and game for their daily food and to insure that they have priority access to this food source.

You can assist me in the passage of this legislation by writing letters and sending public opinion messages to members of the Alaska State Senate. With your assistance, we can again insure that the subsistence rights of our fellow Alaskans are protected.

Warmest regards,

Stephen McAlpine
Lieutenant Governor

(3)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

TO: Billy Berrier, Director
Division of Legal Services

FROM: Mary Margaret Brady *Mary Margaret Brady*
Administrative Assistant

DATE: December 30, 1985

SUBJECT: John Reeves Contract and Reeves and Associates

The above-referenced contracts are to the same individual. The John Reeves contract is in the amount of \$25,000 and Senator Fahrenkamp is the Project Director. The funds are paid from the Placer Mining and Distribution Grant Program which is under Councils and Subcommittees.

The Reeves and Associates contract is in the amount of \$5,000 and Senator Sturgulewski is the Project Director. The funds are paid from the Senate Resources Committee which is under Senate Leadership.

QUESTION:

Can an individual have two contracts when the total of the two contracts exceeds \$25,000 without requiring a sole justification if each contract is requested by a different committee or source?

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

December 30, 1985

SUBJECT: Reeves Contract

TO: Mary Margaret Brady
Special Assistant

FROM: Billy G. Berrier 
Director
Division of Legal Services

Two contracts have been awarded to John Reeves. One is for \$25,000 from one funding source and Senator Bettye Fahrenkamp is Project Director. The other is from another funding source, Senate Resources Committee, and Senator Arliss Sturgulewski is Project Director. The sum is in the amount of \$5,000. Although not mentioned in your memo the work under both contracts are related but the work in the second contract was not contemplated at the time the first contract was entered into and could not have been contemplated then.

You have asked in this connection, can an individual have two contracts when the total of the two contracts exceeds \$25,000 without requiring a sole justification if each contract is requested by a different committee or source?

The governing statute is AS 24.23.010 (1) which is part of the chapter governing legislative contract procedure. That section provides:

Sec. 24.23.010. Application. This chapter applies to contracts for services to be provided to a legislative agency or legislative committee unless

(1) the total amount of a professional services contract or contracts awarded to a person from a legislative agency or legislative committee does not exceed \$25,000 in a 12-month period;

Mary Margaret Brady
Page 2
December 30, 1985

In my opinion the phrase "a legislative agency or legislative committee" as used in the section makes it clear that contracts are cumulative only if they are from the same agency or committee.

Therefore each of the contracts are exempt and it is proper to award the second without requiring a sole source justification.

I have therefore approved both.

BGB:ml
me1/035

February 6, 1986

Mr. Ralph W. Tarr
Solicitor-Designate
Office of the Solicitor
Department of the Interior
C St. between 18th & 19th Sts., N.W.
Room 6348
Washington, D.C. 20240

Dear Mr. Tarr:

On September 23, 1985, William Horn, Assistant Secretary, Department of the Interior, informed Governor Sheffield that a determination had been made that Alaska's subsistence program is no longer in compliance with the requirements of the Alaska National Interests Lands Conservation Act, Title VIII ("ANILCA"). That determination was based on an analysis of Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985).

In response to the ANILCA ramifications of Madison, as well as the allocation disruptions it mandated, Governor Sheffield had introduced a bill into the State House of Representatives during the 1985 session, House Bill No. 288. That bill would have inserted the word "rural" into the State statutory definition of subsistence uses, and clarified the authority of the State Board of Fisheries to authorize and regulate "personal use fishing," as distinct from "subsistence fishing."

The Alaska Senate did not act on the bill during 1985, but recently the Senate State Affairs Committee passed on a Senate Committee Substitute for House Bill 288, to the Senate Resources Committee. A copy of that February 3, 1986, Senate Committee Substitute is also attached.

Since the Department of the Interior will eventually be reviewing whatever bill is enacted into law, as indicated by Bill Horn's September 1985 letter, your view on the fundamental requirements of ANILCA, and how the Senate Committee Substitute corresponds to those requirements, would assist us in giving the most correct advice to the Legislature and the Governor. In particular, it would be useful to have an assessment from your office on the following issues:

1. Does ANILCA require that "subsistence uses" be limited to customary and traditional uses of fish and game by residents of rural Alaska? It appears that ANILCA § 803 so defines the term.
2. Does ANILCA require that takings for subsistence uses as defined in ANILCA be afforded a priority over takings for other uses whenever it is necessary to restrict the harvest to protect the resource or the continuation of subsistence uses? It appears that ANILCA § 804 establishes that standard.
3. Does ANILCA require that the priority operate to provide reasonable opportunity for all subsistence uses even if that means restricting or eliminating takings for other purposes before any subsistence use is restricted? ("Restrict" is not here intended to include reasonable regulation.) It has been suggested that the extent of the priority may vary, depending upon a balancing of the importance of subsistence uses against the importance of non-subsistence uses. However, the legislative history appears to indicate otherwise. See, for example, 126 Cong. Rec. H10647 (Nov. 12, 1980).
4. Do the provisions of ANILCA § 804 apply to each fish stock and game population which is the subject of subsistence uses? It appears that legislative history mandates that subsistence uses are stock and population specific. See, for example, 126 Cong. Rec. H29279 (Nov. 12, 1980).
5. Does ANILCA authorize a durational rural residency requirement in identifying who may engage in subsistence uses? It appears that legislative history indicates otherwise. See, for example, Senate Report No. 96-413, 96th Cong., 1st Sess. 233 (1979).
6. Does ANILCA require that subsistence uses be identified and regulated on a community or area basis? It appears that legislative history indicates that ANILCA does not intend for subsistence to be identified and regulated on an individual basis. See, for example, 126 Cong. Rec. H10546 (Nov. 12, 1980).

7. Does ANILCA authorize only "important" subsistence uses to be subject to the protections of the subsistence law? It appears that ANILCA § 803 and § 804 require that all subsistence uses of a fish stock or game population be authorized, rather than only "important" subsistence uses.
8. Is the subsistence priority in ANILCA limited to a priority over other consumptive uses, or would it include a priority over other takings, such as catch-and-release fishing? It appears that ANILCA § 804 simply refers to "taking."
9. Does ANILCA require that fish stocks and game population can be harvested for subsistence uses only by people living in the immediate vicinity of the stocks and populations? It appears that such an interpretation would not take into account the customary and traditional patterns of use of residents of certain rural communities and areas who travel some distance to hunt or fish at certain times of the year.
10. Would defining "subsistence uses" in terms of individual need be consistent with ANILCA? It appears that legislative history indicates otherwise. See, for example, 126 Cong. Rec. H10546 (Nov. 12, 1980).

Your assessment of these specific questions would be of great assistance to us. Since it is not possible to predict how quickly the Senate will act, as prompt a reply as is feasible would be appreciated.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Bill Horn
David Gayer
Sharon Allender



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

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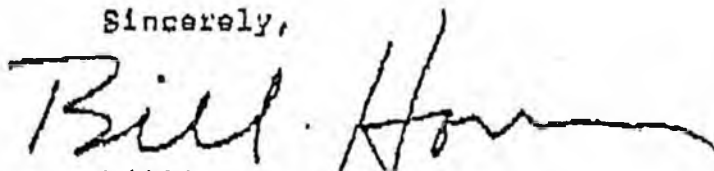
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Assistant Secretary
Fish and Wildlife and Parks

cc: AK Delegation
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Asst. Sec, Peter Myers, U.S. Dept. Agriculture .

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

TO: Senate Resource Committee Members

March 5, 1986

FROM: Senate Resources Committee Staff

MSK

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

SECTION BY SECTION ANALYSIS

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

Section 1

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

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

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

Section 2

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

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

Section 3

Section 3 is identical to paragraph (13) in section 2, except that section 3 applies to game. Two minor drafting changes are suggested for this section. In Alaska statutes, "game" is defined to include all wild animals.

Section 4

Section 4 is a major portion of the bill. It adds two new sections to the Alaska Statutes. AS 16.05.258 sets out a method of allocating fish and game among subsistence, sport, commercial, and nonconsumptive uses. It also contains important aspects of current subsistence law, such as the subsistence preference. It is intended to be consistent with Federal law. AS 16.05.259, is the second statute dealt with in this section. It addresses administrative appeals of decisions made by the boards.

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

AS 16.05.258(a)

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

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

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

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

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

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

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

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

AS 16.05.258(b)

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

Paragraph (2) in subsection AS 16.05.258(b) establishes a legal standard for determining how much of a fish stock or a game population is needed for subsistence. The standard is a "reasonable opportunity to satisfy subsistence uses". Reasonable is a commonly accepted concept in law frequently used in statutes and applied by courts. Reasonable currently appears 1,356 times in the Alaska Statutes. The standard means that the boards' decisions should be based on available information, for example, a consideration of the customary and traditional levels of harvest. It does not permit the boards to be arbitrary, capricious, or prejudiced in allocating to subsistence. Conversely, it does not require the boards to satisfy desires of subsistence users that are unreasonable, that are inconsistent with available information, or that might be based on prejudice.

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

AS 16.05.258(c)

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

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

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

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

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

AS 16.05.258(d)

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

AS 16.05.258(e)

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

AS 16.05.258(f)

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

AS 16.05.259

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

Section 5

Section 5 amends AS 16.05 by adding a new section, AS 16.05.261, which states that in a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense to the charge that the taking was done for subsistence use. This section requires a person who disagrees with a board action or statute to seek to correct that action or statute through appeal, petitions for reconsideration, court action, etc. rather than permitting the person to violate the statute or regulation and claim subsistence as a defense. This eliminates the "subsistence defense" as arose in the Eluska and Skuse cases.

This section does not effect AS 16.05.930 (b) which allows people to take fish and game in case of emergency.

Section 6

Section 6 amends AS 16.05.330 to allow the boards to adopt regulations providing for subsistence permits. Those permits may be for all subsistence users within a rural area, for rural communities or villages, or for groups or individuals in rural areas. The boards are required to adopt a permit program when the subsistence preference requires reductions in the harvest by nonsubsistence users. Such a reduction should only take place in case of a resource shortage compared to the number of users. When that situation exists, the Department and boards should have such a system in place so they can closely monitor the harvest and the demand on the resource.

Section 7

Section 7 amends the definition of subsistence fishing to state that subsistence fishing may only be engaged in by rural residents domiciled in a rural area.

Section 8

Section 8 amends the definition of subsistence uses to state that it does not include harvests for commercial enterprises. The addition of the word "noncommercial" to the definition is not meant to prevent limited exchanges of goods for cash under customary and traditional trading practices, but it is meant to prevent subsistence harvest for substantially commercial enterprises. As specified in Section 2, it is understood that subsistence uses shall be nonwasteful. The definition of subsistence uses is also amended to make plain that subsistence uses have to be by a resident domiciled in a rural area of the state.

Section 9

Section 9 addresses several other definitions. The first of these is "domicile" which is defined as a person's "true and permanent home...". The definition states that domicile may be proved by presenting evidence acceptable to the boards. The board of fisheries already has regulations on domicile and it is anticipated that the board of game would adopt similar regulations.

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

A definition of personal use fishing is contained in this section. This definition is very similar to the definition in the House version of this bill. Neither sport, commercial, or personal use fishing is afforded any priority over any other type of fishing in this legislation. As indicated in section 1 it is envisioned that personal

use fishing may be particularly appropriate in certain areas of the state that were considered rural before the enactment of this bill. This legislation is not intended to statutorily increase or decrease existing personal use fishing. The scope of these fisheries is an allocation decision left to the board.

The bill adopts a definition of "rural area" similar to the definition added in the House. It is defined as a community or area of the State where the noncommercial, customary and traditional use of fish and game for personal and family consumption is a significant characteristic of the economy of the community or area. The definition is designed to mesh with the definition of subsistence uses. The definition is not meant to preclude an area from being rural simply because there may also be significant elements of the cash economy in the area, such as commercial fishing.

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

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

Section 10

Section 10 repeals three portions of subsistence law. AS 16.05.251(b) concerns fish, and AS 16.05.255(b) concerns game. They are similarly worded in current law. They require the boards to adopt subsistence regulations and establish the preference in current law. In the bill, these requirements and the preference are readopted in the new AS 16.05.258(c).

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

Section 11

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

7

W.A. 7 1986

R O N S O M E R V I L L E

FOR

GOVERNOR OF ALASKA

8800 Glacier Hwy., Suite 250
JUNEAU, AK. 99801

March 5, 1986

Senate Resources Committee
State of Alaska
Senator Arliss Sturgulewski, Chairman
Pouch V
Juneau, AK. 99811

Dear Senators:

It is my understanding that your review of Senate CS for HB 288 (subsistence) is coming to an end and there may not be any further public testimony on this piece of legislation in your committee. Unfortunately, I was unaware of your one teleconference on the bill and thus was not able to testify. I do believe, however, that there are a few points that have not been stressed adequately and since it appears that I will not be able to present them personally, I am putting them in writing.

First, I want to stress that all Alaskans are praying that a fair and workable law will be forthcoming which will lay the subsistence controversy to rest, once and for all. We are also appreciative of the complexity of the problem and the seriousness of the issue as, in one way or the other, it affects the daily lives of most Alaskans.

I would like to compliment the State Affairs and Resource Committees attempts to improve on the simplistic legislation introduced by the Governor and narrowly passed by the House during the last session. There are definite improvements in the legislation.

The provisions which provide the authority to regulate subsistence taking, give the Boards authority to identify subsistence stocks, authorize issuance of subsistence permits, provide that subsistence users be given a reasonable opportunity to harvest and allow no subsistence defense for fish and wildlife harvested outside the regulations are all important and crucial additions to the original bills.

The major stumbling blocks of the subsistence law debates are, however, still left unattended. The committee chose to eliminate

a critical section of an early draft which allowed the Boards to apportion subsistence use among species, stocks and populations that are similar and reasonably available. The committee also chose to insert the word "rural" into the state law without providing a definition which would possibly narrow a subsistence priority down to the "true subsistence users" which most Alaskans would agree deserve some preferential treatment.

The committee has also chosen to ignore the overwhelming testimony of most Alaskans that any preferential allocation of our common property resources for subsistence should be based on need rather than residency. Alaskans have also strongly endorsed a revision of the existing policy to base subsistence on individual or family need rather than on a community basis where "need" is totally ignored.

We all fully realize that you are under pressure from the Federal government and subsistence advocates to adopt a state law precisely in line with their narrow interpretations of the existing Federal law. Unfortunately, most Alaskans are not going to endorse a law which discriminates based on where a person lives in Alaska.

One of the most volatile issues has been concerned with identifying "who" is a subsistence user. In your legislation, by complying with the Federal law and inserting the word rural, the only residents that are really eliminated from the priority use are those that live in Anchorage, Fairbanks, Juneau and Ketchikan. I fully realize that you have provided direction, through the letter of intent, for the Boards of Fisheries and Game to further delineate "subsistence uses" and "rural areas". In my opinion, by passing the buck to the regulatory boards, the legislature is neglecting its responsibilities. It is obvious that if each legislator is forced to define which area is or is not a subsistence area and thus which constituents are subsistence users, that it is going to be extremely difficult to draft legislation which will pass both houses.

I maintain that the boards are even less prepared to deal with the construction of socially discriminatory laws than is the legislature and further more it is not the function of an allocation board. It is clearly the function of the legislature to develop clear guidelines by which the boards would follow in implementing the laws. Most importantly, every Alaskan would be able to judge and comment personally on the legislation. It is critical that everyone be able to determine whether he or she is "in" or "out" directly from the proposed legislation.

I believe it is hypocritical for the legislature to consistently criticize the administrative agencies for developing broad regulatory authority and then pass a piece of legislation as poorly constructed as this legislation with almost unlimited regulatory options. It is clear that because the legislature cannot deal with the politics of this issue, they are pulling the pin and throwing the hand grenade to the Boards in hope that they

will develop the political guts to do what the legislature is apparently unable to do.

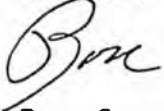
I personally feel you should craft a subsistence law which is acceptable to most Alaskans based on some criteria of need and lack of alternative resources and let the courts settle whether or not it is in compliance with the Federal law. I also strongly urge you to face up to your public responsibilities if you decide to descriminate against urban residents by giving a priority to rural residents by precisely defining what is rural. The public deserves that much consideration on this volatile issue.

I would like to point out in closing that despite recent testimony to the contrary, Alaskans voted in 1982 to retain the exisiting State law which clearly does not descriminate against urban users. For some reason, subsistence advocates have twisted the 1982 vote as an endorsement of the privilege for only rural residents.

It is also important to express my concern for your lack of consideration for public input into the constantly changing legislation. One poorly advertised teleconference can hardly be considered public participation.

Thank you for considering my comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron".

Ron Somerville

MAY 10 1985



ALASKA PUBLIC INTEREST RESEARCH GROUP

Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

May 10, 1985

Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator:

Although it appears that differences between the House and the Senate on the Longevity Bonus, the budget and the public employee pay raise may finally get settled before the end of the session, the Alaska Public Interest Research Group has grave fears that a fourth, just as important issue will remain unresolved through the summer. That issue is subsistence.

Since February 22nd, the legislature has been on notice that the subsistence preference would have to be resolved before the 120 day limit expired. The House version of the bill is an improvement over the governor's original bill, and is clearly preferable to the Senate versions now being considered. The House version implements the will and intentions of the voters in opposing the 1982 ballot proposition. The Senate versions revoke that vote by extending subsistence preferences to all Alaskans, rural and urban alike, provided they leave town before they shoot a caribou.

We urge you to live up to your legislative responsibilities, follow the will of the voters and pass a rational, equitable bill similar to the House version before adjournment. Subsistence is not a rural issue, it is a statewide issue.

Sincerely,

Maureen Kennedy
Director

For the Board:

Abby Arnold
Hugh Fleischer
Jim Gottstein
Karla Huntington
Bob Lohr
Pat Smutz

Linda Snyder
John Suddock
Phil Volland
Marsha Walton
Matt Zencey

MAY 07 1985

April 30, 1985

810 Ballaine Road
Fairbanks, Alaska 99701

Dear Legislator:

As professional fisheries and wildlife biologists, we are deeply concerned about the wise management and conservation of Alaska's fish and wildlife resources. Sections of the current Alaska statutes governing those resources seem to deny the use of a management approach that we believe is essential in order to manage those resources safely. In this letter, we identify the statutory sections in question and request legislative action to correct them.

The sections of the statutes of primary concern are those (Sec. 16.05.251 and 16.05.255) which require that a particular consumptive use, subsistence, must remain unrestricted unless the Board of Fisheries or the Board of Game determines that such use, continued without restriction, would jeopardize the sustaining of such use (i.e. would not allow sustained yield). That approach -- unrestricted use unless damage is proven -- is opposite to the accepted and established resource management strategy of the fisheries and wildlife professions.

The consistently reliable approach in connection with consumptive uses of fish and wildlife is a conservative one. In effect, one should manage from an initial position of complete closure, removing restrictions in a safe manner as understanding of the resources increases so that we can be assured that the desired consumptive uses can be accommodated. Current understanding of most wild populations, and of their consumptive harvests, allows us safely to set limited seasons and bag limits. However, even though Alaska has one of the best fisheries and wildlife staffs in the country, the existing specific population data usually are not sufficient to prove, before we can impose restrictions, that unrestricted use is jeopardizing sustained yield. Given the budget constraints presently inhibiting gathering additional information, that situation likely will persist. Hence we should take a conservative approach to managing consumptive uses if we are to guarantee that users, subsistence and others, will have long-term access to fish and wildlife resources.

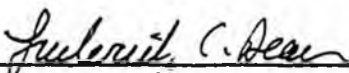
Another undesirable consequence of the unrestricted approach is that harvests often will occur at times of the year when they have greater detrimental impacts on the fish and wildlife populations than do controlled harvests occurring at specific times. Obvious examples of the need for control over timing of harvests in order to protect resource productive potential exist in the instances of king salmon smolt leaving fresh water, of ptarmigan on the nesting grounds, of cow moose when they have calves, and of sow bears when they have cubs. Many other examples also could be cited. The point is, greater total yields often could be provided if restrictions on seasons, methods and means, etc., could be

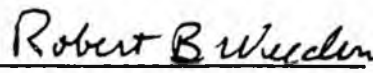
put in place based on our understanding of population dynamics. The current statutory language regarding controls on subsistence use does not permit such restrictions, even those that conceivably could increase total allowable harvest. We believe such management latitude is necessary, particularly in this day and age when subsistence use does not have the same dire dependence associated with it that was true several decades ago. In addition, subsistence harvesting with steadily increasing use of modern equipment often places the resource in essentially the same risk situation that non-subsistence uses do.

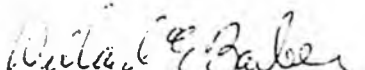
We hope that you will see the need for regaining a conservative, flexible management approach in order to provide long-term protection to resources whose continuation is critical to subsistence lifestyles as well as to all other uses. Wise and responsible management of our fish and wildlife populations requires that we change the current statutory language regarding management of subsistence uses. We request your help in that regard.

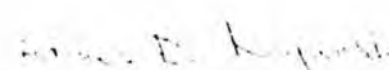
Thank you for your concern for Alaska's fish and wildlife.

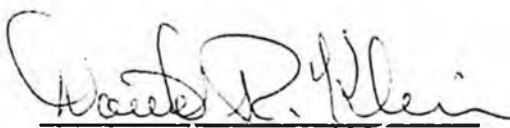
Sincerely,

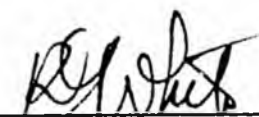

Dr. Frederick C. Dean
Ph.D., Forest Zoology


Dr. Robert B. Weeden
Ph.D., Zoology


Dr. Willard E. Barber
Ph.D., Fisheries


Dr. James B. Reynolds
Ph.D., Fisheries


Dr. David R. Klein
Ph.D., Wildlife Management


Dr. Robert G. White
Ph.D., Zoophysiology and Nutrition

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF BOARDS

MAR 27 1985
BILL SHEFFIELD, GOVERNOR

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

February 11, 1985

Mr. Theodore J. Almasy
Nixon Fork Mine
McGrath, Alaska 99627

Dear Mr. Almasy:

We received your proposal for change to the regulations of the Alaska joint Boards of Fisheries and Game. Unfortunately, the board is not considering the subject of your proposal at the spring 1985 meeting. I am returning your proposal so it will not be lost or misplaced. I have enclosed a copy of the Game Board regulations. The joint board subsistence regulations begin on page 66.

The board appreciates your interest in Alaska's fish and wildlife resources.

Sincerely,

Bob Larson

Bob Larson
Assistant Executive Director

Enclosure

3/25/85

*Chairman: Committee on Natural Resources
Alaska State Senate*

I would appreciate consideration by your committee of my recent proposal to the joint Boards of Fisheries & Game regarding subsistence regulations. The intent is to create a regulation or statute that is acceptable while designed to withstand any court challenge based upon equal rights of citizenship civil rights as the case may be. Thank you.

*Sincerely,
Theodore J. Almasy*

REGULATION PROPOSAL FORM

Alaska Boards of Fisheries and Game

See Other Side
For Instructions
on Completing
This Form

Proposal Concerns (Check one)

Commercial ☐
Fishing

Sport ☐
Fishing

Personal Use ☐
Fishing

Hunting ☐

Trapping ☐

Subsistence ☒

Advisory ☐
Committees

*Use Separate Forms For Each
Change of Regulation*

RECEIVED
DEC 21 1981
DEPARTMENT OF FISH & GAME

1. Area(s) Affected Statewide

2. Alaska Administrative
Code Number 5 AAC

Regulation Book
Page No.

3. Purpose of Proposal

To Define; State the Legal Basis; Determine Qualifications and Exemptions;
and, Establish the Rules of Implimentation of a Subsistence Regulation.

4. Suggested Wording of Proposed Regulation (Use separate sheet if necessary)

As per Attached: Three (3) Pages.

5. Justification

Act and Order of Congress

6. Submitted By: Name Theodore J. Almasy
Address Nixon Fork Mine - McGrath, Alaska Zip Code 99627 Phone None
Representing ☒ Self ☐ Advisory Committee:
☐ Regional Council: ☐ Other:

PROPOSAL

THEODORE J. ALMASY

Pioneer "Alaskan Woodsman" Guide-Outfitter

McGrath, Alaska 99627

The Tikchik Lakes - The Kuskokwim - The Alaska Range
Trophy Fishing • Trophy Hunting • Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistence in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without regard to race or ancestral heirdity); and, including, but not limited to; agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more than 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and commitments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestral heirdity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in the Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully segregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * *

* * * * *

DETERMINATION of WHO and WHOM QUALIFIES

* * * * *

WHO IS QUALIFIED? : All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistence users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? : All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistence Rights in Alaska.

IMPLEMENTATION

1. (a) For the purpose of implimenting this Section: Each full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistence Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistence Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistence Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistence right, and trapping is closed except to Subsistence Users.

4. Any Alaskan holding a "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistence user and hold Subsistence Rights.

5. That where the taking of certain game animals is restricted by permit that subsistence users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

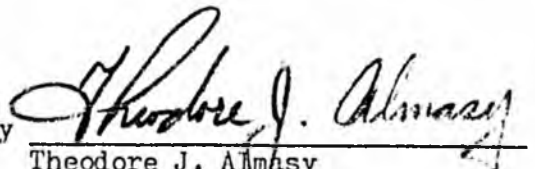
Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * *

END

* * * * *

by 
Theodore J. Almsy

*Jim Brown
brought to public
meeting - 11/26/85*

REGULATION PROPOSAL FORM

Alaska Boards of Fisheries and Game

See Other Side
For Instructions
on Completing
This Form

Proposal Concerns (Check one)

Commercial Fishing ☐ Sport Fishing ☐ Personal Use Fishing ☐ Hunting ☐ Trapping ☐ Subsistence ☒ Advisory Committees ☐

*Use Separate Forms For Each
Change of Regulation*

1. Area(s) Affected STATEWIDE

2. Alaska Administrative Code Number 5 AAC 01.010 sec. a sub. par. g Regulation Book SUBSISTENCE
Page No. 10

3. Purpose of Proposal THIS PROPOSAL WILL PROVIDE ACCESS FOR HOOK AND LINE FISHERMEN TO THE SUBSISTENCE PRIORITY.

4. Suggested Wording of Proposed Regulation (Use separate sheet if necessary)

ADD WORDS "HELD IN THE HANDS OR CLOSELY ATTENDED, HOOK AND LINE HELD IN THE HANDS, AND DIPNET IS LAWFUL." AFTER THE WORD "POLE". DELETE THE WORDS AFTER "POLE" AND ALL OTHER RESTRICTIONS ON THE USE OF HOOK AND LINE GEAR CONTAINED IN SUBSISTENCE REGULATIONS. ADD THE WORDS "A SUBSISTENCE FISHERY IS ESTABLISHED WITH THE USE OF HOOK AND LINE EVERYWHERE THAT A SPORT FISHER FOR ANY SPECIES OTHER THEN RAINBOW AND STEELHEAD, OCCURED LFGALLY IN 1983." TO THIS SECTION AS SUB. PARAGRAPH "M".

5. Justification BETTER THEN 90% OF THE PERSONAL USE OF THE FISHERY IN ALASKA OCCURS WITH THE USE OF HOOK AND LINE. HOOK AND LINE ARE THE SECOND OLDEST TYPES OF FISHING GEAR. THERE IS NO BIOLOGICAL JUSTIFICATION FOR LIMITING USE OF HOOK AND LINE UNDER THE SUBSISTENCE LAW IN AREAS, WAYS, AND WITH

6. Submitted By: Name Thomas E. Brown
Address P.O. Box 657 Homer Zip Code 99553 Phone —
Representing ☒ Self ☐ Advisory Committee: —
☐ Regional Council: — ☐ Other: all applicants to

hook and line fishery

PAGE TWO REGULATION PROPOSAL BY TOM BROWN

JUSTIFICATION CONT.: THE SAME BAG LIMITS AS PRESENTLY OPEN TO THE USE OF HOOK AND LINE UNDER THE SPORTS REGULATIONS. SINCE THE SUBSISTENCE PRIORITY WILL ALLOW GREATER UTILIZATION OF FISHERIES RESOURCE BY INDIVIDUAL ALASKAN RESIDENTS AND WILL FUNCTION TO PROVIDE MORE SALMON IN STREAMS ALSO UTILIZED BY THOSE NOT ELEGABLE FOR THE SUBSISTENCE PRIORITY THE NET EFFECT WILL BENEFIT THE PEOPLE OF THE STATE AND THE INDUSTRIES WHICH SERVICE THOSE PEOPLE.

Nine Fast

MINUTES

WASTE DISPOSAL COMMISSION MEETING

OCTOBER 2, 1985

MEMBERS PRESENT:

Joe Arness
Tom Brown
John Landua
Larry Smith

MEMBERS ABSENT:

Keith Laurie

ALSO PRESENT:

Skip Bambard
Jessica Black
Bob Pollard
Marilyn Dimmick
Dave Brown
Mike Kennedy
Larry Acomb
Charlie Dixon
Bob Delaney

David Wigglesworth
47 West 9th Ave.
Anchorage AK
Alaska Health Project

The regularly scheduled meeting of the Waste Disposal Commission was called to order at 7:55 pm on October 2, 1985 by Chairman Joe Arness. Joe said there were several people present, he asked that if someone would like to speak that they should come forward and speak into a microphone.

Jessica Black: my name is Jessica Black - probably some of the board members have heard of me because there has been some publicity about problems. I am here because I wanted to express my concern as a resident of the Kenai Peninsula Borough about problems that are affecting my husband and I. We bought some property in May of last year at the end of West Poppy Road and that is bordering on land that is owned by Union 76. At the time that we bought the property it had a small cabin on it, we planned on building a larger house on it. About two or three months after we bought the property and we'd built a floor and we'd started to frame up the walls my husband had an occasion to meet with Larry Cutting from Union 76 and we had been involved in the drilling mud issue because of our membership in Audubon Society and just by chance my husband happened to ask Larry Cutting if there were any drilling muds that were dumped on the property next to our house. He said absolutely not, there is nothing, it was just a benign old gravel pit that they used to build their pad with. Well, just as recently as three weeks ago, DEC found drilling muds within a hundred yards of my house and there is a mysterious puddle of unknown substances and oil welling up from the ground. There are photographs that were taken by my neighbors of a fire that occurred in the pit - that was found by the forestry people that put out the fire that was of a chemical nature. All sorts of interviews have resulted in information that there were things that had been dumped in the pit. I've got a lot of concerns about that. I found out in November that DEC had been talking to one of my neighbors about a pile of gaswell condensate that was out there. There is two hundred and fifty cubic yards of it - four hundred parts per million was found in the tests and point five per million is considered toxic by federal standards. Right now my husband and I are carrying our water into our house and I had some health concerns because we noticed that our health had generally gone down since we started living in the house so I had some medical tests done and originally my blood showed that I had a real high amount of chromium in it, like maybe ten times the normal amount of chromium that is found in humans. After six months, I had myself retested at Harborview Medical Clinic by specialists in epidemiology and the level had gone down, however she said that wouldn't be unusual because you can pee it out. Chromium is something that you can get rid of. However, nobody can tell us what the medical risks are. Union 76 won't reveal what could be possibly be in the pit, or what ingredients could be in drilling muds, so we can't sufficiently test ourselves, or our water or the soil around our house to find out just what kind of health risks we might be exposed to right now. We are also feeling pretty helpless because there is a lot of different concerns with drillings muds and with other wastes and it's not being very cohesive because some people are interested in just making sure the water is ok and some people are interested in checking for the hazardous waste thing, and some people are just checking for the soil and I just feel like we haven't gotten the satisfaction of feeling like there is a cohesive study going on of that pit to make sure that it is being taken care of. Also, we have been told that there really isn't a plan to get rid of that stuff out of the pit and if it was - who knows if the water would be safe for up to ten years. Everybody at DEC is saying they are doing what they can and saying that everything is ok, but they always end every sentence by saying "you are not drinking your water are you?" - and that is pretty unsettling. It might sound sort of stuffy and funny, but I finally felt like I had to come in and address this group because I feel like there is some urgency to locate a hazardous waste site so that there is a place to take the stuff out of the pit next to our house to put it away from

Tom Brown
Felt we should
have this
testimony
shared here

Brought to public only
Tom Brown
11/2/85

our homes and the stuff that got put in the Kenai Landfill because I had seen the stuff that came out of it before it got put in the landfill and that was not anything that was benign, it was bad stuff. Also, I urge you to hurry on your task and I also ask you that there are people that are being hurt by this because I can't sell my house right now so I am stuck with a house - I have to disclose to any potential buyer what I think is wrong with the house. I built that house, and I'm proud of it, but I don't feel like living in it anymore because sometimes I dream it is killing me - that sounds kind of hoaky, but it's true. I'm feeling stressed out because I'm living in a house that I feel is dangerous to me and my health and my husbands health and also because we might not be able to sell it when we decide to move on and because I feel like we haven't gotten the response that we'd hoped for from the different government and Borough agencies.

Joe Arness: have you had your water tested?

Jessica Black: yes, but I was talking to Carl Reller - he came down for a meeting a couple of months ago and he stopped by my house before he came to the meeting - they have never tested for the gaswell condensate items in our water and that was one thing at that time that they knew was in the pit. He told me that they had not done the appropriate tests, but I'm not sure cause I'm not a chemist and I don't know what those tests were, but he told me that the appropriate test to find whether any of the things that are in gaswell condensate - and I guess it's straight C carbons, it's real highly volatile stuff and it's really toxic to humans is what I've been told by DEC. Larry Cutting happened to make a joke the other day while he was out there at the pit, he said to my neighbor Charlie something to the effect that maybe we should just make this the waste site - ha, ha Larry - I don't want to live next to it - it's a hassle.

John Landua: I want to say for the record that I have seen some of the test results from Jessica Black's well. I don't remember seeing any results from hydrocarbon testing on any of those things and those things were what they were going down there for - it was clearly Jessica Black's concern at that time. We have talked about this before.

Jessica Black: not only that, but apparently they can only do so many tests on so many things in the water and without knowing a list of ingredients that are in the drilling mud they can't test for things unless they know they are there. Also, Northern Tests Labs had been hired by Union 76 to do tests as an impartial person and they sent me a letter saying something about that they were going to have to re-do the oil and grease test because there had been some kind of result showing something about oil and grease and they were going to retest it to see what came out of that and we've never gotten results, we've never heard back from them from that time and that was about February or March.

Apparently they dug this winter for five monitoring wells to test for what could be down in that well, four out of five of those tests have apparently shown really high levels of arsenic, but nobody can agree whether or not that arsenic came out of the dirt, or came out of the water. Because their testing techniques haven't been the same, that has all been up in the air too. I think the one thing that we'd like Union 76 to do is just to go out there with a backhoe and dig it up and see what's there, but if they would that would sure set a lot of minds to rest because we are unsure about the unknown. All year long we've been told even by DEC there are no drill muds out there, what was put in was taken out and there is nothing out there and yet two weeks ago they found drilling muds. Who am I supposed to believe? I have been lied to.

Tom Brown - have you been able to gather all of the documents that you have on this so that you could present them to the Special Waste Commission - all of the letters, all of the test results, etc.

Jessica Black - I could put them together, but it is kind of a hassle because we're building our house and everything is all over the house in boxes, but given some time if you wanted them I could do that.

Skip Bambard - state statutes say that any well must be 32 feet.

Jessica Black - I know, the guy that I bought the property from said the well was 32 feet, but it wasn't until Charlie told me that it was only 17 feet.

John Landua - I'd be interested in if you have any thoughts on what kind of pressure you consider that this commission might be able to apply to get this excavation done that you are talking about.

Jessica Black - I think that above and beyond everything else, because it's apparently health testing as far as blood and urine on humans doesn't tend to show as well as water and soil because the medical testing isn't very far advanced. So that leaves us to continuing the water tests and continuing to have Union to allow to have DEC to take samples of the water at the same time they take their samples and also digging that place up would just set a lot of peoples minds to rest. Charlie has lived there the longest and has witnessed the most of what has gone on. If Union or DEC could find the money to get a backhoe out there to dig where Charlie says and dig as deep as Charlie says - if they don't find anything there we'll all shut up. But so far I've been told there wasn't anything and now there is something and so I have a tendency to think that there really is something there and they just don't want us to know.

Joe Arness - you say they found drilling mud - is it just a pocket of drilling mud or is it mixed with gravel.

Jessica Black - it's all over the place, you can walk around the pit and see chunks of bentonite all over and bentonite just doesn't occur around there - it is obvious what it is and it's all over that pit.

Joe Arness - does Union try to keep DEC off the property.

Jessica Black - I don't know to what DEC has attempted to get Union's cooperation or what extent Union has cooperated.

John Landua - have you poked around out there very much, is there other debris out there?

Jessica Black - Yes, sure there is lots of couplings, and there is barrels and barrels with writing on them and there are things that look like skids and lots of other debris out there - scrap steel and lots of other stuff. One of my neighbors, Mr. Engelman has lived there for quite some time, he homesteaded part of that area told me that at one time there was this big stack of barrels and the number of barrels he's not quite sure of, but they were in the corner of the pit near our house and then he said that one day he rode a snowmobile down there and they were there and the next day the dirt was all pushed around and they were all gone which led him to believe that they got buried there. I don't have any doubt that there is lots of industrial barrels buried under the surface of the ground because they are surfacing now and there is lots of other stuff under there.

John Landua - there is no permitted waste site out in that direction is there?

Skip Bambard - No.

Jessica Black - it's just right there down Poppy Lane right where it leads into the roads that go into the gas fields back there the road that has a guardrail across it. So there is a lot of

traffic that goes back in there and there is a pit back in there, an unlined pit that they are trying to get the permit for is just beyond there.

Joe Arneas - how big is this gravel pit?

Jessica Black - I think it's twenty acres, I think they own 40 acres and twenty of it is still wooded and twenty of it is the pit.

Larry Smith - do you have any idea what time all of the activity out there is taking place?

Jessica Black - no not really, Charlie knows better than me. I've talked to everybody about this - Carl Reller came from Juneau to talk to us about it and Mike Lucky is the one who I originally talked to and who I have pretty constant rapport with because he is down here and because I have professional contacts with him and so I corner him every once in a while and ask him what is going on. Colleen Byrd, has a position with DEC that is funded by the EPA comes down and is doing a hazardous waste study down here. You can ask one of them one thing and then ask another one another thing and you don't get the same answer.

Tom Brown - are you aware that we are an advisory body and that we are receiving your complaint? We will be making a communication to the Assembly and to the Mayor concerning this complaint and requesting direction. Any documentation that you can provide to us will be presented to the Assembly and they will see it.

Jessica Black - yes, and I would be willing to come before the Assembly if they have questions.

Charlie Dixon - my name is Mr. Dixon and I live right next door to Jessica Black. I could draw you a picture of what we are dealing with out there. (He drew a drawing and explained about the land, the houses near it and the Union oil company land) He showed where the peat condensate has been for about six years. He showed an area behind Mrs. Black's house that was used for years to store about two hundred barrels - no idea if they were full or empty. He showed where Mr. Engelman has lived for years. purchased this property and started clearing and building on it in the spring of 80. During that time, these red pump trucks would come in and start dumping an oozy gray liquid - I have no idea what the liquid was. The trucks belongs to Saltz Construction, the name was written on the side of the trucks. We watched them dumping this oozy gray liquid with a black oilish look to it - I've since learned that was drilling mud. I watched them dump a good dozen loads in this area. At that time, from the smell of the stuff I decided this wasn't stuff that maybe should be dumped right out on the ground so I went and talked to Mr. Roger Moulton who worked for DEC (he is no longer with them) I went in and spoke to him and advised him of what was taking place in this area and he said he needed to catch the trucks out there, what they were doing was dumping drilling muds and they had no permit to dump them in this area. So, whenever the trucks were out there I was to call him and he would come out and catch them in the act of dumping. He said that if we could get pictures, we should do that. It was hard to get this done because the trucks would pull up, dump the mud and be gone before he could get out there. After trying a couple of times and being unsuccessful we finally got Mr. Moulton and a driver of a truck together - he said he was pumping wash water. At that time my wife walked down there with Mr Moulton and pointed out several things on the ground that pertained to illegal dumping. He told her at that time that they had been dumping there for a minimum of five years and he pointed out the various things that they were dumping besides drilling muds - there were other chemicals involved. They took three samples, they were sent to a Juneau lab and I was finally able a couple of weeks ago to get that information relayed verbally over the phone from DEC that they

had tested for bacteria - - now why would they take chemical samples and test them for bacteria, but apparently something happened to the samples. You'll find the area where they have dumped the drilling has been plowed over and covered up with gravel pit or a big gravel berm. They basically built a road in here. The state has come in and plowed a channel to drain this corner here on Poppy because it floods real bad. So they know have all of this water draining down to where these drilling muds are. Union came in with their Cats and their equipment after we'd had all of the ruckus and DEC out there and just covered all of this up where it can't be seen anymore. It's still out there, it's just covered up. It's obvious what has occurred when you go out and look at it. This area where they were dumping was about 12 feet down - it had been excavated, gravel had been taken out of it. They were dumping literally three feet from the water table and they have now covered it up. This area also has several little ponds in it. About a year and a half after I moved into this area I raised sled dogs, a couple of my young dogs got loose and they went down and played in this pond for about an hour and then came back up to the house. They came back up to the house and within an hour they dropped, down - they couldn't even lift their head up - they were just about dead. I took them to the vet and he said they had been poisoned, but he didn't know what type of poison, they were in such bad shape he said they would either live or die - he gave them some medicines and they did pull through. But within an hour of playing in this pond they were damn near dead - they hadn't gone anywhere else because I was watching them. When I look out of my kitchen window there is a pool of drilling mud. DEC has been out there and seen all of this. They have had a head in the sand attitude, they don't want to do anything. I have asked them to come in here with a backhoe and dig a trench across here, maybe a hundred to one hundred and fifty feet long. If they don't find what I've said is in there I would shut up (I've seen what was put in there, friends have seen it put there, my family has seen it put there), but they don't want to do any digging out here because I'm afraid gentlemen what is going to be found is this has been used as an illegal dump for many years. In 1980 I was informed by DEC that what had occurred out there was illegal, a search warrant was issued, samples were taken and then nothing has been done. I've had Andre Marrou out there, he's inspected it. I built this house with a relative for resale, but I can't sell it, I've gone through 80 perspective buyers but nobody wants to buy it. I spoke to Mr. Lameroux at DEC and he informed me that they are working with DEC that they want Union Oil to come out and dig it up, but they aren't going to spend the money and do that because they aren't going to cut their own throats. When this whole thing started Mrs Black's husband and I went and talked to Mr. Lucky and the four public speakers for Union Oil and they agreed to come out and put these tests wells in to test our water. I got a phone call from Mr. Taurianen of Northern Test Lab, he informed me that they were going to come out and test our well and he brings this form out that says that if they test my well and find anything that is bad that I am releasing them from any responsibility. I refused to sign the form and subsequently we had some discussion and they decided they would retype the form and they would take that portion about responsibility out. I was then informed there was a very specific procedure in taking these samples and that was that they had to come from the well with the proper equipment and be placed into the proper containers and shipped within a certain amount of time under certain temperatures for testing. They went through the first portion of it very specific - they said it could not come through the pipes in the house and be aeriated because of the volatility of the chemicals we are dealing with. They said it must come directly from the well. They came out to test it, they cycled my well three times and then took the sample directly from my faucet after telling me this wasn't the way it was supposed to be done because everything that was in the water that they want to test for is now boiled out. DEC came out and took a test of my water, I informed Miss Colleen Berg that the sample she was taking according to the experts I had talked to was very crucial to have

it done correctly. She said that this was the way that Juneau told her to do it. So I have two tests on my water that say everything is fine.

In 1981 there was a fire. There was a couple of Union Oil Trucks (signs on the trucks) I looked out of the window and there were a few people out there with the trucks, they were dumping this black oozy liquid out of the truck onto the ground and they lit a fire. The ground was dry and the wind was blowing so naturally I was concerned because they were starting a fire right outside of my house. This black, thick smoke that you couldn't see through started boiling up - KSRM called the fire department. I went out there because the smell coming off of the fire would just take your breath away it was a caustic smell. I asked them what they were doing, the gentlemen's name was Bob I think, he said they were burning a chemical up. I said I didn't think they were supposed to be doing this, I said I was going to call DEC and they all got into their trucks and left. The fire was burning, the high grass was very dry and the wind was blowing. We called State Forestry to help and it took several hours to put the fire out.

What is occurring gentlemen is whenever I raise a ruckus DEC comes out in the paper and says they are going to do a bunch of things, but then nothing happens. They don't do anything at all. The stuff is in the ground and they are arguing about who is going to dig it up.

From investigations that we've been doing there are about 300 illegal pits in the area. You have drilling mud pits in your water table for the City of Kenai. What we're dealing with here in the future is going to be genocide. Do you realize what is going to happen to our water in about 20 years from now when the increased draw from the population, the wells that are being drilled everyday, the stronger draw that is going to be from industry and from the City itself as we start drawing on that water. We have laws to protect our health and welfare in this state but no one is doing anything to uphold them. Do we want the Kenai Peninsula to turn into another Louisiana, do we want entire families dying from cancer? I don't think so, if the people in this community want that then I don't want to be a part of the community. We cannot allow our land, our water and our health to be jeopardized like it is now.

Dave Brown: Jessica, don't go away cause I want to pick on you for a minute before you leave. I thought that I was the only one who cared. Jessica, could I invade your privacy for just a wee little bit for a half a second. I won't ask you any questions, but she mentioned to you earlier, Jessica Black, about her medical problem and she showed me her medical report a few months ago and I read it because I was mailing some stuff to Anchorage and she asked me if I'd drop that in the mail for her on the way and the level I believe of chromium in her bloodstream - was it chromium Jessica? - was ten times what the medical profession considers to be safe. Now, she went later on as she told you to the Harborview Medical Clinic and got a clean bill of health, but the only reason, I think she got a clean bill of health from the Harborview Medical Clinic was a very simple fact - she stopped drinking the water that was coming out of her drinking well and she is terrified of drinking it now and I told her - I said Jessica, if you want to win your case just go back to drinking the water out of that water well again and then go back to the Harborview Medical Clinic and you'll get the same thing all over again. She said the heck with the case, I don't want any part of that, I want to stay healthy. So anyway I have brought some documentation that I want to give to you people. I want everyone on the Waste Commission to have a copy of this and so I put it in file folders, I'm going to give one to each of you and I've got some notes that I made so that I won't hold you up any longer than necessary and I'll ask you to refer to some of the documentation in these file folders while I'm reading the notes. I'll wait a minute for Tom Brown to get back. I think he only went to the little boy's room didn't he - Tom Brown?

Up until about a year ago when I went public most of the people on the Kenai Peninsula including you people right here in the room had never heard of me. Now as a result of having gone public, a lot of the people think I'm crazy, the DEC hates me, and industry hates me also. No one, not even the oil industry likes to get caught with their hand in the cookie jar. No one likes to be accused of not doing their job. Pollution is a serious crime whether you people have stopped to think about it or whether you have not and when it's done willfully it should result in instant punishment and that punishment should fit the crime. Anyone who thinks that local industry, not all of it, but much of it is not guilty of the crime of very serious and willful pollution is extremely naive and had better wake up before it's too late. Perhaps my going public was a bit unconventional, but if that's what it took to get my point across, then maybe it was worth it even though it's just about put me out of business. Now, we went to the DEC prior to going public, we went to the Governor - we got nowhere going anywhere and the idea of going public and buying full page ads in the newspaper and telling it exactly like it was, was poor legal advice from a young attorney that I had who had more ambition than he had good sense. I took his advice because I think if you can't listen to your attorney you had better get rid of him which I did here a month and a half ago. Be that as it may, regardless of the fact that DEC hates me for exposing their ineptness that does not give them the right to assume powers which they do not have. Nor does it give them the right to lie to me or about me, nor does it give them the right to revoke my permit. The Sterling Waste site exists because it was needed by industry. It was needed by the DEC, by the Borough and by the people so that these wastes would all remain in one location - the reason being that one location is easier to manage than many locations. At the present time, three hundred and five wells have been drilled onshore within the Kenai Peninsula Borough; those are the lists that I gave you. Now the first list lists sixty-seven wells that have been drilled onshore on the Peninsula itself. The second one lists twenty-eight that have been drilled across the inlet, but within the confines of the Borough and if you notice some of the wells on that second list have been crossed out with a line by myself and the reason for that is when the Oil and Gas Commission made those lists for me they made a computer error and those wells were repeated on the previous sheet so I just lined them out, but there are a total of ninety-five wells that have been drilled since July 1, 1973 when the DEC established its first set of Solid Waste Regulations and when they decided that drilling mud was solid waste. The third list that you have is a list of wells that were drilled prior to regulations in other words from July of 1957 when the discovery well came in at Swanson River until July of 1973 when the regulations were enacted by the DEC and there are two hundred and ten of those. There are a total of three hundred and five wells existing onshore within the confines of the Kenai Peninsula Borough. The vast majority of them are on this side of the inlet on the Peninsula, there are a few across the inlet. I did not go in in this study at all to off-shore wells, I was only concerned with onshore wells. Now if you'll look, you've looked at those lists, there is a document right here I'd like you to see. First of all there is a letter from Bill Ross to me dated April 26, 1985 addressed to Dave Brown, Alaska Environmental Industries and he says if you will look that he cannot give me the location and the well numbers of any and all gas wells from 1957 on because the DEC doesn't have that information. He can't tell me which wells were drilled after the establishment of the Sterling Special Waste Site in 1976 because DEC doesn't have that information. If they had been doing their homework they would because other agencies do. Who was the landowner not the leaseholder - the DEC doesn't have that information so on page two I said give me permit numbers and copies of any and all solid waste disposal permits for the disposal of drilling mud which were issued or even applied for at each and every one of these wells and he says a summary sheet with copies of the issued permits is enclosed and this gentlemen is the summary sheet. Out

of three hundred and five wells drilled down here, onshore, and granted two hundred and ten of them were prior to regulations, but ninety five of them have been since the DEC established its regulations and out of those remaining ninety-five only twelve times has an oil company applied for a permit to bury drilling muds and cuttings in place and only five times has that permit been issued. Now your sheet indicates only four I believe, but permit number 8423BA012 for ARCO has since been issued so that makes number five. In other words gentlemen, five times the DEC has done their job in twelve years and ninety times they have not done their job. Now, so much for that.

Now, I mentioned the number of wells and the number of permits and the ridiculousness of the situation. In that same folder are some articles that I included on pollution and they may not sound to you like too much, but there is one at the bottom that comes on the letterhead of my ex-attorney the law offices of William Eixby, that is a condensed version of a Wall Street Journal article that was published last October in the Wall Street Journal referring to the disastrous situation in Louisiana from the Oil and Gas industry and the fact that entire families are coming down with cancer because there are thousands and thousands of drilling mud pits in the wetlands. There are a couple of other articles pertaining to pollution, if you'll notice this one right here, I do not belong to the Sierra Club nor the Center for the Environment, nor any other conservation organization except the Isaac Walton League because Saul Raymond from Union Chemical talked me into joining it about three years ago and I pay my dues and they don't have a local chapter, but they send an interesting little magazine out about four times a year called "Outdoor America" and in the Spring 1985 issue, I wished I'd had enough paper left in my copying machine to copy the entire story, but there was a story about cancer in fish and what does it mean. I'm originally from northern New York State. I lived on Lake Ontario all my life and when I read that right today, now that I've been gone for twenty-one years that the Department of Health recommends that people back there eat no more than one half pound of fish a week from any water in the State that kind of tears me up. Now, what would Les Anderson do with that ninety-seven pound King Salmon that he caught this summer if the State of Alaska said, Les you can only eat a half a pound of that a week. If the man is a bachelor it would take him two years to eat the fish, if he had a wife he could eat it in a year, if he could suffer through the freezer burn and everything else. Now you can say what you will, but I bring up this fish issue for one reason, New York State to this day is a hell of a lot cleaner than Alaska is. If you walk around the Adirondack Mountains and the St. Lawrence River and Lake Ontario and look at how clean and green it is, believe me its got it all over this place, but it's got more industry - for clean it has, but it's got more industry than this state has got so its got more pollution alright, but what you'd better stop and consider is that the State of Alaska is the only state in the fifty states in the United States that still allows offshore dumping of drilling mud - that's a fact. I spent over two-thousand dollars in one month on my phone bill calling the DEC or its equivalent in every single state in the lower union - lower forty-eight that drills for oil and gas and I may have missed a state or two but that's it. In the state of California, believe it or not, and even Budd Kloppenburg at Chevron who hates me with a passion will verify this. They come in off an offshore platform with drilling mud in a barge and a vacuum truck greets the barge, sucks up the load and sometimes goes as far as a hundred miles one way to a remote site to get rid of that load of mud - now that's pretty far out, but that's the way they are handling it in California now. Texas and Louisiana no longer dump drilling mud offshore. They bring it in by barge and they truck it off to a remote site. Yet, we do this in Alaska and I know allegedly we've got ferocious tides in Cook Inlet and the stuff goes downstream and it comes back upstream, but sooner or later it falls out and it lands somewhere and I'm not so sure that that's good. You can pick up "Outdoor Life" or "Field and Stream" or you can borrow a copy from me of the "New York State

Conservationist cause my son subscribes to it and I steal it from him. They have fantastic runs of salmon back there now, Lake Ontario is loaded with salmon and the Salmon River and a lot of the other streams are because the State has done a marvelous job, spent billions of dollars cleaning up the rivers and lakes and stocking with salmon, but you can't eat the fish after you catch them. Now my question to you is what the heck are we going to do if we don't wake up and this continues because where are we going to be if ten years from now if the runs for Salmon in the Cook Inlet are four times as big as they are right today. You've got to admit that the fishing industry has not fallen off in spite of the offshore oil drilling. In fact, it's probably picked up. The fishing in the Kenai River is fantastic the only problem is the boat traffic. But if we reach a point ten or twenty years down the road where the Department of Health or the DEC or someone comes along and says, hey guys, you can catch those fish, but turn them loose - you can't eat them anymore. What's going to happen? I'll tell you what's going to happen, Joe Arness and his father ren't going to be able to commercial fish anymore because nobody's going to buy the fish. If you want to throw your set-net out and pick your fish and throw them back in the inlet just to keep your arm in shape have at it, but I don't think that's why you do it Joe. Skip, you going fishing in the Kenai River or wherever you're going to have to practice catch and release if they don't turn the situation around and mister I'm not exaggerating, the State of Michigan is getting the same way, they are saying to people, hey - don't eat more than something like a pound of fish a week. This is crazy, but this is the real world and you people - you know on the Kenai Peninsula say hey Dave Brown is a nut you know, let's shut him down. I'll tell you something, all due respect to Walt Pedersen I like the old man okay, I hated him for a while, but I finally got to where I like him, but the end result of his campaign is very simple - if that site is shut down you can blame him for half of the pollution that goes on. You can blame him for a good share of the pollution that's gone on in the last five years because his campaign has been so intense that nobody wants to use that site. Very few people do and the oil industry sits back and says hell the DEC doesn't care so why should we care and it's obvious when out of ninety-five wells drilled since the regulations went into effect only five permits have been issued to bury any in place and yet every single well out there has got mud buried in place. Now I've been here five and a half years. I took over MAR Enterprises and the Sterling Waste Site the seventh day of July 1980. I came down here and started learning the business from Bob Houser in June, but I took it over on the seventh of July. From then until now there have been thirty-five wells drilled onshore. From then until now I have been required to spend approximately a quarter of a million at that little, dinky, ridiculous eleven acre site by the DEC whether I wanted to or not, you will by God do this or if you don't we'll jerk your permit. I've spent all that money. The oil industry hasn't spent a dime to put drilling muds there with a couple of exceptions, ARCO has spent some, Marathon has spent some, Union Oil has spent just enough to say hey by God we're doing what we're supposed to, it gives them a front okay. When they had to have the Sterling Site, Chevron - George Day from Chevron stood up and spoke and said by God we need that site. The oil industry has no place to go with its mud, we can no longer put it in the Kenai landfill we've got to have a permitted site. I'd like to ask George Day if he were in this room right now why by God Chevron has got over one hundred, illegal, covered up, back-filled drilling mud pits at Swanson River alone without one permit for any of them. I'd like to ask George Day why he has never used that site. Stop and think about that for a minute. You can say Swanson River is remote, it's not like Union Oil, Union Oil is in downtown Kenai and Soldotna. Sure they are, but when Union Oil first started drilling in that gas field many, many years ago that wasn't downtown Kenai and Soldotna, that was remote - semi at least it was out in the brush and there weren't many people living out there. Right now, Kenai Native Association owns an awful lot of land right close to Swanson

River and if George Miller keeps working as hard as he is he will see the day I think when Uncle Sam will say, go ahead guys and subdivide your land, we give up, because he's as tenacious as Walt Pedersen is, he don't know when to quit, he'll get his wish and when he does they'll put up their new houses right next to all these old mud pits and there are over a hundred of them at Swanson River which is why Chevron doesn't like me very well.

Forgetting Chevron for a minute, you've read the articles on pollution let me say this to you. A permit, whether any of you people have ever stopped to think about it or not, is not merely a piece of paper designed to give a Clerk/Typist down in Juneau a day's work. It is an actual certification from the Alaska Department of Environmental Conservation that says this method of disposal at this time, in this location is safe or at least by God it's as safe as anything that we know of go ahead and do it. Now when the DEC does not issue that permit there is only a couple of reasons for it: number one - they are lazy, number two - they are inept, number three- maybe there is something (question raised by Tom Brown of the Waste Disposal Commission asking what this all has to do with them) - it's got a lot to do with you and I'd like you to hear me out Tom. There maybe another reason and I don't care what the other reason might be. When an oil company does not apply for a permit there is only two reasons for it: number one- they don't want a permit because they know if they applied the DEC would not issue it because it's right in the water table or whatever, number two- it's a whole lot cheaper to bury it on site than to haul it to a permitted site so they aren't interested in being legal. Now a permit, Tom says what's this got to do with us - what it's got to do with you is the attempt to close the Sterling Site. A permit has to be written, whether the DEC wants to admit it or not within the parameters of the Alaska State Statutes and the DEC Solid Waste Management Regulations. Permits must be written with a reasonable degree of uniformity because regardless of the DEC's traditional policies of harassment and selective enforcement the Constitution of the United States of America which is supposed to be the supreme law of the land, guarantees to each and every one of us equal protection under the law. Now how does that apply to me or the Sterling Site, I'll tell you how. I called the U.S. Attorney in Anchorage and I said does that equal protection under the apply apply only to individuals or does it apply to corporations. They said to me and I quote, "unless there can be a reasonable basis for distinction - unless there is a reasonable basis for distinction there can be no distinction" in other words a corporation is treated like an individual so therefore is XYZ oil company can dump drilling muds in pits with straight up and down sides and not mix it with dry dirt in six inch lifts then so can any other oil company or so can I.

Now forgetting that for a moment. When my permit was renewed two and a half years ago we were merely asking for renewal of an already existing permit so there was no need for public notices, there was no need for public hearings, but they had them anyway, they weren't necessary. Their permit as it was re-written was altered considerably from its original state with no justification forever or whatever. Now, if you will pick up your copy of the Solid Waste Management Regulations which you've got in your folder, turn to page eight, on the left, two thirds of the way down the page, item three - drill mud disposed of on land is confined in a pit a trench or a diked area that prevents erosion or mass flow of the mud. See that, it does not say that drilling muds have to be in pits with three to one slopes, it doesn't say that drilling mud has to be mixed with dry dirt and put in in six inch lifts. Now, so much for page eight, no mention is made of six inch lifts. Now if you'll go back to page five which means turn about two sheets, and on the right hand side up near the top under item two finished lift height does not exceed eight feet. In other words, according to State Regulations any lift up to eight foot in depth is legal whether Mr. Martin up in Anchorage thinks so or whether he doesn't. Now, that doesn't look to me like six inches, but then the people that

wrote those regulations weren't bent on putting me out of business they were only intent upon writing sensible regulations. Now look on page four if you will please where I underlined surface water runoff. Okay, surface water runoff does not flow over, into or through uncovered solid waste. We have constructed very effective diversionary structures to prevent this from happening. Now nothing in the regulations, I'm talking about the things that DEC has cited me for which are illegal citations. (Mr. Tom Brown of the Commission again what that has to do with us?) Its got a lot to do with you because you are the Solid Waste Commission, the DEC is attempting to illegally revoke a permit and they are going to the public and you're part of the -- (Mr. Tom Brown stated "the Solid Waste Commission has no jurisdiction over that matter") I'm not asking you for jurisdiction, I'm just asking you to hear because I think you should be informed. Nothing in the regulations says where we have to get the material that we build our diversionary structures out of and nothing in the permit says where we have to get the material that we build the structures out of. Now, on the south end of the site we built those structures out of clean dirt from outside the fence. On the north end because of tight quarters we used materials from inside the fence that came out of Union Chemical's pit, but on the north end of the site gentlemen the site is at a lower elevation than the ground outside of the fence. We are preventing runoff from coming in, not from going out. We have had no violations at the Sterling Site except one and it has nothing to do with what we are being cited for. Now, at the top of page ten you will see item B underlined and all it says at the top of page ten - persons holding valid permits on the effective chapter shall have until July 1, 1984 to meet the requirements of this chapter. We have met every requirement of that chapter. Now, Bob Martin agreed verbally a couple of years ago with Jim Cross from Environmental Services Limited in Anchorage to amend our permit because these things were not necessary to begin with and he admitted this and he agreed to amend it by attaching to it a copy of Jim Cross' plan of operations. Now this was a verbal promise, he did not follow it up, he did put it in writing and he circulated the written version amongst the DEC offices, but he did not date it or sign it so at this point in time I suppose you could say it possibly isn't valid. McClellan EBA a soils engineering firm in Anchorage was picked recently by the DEC to help the state to locate a hazardous waste site for the state by testing the soils at the various locations. We hired McClellan EBA because I felt that if McClellan EBA was good enough to do this work for the state to find a hazardous waste site then by god they must have the qualifications to test the soil at Sterling. They came down here with three people (Arshud Mammu?) who is president of the company and has a PHD in soils engineering and two other gentlemen, one of whom was a engineering geologist and the other one was just a working man like the rest of us. They tested the soils in my twenty foot deep pit, they tested mud out of two pits that twenty foot deep pit and the adjoining pit which has ARCO's drilling mud in it from Wolf Lake number 2 that we put in their last January. They determined, they took the samples back to Anchorage. They weighed the drilling mud samples and then they put them in another one labeling them and they weighed them the next day and the weight loss was the water that went out. But they determined that the soil conditions were so tight around that twenty foot deep pit that there was no need of ever changing the slopes on the pit as long as we continued to maintain the dikes. Now the only thing he said in addition to that regarding that pit was he said: A. that pit is an excavation in the ground, there is no need to worry about dikes, but since it was built on the edge of a hill and where the hill starts to go down is on the east bank therefore you do have a built up dike on the eastbank that's about eight foot high. So he said fill the pit to the ten foot depth and then we will come and we will take soil samples from that dike and we may tell you at that point in time that you should reslope the outboard side of that dike from its present one to one to maybe one and a half to one or even two to one, depending upon soil conditions, but if you don't get ten feet of

mud in there don't worry about it don't spend the money. Now as far as the mud itself is concerned I was astounded, the mud in ARCO's pit that has been in there since January is still very close to 80% water even though you look at it and it looks like mud, but that which is in the big pit which was stacked up against the slope of the bank is down to about 20% water in other words our method of taking it out with a backhoe after the water off the top evaporates and stacking it up against the bank gives you the most efficiency you can get in a small site like that.

Anyway, forgetting Mammud and McClellan EBA for a minute, we have spent approximately a quarter of a million in Sterling doing all of the things that DEC has required in the meantime DEC allows the oil industry to do as they wish with no permits, no regard to statutes, no regard to regulations, no regard to the environment, no regard to the people that live in it. Now we have discussed the alleged permit violations at Sterling and there aren't any, only one about three years ago I'm going to say, one of my employees pumped some rainwater over the bank - he shouldn't have done it. I accepted the responsibility for that, we got cited by DEC for it. My attorney got involved because DEC claimed it was drilling mud and it wasn't. We took samples to test lab and DEC dropped the charges, they are bringing that up again now. Also they brought up one more issue recently in this list of violations when they decided to revoke my permit. And that was the issue of the day when I was set up by Dan Roberts, my favorite friendly competitor. Dan got a call from Marathon Oil to come and pump some oily bilge water off the Rig Engineer, he had a couple of trucks that weren't busy, but he knew that Ron Swanson's truck was busy so he said to Marathon (knowing that my trucks were not busy) he said hey I'm tied up, I can't make it, why don't you call Dave Brown. So they called me, Jerry (McClay?) called me. I said what is it Jerry? He said it's water Dave, it's just bilge water with traces of oil. I said fine, we'll come and get it. We did. I got a frantic phone call or not phone call, but call on the radio from my truck driver from the site at Sterling. He said you better come up here, Dan Roberts is here taking pictures and he took a sample of the stuff coming out of the back of the truck and he said when he took his sample it was pretty oily. So I went up and said to Dan, what's your problem Dan. He said we do have a problem let's get on the site and talk about it. I did. I went down there and there is a State Trooper has my truck driver's license. I said to the trooper the driver hasn't done anything wrong so why are you here? He said well I got a phone call, said something was going on that shouldn't be and I should come here. I said well look if anything has happened that shouldn't, I'm accepting the responsibility, I operate the site so let the man go and give him back his drivers license if you would please. So he did. Then two cars came from DEC with Bob Cannone in one and some others in the other one. They were followed by Skip Bamard from the Borough with a lady with him and that was followed by Polly Crawford from the Peninsula Clarion. Well that kind of did it. I said Polly what are you doing here? I like Polly. She said Dave, I got a phone call from Dan Roberts' secretary said that if I want to see the Sterling Waste Site shut down that I should come out here and bring my camera and take pictures. I said Polly you aren't going to see it shut down today or any other day, but I said go ahead, but I said while you are here why don't you ask Mr. Roberts since this is the first time that we pumped that ship or worked for Marathon in over two years and he has been taking their bilge every couple of months, why don't you ask him where he has been putting it. Has he been dumping it in the Cook Inlet at night in an outgoing tide or in the woods or in the Kenai River. Roberts of course didn't have any answers. Bob Cannone went out with his little jar and took a sample. My permit says that I can take water containing not more than four percent oil. Now that load was fifty barrels, okay. A hundred barrels is forty-two hundred gallons. Fifty barrels is twenty-one hundred gallons. Four percent of that would be about fifty gallons of oil. Okay, alright Skip? Fifty gallons of oil on a pond not more than fifty feet in diameter would completely

inundate the top of that pond with an oil slick. There was no oil slick, there were traces of oil over in the right rear corner as we stood in front of the pond, but there is a big berm around the side of the pond and my trucks back up against that berm, open their valve and blow out their load. Well when they blow out their load pretty soon the stream coming out of the valve peters out as the tank gets empty and the pressure goes down. There are always two or three holes right underneath, right in the bottom of the dike from erosion from that stream petering out coming out of the valve. Cannone took his sample right out of the hole that was underneath the valve and I'm going to say that that hole was probably that long and maybe that deep and it was full pretty much of straight oil, okay, but that hole could not have contained more than five gallons. I said to Cannone I said hey, why don't you take your sample from the pond, I said certainly you're going to get straight oil in there because oil and water don't mix, the oil rises to the top. He said, well I know that, but he said well I've got my low shoes on I can't take one from the pond. So, those idiots cited me with that in this recent list of violations, okay, now, so much for the intelligence of the DEC. Now the DEC is claiming there is pollution in Sterling and there isn't and there never has been and the EPA strongly disagrees with them and I'm going to suggest that the Waste Commission make a couple of phone calls to satisfy themselves. Call the EPA Region 10 in Seattle and talk with John Meyer. John Meyer is the man who is in charge of the testing at the Sterling Waste Site. John Meyer will tell you as he told my attorney and I - Bill Lameroux lied to the press, he lied to the press twice here the other day and I'm being hung on that by the people. First of all he said that the EPA found pollution in the catchment ditch that goes around the southeast corner of the Sterling Site - it runs all the way down the southside and all the way down the eastside and it meets on the corner and there is a catch basin there. EPA divided that catchment ditch into five segments. They took one sample out of each segment. They threw all of the samples into a pile and stirred them up and then took one representative sample out of that and sent it to the DEC's lab. The DEC's lab turned up seventeen hundred and fifty parts per billion of barium. Barium is an ingredient found in drilling mud. Our dikes our built out of dirt- our hill is made of dirt and there is a certain amount of dried drilling mud in that dirt, when it rains you get a certain amount of runoff from those dikes - that's what the catchment ditch is for. The seventeen hundred fifty parts per billion proves two things: A. that the catchment ditch is doing its job and B. that the EPA is also doing its job because their safe standard for barium is a hundred thousand parts per billion. So I've got about ninety eight thousand five hundred parts to go per billion on barium before Mr. Lameroux can tell the newspapers that there was pollution found in that catchment ditch. Now, the other thing Mr. Lameroux said that was a total lie - its not a total lie, but the way in which he gave it was a total lie - he said there is pollution there because well number six is turning up oil and grease. Well number six has turned up oil and grease several times and there isn't any oil and grease in it and the reason is very simple - we sample three wells when we go out there - two, four and six. Well number two and four you cannot pump dry, they will run water all day long without drying up and so when we take our sample from those two wells we hold our jug underneath the stream of water coming out of the pipe and DEC waits until our jugs are full and then they fill their jug and we wear rubber gloves when we do this normally. Okay, well six dries up in a hurry - it will pump for about four minutes and that's it. So because of that DEC has always followed a practice as I hold my jug down here, here is the pipe with the water I hold my jug down here and Mike Lucky reaches in up here and fills his bottles. Alright, Mike usually wears rubber gloves, but I'll tell you what if there is a quarter of an inch gap between the top of the gloves and his shirt sleeves and that water stream hits there you are going to get oil and grease in my bottle because the oil and grease is the oil out of everybody's skin. Now the last time we sampled those wells in July, Buckles came out and did it because Mike Lucky was

down in Homer or someplace. Buckles didn't wear any gloves and I wasn't paying attention, nor was the guy who was working for me. I held my jar - my guy held my jug down here, Buckles reached in with his bare hands and we turned up oil and grease like you wouldn't believe so a few days later we resampled that well and no oil and grease. Chem and Geo the test lab in Anchorage - you can talk to Gene Yonkin, he's the head man up there, but I gave you some well samples from the last time around. If you'll take a quick look at them you'll see that the last sheet amongst the well samples is the oil and grease that wasn't there. Okay folks, I'm done okay, but anyway the first sheet of the three is well number two - shows you all the different things we sampled for.

Skip Bamard: we need to take a quick little set cause I don't think this tape is going to turn over. She'll try it, but if it doesn't start recording on the other we are going to have to change it.

OFF RECORD TO CHANGE TAPE
BACK ON RECORD - Tape #2

The point I'm trying to make ladies and gentlemen - the point that I would like to make out of this whole thing is very simple and then I'll get out of here. When EPA was up there doing their sampling recently, the guy that was in charge of the EPA crew made some comments. There were some people there doing seismic work and they made some comments. There was a man by the name of (Kunuth?) from Juneau with DEC and he made some comments. And I had a man working for me by the name of Kerry Wright who is an ex-cop - he's got nine years as a cop and he just resigned up in Galena and came down here to get license as a private investigator and he was working for me at the time, but hang together - every time one of those people spoke to Kerry he never said a word he just waited and wandered back to his car and wrote down notes. Joe Smith said such and such at 8:25 am on January 22 or whatever the date was - he made two pages of notes. Alright, the head guy with EPA said this was the cleanest site he had ever investigated - that's a fact. Kunuth from the DEC in Juneau said this was the cleanest site he had ever been on and that you could almost drink the water out of the ponds, but there was one of them where he sure as heck wouldn't want to try it. The guys on the seismic crew said the soil was so tight they didn't see how anything could ever possibly leach out of it and the parting shot from the guy with EPA was a very simple parting shot - he said, hey this whole thing is political. Walt Pedersen has made all of this noise for so many years that the Borough can't handle it. The Borough has dumped it in the lap of the DEC, they can't handle it either so they have finally gone to the EPA and you know something he said we can't handle it. He said we have spent over two hundred thousand dollars doing sampling and testing last year and now he said we're going to put in a half a dozen new monitoring wells as we agreed and he said we don't expect to find a thing from those monitoring wells, but we're going to be able then to close the file on the Sterling Waste Site and forget about it. Now that's where it's at. Now, the last thing that I have to say before I leave and I think you should all give this a little bit of thought. Say what you will, but there's probably 20,000 people on the Kenai Peninsula - quite a few of them their quality of life is going to be affected somewhat in the next few years as Charlie Dixon said if this pollution continues. If you want to have three hundred sites out there - three thousand sites out there it may be okay, but sooner or later you are going to pay the price whether you put plastic liners in them or whether you don't. ARCO has no intention of doing any monitoring at Wolf Lake number two - they are taking the road out. How are they going to get in there to monitor it. The original concept behind the Sterling Waste Site was a good one. I don't like to get shot down for political reasons, I don't like to get shot down for my sparkling personality. Whatever the reason may be I don't care much for it. Now, I feel this way about it - whether the Borough is willing to accept this

fact or whether they aren't - the Borough has some very stout legal responsibility where I'm concerned. I don't want to get into a lawsuit with the Borough that's not my intention I live here. I have to say this in all fairness to the Borough they are several notches above the DEC - quite a few which is why the Waste Commission was formed. But, be that as it may, I wrote a freedom of information letter to Stan Thompson and gave a copy to your commission and one to the Assembly - it hasn't been answered yet. I have a paragraph in my lease that says the Borough will not allow the same types of wastes that we are permitted to dispose of at Sterling to be disposed of anywhere else within the Borough on lands actually owned by the Borough and that has not been the case - this has happened. In fact, at the present time the Borough is apparently negotiating with Chevron to buy some land probably across the inlet wherein Chevron is already drilling wells and even if they closed the sale of the land today it would not alter the fact that the intent of the Borough at the time that the wells were planned and the mud pits were put in was possibly not to read the lease for the Sterling Waste Site before they did it. Now it doesn't say in my lease anything about across the inlet - it just says within the Borough. As far as I'm concerned if drilling mud sits on land owned by the Borough across the inlet, even if there is no provision to bring it over by boat it is still a violation of the lease. But more important than that look in your Alaska State Solid Waste Regulations and find the paragraph that says

Tom Brown are you referring to the Beluga River Facility?:

Dave Brown any facility that you want pick -- if the Borough owns the land

Tom Brown what gives you the indication that there is drilling mud being deposited there?

Dave Brown well I'll tell you what, I've been around drilling mud long enough to know that drilling mud normally is buried within fifty feet of a well casing. Now forgetting that for a moment something you should look at in here - there is a paragraph in here that says anytime solid waste lays upon land without a permit, by state regulation that material has to be dug up and moved to a permitted site. Now maybe the Borough has never thought about it but with as much as the DEC has had to say about pollution at Sterling which doesn't exist, if they go ahead with this revocation and the Borough goes ahead with the termination of the lease then you cannot turn around and turn that over to another operator to run, okay. So if it ---

Tom Brown - Mr. Brown, we have no jurisdiction in these questions. You are wasting our time. We are trying to get on with some serious business here trying to find a site for wastes. If you are the adequate operator of that site, you will be the operator of that site whether it's in Sterling or someplace else. We have no jurisdiction over the questions you are bringing up here.

Dave Brown - not necessarily, no but you do have the authority to talk with the Assembly - you have the authority to talk with the Assembly.

Tom Brown - about what?

Dave Brown - about the various issues that we are discussing.

Larry Smith Tom, I think that later this evening, under the new business portion I want to discuss something to do with compliance.

Dave Brown - the regulation that I was trying to finish citing before you interrupted Tom which is alright it's your privilege states loud and clear if that permit is revoked whether you terminate the lease or not if that permit is revoked the Borough

is going to have to dig up everything in that Sterling Waste Site and take it to a permitted site and right now there is no permitted site they can take it to so it would seem to me that it might behoove the Waste Commission to suggest to the Assembly that maybe we should go ahead and find this big new site but do something with the DEC to get them to keep that permit active out there so the Borough isn't forced to dig it up and move it, because if I go bankrupt, I can't afford to do it and I got news for you the EPA isn't going to help you do it. By the time they drill those wells they have dumped every dime in that Sterling Site they are going to dump in unless they find disastrous pollution which they know they are not going to find.

Larry Smith - just out of curiosity you are under Chapter Eleven right now?

Dave Brown - you bet your life I am, thanks to the DEC. You bet your life I am - I've been doing a balancing act for --

Larry Smith - so you can't be forced to do anything in regards to that site even if (unintelligible)

Dave Brown - I can't be forced to do anything in regards to that site, but I'll tell you what, you know - the regulation is there - I'm not saying they would enforce it - they haven't enforced any of the regulations so far but you better consider one thing. Walt Pedersen is a pretty sharp old man - he is aware of that regulation - he is already asking to get the site cleaned up. So, if the permit goes and the lease goes - he will demand that the state clean the site up and his campaign then will be twice as heated as it's been so far. Now whether you guys know it or not the people on the Kenai Peninsula need a nasty old man like me that's a watchdog and to answer a concern that at least one of you have had and I think it's you - if you open a new site and it sits there if I have antagonized the oil industry by going public are they going to use it. Yes they are because I'll tell you why, the oil industry at this point in time is being very careful what it does at least on this side of the inlet, they have to be, they don't dare play any more games because I've got a lot of documentation that I didn't bring here tonite. But you people asked a question six months back what quantities might there be out there. Take those lists of wells I gave you and do some averages for yourself and that will give you some ideas of the quantities. Now let me get out of here and let you go on with your more important business. I hope I didn't tick any of you off. I thank you for your time.

Joe Arness thank you Dave.

BREAK - OFF RECORD FOR FIVE MINUTES

Joe Arness -- we're back on record.

Skip Bambard explained that there were two letters in the packet from Tony Neal and a response from him. He said that based upon Mr. Tom Brown's testimony at the last waste commission meeting regarding the baler, that they have instituted a new policy at the baler and we will be instituting it at all of our sites with regular photographic evidence as to the conditions of the site on a regular basis. The baler will be done three times a week. He explained that they are going to try and get the Kenai and Soldotna Landfills done on a daily basis. He said they would keep constant record. He said that the problem was one of not being to respond to comments such as Mr. Brown's and Mr. Neal's and have people be able to say, well on such and such a date this happened - we want to have something that we can refer to and say okay what really happened and were we out of line or does this person just got a problem with personnel or what - we want to know what the facts are. He then showed the commission some pictures that he had taken the day before and noted that on the lefthand corner they are dated so there is no question of when they were taken. He said that he asked the baler operator Mr.

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 8512

APR 09 1985

A RESOLUTION OF THE CITY OF VALDEZ, ALASKA
URGING IMMEDIATE PASSAGE OF SENATE BILL 231
AND HOUSE BILL 288, RELATING TO SUBSISTENCE
FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in nonsubsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and nonsubsistence fishery issues, and

WHEREAS, the economy of the City of Valdez is critically dependent on the revenue and employment resulting from the commercial and sport fisheries, and

WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that

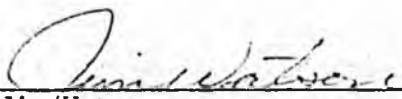
Section 1. There be immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA this 1st day of April, 1985.

CITY OF VALDEZ, ALASKA


John Devens, Mayor

ATTEST:


Jim Watson
City Manager/City Clerk

APR 24 1985

from
Mark Jensen

A position statement

released in late November, 1984, by the U.S. Fish and Wildlife Service in Alaska recommends that

"... management of the polar bear, walrus, and sea otter should be returned to the State of Alaska."

In 1973, under terms of the Marine Mammal Protection Act, the FWS and the National Marine Fisheries Service assumed control of ten species of marine mammals in Alaska: the FWS is responsible for the polar bear, walrus and sea otter, while the NMFS is responsible for the sea lion, beluga, and five species of seals.

The FWS said its position statement is based upon five major points:

1. The Marine Mammal Protection Act places restrictions upon the federal government that impedes sound management.

2. Under the MMPA, harvest of a marine mammal species cannot be restricted by federal action until stocks have been found to be depleted, and then only after lengthy hearings before an administrative law judge.

3. Under the Act, as amended in 1981, the state would be able to regulate harvest before a stock

becomes depleted and this would not require hearings before an administrative law judge.

4. The State of Alaska has an established history of high-quality research and management of marine mammals.

5. Legislative history of the MMPA and amendments consistently has shown the intent of Congress to be for return of marine mammal management to the States.

While the FWS says it favors return of management of polar bears, walrus, and sea otters to Alaska, it also says that if the state decides against such management, or in the interim before management is returned to the state, "... the FWS will begin a management program."

According to the statement, "In 1981 Congress gave the FWS specific authority to require marking and tagging of marine mammals taken by Natives. In 1984, Congress has issued a mandate to the FWS to implement this effort."

Alaska Natives (Eskimos, Indians, Aleuts) are the only people allowed to hunt marine mammals under the federally administered MMPA.

Last November the Alaska Department of Fish and Game scheduled 40 public hearings throughout Alaska to get the public's view on return of marine mammal management to the state.

The FWS position statement was issued while the public hearing process was underway.

Alaska's newest passenger airline, MarkAir, laid



Telegram

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SEN ARLISS STURGULEWSKI

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JUNEAU AK

DEAR SENATOR,

IN THE EVENT THAT HB288 DOES NOT PASS ANGOON WOULD BE NEGATIVELY
IMPACTED BY NON-ANGOON RESIDENTS BECOMING ELIGIBLE. ANGOON IS
ONE OF TWO SOUTHEAST COMMUNITIES EFFECTED. THE A.D.F.G. ALLOCATION
WAS BASED UPON HOUSEHOLD NEED IN AND AROUND ANGOON. WE WOULD
APPRECIATE YOUR SUPPORT FOR PASSAGE THIS YEAR. IF THE AREA WERE
OPEN TO ALL USERS, RAPID DEPLETION OF SUBSISTANCE RESOURCES WOULD
BE INEVITABLE.

THANK YOU,

EDWARD J GAMBLE SR MAYOR

CITY OF ANGOON

MAY 06 1985

EMMONAK CORPORATION AND CITY OF EMMONAK
JOINT RESOLUTION IN SUPPORT OF HOUSE BILL 288

TO ALL MEMBERS OF THE ALASKA LEGISLATURE:

THIS RESOLUTION expresses the most urgent request by the people of Emmonak that House Bill 288 be passed immediately.

Six hundred forty-one people live in Emmonak. Many, but not all, are shareholders of Emmonak Corporation. The primary resource from which our people derive income and subsistence is the lower Yukon fishery. This fishery provides ninety percent (90%) of the cash income for the people of Emmonak. Nearly all other non-governmental enterprises are also dependent upon cash income from this fishery.

The lower Yukon fishery has historically been managed so as to provide adequate fish for subsistence users without conflict with commercial fishermen. This sustained yield management can continue to provide for this balance and for a viable community economy in Emmonak.

Recent developments in the law, particularly as expressed in Madison v. Alaska Department of Fish and Game, Opinion No. 2911 of the Alaska Supreme Court, threaten the destruction of the only viable cash economy in the lower Yukon area. At the present time these developments, unless altered by passage of House Bill 288, may end commercial fishing on the lower Yukon for the 1985 season and possibly thereafter. The impact of this development on our people, both commercial fishermen, subsistence users, and other non-governmental enterprises, will be catastrophic. A substantial portion, if not all of our

population, will find it necessary to seek governmental assistance for the barest of essentials absent the cash incomes derived by the community from commercial fishing operations.

Even those of us who depend on subsistence fishing will be injured due to the destruction of the cash economy of the lower Yukon.

We unanimously have resolved to urge you to pass House Bill 288 as soon as possible. Preparations for the 1985 season have already begun. These preparations require start-up financing which may become unavailable if the current uncertainties following Madison are not resolved immediately.

RESPECTFULLY SUBMITTED to the Legislature of the State of Alaska this ____ day of May, 1985.

EMMONAK CORPORATION
By its Board of Directors

CITY OF EMMONAK

Martin B. Moore, Chairman

Andrew Kelly, Sr., Mayor

Mr. Billy Charles

Mary Ann Immamak, Vice Mayor

Ms. Elizabeth Carden

attest:

Mr. Raymond F. Waska, Sr.

Secretary

Mr. Phillip G. Immamak

Mr. Donald B. Redfox

Mr. James M. Kameroff

Mr. Jacob A. Johnson, Sr.

Mr. Andrew C. Kelly, Sr.



KENAI RIVER SPORTFISHING ASSOCIATION

3301 "C" Street Suite 202
Anchorage, Alaska 99503
Phone (907) 276-1451

MAY 08 1985



May 7, 1985

To: All members of the Alaska Legislature

From: Kenai River Sportfishing Association

Subject: House Bill #288

Kenai River Sportfishing Association strongly urges you to achieve the following objective:

1. Complete legislation this year which will return us as near as possible to the status that we experienced prior to the Madison decision.
2. Install a "sunset clause" of either one or two years in the event that problems occur and require further legislation.
3. Make every effort to have the legislation enforceable.

by Bob Gerdon, Jr.
acting President of Kenai River Sportfishing Association



Alaska Sportfishing Association

3805 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

May 7, 1985

To: All Members of the Alaska Legislature

Subject: House Bill 288

The Alaska Sportfishing Association feels strongly about the following three points:

1. Legislation is needed this year to preclude wide-spread anarchy, particularly in the hunting area.
2. The legislation needs a sunset clause since the only bill being presented or considered to date is from the same organization that originated the devisive 1978 Subsistence bill.
3. Provisions must be included that will insure that Fish and Game regulations and the allocations made by the Boards of Fish and Game are enforceable, that is, subsistence cannot be used as a defense in court to get around these regulations.

ALL three points are necessary together to insure that fair, well thought out, comprehensive, enforceable legislation is passed.

Sincerely,

Robert L. Hunter
Chairman, Legislative Committee

TO: MEMBERS, ALASKA STATE LEGISLATURE

FROM: Rep. Jack Fuller, Chairman,
House Interim Committee on Subsistence

DATE: October 10, 1985

SUBJECT: Subsistence Committee Hearings

The House Interim Committee on Subsistence would like to invite you to join us for public hearings in early November. As the hearings will be teleconferenced on a statewide basis, you may join us by participating in your community's teleconference.

The first hearing in Anchorage, November 6, will begin with an update on what has happened with the subsistence issue since the end of last session. This update will include the current status of all litigation, federal action, AFN's legal petitions, comments by the Department of Fish and Game, and issues before the Fisheries and Game Boards. In addition, I will provide for the committee an analysis of the House-passed bill in light of current problems.

I encourage you to join us in November.

The hearing schedule is as follows:

ANCHORAGE: Testimony from Anchorage area. All other sites may listen in. Wednesday, November 6; 9 a.m.-1 p.m., 2:30-5:30 p.m., 7:00-9:00 p.m.. Location: Anchorage LIO, 1024 6th.

FAIRBANKS & INTERIOR: Testimony from Fairbanks area and Interior. All other sites may listen in. Thursday, November 7; 12:00-5:30 p.m., 7:00-9:00 p.m. Location: Fairbanks LIO, 315 Barnett St., Suite 101.

SOUTHEAST, PRINCE WILLIAM SOUND, KODIAK: Testimony from these areas. All other sites may listen in. Tuesday, November 12; 9 a.m.-1 p.m. Committee members and other Representatives present at their home sites.

WESTERN, NORTHWESTERN, SOUTHWESTERN: Testimony from these areas. All other sites may listen in. Tuesday, November 12; 2 - 6:00 p.m. Committee members and other Representatives present at their home sites.

May 8, 1985

MAY 09 1985

Governor Bill Sheffield
Members of the
Alaska State Senate

Gentlemen:

The following members of the Kenai Peninsula Borough Assembly do hereby request that a Subsistence Bill be enacted this session. This legislation should guard against the combined risks of

- (1) Federal intrusion
- (2) Unprosecuted violations of Fish and Game laws
- (3) Possible closures of both sport and commercial seasons.

Please consider these possible negative effects, and implement a subsistence law which protects all user groups.

As a result of the approaching end of the Legislative Session, and restrictions upon the time of the Kenai Peninsula Borough Assembly, we were unable to have this item considered as a formal matter of business of the Assembly. We therefore chose to utilize this forum to express our opinions, and it needs to be clear that these are only our opinions and not a statement of Borough policy.

Thank You For Your Consideration,

1. Frank Mullen	FRANK MULLEN	DISTRICT II	SEAT C - SOLDOTNA
2. Marie E. Walli	MARIE E. WALLI	DISTRICT IV	HOOPER
3. Karen S. McGowan	KAREN S. MCGOWAN	DISTRICT III	NIKILKI
4. Jim Skogstad	JIM SKOGSTAD	DISTRICT I	HOPE
5. Gary Fandel	GARY FANDEL	DISTRICT III	NIKILKI
6. Ronald J. Johnson	RONALD J. JOHNSON	DISTRICT III	NIKILKI
7. Betty J. Gluck	BETTY J. GLUCK	DISTRICT III	Kenai
8. Jonathan W. Sewall	JONATHAN W. SEWALL	DISTRICT I	Seward
9. Francis S. Moore	FRANCIS S. MOORE	DISTRICT II	SOLDOTNA
10. M. D. Vahrick	M. D. VAHRICK	DISTRICT IV	Nikilki
11. Paul Dale	PAUL DALE	DISTRICT II	SOLDOTNA
12. Dave Cook	DAVE COOK	DISTRICT IV	SOLDOTNA
13. Ken Stephens	KEN STEPHENS	DISTRICT II	SOLDOTNA

Rural Alaska Community Action Program, Inc.

May 9, 1985

Senator Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

On March 20, 1985 at our regular Board meeting the Rural Alaska Community Action Program (RurAL CAP) passed Resolution 85-06, "In Support of Legislation to Maintain Orderly Harvest of Fish and Game Resources" (copy attached). RurAL CAP urges immediate action to respond to the Madison Supreme Court decision.

HB 283 has been carefully considered in the House: the teleconference hearings, the floor debates, the intensive media coverage, and the bill's ultimate approval May 4 have provided extensive opportunity for public involvement. The time has come for action on HB 288 in the Senate, before adjournment of this session.

The Madison Supreme Court ruling struck down the Board of Fisheries' definition of subsistence, specifically the part that said in order for a person to qualify as a subsistence user, he/she would have to live in a rural area. The court said that this definition did not give the kind of protection to subsistence users that was meant to be given by the State of Alaska's 1978 subsistence priority law.

The Eluska decision basically says that, since no regulations currently exist for subsistence use of game, a subsistence hunter cannot be prosecuted for taking moose or caribou, etc. if the meat is used for subsistence.

The combination of these two decisions makes it impossible for the Department of Fish and Game, and the Boards of Fish and Game to manage the allocation of fish and game resources. The Madison ruling has taken away their authority to regulate the taking of fish and game. Presently, the only thing they can do is to apply emergency regulations, but ONLY if the "sustained yield" of any resource is threatened. The likelihood of the "sustained yield"

of, for example, salmon fisheries that used to be taken mostly by commercial fishermen being threatened is very remote. Therefore, the Madison ruling that says the Board of Fish cannot differentiate between rural and urban to decide who is a subsistence user and who is not, means that just about anyone in Alaska qualifies for subsistence uses of fish and game. This creates a critical situation: the commercial fishermen who rely on fishing for their livelihood will have to wait until the Department of Fish and Game or the Board of Fish says all subsistence users have been satisfied before they will be allowed to take commercial fish. The sports fishermen will have to wait, too. Meanwhile, who is to say WHEN the Board or Department can say, truthfully and with documentation to back themselves up, that ALL subsistence uses have been satisfied?

The Eluska decision further muddies the water: it says, since the Madison ruling makes almost everybody subsistence users, and since there are no regulations for subsistence hunting (because of Madison there cannot be any) then almost anyone can take almost anything in the name of subsistence.

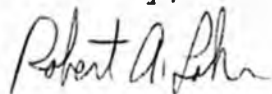
We believe that individual senators are, in fact, concerned about acting on the subsistence issue this session, and for good reason: lack of action this session aimed at correcting the imbalance created by the Madison court decision will result in serious harm to commercial and sports users of especially fisheries resources this spring and summer. Those who have subsisted in rural Alaska will continue to do so and suffer little or no impact as a result of inaction or delay by the Senate in 1985. This inequity is not in the interest of the people of Alaska. No public official could countenance a return to the divisiveness of 1982 when the subsistence repeal effort split the people of this State. By timely, responsible action this session you have the opportunity to defuse a potentially explosive situation.

Our constituency consists of both rural and urban residents; subsistence, commercial and sports users of fish resources; Democrats and Republicans. Their concern over this latest evidence of conflict over resource uses has been expressed to the Directors, and the result was unanimous adoption by the Board of Resolution 85-06. We recognize that the Senate's constituency is likewise diverse, and hope that you as a concerned Senator will

respond to the statewide expression we heard during the House teleconferences of the desire on the part of Alaskan residents that something be done about this issue this year.

Thank you for your attention and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert A. Lohr".

Robert A. Lohr
Executive Director

Enclosure

RAL:ct

Rural Alaska Community Action Program, Inc.

Resolution #85 - 06

- ENTITLED: In Support of Legislation to Maintain Orderly Harvest of Fish and Game Resources.
- WHEREAS, the orderly harvest of fish and game resources is essential to the general welfare of rural Alaskans who depend on these resources for a large part of their livelihood; and
- WHEREAS, the Alaska Supreme Court, in Madison, et al. vs. the Alaska Department of Fish and Game, struck down state regulations designed to determine eligibility for subsistence as being inconsistent with state law and legislative intent; and
- WHEREAS, the decision would have the effect of allowing massive increases in the number of subsistence permits which may be issued; and
- WHEREAS, this ruling also has the effect of preventing orderly harvest of subsistence fish and game resources because it diminishes the authority delegated to the Alaska State Board of Fisheries to establish criteria for the eligibility of users; and
- WHEREAS, the ruling broadens the eligibility for subsistence permits to include all residents of the state, because it focuses on the place where customary and traditional uses have occurred, rather than the people who conduct them; and
- WHEREAS, relaxing the eligibility requirements may necessitate emergency closure of commercial and sport harvests due to the influx of "court-created" subsistence users; and
- WHEREAS, the court recognized that the legislature intended to protect subsistence rights in the 1978 statute; and
- WHEREAS, the court, by broadening subsistence access so dramatically, jeopardizes the preference for those who depend most directly on the resource: rural residents of Alaska; and

WHEREAS, Governor Sheffield has introduced legislation that would restore order to the harvest of fish and game by more strictly defining the personal use and subsistence use of fish and game; and

WHEREAS, the subsistence use definitions must include the use of the words "rural" and "residents" in order to protect limited resources from virtually unlimited access by urban residents who have never depended upon fish and game resources for maintaining their way of life;

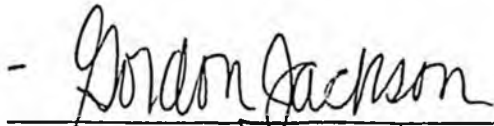
now, therefore, be it

RESOLVED: that the Board of Directors of the Rural Alaska Community Action Program, Inc., endorses Senate Bill No. 231, "An Act Relating to the Taking of Fish and Game for Subsistence and Personal Use," and

be it further

RESOLVED: that the Alaska State Legislature is urged to act immediately on this legislation, in order to maintain harmonious relations among Alaska fish and game user groups.

ADOPTED at a regular meeting of the Board of Directors meeting in Juneau, Alaska, March 20, 1985.

- 

Gordon Jackson, President
Board of Directors



Robert A. Lohr
Executive Director

Kie - We need a new approach
& this may be a useful direction. I have
a feeling we're not seeing forest for trees.

This draft bill attempts to:

1. Place the state in a positive management role instead of being always on defensive.
2. Convey a clear message of cooperation to feds & of equal treatment to Alaskans.
3. Comply with ANILCA & thereby preclude litigation & the big "fed threat".
4. Establish rationality in Alaska resource management & preclude annual crisis, threats, etc.
5. Shift the subsistence allocation/priority burden to the feds who originated it.
6. Neutralize the advocacy role of this (or any) administration & the attendant dubious advice being received from AG & F&G.

Sec 1. Findings. The Legislature finds that:

- (1) The management of fish & game resources is increasingly complex as human populations increase.
- (2) There is increasing controversy over priorities among competing user groups.
- (3) Priority classes among citizens are not consistent with common property resource use.
Establishing any priority leads to a need for additional future priorities.
- (4) Federal law imposes a subsistence priority on federal land in Alaska, a situation that does not exist in the other United States.
- (5) The complex overlap of state & federal law is a basis for increasingly frequent litigation & misleading expectations among citizens.
- (6) It is state intent to meet federal requirements of ANILCA.
- (7) It is desirable to simplify the management of state fish & game by initiating a new management format for a test period of 5 years.

Sec 2. The (existing? subsistence law) is repealed
& reenacted to read:

A. The Boards shall regulate fish & game
use as either personal use or commercial use.

(1) All subsistence & recreational opportunities
are regulated as personal use.

(2) There shall be no priority among personal uses.

~~Sec 2.~~

B. The Boards shall adopt regulations permitting
additional subsistence opportunities on federal
lands when:

(1) Residents of those areas have no opportunity
to meet their needs under existing
personal use regulations, and;

(2) The Dept of Interior presents documented
findings of subsistence needs specific
to fish or game stocks & to geographic area.

Sec 3 This Act is authorized for a period of
5 years.

alaska's marine mammals who will benefit from state management?

Passed in 1972, the Marine Mammal Protection Act (MMPA) imposed a moratorium on the taking of marine mammals and marine mammal products for any purposes. Exempted from that moratorium were Alaskan Natives, who were allowed to continue their traditional and customary use of marine mammals and marine mammal by-products for subsistence purposes, and for purposes of creating Native handi-



crafts. Under the MMPA as originally adopted, the federal government had exclusive management authority and authority to issue permits on a limited basis for the taking of marine mammals for scientific research. The federal government also had authority to allow commercial harvesting of marine mammals but has consistently refused to exercise that authority. Consequently, no commercial or sport harvesting of marine mammals in Alaska has occurred since 1972.

The MMPA provided a mechanism by which coastal states could obtain a transfer of management authority. To obtain such a transfer, the state would have to show that it had developed and would implement a program for the conservation and management of marine mammals consistent with the purposes and goals of the Act. The transfer provisions of the MMPA provided states with the opportunity to authorize and regulate a sport and commercial harvest of marine mammals on conditions that those harvests not reduce the population of the harvested species below optimum sustainable population levels.

In 1982, the State of Alaska engineered adoption of amendments to the MMPA regarding transfer of marine mammal regulatory authority. The transfer provisions adopted in 1982 authorize a transfer of management authority to the State of Alaska on a finding that (1) the State has

adopted a mechanism to allow the taking of marine mammals for subsistence uses, (2) ensures that taking of marine mammals for other non-subsistence uses will be authorized only on a finding that such taking will not significantly impact subsistence uses, and (3) that the taking will, to the maximum extent practicable, provide economic opportunities for the residents of rural coastal villages in Alaska.

Since the 1982 amendments, the State has been seriously considering whether to request a transfer of management authority from the federal government. It has held hearings throughout the State in coastal villages and elsewhere on this issue. It also secretly developed a draft application for transfer of marine mammal management authority to the State.

Transfer of marine mammal management authority would have catastrophic consequences for rural Native Alaskans who rely on marine mammals for subsistence purposes, as well as on the marine mammals themselves. Under the 1982 MMPA amendments, transfer of management authority to the State of Alaska would result in subsistence taking by all rural residents of Alaska. Such taking would no longer be restricted to Native Alaskans who customarily rely on those species for food, clothing, and handicrafts. It takes little imagination to realize that expanding the category of persons who may engage in "subsistence" harvesting of marine mammals will result in increased tensions and most likely outright conflicts between Natives and non-Natives. Non-Native harvesters will, under the guise of engaging in subsistence harvesting, substantially interfere with Native access to and use of such critical species as Pacific walrus; ringed, spotted, and harbor seals; and polar bears. The number of marine mammals actually taken could skyrocket. Moreover, non-Native harvesting of Pacific walrus will result in a flood of non-Native ivory carvings, thereby destroying the only opportunity for Native residents of Bering Sea villages to obtain the cash necessary to continue their subsistence activities. The poor will get poorer while a new class of "artisans" will begin to reap the benefits of the ivory trade.

Beyond the dilution of Native subsistence harvesting rights, the State plan will result in both commercial and sport harvesting of

many species of marine mammals. Among the species the State claims can support a commercial and sport harvest are belukha whales, Pacific walrus, polar bears, sea otters, Steller's sea lions (adults to be harvest for crab bait or animal food), bearded seals, harbor seals (sustainable yield projected in excess of 10,000 animals annually), ringed seals (6,000 harvested annually for both human and animal consumption) and spotted seals (up to 3,000 harvested annually for both human and animal consumption).

Alaska Friends of the Earth objects to the State's attempt to obtain management authority over marine mammals. The threats to the species themselves as well as to the opportunity of rural Native Alaskans to continue their customary and traditional taking and use of these species cannot be tolerated.

This policy statement was unanimously approved by the Board of Directors of Alaska Friends of Earth on April 4, 1985. Emphasis has been added.

Alaska Friends of the Earth Newsletter

Spring, 1985

Volume 1 Number 1

Published quarterly by the Alaska Branch of Friends of the Earth. Subscriptions for non-members are \$15 annually.

Checks should be made payable to Friends of the Earth

Return to: Alaska Friends of the Earth
1069 West Sixth Avenue
Anchorage, AK 99501

Editor: Margie Gibson

Board of Directors:

Mike Holloway, Chair

Sue Libensen, Secretary

Alison Hedberg, Treasurer

Jim Bamberger

Gordon Wright

Contributions to Friends of the Earth are not tax-deductible.

Aspects Needing Consideration in Subsistence Legislation.

The continuing controversy surrounding the subsistence law attests to several basic flaws in the law. Those flaws have made implementation of the law by the Boards of Fisheries and Game extremely difficult, as numerous successful challenges to the Boards' regulations amply demonstrate.

The first part of this discussion will highlight the major flaws in the current law and then suggest corrective approaches for them. The three bills currently in the Legislature, HB 288 and SB 231 (the Governor's bills--hereafter treated together) and SB 320 will then be evaluated regarding these flaws.

The last part of this discussion will consider several other aspects of the subsistence issue that have generated considerable debate. The Governor's bills and SB 320 will be evaluated relevant to those aspects.

A. BASIC FLAWS IN THE CURRENT SUBSISTENCE LAW.

1. Lack Of Adequate Definition Of Subsistence Use.

Perhaps the most significant flaw hindering successful implementation is an inadequate definition of subsistence use. Defining subsistence use as the customary and traditional use of fish and game for food, clothing, etc., is not adequate. The quagmire that the Boards found themselves in is ample proof of that. For example, the Board of Game chose an individual family approach, using history of use and income level as a means of identifying who had subsistence uses, whereas the Board of Fisheries used community attributes and residency as the criteria. Both approaches were legally faulty. Customary and traditional are words that do not have legally precise meanings. If the Legislature believes it necessary to keep customary and traditional use as the definition of subsistence use, then customary and traditional need to be clearly and unambiguously defined so that all Alaskans have the same understanding of what is subsistence.

Governor's bills.--These two bills do not define customary and traditional use. Instead, the bills give the subsistence priority to rural Alaskan residents. In defining who qualifies, however, additional confusion regarding customary and traditional use arises. That confusion arises because the priority is given to residents of communities and areas in which personal and family consumption of fish and wildlife is a significant characteristic of the economy. So is personal and family consumption the definition of customary and traditional use? Is the economic aspect the critical aspect of

the definition (and where then should the economically important commercial fisheries fit in)? What constitutes a significant characteristic of the economy? Rather than reducing confusion by defining customary and traditional, the Governor's bills simply add an additional level of confusion.

SB 320.--This bill does not explicitly define customary and traditional. However, it defines who qualifies for that use. By so doing, the bill in effect defines subsistence use. The definition essentially involves a documented history of use and an inability to obtain alternative sustenance. The criteria that SB 320 contain can be implemented. They are also clear enough in their meaning so that litigation due to ambiguity should not be frequent. Furthermore, SB 320's approach to subsistence probably is the one most Alaskans have in mind when they think of subsistence; general accord as to what is subsistence should result.

2. Inability To Regulate And Manage Subsistence Harvests.

The current law does not allow adequate regulation of subsistence harvests. The recent Supreme Court decision in the Madison case, and the Court of Appeals ruling in the Eluska case clearly indicate that no restrictions at all can be placed on subsistence take if sport or commercial harvests are occurring (in fact, if any consumptive uses other than subsistence are occurring). Furthermore, subsistence use can only be restricted if sustained yield (of that subsistence use) is jeopardized. The consequences of not being able to regulate the harvest of cow moose during the calving season, the inability to stop shooting of ptarmigan during nesting, and the inability to restrict gill netting of spawning rainbow trout should be obvious to all. To properly manage fish and wildlife populations, the regulatory agencies need the ability to restrict those harvests that are most detrimental to fish and wildlife stocks. Such flexibility often allows larger total harvests to be taken safely. For example, 500 geese might be harvested on a sustainable basis if they are shot during nesting, but a sustainable harvest of more than 2,000 might be possible if they are taken in the fall. For common property such as fish and wildlife, one cannot allow sound management practices to be violated, regardless of the beneficial use being considered. The present law needs to be modified to allow adequate regulation of subsistence harvests.

Governor's bills.--The Governor's bills don't address this problem. In fact, an Assistant Attorney General apparently advised one legislator during the last week of the session that the Boards did have authority to restrict subsistence harvests -- even despite

the very explicit wording in the Court of Appeals ruling (see particularly footnotes 6 and 7 of that ruling). One can only conclude that the Assistant Attorney General's pronouncement was one of advocacy and not of legal scholarship. The point is, the Governor's bills would not correct the regulatory difficulty that currently does exist.

SB 320.--This bill does address the problem. It specifically states that only those subsistence uses allowed by regulation are legal. Obviously, regulations based on proven principles of fish and wildlife management can be implemented under this bill.

3. Legal Implications Of Granting Priority To A Use.

Does granting a use a priority status infer that regulations partially restricting such use (i.e. not allowing complete satisfaction of that use), so that other uses can be partially satisfied concurrently, are illegal? That is, does a priority use have exclusive right to the resources if the resources cannot satisfy all demands for the priority use? Or is a priority satisfied if only a reasonable opportunity is provided to subsistence users, even though such an opportunity is not expected to fully satisfy all demands for the priority use? To our knowledge, the legal implications of granting a use a priority status have not been addressed in the courts. Undoubtedly they will be, if the current priority designation is retained in the law. Rather than let the courts decide, the Legislature should carefully specify what is meant by priority if that designation is retained. If priority can be equated only with exclusive use in cases of inadequate resource supply, then the designation should be changed from priority to preference. Whatever the designation, it is not reasonable that other uses will be allowed only in those cases in which the status use can be satisfied completely.

Governor's bills.--These bills do not address the priority issue. The priority designation would be unchanged if the Governor's bills are adopted as is.

SB 320.--This bill does not specifically address the priority issue. The bill does indicate that historical levels of subsistence use could be designated, thereby putting a cap on the amount of subsistence use allowed. However, the question of exclusivity when the resources are in short supply is not addressed. We believe that must be addressed in the bill.

B. OTHER ASPECTS OF THE SUBSISTENCE ISSUE.

1. Location Of Residence As A Basis For The Subsistence Priority.

The current law does not have residency as a criterion for subsistence use. It is used, however, in allocating resources among subsistence users. The legislative record established during passage of the current law clearly indicated legislative intent that all subsistence uses, regardless of where occurring in the state, would have a priority; the intent clearly was not to restrict the priority only to certain communities or only to rural Alaska. In spite of that record, the Boards did restrict the priority to rural Alaskans, with the Board of Fisheries implementing it solely on a community basis. The Attorney General's staff took an active advocacy role in developing the rural/community approach; an often voiced argument was that the State needed to be "in compliance" with the Federal rural designation, otherwise Federal preemption of State management on Federal lands would result. The State Supreme Court in the Madison ruling found the rural/community approach in violation of the State subsistence law; the Court did not rule on the constitutionality of that approach. However, a significant legal question remains regarding the constitutionality of the location of residency criterion, particularly when one considers the very extensive legislative record documenting that subsistence uses occur in both urban and rural Alaska.

The current State administration, through the Attorney General's staff and the Commissioner's office of ADF&G, is pushing a rural/community approach. Their principal argument is that in view of the Supreme Court's Madison ruling a rural/community approach is necessary to eliminate the management/regulatory chaos created by the Madison decision. If that decision did create such chaos, the rural/community approach, which would reduce the number of individuals qualifying for the subsistence priority, would not eliminate the chaos, although it might constrain it somewhat. Any chaos created by the decision would be due to two sources: an increased number of subsistence users and the legal recognition that subsistence use of a resource cannot be restricted so long as any other consumptive use of that resource is occurring. The latter aspect has at least as dire an implication for resource management as does the former. The salient point is this: using a rural/community criterion for determining the subsistence priority is not going to correct the management/regulatory hiatus (revealed by the Madison decision) that exists with the current subsistence law! That aspect is of fundamental importance when considering revisions to the subsistence law.

The rural/community criterion for determining who gets a subsistence priority has one significant drawback -- it is not fair! Not all individuals and families with equal dependence on the fish and wildlife resources are treated equally. All individuals in a community designated as a subsistence community would get the subsistence priority (regardless of their use of the resources), but those individuals in a community not so designated would not have the priority, regardless of how dependent on the resources an individual or a family might be! People equally situated should be treated equally. Until that is assured, the subsistence law will be a continuing source of controversy.

The argument has been raised that the subsistence priority must be on a community basis so that a village economy is not threatened or unduly impacted. If a village economy has a substantial dependence on subsistence use of fish and wildlife, one would expect most individuals and families in that community to qualify on an individual basis for the subsistence priority. Hence, that village's economy would be protected by granting the priority on an individual, not a community, basis.

Governor's bills.--As indicated above, the administration is pushing the rural/community approach; these bills contain the rural/community criterion.

SB 320.--This bill assigns the priority on an individual basis, including all dependant members of that individual's household.

2. Compliance With The Federal Law.

One very significant difference between the State and Federal subsistence provisions is the priority. In State law, subsistence use is the priority use; in Federal law subsistence use is only a priority among the consumptive uses. That difference has troublesome management implications for Alaska. Under State law, the Boards are required to provide for subsistence use, restricting such use only if two conditions hold: 1) all other competing consumptive uses are abolished, and 2) sustained yield of the subsistence use is jeopardized. Obviously, National Parks and Preserves, primarily dedicated to non-consumptive uses, were not established under ANILCA with that scenario in mind. Recent interactions between the Board of Game and the National Park Service regarding subsistence regulations in the Gates of the Arctic National Park demonstrate the divergent mandates. Obviously, State law is not in compliance with the Federal law on the critical point of priority. Should we modify our State law to gain compliance, thus placing subsistence use only in a priority status with respect to other consumptive uses? If compliance with the Federal law is very important, perhaps we should! But is compliance that

important?

The argument advanced for compliance is that without it the Feds might preempt State management authority on Federal lands. They might, especially in those instances in which the variant in the State law disallows satisfaction of provisions mandated in the Federal law. The different specifications for priority might be one such variant, for Federal officials may need to restrict subsistence uses in order to protect non-consumptive values for which the land was set aside.

The question of compliance needs to be evaluated on a case by case basis. That is the only rational approach, for one provision of the law might be modified with only slight negative impacts on state and private lands, whereas modification of a different provision to conform to Federal law might produce very undesirable results for resource use on non-federal lands. That is, some provisions in the Federal subsistence law may be very undesirable ones from the State perspective (and perhaps even at variance with the State of Alaska constitution). The rural provision in the Federal law may be the prime example.

Non-compliance does not imply that Federal preemption is inevitable. Even if legal action is initiated, based on claims that the State statutes and regulations do not provide the subsistence privileges specified in ANILCA, the State's management authority probably will not be preempted unless it is clear that State laws and regulations are more restrictive than those the Federal officials would promulgate. Who is likely to be stronger advocates of consumptive uses of fish and wildlife -- the State of Alaska or the Federal officials, particularly those in the National Park Service? Anyone contemplating legal action to institute Federal management of subsistence should carefully evaluate the ultimate consequences of those actions.

Governor's bills.--These bills would bring State law into accord with the Federal law regarding rural priority. Other points of disagreement would remain.

SB 320.--This bill would not change the current situation that the priority is given to any subsistence user, rural or urban. Other points of disagreement would also exist.

3. Trade and Barter Provisions

???????

(Also need a summary regarding the Gov's bills and SB 320)

1. License

2. Qualifications for license
must be individual/family

3. Regulate the use

4. Presence, not absence
priority.

5. Trade & Route

Mary Bishop
1555 Luss Circle
Ft. KS, AK 99701

with
AK Outdoor Council
455-6151

Talking with Mary Bishop.
Subsistence Use.

License

A subsistence user must have a licence

Regulations.

The use must be regulated by game laws.

Qualifications for permit to use.

The qualifications must be personal, familial, or individually determined, not determined by community.

Subsistence harvested ~~game~~ ^{resources} should not be available for sale.

Comments

Emperor geese are down more than half from several years ago. Down 17 % in last year. Cackling Goose down to 5% of population some ¹⁰ years ago. Black Brant is down, White Fronted is down. Some populations are in deep trouble. ¹⁹⁸⁰

People of the Y-K Delta are harvesting geese. ^{in spring}

People who have won the subsistence fight now want to prove that they can do what they have gained the right to do.

Moose population down from Fort Yukon is very low. Hunting, loss of habitat from fire control, wolves. Politically cannot close but it probably would not make much difference. 250 hunting area.

Community based privilege is a stepping stone to treating a village as a "dependent ^{Indian} community". → ^{sovereignty}

Inholding problems that would result from Tribal Council establishment.

Not
material

GENERAL POINTS FOR CONSIDERATION AND CONCURRENCE - SUBSISTENCE

1. Licensing: A license will be required for subsistence preference use. Licensing will be based on personal or household qualifications--not on the locality in which one lives nor upon racial, cultural or ethnic considerations.
2. Limiting Qualifications: Qualifications for the license 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.
3. Subsistence Seasons and Bag Limits: The license 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.

APR 23 1985

UCIDA
United Cook Inlet Drift Association
Box 4440 Kenai, Alaska 99611

UCIDA POSITION ON SUBSISTENCE

The United Cook Inlet Drift Association is an organization of commercial fishermen comprised of 300 members out of a fleet in Cook Inlet numbering nearly 600. We have studied the subsistence issue thoroughly in light of the Madison decision and the recent opinion released by Judge Madsen and the Court of Appeals.

Earlier this year, the Alaskan Supreme Court ruled (in the Madison decision) that the State of Alaska and the Board of Fisheries has been in error by restricting subsistence fishing to rural areas. The decision now states that subsistence fishing has priority over all other methods of harvest and that every citizen of Alaska may participate in a subsistence fishery.

To further complicate matters, in a recent decision of the State Court of Appeals, it was ruled that a subsistence defense is now available (as a result of the Madison decision) to violators of game laws. We expect that "subsistence fishermen" will put their nets in the water on Cook Inlet beaches in June or July, to test this theory as it may apply to fisheries law, which could throw the whole management plan into turmoil.

The UCIDA board has looked at this whole situation closely. We have concluded (along with nearly every other fishing organization in Alaska) that fishing seasons cannot be adequately managed by the Department of Fish and Game in a climate of uncertainty over subsistence harvests and the threat of court action. Any curtailment of our season could be disastrous. We honestly feel that subsistence should be for rural Alaskans, and that urban residents can adequately share in the resource through sport or personal use harvests.

Governor Sheffield has introduced legislation that would, if properly amended, legalize the balance between subsistence, personal use, sport, and commercial harvests that seems to have worked well in recent years. Many critics blame the Board of Fisheries for the problems that exist today, and expect the Board to come forward with all-encompassing solutions. We feel that solutions to this problem lie with the legislature. If the legislature refuses to deal with this issue as soon as possible, it will be a slap in the face to the commercial fishing industry in the State of Alaska.

The United Cook Inlet Drift Association urges support of HB 288 and SB 231 in hopes that fishermen will be allowed the opportunity to earn a living and support their families with assurance in 1985.

APR 23 1985

April 16, 1985

Sen. Arliss Sturgewlewski
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgewlewski;

UCIDA is an organization of commercial fishermen comprised of 300 paid members out of a fleet in Cook Inlet numbering nearly 600. We have studied the subsistence issue thoroughly in light of the Madison decision and the recent opinion released by Judge Madsen and the Court of Appeals which validates the "subsistence defense" for game violations.

The UCIDA Board of Directors strongly supports passage of SB 231 this session with a sunset clause if necessary for the following reasons:

- The 1985 fishing season cannot be adequately managed by the Department of Fish and Game in a climate of uncertainty over subsistence harvests and the threat of court action. Any curtailment of our season could be disastrous.
- We honestly feel that subsistence should be for rural Alaskans, and that urban residents can adequately share in the resource through sport or personal use harvests.

Please support SB 231, and allow fishermen the opportunity to earn a living and support their families with assurance in 1985.

Sincerely,



Jim Evenson
President, UCIDA

cc: all legislators

Rogier Lohme

ANCHORAGE FISH & GAME ADVISORY COMMITTEE
c/o 333 Raspberry Road
Anchorage, Alaska 99518-1599

October 30, 1985

Don W. Collinsworth
Commissioner
ADF&G
PO Box 3-2000
Juneau, AK 99802

*10/31
Contact Don Hennessy
Thank you for copying
this letter down*

Dear Commissioner Collinsworth:

The Anchorage Fish and Game Advisory Committee strongly disapproves of the fact that the Madison decision, as well as the questionable interpretation of it by the Attorney General's office, have necessitated closure of many previous sport hunts and have allowed them only as subsistence Tier II hunts.

Therefore, the Anchorage Fish and Game Advisory Committee strongly urges the Board of Game and the Department of Fish and Game to do the following two things.

Our first recommendation addresses what the board and the department can and should do before the legislature addresses the subsistence issue or if the legislature fails to amend the subsistence law to correct the present Tier II problems. We urge that the Board of Game, with the assistance of the department, identify all Tier II hunts where the Tier II harvest did not approach, and will not likely approach, the authorized Tier II harvest level. The department and the board should open these hunts to all Alaskans as Tier I hunts, either through standard unrestricted participation or through lotteries in which any Alaskan has an equal chance. Examples include the moose hunts in the Eagle River and Eklutna areas.

Second, we request that the board and the department work aggressively with the Alaska Legislature to have it adopt amendments to the state subsistence law that would re-open to all Alaskans all sport hunts that were in effect prior to the 1985 season, now classified as Tier II hunts. Furthermore, any amendments should also include or clarify the authority of the board to identify appropriate and inappropriate subsistence stocks. For example, we believe that some species or stocks of wildlife, such as sheep, brown bear, cranes, steelhead, and rainbow

October 30, 1985

trout, goats, bison, and musk oxen generally are not subsistence stocks. We also believe that the board and the department should work with the legislature to address what constitutes "customary and traditional" subsistence use, and other uncertainties in the present law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Stevens".

Tim Stevens, Chairman
Anchorage Advisory Committee

ANCHORAGE FISH AND GAME ADVISORY COMMITTEE

COMMENTS ON AFN-PROPOSED 5 AAC 99.010

IN JOINT BOARD BOOK

The following amendments to the AFN proposal in the Joint Board Book concerning 5 AAC 99.010 are done in the standard format for amendments. Amendments adding language are underlined, and amendments deleting language are bracketed and capitalized.

PREAMBLE TO ANCHORAGE ADV. COMM. AMENDMENTS TO AFN PROPOSED 5 AAC 99.010

The Anchorage Fish and Game Advisory Committee prefaces their proposed changes to 5 AAC 99.010 in lieu of the AFN proposal, with the following caveats:

- 1) We find the concept of subsistence priority to be a deprivation of individual opportunity under the Alaska Constitution to harvest fish and game;
- 2) We favor elimination of subsistence priority to fish and game resources within the state;
- 3) We favor a system where those in true need of the resource, can harvest the resource;
- 4) We favor defining "need" as those living below the federal poverty levels, and without common amenities such as hot and cold running water, electricity, aircraft, and without substantial public assistance;
- 5) Failing elimination of subsistence priority, we favor return of all Tier II hunts to Tier I hunts, except where biological circumstances limit the available resource;
- 6) Failing this, we favor the following proposed 5 AAC 99.010 which although containing reprehensible conditions such as "rural residents" and "subsistence use zones" is the only avenue currently available within the law to return equity of opportunity in harvest of fish and game resources;

5 AAC 99.010. BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES: (a) The Board of Fisheries and the Board of Game shall identify and regulate the taking of fish stocks and game populations according to the following procedures:

(1) Meeting in joint board session, the boards shall seek to --

(A) identify and quantify the amount of customary and traditional subsistence uses of fish and game that is necessary to provide a reasonable opportunity for rural residents engaged in a subsistence way of life to do so; provided that such determinations shall be based at least upon the research, analysis, comments and recommendations of the subsistence division of the department that are reviewed and concurred in by the other divisions of the department.

(B) identify and designate customary and traditional subsistence use zones utilized by such rural residents;

(C) identify fish stocks and game populations that customarily and traditionally have been important subsistence stocks and populations utilized by such rural residents for subsistence use;

Explanation:

The new paragraph (1) requires the boards to jointly determine the approximate amount of fish and game resources that are necessary to meet customary and traditional subsistence needs, customary and traditional subsistence use zones for populations of rural residents, and fish and game populations that have customarily and traditionally been important to subsistence use. There is a strong emphasis in each element of this paragraph on what is customary and traditional. This emphasis should put the boards in a good position to find that certain rural practices, such as round-hauling of fish and barter of fish in a substantially commercial setting, are not customary and traditional subsistence use.

The first element, i.e. the quantification of the amount of fish and game needed to continue the opportunity for a customary and traditional subsistence life-style, is necessary to resolution of any allocation issues, but it has never been stated formally as a requirement. This would correct that deficiency.

The second element, i.e. the identification of subsistence use zones is similar to a concept in the federal subsistence law, which requires "resident subsistence zones" to be identified for regulating subsistence use in national parks. (The concept of residency has been omitted from the proposed language, however, because it would create a legal problem in that it is a Tier II concept in state and federal law, except with respect to national parks. The second element, however, comes as close as legally possible to

effectively making area residency a qualification without actually requiring it.

The third element, i.e. identification of important subsistence stocks, allows there to be a preference only on those stocks and not on unimportant stocks that may only incidentally be used for food or other subsistence uses. The rationale is that those incidental uses could be accommodated through non-subsistence regulations without interfering with the purpose of the state and federal subsistence laws, which is to provide the opportunity for the subsistence life-style to continue.

(2) [(1)] Each board will assess the biological status of fish stocks and game populations that are important subsistence stocks and populations within the use zones and determine whether a surplus may be harvested during a regulatory year [IDENTIFY THE HARVESTABLE SURPLUS WHICH MAY BE TAKEN FROM EACH STOCK AND POPULATION] consistent with the utilization, development and conservation of such stocks and populations on the sustained yield principle, consistent with the conservation of healthy and natural populations of the resource, and consistent with the public interest;

Explanation:

This is modeled after a similar provision, 5 AAC 99.010(a)(1), in the Joint Board's Subsistence Policy, but the above amendments make several improvements.

By focusing the assessment of biological status on important subsistence stocks, any depletion that occurs through subsistence, sport, or commercial over harvest will be identified in relation to that stock, rather than in relation to a set of present and potential subsistence stocks. In other words, this would help identify stocks that need to be managed conservatively to rebuild the stocks. Without the provision, efforts to rebuild could be stymied by claims that the stocks should be managed for lower than sustainable populations and any or most of the harvest of a depressed population would have to be allocated to subsistence or primarily to subsistence. For example, the Nelchina caribou herd has been depressed for many years and is in a rebuilding phase. We would want to avoid assertions that the herd should be managed at a depressed level with a disproportionate amount of the harvest allocated to subsistence and that any shortfall in subsistence need for caribou should be met by allocating more moose (a present subsistence stock) or more sheep (a potential subsistence stock) to meet overall need for subsistence uses, where the additional subsistence allocation of moose or sheep would be contrary to sustained yield or the conservation of healthy and natural populations. In other words, one depressed population should not lead to creation of another, regardless of whether it is of a different species or stock within the subsistence zone

or outside the subsistence zone. If this principle is not accepted by subsistence users, then the subservience of subsistence to sustained yield and the maintenance of natural and healthy populations will be rendered meaningless.

Finally, the phrase "conservation of healthy and natural populations" is rooted in the federal law, whereas the present state law refers only to "sustained yield". Sustained yield is vague, but is more appropriate for stocks where all the harvestable animals are of similar size, age, and character (eg. salmon and ducks), and where the management concern is for sufficient reproduction to maintain future harvests and reproduction, and where the animals die upon reproduction (salmon) or are short-lived (eg. ducks and caribou). However, with other species, such as trout, sheep, moose, brown bear, management for merely sustained yield will disrupt the natural distribution of age classes within the population, and in some instances such as sheep or brown bear this disruption may have biological effects. Thus, the amended language adds to the sustained yield principle the requirement that the boards also consider the maintenance of healthy and natural populations and the public interest in maintaining healthy and natural populations, regardless of whether those public interests are for consumptive trophy harvest, non-consumptive use, or are for biological reasons other than sustained yield.

[(2) WITH RESPECT OF EACH FISH STOCK OR GAME POPULATION FOR WHICH A HARVESTABLE SURPLUS HAS BEEN IDENTIFIED, EACH BOARD WILL IDENTIFY "SUBSISTENCE USES" OF SUCH STOCK OR POPULATION AS SUCH TERM IS DEFINED IN SEC. 803, PUB. L. 96-487 (16 U.S.C. 3113), TO WIT THE CUSTOMARY AND TRADITIONAL USES OF SUCH STOCK OR POPULATION BY RURAL ALASKA RESIDENTS 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 STOCKS OR POPULATIONS TAKEN FOR PERSONAL OR FAMILY CONSUMPTION, AND FOR CUSTOMARY TRADE.]

Explanation:

This paragraph has been deleted because paragraph 1(A) now does this better language. A problem with the deleted language is that it essentially says that every stock of fish and game for which there is a harvestable surplus will have subsistence uses put upon it.

(3) (A) After identifying subsistence uses of a fish stock or game population that is important to customary and traditional subsistence use [pursuant to paragraph (2)], the appropriate board will determine the amount of harvestable surplus of such stock or population required to [FULLY] provide a reasonable opportunity to engage in such uses, and [PURSUANT TO SEC. 804, PUB. L. 96-487 (16 U.S.C. 3114),] will adopt regulations which authorize the taking

of such stock or population for subsistence uses; provided that such regulations may be the same as, different from or in addition to regulations governing other consumptive uses of the stock or population.

Explanation:

Deletion of the word "fully" avoids tension between "fully" and "reasonable". Any subsistence preference should not unreasonably restrict non-subsistence users of important subsistence stocks.

Allowing subsistence regulations to be worked into existing sport or commercial regulations, or to be separate from them, allows the boards discretion and overcomes the problem raised in the Eluska case, in which the trial court declined to enforce an out-of-season hunting regulation because the Board of Game had failed to provide a separate subsistence season. This language allows the boards not to provide a separate subsistence season if the present sport (or commercial) season is adequate to meet subsistence needs, so long as it is also specified as a subsistence season.

[(B) PURSUANT TO SEC. 802, PUB. L. 96-487 (16 U.S.C. 3112) AND THE MAINTENANCE OF FISH STOCKS AND GAME POPULATIONS ON THE SUSTAINED YIELD PRINCIPLE, REGULATIONS ADOPTED PURSUANT TO THIS PARAGRAPH WILL CAUSE THE LEAST ADVERSE IMPACT POSSIBLE ON PERSONS ENGAGED IN SUBSISTENCE USES OF SUCH STOCKS AND POPULATIONS.]

Explanation:

This paragraph is not founded on the previous Joint Board's Subsistence Policy, 5 AAC 99.010. Instead, it is inappropriately derived from policy language in sec. 802 of ANILCA that is focused on federal land use decisions and the effect such land use decisions have on subsistence. That policy addressing land use is implemented by sec. 810 of ANILCA and governs federal actions concerning leases, land disposals, and permits for the use and occupancy of federal lands. Such issues are faced by land federal management agencies having primary jurisdiction over the land, rather than by the Alaska boards of fish and game, which have primary jurisdiction over fish and game. As a matter of law, neither sec. 802 or sec. 810 requires the boards to implement a legal standard of "least adverse impact possible" of subsistence use. Instead, both the federal and state subsistence law afford a priority or preference for subsistence use. Thus, this proposed language, unfounded in previous board policy or state or federal law, creates a politically dangerous extension of the subsistence preference by adding a very restrictive and unnecessarily overly protective legal standard for disallowing even the slightest avoidable harm to subsistence use. Such a standard will only

further exacerbate opposition to any subsistence priority or preference.

(4) If the harvestable surplus of a fish stock or game population that is important to subsistence use is not large enough to safely sustain a harvest [CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] by all persons engaged in subsistence uses of such stock or population, in that the harvest by all subsistence users of such stock or population would be inconsistent with the sustained yield principle, the conservation of healthy and natural populations and the public interest, then the appropriate board will adopt regulations which allocate the opportunity to take such stock or population for subsistence uses among such persons on the basis of the following criteria:

(A) customary and direct dependence upon the [LIVE] stock or population as the mainstay of livelihood;

(B) local residency; and

(C) the availability of alternative [FOOD] resources.

Explanation:

This is Tier II subsistence, which is how the subsistence preference or priority found in both federal and state law is administered when there is no enough harvestable resource to accommodate all subsistence uses of the stock. The amendments here conform this provision to previous amendments and federal and state law as it now stands.

(5) [IF THE HARVESTABLE SURPLUS OF A FISH STOCK OR GAME POPULATION IS LARGER THAN THE AMOUNT OF THE SURPLUS NEEDED TO FULLY PROVIDE A REASONABLE OPPORTUNITY TO ENGAGE IN SUBSISTENCE USE OF SUCH STOCK OR POPULATION, THE] Each board will, in its discretion, adopt regulations pursuant to AS 16.05 which authorize the taking, for non-subsistence uses, of any [SUCH] stock or population identified as important for subsistence use, [FOR NONSUBSISTENCE USES CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish and game resources on a sustained yield basis or the conservation of natural and healthy populations, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided by this section.

Explanation:

As originally proposed paragraph (5) is poorly drafted in that it actually infringes on the discretion of the boards to authorize non-subsistence uses of fish and game. It does so in several respects.

First, it again carries the erroneous presumption that all fish and game are subsistence stocks.

Second, it again carries the tension between "fully" and "reasonable".

Third, when these first and second problems are considered in light of the federal subsistence law, the

proposed paragraph (5) makes it more difficult for the boards to keep non-subsistence uses authorized. This is because the federal subsistence law, in sec. 805, Pub. L. 96-487, (16 U.S.C. 3115) appears to create a higher "substantial evidence" test (as opposed to the conventional and more easily met "rational basis" test) for regulations proposed by regional advisory councils. The proposed paragraph (5) puts each board in a position of having to close non-subsistence uses if two criteria are met: (1) if a regional council proposes closure on the alleged grounds that subsistence needs are not being fully met, and (2) if the board can only find a rational basis, but not substantial evidence, sufficient to show that subsistence needs are being fully met. The legal principles here are complicated, so let's clarify the problem through a concrete example involving a contemporary real issue: moose harvest along the Petersville Road.

Let's say there is poor or no data on the population size of moose along the Petersville Road, but the responsible game biologist says the population is probably sufficient to sustain subsistence and sport harvest although no data exists. Based on that statement, the Board of Game can rationally leave the area open to sport harvest, because the board will have a rational basis for doing so, i.e. it has the testimony of the biologist. However, if the regional council for the Petersville Road area proposes closure to sport use and says simply that there are not enough moose to fully provide a reasonable opportunity for subsistence harvest, then the board will have to close the area to sport moose hunting unless the biologist can come up with substantial evidence, such as moose surveys along the road, to show that there are plenty of moose for sport use and for fully providing a reasonable subsistence opportunity. Such surveys cost money, so the board in many instances will never get the substantial evidence necessary to keep non-subsistence uses open.

(b) for the purposes of subsection (a), the terms -

(1) "rural residents" means residents engaged in customary and traditional subsistence as a way of life [A COMMUNITY OR AREA IN WHICH THE TAKING OF FISH STOCKS AND GAME POPULATIONS FOR PERSONAL OR FAMILY CONSUMPTION IS A SIGNIFICANT CHARACTERISTIC OF THE ECONOMY OF THE COMMUNITY OR AREA].

Explanation:

This ties the definition of rural residents to the definition of a customary and traditional subsistence life-style. The definition proposed by AFN mixes the concepts of "community or area" with the concepts of subsistence life-style and subsistence economy.

Previous board policy at 5 AAC 99.010 appropriately tied "rural residents" to the criteria for determining what constituted "customary and traditional." Thus, the amendment suggested by the Anchorage Fish and Game Advisory Committee retains existing policy without conflicting with Madison. The AFN proposed definition of "rural" may result in conflicts with the federal subsistence law in that the proposed definition could qualify areas or communities in which the taking of fish and game for personal or family consumption is a significant characteristic of the economy but is not customary and traditional.

(2) "customary and traditional" means:

(i) a long term, consistent pattern of legal use of a fish stock or game population, excluding interruption by circumstances beyond the control of the persons taking such stock or population such as regulatory prohibition;

(ii) a use pattern which recurs in specific seasons of each year;

(iii) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local circumstances;

(iv) the consistent harvest and use of such stock or population near, or at a location reasonably accessible from [TO,] the residence of the persons taking such stock or population;

(v) the handling, preparing, preserving and storing of such stock or population in a manner which has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances;

(vi) a use pattern which includes the handing down of knowledge of fishing or hunting skills and values and lore from generation to generation;

(vii) a use pattern in which the hunting or fishing effort or the products of that effort [DERIVED FROM SUCH STOCK OR POPULATION] are distributed or shared among others within a definable community of persons, including customary trade (excluding trade in the nature of a commercial enterprise [TO SIGNIFICANT COMMERCIAL ENTERPRISES]), barter, sharing, and gift-giving; and

(viii) a use pattern which includes reliance for subsistence purposes upon a wide diversity of fish stocks and game populations of an area for personal and family consumption and which provides substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take and consume such stock or population for their sustenance.

(3) "fish stock" means a species, subspecies, geographic grouping or other category of fish capable of management as a unit which at any time during any season of the year may be found in waters of the United States, including but not limited to navigable waters described in 33 U.S.C. 1362(8), the territorial sea, waters

located within the boundaries of a conservation system unit and waters which abut land the title to which is in the United States.

(4) "game population" means a group of game animals of the same species or smaller taxa whose members in whole or in part use or may be found at any time or during any season of the year upon land the title to which is in the United States or upon or in waters described in paragraph (3) of this subsection.

(5) "the conservation of healthy and natural populations" means that for some species, stocks, or populations of fish and game the sole application of the sustained-yield principle may not alone be enough in terms of sound management to assure wise conservation, use and development of those species, stocks or populations. Sustained yield is appropriate for wildlife of which all or most of the harvested animals are of the same or similar age class, size, reproductive value, and biological significance, such as with salmon, waterfowl, most small game, and perhaps caribou. But, sustained yield principles may not be sufficient management guidance for wildlife such as brown bear, sheep, trout and others where maintenance of age classes within the population is either a biological consideration or where such maintenance is important to the sound conservation, development and utilization of the resource. Use of phrase "conservation of healthy and natural populations" is intended to clarify sustained yield in appropriate circumstances rather than replace the sustained yield principle. Use the the word "natural" is not intended to mean that the resource may not be harvested at all.

Explanation:

This definition is largely self-explanatory. It is important that this definition is a clarification, rather than a replacement, of sustained yield principles for particular stocks or populations of fish and game because sustained yield management is required by Article VIII, Sec. 4 of the Alaska Constitution. The phrase "conservation of healthy and natural populations" comes from the federal subsistence law (Title VIII of ANILCA) and its legislative history (Sen. Rept. No. 96-413, 96th Cong., 1st sess. at 232-233). Therefore, the phrase is consistent with the federal law.

(c) The taking of fish stocks and game populations which are not subject of regulation pursuant to subsection (a) of this section shall be regulated by the boards pursuant to AS 16.05.

ANCHORAGE FISH AND GAME ADVISORY COMMITTEE

COMMENTS ON AFN-PROPOSED 5 AAC 99.010

IN JOINT BOARD BOOK

The following amendments to the AFN proposal in the Joint Board Book concerning 5 AAC 99.010 are done in the standard format for amendments. Amendments adding language are underlined, and amendments deleting language are bracketed and capitalized.

PREAMBLE TO ANCHORAGE ADV. COMM. AMENDMENTS TO AFN PROPOSED 5 AAC 99.010

The Anchorage Fish and Game Advisory Committee prefaces their proposed changes to 5 AAC 99.010 in lieu of the AFN proposal, with the following caveats:

- 1) We find the concept of subsistence priority to be a deprivation of individual opportunity under the Alaska Constitution to harvest fish and game;
- 2) We favor elimination of subsistence priority to fish and game resources within the state;
- 3) We favor a system where those in true need of the resource, can harvest the resource;
- 4) We favor defining "need" as those living below the federal poverty levels, and without common amenities such as hot and cold running water, electricity, aircraft, and without substantial public assistance;
- 5) Failing elimination of subsistence priority, we favor return of all Tier II hunts to Tier I hunts, except where biological circumstances limit the available resource;
- 6) Failing this, we favor the following proposed 5 AAC 99.010 which although containing reprehensible conditions such as "rural residents" and "subsistence use zone," is the only avenue currently available within the law to return equity of opportunity in harvest of fish and game resources;

5 AAC 99.010. BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES: (a) The Board of Fisheries and the Board of Game shall identify and regulate the taking of fish stocks and game populations according to the following procedures:

(1) Meeting in joint board session, the boards shall seek to --

(A) identify and quantify the amount of customary and traditional subsistence uses of fish and game that is necessary to provide a reasonable opportunity for rural residents engaged in a subsistence way of life to do so; provided that such determinations shall be based at least upon the research, analysis, comments and recommendations of the subsistence division of the department that are reviewed and concurred in by the other divisions of the department.

(B) identify and designate customary and traditional subsistence use zones utilized by such rural residents;

(C) identify fish stocks and game populations that customarily and traditionally have been important subsistence stocks and populations utilized by such rural residents for subsistence use;

Explanation:

The new paragraph (1) requires the boards to jointly determine the approximate amount of fish and game resources that are necessary to meet customary and traditional subsistence needs, customary and traditional subsistence use zones for populations of rural residents, and fish and game populations that have customarily and traditionally been important to subsistence use. There is a strong emphasis in each element of this paragraph on what is customary and traditional. This emphasis should put the boards in a good position to find that certain rural practices, such as round-hauling of fish and barter of fish in a substantially commercial setting, are not customary and traditional subsistence use.

The first element, i.e. the quantification of the amount of fish and game needed to continue the opportunity for a customary and traditional subsistence life-style, is necessary to resolution of any allocation issues, but it has never been stated formally as a requirement. This would correct that deficiency.

The second element, i.e. the identification of subsistence use zones is similar to a concept in the federal subsistence law, which requires "resident subsistence zones" to be identified for regulating subsistence use in national parks. (The concept of residency has been omitted from the proposed language, however, because it would create a legal problem in that it is a Tier II concept in state and federal law, except with respect to national parks. The second element, however, comes as close as legally possible to

effectively making area residency a qualification without actually requiring it.

The third element, i.e. identification of important subsistence stocks, allows there to be a preference only on those stocks and not on unimportant stocks that may only incidentally be used for food or other subsistence uses. The rationale is that those incidental uses could be accommodated through non-subsistence regulations without interfering with the purpose of the state and federal subsistence laws, which is to provide the opportunity for the subsistence life-style to continue.

(2) [(1)] Each board will assess the biological status of fish stocks and game populations that are important subsistence stocks and populations within the use zones and determine whether a surplus may be harvested during a regulatory year [IDENTIFY THE HARVESTABLE SURPLUS WHICH MAY BE TAKEN FROM EACH STOCK AND POPULATION] consistent with the utilization, development and conservation of such stocks and populations on the sustained yield principle, consistent with the conservation of healthy and natural populations of the resource, and consistent with the public interest;

Explanation:

This is modeled after a similar provision, 5 AAC 99.010(a)(1), in the Joint Board's Subsistence Policy, but the above amendments make several improvements.

By focusing the assessment of biological status on important subsistence stocks, any depletion that occurs through subsistence, sport, or commercial over harvest will be identified in relation to that stock, rather than in relation to a set of present and potential subsistence stocks. In other words, this would help identify stocks that need to be managed conservatively to rebuild the stocks. Without the provision, efforts to rebuild could be stymied by claims that the stocks should be managed for lower than sustainable populations and any or most of the harvest of a depressed population would have to be allocated to subsistence or primarily to subsistence. For example, the Nelchina caribou herd has been depressed for many years and is in a rebuilding phase. We would want to avoid assertions that the herd should be managed at a depressed level with a disproportionate amount of the harvest allocated to subsistence and that any shortfall in subsistence need for caribou should be met by allocating more moose (a present subsistence stock) or more sheep (a potential subsistence stock) to meet overall need for subsistence uses, where the additional subsistence allocation of moose or sheep would be contrary to sustained yield or the conservation of healthy and natural populations. In other words, one depressed population should not lead to creation of another, regardless of whether it is of a different species or stock within the subsistence zone

or outside the subsistence zone. If this principle is not accepted by subsistence users, then the subservience of subsistence to sustained yield and the maintenance of natural and healthy populations will be rendered meaningless.

Finally, the phrase "conservation of healthy and natural populations" is rooted in the federal law, whereas the present state law refers only to "sustained yield". Sustained yield is vague, but is more appropriate for stocks where all the harvestable animals are of similar size, age, and character (eg. salmon and ducks), and where the management concern is for sufficient reproduction to maintain future harvests and reproduction, and where the animals die upon reproduction (salmon) or are short-lived (eg. ducks and caribou). However, with other species, such as trout, sheep, moose, brown bear, management for merely sustained yield will disrupt the natural distribution of age classes within the population, and in some instances such as sheep or brown bear this disruption may have biological effects. Thus, the amended language adds to the sustained yield principle the requirement that the boards also consider the maintenance of healthy and natural populations and the public interest in maintaining healthy and natural populations, regardless of whether those public interests are for consumptive trophy harvest, non-consumptive use, or are for biological reasons other than sustained yield.

[(2) WITH RESPECT OF EACH FISH STOCK OR GAME POPULATION FOR WHICH A HARVESTABLE SURPLUS HAS BEEN IDENTIFIED, EACH BOARD WILL IDENTIFY "SUBSISTENCE USES" OF SUCH STOCK OR POPULATION AS SUCH TERM IS DEFINED IN SEC. 803, PUB. L. 96-487 (16 U.S.C. 3113), TO WIT THE CUSTOMARY AND TRADITIONAL USES OF SUCH STOCK OR POPULATION BY RURAL ALASKA RESIDENTS 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 STOCKS OR POPULATIONS TAKEN FOR PERSONAL OR FAMILY CONSUMPTION, AND FOR CUSTOMARY TRADE.]

Explanation:

This paragraph has been deleted because paragraph 1(A) now does this better language. A problem with the deleted language is that it essentially says that every stock of fish and game for which there is a harvestable surplus will have subsistence uses put upon it.

(3) (A) After identifying subsistence uses of a fish stock or game population that is important to customary and traditional subsistence use [pursuant to paragraph (2)], the appropriate board will determine the amount of harvestable surplus of such stock or population required to [FULLY] provide a reasonable opportunity to engage in such uses, and [PURSUANT TO SEC. 804, PUB. L. 96-487 (16 U.S.C. 3114),] will adopt regulations which authorize the taking

of such stock or population for subsistence uses; provided that such regulations may be the same as, different from or in addition to regulations governing other consumptive uses of the stock or population.

Explanation:

Deletion of the word "fully" avoids tension between "fully" and "reasonable". Any subsistence preference should not unreasonably restrict non-subsistence users of important subsistence stocks.

Allowing subsistence regulations to be worked into existing sport or commercial regulations, or to be separate from them, allows the boards discretion and overcomes the problem raised in the Eluska case, in which the trial court declined to enforce an out-of-season hunting regulation because the Board of Game had failed to provide a separate subsistence season. This language allows the boards not to provide a separate subsistence season if the present sport (or commercial) season is adequate to meet subsistence needs, so long as it is also specified as a subsistence season.

[(B) PURSUANT TO SEC. 802, PUB. L. 96-487 (16 U.S.C. 3112) AND THE MAINTENANCE OF FISH STOCKS AND GAME POPULATIONS ON THE SUSTAINED YIELD PRINCIPLE, REGULATIONS ADOPTED PURSUANT TO THIS PARAGRAPH WILL CAUSE THE LEAST ADVERSE IMPACT POSSIBLE ON PERSONS ENGAGED IN SUBSISTENCE USES OF SUCH STOCKS AND POPULATIONS.]

Explanation:

This paragraph is not founded on the previous Joint Board's Subsistence Policy, 5 AAC 99.010. Instead, it is inappropriately derived from policy language in sec. 802 of ANILCA that is focused on federal land use decisions and the effect such land use decisions have on subsistence. That policy addressing land use is implemented by sec. 810 of ANILCA and governs federal actions concerning leases, land disposals, and permits for the use and occupancy of federal lands. Such issues are faced by land federal management agencies having primary jurisdiction over the land, rather than by the Alaska boards of fish and game, which have primary jurisdiction over fish and game. As a matter of law, neither sec. 802 or sec. 810 requires the boards to implement a legal standard of "least adverse impact possible" of subsistence use. Instead, both the federal and state subsistence law afford a priority or preference for subsistence use. Thus, this proposed language, unfounded in previous board policy or state or federal law, creates a politically dangerous extension of the subsistence preference by adding a very restrictive and unnecessarily overly protective legal standard for disallowing even the slightest avoidable harm to subsistence use. Such a standard will only

further exacerbate opposition to any subsistence priority or preference.

(4) If the harvestable surplus of a fish stock or game population that is important to subsistence use is not large enough to safely sustain a harvest [CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] by all persons engaged in subsistence uses of such stock or population, in that the harvest by all subsistence users of such stock or population would be inconsistent with the sustained yield principle, the conservation of healthy and natural populations and the public interest, then the appropriate board will adopt regulations which allocate the opportunity to take such stock or population for subsistence uses among such persons on the basis of the following criteria:

(A) customary and direct dependence upon the [LIVE] stock or population as the mainstay of livelihood;

(B) local residency; and

(C) the availability of alternative [FOOD] resources.

Explanation:

This is Tier II subsistence, which is how the subsistence preference or priority found in both federal and state law is administered when there is no enough harvestable resource to accommodate all subsistence users of the stock. The amendments here conform this provision to previous amendments and federal and state law as it now stands.

(5) [IF THE HARVESTABLE SURPLUS OF A FISH STOCK OR GAME POPULATION IS LARGER THAN THE AMOUNT OF THE SURPLUS NEEDED TO FULLY PROVIDE A REASONABLE OPPORTUNITY TO ENGAGE IN SUBSISTENCE USE OF SUCH STOCK OR POPULATION, THE] Each board will, in its discretion, adopt regulations pursuant to AS 16.05 which authorize the taking, for non-subsistence uses, of any [SUCH] stock or population identified as important for subsistence use, [FOR NONSUBSISTENCE USES CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish and game resources on a sustained yield basis or the conservation of natural and healthy populations, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided by this section.

Explanation:

As originally proposed paragraph (5) is poorly drafted in that it actually infringes on the discretion of the boards to authorize non-subsistence uses of fish and game. It does so in several respects.

First, it again carries the erroneous presumption that all fish and game are subsistence stocks.

Second, it again carries the tension between "fully" and "reasonable".

Third, when these first and second problems are considered in light of the federal subsistence law, the

proposed paragraph (5) makes it more difficult for the boards to keep non-subsistence uses authorized. This is because the federal subsistence law, in sec. 805, Pub. L. 96-487, (16 U.S.C. 3115) appears to create a higher "substantial evidence" test (as opposed to the conventional and more easily met "rational basis" test) for regulations proposed by regional advisory councils. The proposed paragraph (5) puts each board in a position of having to close non-subsistence uses if two criteria are met: (1) if a regional council proposes closure on the alleged grounds that subsistence needs are not being fully met, and (2) if the board can only find a rational basis, but not substantial evidence, sufficient to show that subsistence needs are being fully met. The legal principles here are complicated, so let's clarify the problem through a concrete example involving a contemporary real issue: moose harvest along the Petersville Road.

Let's say there is poor or no data on the population size of moose along the Petersville Road, but the responsible game biologist says the population is probably sufficient to sustain subsistence and sport harvest although no data exists. Based on that statement, the Board of Game can rationally leave the area open to sport harvest, because the board will have a rational basis for doing so, i.e. it has the testimony of the biologist. However, if the regional council for the Petersville Road area proposes closure to sport use and says simply that there are not enough moose to fully provide a reasonable opportunity for subsistence harvest, then the board will have to close the area to sport moose hunting unless the biologist can come up with substantial evidence, such as moose surveys along the road, to show that there are plenty of moose for sport use and for fully providing a reasonable subsistence opportunity. Such surveys cost money, so the board in many instances will never get the substantial evidence necessary to keep non-subsistence uses open.

(b) for the purposes of subsection (a), the terms -

(1) "rural residents" means residents engaged in customary and traditional subsistence as a way of life [A COMMUNITY OR AREA IN WHICH THE TAKING OF FISH STOCKS AND GAME POPULATIONS FOR PERSONAL OR FAMILY CONSUMPTION IS A SIGNIFICANT CHARACTERISTIC OF THE ECONOMY OF THE COMMUNITY OR AREA].

Explanation:

This ties the definition of rural residents to the definition of a customary and traditional subsistence life-style. The definition proposed by AFN mixes the concepts of "community or area" with the concepts of subsistence life-style and subsistence economy.

Previous board policy at 5 AAC 99.010 appropriately tied "rural residents" to the criteria for determining what constituted "customary and traditional." Thus, the amendment suggested by the Anchorage Fish and Game Advisory Committee retains existing policy without conflicting with Madison. The AFN proposed definition of "rural" may result in conflicts with the federal subsistence law in that the proposed definition could qualify areas or communities in which the taking of fish and game for personal or family consumption is a significant characteristic of the economy but is not customary and traditional.

(2) "customary and traditional" means:

(i) a long term, consistent pattern of legal use of a fish stock or game population, excluding interruption by circumstances beyond the control of the persons taking such stock or population such as regulatory prohibition;

(ii) a use pattern which recurs in specific seasons of each year;

(iii) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local circumstances;

(iv) the consistent harvest and use of such stock or population near, or at a location reasonably accessible from [TO,] the residence of the persons taking such stock or population;

(v) the handling, preparing, preserving and storing of such stock or population in a manner which has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances;

(vi) a use pattern which includes the handing down of knowledge of fishing or hunting skills and values and lore from generation to generation;

(vii) a use pattern in which the hunting or fishing effort or the products of that effort [DERIVED FROM SUCH STOCK OR POPULATION] are distributed or shared among others within a definable community of persons, including customary trade (excluding trade in the nature of a commercial enterprise [TO SIGNIFICANT COMMERCIAL ENTERPRISES]), barter, sharing, and gift-giving; and

(viii) a use pattern which includes reliance for subsistence purposes upon a wide diversity of fish stocks and game populations of an area for personal and family consumption and which provides substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take and consume such stock or population for their sustenance.

(3) "fish stock" means a species, subspecies, geographic grouping or other category of fish capable of management as a unit which at any time during any season of the year may be found in waters of the United States, including but not limited to navigable waters described in 33 U.S.C. 1362(8), the territorial sea, waters

located within the boundaries of a conservation system unit and waters which abut land the title to which is in the United States.

(4) "game population" means a group of game animals of the same species or smaller taxa whose members in whole or in part use or may be found at any time or during any season of the year upon land the title to which is in the United States or upon or in waters described in paragraph (3) of this subsection.

(5) "the conservation of healthy and natural populations" means that for some species, stocks, or populations of fish and game the sole application of the sustained-yield principle may not alone be enough in terms of sound management to assure wise conservation, use and development of those species, stocks or populations. Sustained yield is appropriate for wildlife of which all or most of the harvested animals are of the same or similar age class, size, reproductive value, and biological significance, such as with salmon, waterfowl, most small game, and perhaps caribou. But, sustained yield principles may not be sufficient management guidance for wildlife such as brown bear, sheep, trout and others where maintenance of age classes within the population is either a biological consideration or where such maintenance is important to the sound conservation, development and utilization of the resource. Use of phrase "conservation of healthy and natural populations" is intended to clarify sustained yield in appropriate circumstances rather than replace the sustained yield principle. Use the the word "natural" is not intended to mean that the resource may not be harvested at all.

Explanation:

This definition is largely self-explanatory. It is important that this definition is a clarification, rather than a replacement, of sustained yield principles for particular stocks or populations of fish and game because sustained yield management is required by Article VIII, Sec. 4 of the Alaska Constitution. The phrase "conservation of healthy and natural populations" comes from the federal subsistence law (Title VIII of ANILCA) and its legislative history (Sen. Rept. No. 96-413, 96th Cong., 1st sess. at 232-233). Therefore, the phrase is consistent with the federal law.

(c) The taking of fish stocks and game populations which are not subject of regulation pursuant to subsection (a) of this section shall be regulated by the boards pursuant to AS 16.05.

ANCHORAGE FISH & GAME ADVISORY COMMITTEE
c/o 333 Raspberry Road
Anchorage, Alaska 99518-1599

October 30, 1985

Don W. Collinsworth
Commissioner
ADF&G
PO Box 3-2000
Juneau, AK 99802

Dear Commissioner Collinsworth:

The Anchorage Fish and Game Advisory Committee strongly disapproves of the fact that the Madison decision, as well as the questionable interpretation of it by the Attorney General's office, have necessitated closure of many previous sport hunts and have allowed them only as subsistence Tier II hunts.

Therefore, the Anchorage Fish and Game Advisory Committee strongly urges the Board of Game and the Department of Fish and Game to do the following two things.

Our first recommendation addresses what the board and the department can and should do before the legislature addresses the subsistence issue or if the legislature fails to amend the subsistence law to correct the present Tier II problems. We urge that the Board of Game, with the assistance of the department, identify all Tier II hunts where the Tier II harvest did not approach, and will not likely approach, the authorized Tier II harvest level. The department and the board should open these hunts to all Alaskans as Tier I hunts, either through standard unrestricted participation or through lotteries in which any Alaskan has an equal chance. Examples include the moose hunts in the Eagle River and Eklutna areas.

Second, we request that the board and the department work aggressively with the Alaska Legislature to have it adopt amendments to the state subsistence law that would re-open to all Alaskans all sport hunts that were in effect prior to the 1985 season, now classified as Tier II hunts. Furthermore, any amendments should also include or clarify the authority of the board to identify appropriate and inappropriate subsistence stocks. For example, we believe that some species or stocks of wildlife, such as sheep, brown bear, cranes, steelhead, and rainbow

October 30, 1985

trout, goats, bison, and musk oxen generally are not subsistence stocks. We also believe that the board and the department should work with the legislature to address what constitutes "customary and traditional" subsistence use, and other uncertainties in the present law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Stevens".

Tim Stevens, Chairman
Anchorage Advisory Committee

Alaska Sportfishing Comments Re: Draft Subsistence Bill
November 6, 1985

The following comments on the 9/25/85 draft subsistence bill are those of the Alaska Sportfishing Association. We feel that the bill has two major omissions:

(1) It does not have a needs test to establish individual qualifications for subsistence preference.

(2) It does not include language to allow substitution of one comparable species for another. From a fisheries standpoint this is of critical importance. It is imperative that the board be able to utilize and substitute those species, particularly salmon, which occur in the greatest numbers in order to reduce pressure on species which occur in far too few numbers.

In addition, many words and phrases must be defined. Specific line by line comments are as follows:

pp1 L10

Hunting and fishing may be important or substantial food sources not necessarily "principal means" . . . Why not delete the word "principal"?

pp1 L26

The word "preference" must be defined.

pp1 L27-28

The term "where no practical alternative means are available to re-place food sources . . ." needs definition. Every community in Alaska utilizes canned and/or processed food to some degree. Therefore, there appears always to be a "practical alternative".

pp3 L11-12

This section is not needed. Bag limits are covered in item 3. Hook and release is simply one particular bag limit.

pp3 L13-14

This section is also not needed. The harvest of fish by all user groups is covered in sections 2-4.

pp3 L24

"Preferred" needs definition.

pp3 L28/pp4 L2

These three sections from the original statute, which were never defined by the legislature, are what has caused much of our current problem. No definition has been added in the draft bill.

pp4 L4-5 Section (d)

The importance of this section depends upon how "reasonable regulation" relates to other uses, ie. a definition of "preference".

pp4 L6-11

A great section. It allows the board to exclude species such as rainbow trout. This is a very important section, which we feel must stay in the bill.

pp4 L12-16

This section needs to be clarified. It appears to preclude timely enactment of regulations. Every controversial regulatory decision would go through two regulatory meetings rather than one. How would the appeal process be structured? If court actions could be avoided, this section would appear to have considerable value.

pp4 L17/pp6 L17

Hunting section of the bill not reviewed by our organization.

pp6 L18 Section 16.05.330

We disagree with licences and fees for subsistence hunting and fishing. If subsistence is somehow related to needy persons, we should not assess a licence fee. In addition, a permit is much more flexible in that conditions or stipulations particular to specific areas can be included on the permit.

pp7 L15

It is critical that "a rural subsistence area of the state" be defined on a geographic basis. Section 30 on pp8 adds qualifying language but never defines what "area" means.

pp7 L25 (28)

Add personal use fishing definition. This section should clearly state that personal use fishing has no priority over other uses.

pp8 L13-15

Why include aliens as persons who qualify for subsistence preference?

pp8 L28/pp9 L1

This section is the one which really limits the communities which qualify. I can not believe a section this restrictive will remain in the bill. For example, every Alaskan community has regularly scheduled air service, at least for mail delivery. If this section is dropped what do we want to replace it? It is probably important that individual communities not be listed in the bill. Once they are included they will be in forever.

MESSAGE

Date 5-8 Time 3:15

For: Arliss

From: Karen McGahan

of Nikiski

Phone No. 776-8240

Telephoned (x) Called to see you ()
Please call () Will Call Again ()
Returned your call () Urgent ()

Message On Ken. Pen. Bor. Asmbly. Called to
express appreciation for your work on sub-
sistence. Last night's Borough Assembly
meeting could not issue resolution because
of no time for public input, but they have
written a letter, signed by 14 members, ex-
pressing support for your subsistence bill;
have also sent POMs and other communication
to Senators Bennett, Abood and others.

Operator _____

LAA-16

DACMETH, Hay Flats
Nehalem Rec

Water Quality $\sim$ $\sim$ $\sim$

needs

acknowledged

cosponsor of
Environmental Lobby's
Hazardous ~~Agency~~ ^{Agency}
~~Act~~ in Work Place

MAY 08 1985

Bog Hollow
Homer, Alaska
May 2, 1985

Hello

This letter and the enclosed are for you to consider in reference to the SUBSISTENCE Law. I am one of the founding members of the Kachamak Bay Subsistence Inc. which has fought successfully since 1976 for Subsistence rights in Alaska. At the time of our founding I requested that the group advocate for all Alaskans Subsistence rights especially as to the gear they used. At that time it was decided that it was best to fight a holding action, resisting the attempts of the Board of Fisheries to take away our local use of nets and not to expand the conflict to include those who like myself had always used hook and line to feed myself. I supported the decision of the group and aided in the organization any way I could. As you may know for the last month I have carried this idea to the Board of fisheries, the media, the personal use fishermen organizations like Alaska Sportsmans Organization, the Kenai River Sportsmans Organization, and the Cook Inlet Profesional Sportfishermans Organization among others. Along the way I've covered every sporting goods store from Talkeetna to Homer and most of the lodges, gas stations and other buisness's serving the personal use fisherman. It is my intention to accomplish the following actions:

1. to get the gear "hook and line held in the hand or attached to rod or pole, and dipnet" added to the Subsistence law
2. to establish subsistence fisheries everywhere that sport fisheries have existed for fish except for Rainbow and Steelhead trout as these are not available for subsistence use
3. to establish forever the concept that "personal or family consumption as food," is the priority consumptive use of aquatic resources.

I hope you can join me in this effort. Please resist the governors bill and any other legislative attempts to modify or restrict the Subsistence Law other then as above. Thank You . . .

Sincerely

Thomas F. Brown

Box 657, Homer, 99603

P.S.
What a start
for the new
governor

① WILL NATIVE PEOPLE NOT BE ABLE TO DEFEND THEIR USE OF THE LOCAL RESOURCES UNDER THE '78 SUBSISTENCE LAW?

THE SUBSISTENCE LAW ESTABLISHES TWO TIERS OF CONSUMPTIVE USE, THE FIRST FOR ALL ALASKANS AND THE SECOND AND FINAL USE BY THOSE WHO CAN DEMONSTRATE "CUSTOMARY AND DIRECT DEPENDENCE, LOCAL RESIDENCEY AND A LACK OF ALTERNATIVE RESOURCES". ALL ALASKANS CAN LIMIT SUBSISTENCE USE WHEN THERE ISN'T ENOUGH TO GO AROUND.

② WILL THE SUBSISTENCE LAW MEAN THE END OF THE SALMON, THE DESTRUCTION OF THE RESOURCE, OR ANY OTHER SUCH THING?

THE SUBSISTENCE LAW IS ESTABLISHED ON THE CONCEPT OF "SUSTAINED YIELD" WHICH MEANS THAT EVERY TOOL EVER DEVELOPED FOR THE MANAGEMENT OF FISH AND GAME FROM GEAR RESTRICTIONS, QUOTAS, BAG LIMITS, OPEN AND CLOSED SEASONS AND OR AREAS, TO SIZE AND SEX LIMITATIONS ARE AVAILABLE TO THE DEPT. FISH AND GAME AND THE BOARDS FOR THEIR USE.

③ CAN COOK INLET FISHERIES BE MANAGED FOR RESIDENT SUBSISTENCE USE WITHOUT LIMITING THE USE BY NON-RESIDENT SPORT FISHERMEN?

YES. SINCE SUBSISTENCE AND SPORTS FISHERMEN FISH IN THE SAME TIME AND PLACE, USING THE SAME GEAR, AND SINCE THE OVERWELMING CONSUMPTIVE USE HAS BEEN BY COMMERCIAL FISHERMEN WHICH WILL BE LIMITED IN ORDER TO QUARANTEE A SUBSISTENCE HARVEST, THE NET EFFECT WILL BE TO GET MORE FISH INTO THE RIVERS. GIVEN THE RELATIVELY SMALL CONSUMPTION BY NONRESIDENT FISHERMEN IT IS ALMOST IMPOSSIBLE TO JUSTIFY CLOSURE OF A SPORT FISHERY IN ORDER TO ACCOMADATE A SUBSISTENCE FISHERY.

④ WHY ALL THE CONTARVERCY ABOUT THE SUBSISTENCE LAW?

1. THIS IS THE ONLY PLACE IN THE WORLD WHERE THE SUBSISTENCE RIGHT EXISTS IN LAW. IT'S A NEW IDEA.
2. COMMERCIAL FISHERMEN, WHO PREVIOUSLY EXCLUSIVELY HELD THE BOARD OF FISHERIES, WILL BE IMPACTED TO SOME DEGREE, ESPECIALLY IN COOK INLET.
3. THE GOVENOR IS HEAVILY INDEBTED TO THE COMMERCIAL FISHERMEN.
4. PREVIOUSLY THE SPORTSMEN HAS BEEN THE ONE TO PAY THE PRICE, BEING THE "LAST FISHERY IN LINE", FOR THE BIOLOGICAL INTEGRITY OF THE SALMON RUNS. SOME PERCIEVE A THREAT TO THEM BY SUBSISTENCE.BY ESTABLISHING ROD AND REEL AS SUBSISTENCE GEAR WE REMOVE THAT THREAT.

1951

* First mention in commercial regulations.

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

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

1952

No intent to take notification required. More
streams closed, including all tributaries to Knik
Arm, Willow Creek (tributary to Susitna), Campbell
Creek, and all streams and lakes of Kenai Peninsula
that are tributary to Cook Inlet: Provided this

* shall not apply to fishing with rod, hook and line
for personal use.

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

1953

Above regulations same, plus added stipulation
that no personal use fishing allowed within 500 feet
of weirs and ladders. Snagging was prohibited for
the first time.

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

Re: Page # 6

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

Re Page # 10

Kenai Times

WEDNESDAY, APRIL 19, 1985

76 pages/25¢

Kenai anglers claim new status

Rods, reels called subsistence gear

by Bill Sharwood
Times Outdoor Writer

Fishermen on the Kenai Peninsula, following a lead given earlier this year in a court ruling that said all Alaskans may be classified as subsistence users, have taken the first step in an effort to have rod and reel included as a subsistence method.

Tom Brown, a subsistence fisherman who lives in Homer, delivered three letters to the Alaska Department of Fish and Game's Soldotna office on Thursday requesting that rod and reel subsistence fisheries be established on the Kenai River and in Cook Inlet.

Currently, with one exception, there are no rod-and-reel subsistence fisheries established in Alaska. The lone exception allows ice fishing in the Arctic Yukon-Kuskokwim area.

Rod and reel fishing is defined by state law as a sports fishing rather than subsistence fishing method. Brown and other Alaskan fishermen plan to change that law.

"Ultimately, we're hoping that this action will lead to a court suit which will establish rod and reel as subsistence gear," Brown said. "We also want to establish subsistence fisheries for that gear throughout the state."

Brown submitted three "official requests" to the Soldotna ADF&G headquarters on Thursday. One copy was submitted to Sid Logan, an area management biologist in the Sport Fish Division. The letter, signed by Jim Golden of Soldotna, requested a rod-and-reel subsistence fishery on the Kenai River for four types of salmon: kings, silvers, reds and

See Subsistence, page A-14

Continued from page A-1

pinkies.

Two letters were also given to Paul Reusch of the Commercial Fish Division requesting rod-and-reel subsistence fisheries on the Kenai River and Cook Inlet.

In addition, Brown asked for permits to conduct rod-and-reel subsistence fishing for salmon in those areas. In each instance, the request was denied.

"They (Logan and Reusch) were interested and amused, but calm," Brown said. "Their reaction was pretty much 'Oh boy, here comes another court suit.' They verbally denied the requests. Eventually I expect there will be an emergency meeting of the Board of Fisheries to make a decision on the requests. I expect it will be denied and then it will go to court."

Brown added that he has another 30 requests.

signed by different individuals and cover all the waters in the state," he said. "The action has the support of the Cook Inlet Professional Sportfishermen's Association."

Logan explained that "the request had to be denied. The Board of Fisheries has not de-

fined rod and reel as a subsistence means. I expect his next step will probably be to take legal action. I think he was laying the groundwork for a lawsuit against the state. I guess this is a spinoff from the recent (Supreme Court) decision (which ruled that all Alaskans are subsistence users).

Added Reusch, "Rod and reel subsistence fishing has not been legally established by the Board of Fisheries. It doesn't exist, so we couldn't issue the permits he requested. But (Brown) didn't seem surprised. It seemed like he was going through the motions."

The letters delivered by Brown were addressed to Fish and Game and state and read: "I do hereby declare myself to be a subsistence fisherman. I intend to use rod and reel as defined in the sport statute as the gear for catching fish. I will fish at the locations listed below and for the species of salmon listed below. It is my intent to observe the regulations established under sport fishing in 1985 during this fishery. I hereby request that the department manage the fishery in such a way as to provide for my subsistence harvest."

REGULATION PROPOSAL FORM
Alaska Boards of Fisheries and Game

See Other Side
For Instructions
on Completing
This Form

Proposal Concerns (Check one)

Commercial ☐ Sport ☐ Personal Use ☐ Hunting ☐ Trapping ☐ Subsistence ☒ Advisory ☐
Fishing Fishing Fishing Committees

*Use Separate Forms For Each
Change of Regulation*

1. Area(s) Affected STATEWIDE

5 AAC 01.010 sec. a sub. par. g
2. Alaska Administrative Regulation Book SUBSISTENCE
Code Number 5 AAC Page No. 10

3. Purpose of Proposal THIS PROPOSAL WILL PROVIDE ACCESS FOR HOOK AND LINE FISHERMEN TO THE SUBSISTENCE PRIORITY.

4. Suggested Wording of Proposed Regulation (Use separate sheet if necessary)

ADD WORDS "HELD IN THE HANDS OR CLOSELY ATTENDED, HOOK AND LINE HELD IN THE HANDS, AND DIPNET IS LAWFUL." AFTER THE WORD "POLE". DELETE THE WORDS AFTER "POLE" AND ALL OTHER RESTRICTIONS ON THE USE OF HOOK AND LINE GEAR CONTAINED IN SUBSISTENCE REGULATIONS. ADD THE WORDS "A SUBSISTENCE FISHERY IS ESTABLISHED WITH THE USE OF HOOK AND LINE EVERYWHERE THAT A SPORT FISHER FOR ANY SPECIES OTHER THEN RAINBOW AND STEELHEAD, OCCURED LEGALLY IN 1983." TO THIS SECTION AS SUB. PARAGRAPH "N".

5. Justification BETTER THEN 90% OF THE PERSONAL USE OF THE FISHERY IN ALASKA OCCURS WITH THE USE OF HOOK AND LINE. HOOK AND LINE ARE THE SECOND OLDEST TYPES OF FISHING GEAR. THERE IS NO BIOLOGICAL JUSTIFICATION FOR LIMITING USE OF HOOK AND LINE UNDER THE SUBSISTENCE LAW IN AREAS, WAYS, AND WITH

6. Submitted By: Name Thomas E. Brown
Address P.O. Box 657 Homer Zip Code 99533 Phone
Representing ☒ Self ☐ Advisory Committee:
☐ Regional Council: ☐ Other: all applications for

hook and line fishery

PAGE TWO REGULATION PROPOSAL BY TOM BROWN

JUSTIFICATION CONT.: THE SAME BAG LIMITS AS PRESENTLY OPEN TO THE USE OF HOOK AND LINE UNDER THE SPORTS REGULATIONS. SINCE THE SUBSISTENCE PRIORITY WILL ALLOW GREATER UTILIZATION OF FISHERIES RESOURCE BY INDIVIDUAL ALASKAN RESIDENTS AND WILL FUNCTION TO PROVIDE MORE SALMON IN STREAMS ALSO UTILIZED BY THOSE NOT ELEGABLE FOR THE SUBSISTENCE PRIORITY THE NET EFFECT WILL BENEFIT THE PEOPLE OF THE STATE AND THE INDUSTRIES WHICH SERVICE THOSE PEOPLE.

STATEWIDE PROVISIONS

(f) The use of explosives and charnicais is prohibited.

(g) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(h) Each subsistence fisherman shall plainly and legibly inscribe his first initial, last name, and address on his fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(i) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(j) Persons licensed under AS 43.75.011 to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by emergency order for a specific time or area if circumvention of management programs is occurring because of illegal bartering activities.

(k) No person may use a gill net web that contains less than 30 filaments in the taking of salmon for subsistence purposes.

(l) The taking of rainbow trout and steelhead is prohibited.

Authority: AS 16.05.060

AS 16.05.251(a)(2), (3), (4) and (b)

AS 16.05.930(c)

5 AAC 01.015. SUBSISTENCE FISHING PERMITS AND REPORTS. (a) Salmon may be taken only under the authority of a subsistence fishing permit issued by the commissioner or his local representative, unless a permit is specifically not required in a particular area by the subsistence regulations in this chapter, or unless the fisherman is retaining salmon from his commercial catch consistent with sec. 20 of this chapter.

(b) If a subsistence fishing permit is required by this chapter, the following permit conditions apply unless otherwise specified by the subsistence fishing regulations in this chapter:

(1) the numbers of fish taken for subsistence use may not exceed the limits set out in the permit

(2) permits must be obtained from a local representative of the department prior to subsistence fishing;

(3) permits must be retained in the possession of the permittee and be readily available for inspection while taking fish. A person who transports subsistence taken fish shall have a subsistence fishing permit in his possession.

STATEWIDE PROVISIONS

(4) the permit may designate the species and numbers of fish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) if specified on the permit, each subsistence fisherman shall keep accurate daily records of the catch involved, showing the number of fish taken by species, location and date of the catch and such other information as the department may require for management or conservation purposes;

(6) subsistence fishing reports must be completed on forms provided by the department and submitted to the department office from which the permit was issued at a time specified by the department for each particular area and fishery;

(7) if applicable, the total annual possession limit for the permittee must be entered on each permit by the local representative of the department issuing the permit; if applicable, the local representative of the department issuing the permit shall require from an applicant documented proof of residency, income or other criteria required by regulation, or in the absence of such documentation, a signed affidavit setting forth duration of residency, income, or other criteria required by regulation, to determine the applicable annual possession limit and residency of the applicant;

(8) if an applicant for a subsistence salmon fishing permit is unable to personally take salmon due to physical disability, the permit may be issued to his authorized designee to take salmon for the applicant.

(c) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates to the department that failure to report was due to loss in the mail, accident, sickness or other unavoidable circumstance.

(d) Salmon taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial fishing purposes.

Authority: AS 16.05.251(a)(2), (3), (4), and (b)

5 AAC 01.020. SUBSISTENCE FISHING BY COMMERCIAL FISHERMEN. Commercial fishermen may retain fish for their personal use from their lawfully taken commercial catch.

Authority: AS 16.05.251(a)(2), (3), (4) and (b)

5 AAC 01.030. UNLAWFUL POSSESSION OF SUBSISTENCE FINFISH. (a) No person may possess, transport or place into the possession of another person, raw or unprocessed subsistence taken fish or their parts which the person has taken contrary to state law or regulation.

(b) No person may possess or transport raw or unprocessed subsistence taken fish or their parts if the items have been received from a person who took, possessed or

"Cook Inlet Subsistence Fishery"
Stephen Braund Tech Paper #54

Eleven (25.6 percent) of the 43 respondents had subsistence fished in other areas of the State (i.e., the Copper River and Bristol Bay area), and 33 persons (76.8 percent) had sport fishing licenses. When asked if they caught adequate salmon for their needs through sport fishing, 28 (85 percent) of the 33 sport fishing license holders said no. These respondents often described the rising cost of gasoline and the relatively small sport fish bag limits as deterrents to acquiring the desired amount of salmon through sport fishing. Only 6 (15 percent) of the respondents were commercial fishermen. Two of these were halibut fishermen, while the other four fished for salmon.

It is interesting to note that 28 percent of the respondents who acquired a permit in 1979 did not actually fish (Table 10). Most of these people had learned about the permitted fishery from a friend, made plans to go fishing, but for a variety of personal reasons, never went. About half of these people did not plan to acquire a 1980 subsistence permit.

The following remarks by a 1979 Anchorage permittee are typical and describe his first and last attempt at subsistence fishing:

I learned about this subsistence fishery from my neighbor who is a commercial fisherman. A few friends and I got together and bought a net so we could try it. It seemed like a good weekend outing - a chance to get out with the kids and enjoy the outdoors. We had six adults all with permits plus the kids, and we caught 14 fish. The beach was too muddy and the fishing was hard work.

This fisherman and his friends only went fishing one time in 1979, and he did not plan to subsistence fish in 1980. Other, long-time users (i.e., 30 percent of the sample), who had subsistence fished in Cook Inlet for many years without a permit, knew more about the fishery, were more successful, and planned to continue fishing.

Court gives poachers

By CRAIG MEDRED
Daily News reporter

Alaskans caught hunting out of season can claim subsistence — the customary and traditional harvest of wildlife — as a defense for otherwise illegal activities, the state Court of Appeals ruled Friday.

State officials said the ruling could make it difficult to prosecute some poachers for killing caribou, moose and other big game.

The appeals court unanimously decided David Eluska of Kodiak could cite subsistence as a valid reason for killing a female Sitka blacktail deer in May 1983.

Kodiak District Court Judge Roy H. Madsen had earlier ruled the state could not prosecute Eluska at all because there are no laws regulating subsistence hunting.

Attorneys for the state appealed — arguing hunting rules were the same for both sport

subsistence defense

and subsistence hunters on Kodiak Island, where there is a five-month deer season from Aug. 1 to Jan. 31 and a limit of seven deer per year.

The appeals court rejected the state's argument, but sent the Eluska case back to Madsen for trial.

"In the absence of appropriate regulations (governing subsistence hunting), we believe that the best way to accommodate Eluska's

statutory right to subsistence hunting and the state's right to reasonably protect the state's game resources is to judicially recognize a defense for subsistence hunting," Judge James Singleton wrote.

"...Only those who recklessly hunt in bad faith will be subject to prosecution," the appeals court further directed. "...The state

See Back Page, SUBSISTENCE

must prove guilt beyond reasonable doubt by convincing a jury that the hunting in question was not a subsistence use."

State attorneys said they are still trying to determine how the decision is going to influence enforcement of fish and game laws.

"It doesn't invalidate the existing hunting seasons. It doesn't provide carte blanche," said Liza McCracken, an assistant attorney general.

"I don't think the court is recommending that people go out and violate the game laws. It is just giving them the opportunity to raise a defense to a criminal charge."

The Board of Game probably can avoid a crisis by changing existing sport hunting regulations to cover hunting under the state's 1978 subsistence priority law, said Dennis Kelso, deputy director of the Alaska Department of Fish and Game.

"People will be tearing their hair when it comes to dealing with separate regulations, but it's more of a mechanical problem of sitting down and making sure they are formatted appropriately," he said.

"There's really no way out but to work it out," said Joel Bennett, a member of the game board.

The board, he added, tried to avoid complicating regulations by lumping together sport and subsistence hunting — particularly in areas like Kodiak and Southeast Alaska, where deer populations would support long seasons and large harvests.

The appeals court chastised that decision, saying the board "failed to carry out its responsibilities."

"If the state had enacted regulations making adequate provision for subsistence hunting, then the defense we have recognized would not exist."

But even if the state moves quickly to plug that legal loophole, there are still big subsistence problems on the horizon, said Larri Spengler, an assistant attorney general.

The appeals court underlined the priority the state, Supreme Court earlier this year gave all subsistence users — whether urban or rural, she said.

"As the Supreme Court pointed out ... the Board (of Game) may not restrict subsistence hunting at all in an area in which sport or commercial hunting is permitted," the appeals court said.

"Even if sport and commercial hunting are totally prohibited at all times in an area, the Board is still prohibited from restricting subsistence hunting unless the Board specifically finds that unrestricted subsistence hunting will interfere with sustained yield."

The attorney general's office has given the Game and Fisheries boards similar opinions, but they have continued to restrict subsistence activities.

The Board of Fisheries, for instance, decided against a subsistence fishery for Kenai River king salmon this year — although both sport and commercial fishermen are allowed to harvest those fish.

The appeals court ruling seems to indicate that if a subsistence fisherman put out net for those fish and was arrested, "the subsistence defense would be available to him," she said.

The fish and game boards have urged the legislature to solve most of these problems by passing Gov. Bill Sheffield's bill limiting the subsistence priority to rural Alaskans.

MAY 06 1985

M E M O R A N D U M

TO: ALL LEGISLATORS:
For Your Information

FROM: AXEL JOHNSON, EMMONAK
FORMER STATE REPRESENTATIVE

DATE: MAY 5, 1985

SUBJECT: HB 288, SUBSISTENCE
(Taken over telephone by Sen. Sackett
Mr. Johnson's # is 949-1127)



"I do not want the identity of the Eskimo, Indians, and Aleuts to be lost, and I feel this will happen if we do not pass the subsistence legislation.

As a former older legislator I beg the Senate to pass the bill.

I am dying (cancer) but I want this for my children and my grandchildren. Our life is subsistence and today there is no other alternative to being able to hunt & fish in order to eat. In 10 - 40 years maybe we will be modernized but right now there is no economy, few jobs, its tough to make ends meet, so we need to hunt & fish.

When we met together in Juneau in 1959 to organize the State we were not Republicans or Democrats - we were just a group of people who were there to set up rules. Things were tough then, but we tried for the whole state.

Again, I plead and pray that the Senate will pass the bill on subsistence.

I thank each one of you very much."

JUL 15 1985

James C. Picard
4840 Talus Drive
Anchorage, AK 99516
345-5530

July 12, 1985

Board of Game
State of Alaska
333 Raspberry Road
Anchorage, AK 99502

Dear Board Member:

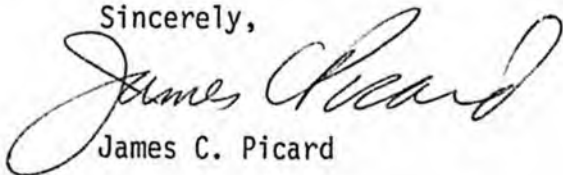
The purpose of this letter is to provide comment on the "tier two" emergency rules recently issued by the board of game. I am angry and I object to your decision which cuts me and a majority of all citizens from certain of Alaska's wildlife resources.

My first objection deals with location criteria. I do not believe that you can legally eliminate city dwellers just because they live in Anchorage, Fairbanks or Juneau. I also object to the dependency of resources criteria which translated favors an unemployed bush resident over an employed urban dweller. The example becomes more objectionable when large quantities of game are utilized to feed dogs used for marginally productive or nonexistent tasks.

I also question your wisdom in restricting access to "locals" of a particular area such as bison in Delta. If Kenai runs short on salmon, will the board in its wisdom, limit salmon to those residing on the Kenai? The restriction on the Delta bison is particularly objectionable given the fact that bison are not indigenous to the area and their development and management has been funded to a great extent by fees paid by urban hunters.

I feel that I am a subsistence hunter and all subsistence hunters should be placed on equal footing, regardless of where one resides in the state or level of income. If the resource is short, settle the issue via a drawing. A rural hunter is no more automatically a subsistence user than an urban dweller is automatically a sports hunter.

Sincerely,



James C. Picard

cc: Governor Bill Sheffield
Senator Arliss Sturguleski —
Senator Jan Faiks
Representative Fritz Pettyjohn
Representative Steve Rieger

B. Eaker
P.O. Box 870554
Umsilla, Alaska
99687

Mam, MAR 3-10-85
13 1985

Please do all possible in
a positive way to see that
House Bills 29, 36, 43
and especially 86 & 93
to enhance the sport fishing
& access to it in upper
Cook inlet, etc.

Our kids future will be
very bleak with out good fishing
areas. Alan Eaker

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

APR 30 1985

April 29, 1985

Dear Editor:

Governor Sheffield gave a radio talk on Sunday, April 28, on his subsistence bill, House Bill 288. His talk indicated a lack of understanding of the problem. His bill adds the word "rural" to circumvent the recent Alaska Supreme Court decision. The "Madison" decision says existing state law provides for subsistence regulations but that they must cover both rural and urban Alaskans.

While HB 288 would allocate subsistence only to "rural" residents, it fails to define "rural". Who are the rural residents of Alaska? Are they those individuals living in cities and towns served by roads, commercial aircraft, ferries and trains? Or are they the individuals residing in truly remote areas? And should subsistence be available only to "rural" Alaskans? The Governor should address the intent and scope of his proposal. Merely tossing the Boards another law on subsistence that further restricts their ability to fairly allocate the resources among the various beneficial uses is not the answer.

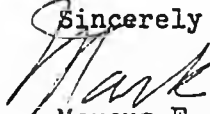
The answer must include protection of the resources and fairness in the allocation of their uses.

The Governor says he is afraid of federal take-over as is provided for in ANILCA. Instead of meekly complying with a bad federal act, perhaps he should use his authority to test the validity of the federal act. Many lawyers feel it is unconstitutional. By testing the federal act the Governor would be representing most Alaskans who want to control their own resource without federal intervention. This is what statehood was all about.

The need for a state subsistence act is greatly diminished when one understands that 42 million acres were given to the Natives for top priority use for subsistence. This land mass is equal to one mile wide and sixty five thousand miles long. It should raise a few animals.

The Governor's proposed law will only further confuse and alienate people and it is not needed. We should all accept the Alaska Native Claims Act for what it was--settlement of aboriginal claims including special claims on fish and game, and get on with fair and equitable allocation of these resources for all Alaskan citizens.

Sincerely yours,



Marcus F. Jensen



MAY 21 1985
ALASKA OUTDOOR COUNCIL, INC.
3780 McGINNIS DR., JUNEAU, AK 99801
(907) 789-3450

PRESIDENT

Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7422

April 28, 1985

REGIONAL VICE-PRESIDENT

Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

Senator Arliss Sturgulewski
Alaska State Capitol - Pouch U
Juneau, AK. 99811

REGIONAL VICE-PRESIDENT

Robert Rausch
P.O. Box 2662
Juneau, AK 99803
(907) 789-3764

Dear Senator Sturgulewski

The Alaska Fish and Wildlife Federation and Outdoor Council endorsed the concept espoused in the attached resolution. Your consideration and support of this action is respectfully requested.

REGIONAL VICE-PRESIDENT

Ron Swanson
3417 Katlian
Eagle River, AK 99577
(907) 694-9564

Sincerely,

Rupe Andrews
President

TREASURER

Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY

Sam Harbo
P.O. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE

Warren Hollich
6901 Tall Spruce Dr
Anchorage, AK 99502
(907) 243-4790

Resolution 3-85

Predator Management

Whereas, it is the policy of the Alaska Fish and Wildlife Federation and Outdoor Council to remove fish and wildlife management from political manipulation, and

Whereas, it is also the policy of the Alaska Outdoor Council to support the reduction of wolf populations when the need has been scientifically established and alternative methods have been considered, and

Whereas, the Board of Game has blatantly disregarded the testimony of the Interior Advisory Committees, the Interior Regional Council and the Southcentral Regional Council by rejecting the proposals to increase moose and caribou population by reducing selected wolf populations, and

Whereas, the Board of Game has adopted a wolf management policy that is technically unfeasible and economically impractical, instead of taking prompt and effective action to restore depressed moose and caribou populations, and

Whereas, the Board of Game's failure to authorize the reduction of wolf populations is a flagrant and crass disregard of the advisory committee and regional council system and the public participation system of fish and wildlife management, now

Therefore, be it resolved that the Game Board immediately rescind the policy established at the March 1985 meeting, and

Be it further resolved that the Game Board reinstate the moose and caribou recovery programs in Units 20A and 20E and favorably act upon the proposals and testimony of the Interior Advisory Committees and the Regional Council.

Am writing to you to ask that you amend the Subsistence law so that rod and reel and dip net would be subsistence gear. The reasons for this are several:

First, ninety nine percent of the effort in personal use fishery (as opposed to commercial use fishery) occurs with this gear type. This has happened through choice- it is the second oldest gear type, and through legislative and regulatory restriction. At one time, prior to statehood, an individual who wished to feed himself could do so with any gear or technique. At statehood fish traps, weirs, and other techniques were outlawed. With limited entry the use of commercial license and gear were restricted to permit holders. In 1975 attempts began to outlaw and restrict subsistence access and gear which continued up until this spring with the Maddison decision. The trend has been over time to force the vast majority of fishery users into use of rod and reel. Is it fair to now say that this gear is ineligible for subsistence use?

Second - the subsistence law says that "gill net, seine, fishwheel, longline, and other means defined by the Board of Fisheries", shall be subsistence gear. The legislation is not exclusive of any gear, and in fact as all that gear is also commercial gear, implies that no gear is exclusive to any one category of use. This spring I offered the Board of fisheries the opportunity to add rod and reel to the subsistence regulations. They have so far declined. Is it reasonable to expect the Board to make a decision which rightfully belongs to the representative branch of government, the Legislature?

Third - the sport fish statute defines sport gear as "hook and line held in the hand, hook and line attached to pole or rod, or other means defined by the Board of fisheries." There is nothing exclusive about either sport, subsistence, or commercial gear type. Each delegates to the Board the power to define any gear in any fishery - a power which originates with the legislature.

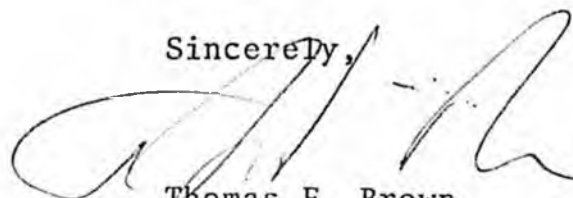
Fourth - the four gear types now available to subsistence use are non selective in harvest. If we are to authorize subsistence in smaller

APR 18 1985

bodies of water then Cook Inlet and Kachemak Bay, a more selective gear type is necessary. Rod and reel and dipnet have the added advantage in that only one fish at a time is caught, allowing effort to be spread out over time and encouraging closer observance of whatever bag limit is in effect.

In order to generate interest and to inform the public about this opportunity, I have visited every sporting goods store from Wasilla to Homer, talked to every radio station, television station and newspaper, attended the Board meetings this spring, begun contact with every local advisory board in the Cook Inlet region, and lobbied every individual and group even remotely associated with the personal use of the fishery. I think that if you contact the Kenai River Sportsmens Ass., Seward Sportsmens Ass., Alaska Sportsmans Ass., and the Marine Dealers Ass. you will receive positive input about this proposal. Enclosed are documents which relate to this issue. Thank you for your consideration.

Sincerely,



Thomas F. Brown
P.O. Box 657
Homer, Alaska 99603

P.S. The following is the proposal which the Board has taken under consideration. If you were to act on adding rod and reel and dip net to the law, it would make their consideration of the other issues considerably simpler.

"WHEREVER, WHENEVER AND IN WHATEVER MANNER BE IT BY BAIT, LURE OR FLY THAT FISHING HAS TAKEN PLACE LEGALLY IN 1984 USING ROD AND REEL, A SUBSISTENCE FISHERY SHALL BE ESTABLISHED TO COINCIDE WITH THAT FISHERY SUCH THAT ROD AND REEL SHALL BE THE METHOD OF CATCH, USING THE SAME GEAR RESTRICTIONS, BAG LIMITS AND HOURS OF FISHING."

There's a catch in subsistence

In the current state of Alaskan subsistence matters — who's to say how things may change tomorrow — all residents of the state are subsistence users.

From Ketchikan to Barrow, from Eagle to Attu, all Alaskans may subsistence fish in the summer of '85, courtesy of the state Supreme Court's ruling of Feb. 22.

There is a catch, however (no pun intended).

You can subsistence fish if you choose to use a net, seine, spear, fishwheel or long line; but not if your preferred choice of gear is a rod and reel.

This fact eliminates a large majority of the state's fishermen from subsistence use. How many of your friends own a net, fishwheel or seine? It also



Tom Brown

angers many Alaskans. One of those is Tom Brown.

Rather than merely cry "unfair" and curse his luck and the state's decision makers — in this instance, the Board of Fisheries — Brown is trying to undo what he feels is a wrong.

The 37-year-old Homer resident has presented a proposal to the Board of Fisheries which would add rod-and-reel fishing to the board's list of allowed-sub-

sistence-methods-of-catch.

Brown is no raving revolutionary wild-eyed trouble-maker. He's thought this through quite carefully.

Brown moved to Alaska in 1975. To supplement his diet, he began subsistence fishing in Kachemak Bay — with rod and reel.

"At that time it was an unregulated fishery," he says. "It was open to anybody."

In 1976, Brown was told he could no longer subsistence fish with a rod and reel. He's "been asking for my subsistence rights ever since."

Brown insists that the no-rod-and-reel-allowed subsistence regulation "discriminates against the majority of the consumptive users in the state. Fishermen have been regulated into the

fishing regulations

situation of using rod and reel. Most don't have the resources or the ability to invest in the other methods that do meet the current regulations.

"There has been a gradual but certain restriction of fisheries use over time," he adds.

And the people feeling the brunt of those restrictions have been the rod and reel users.

"It's the interests of the commercial fishermen who have been served," Brown says. "Although by law the rights of (subsistence, sports and commercial groups) are supposed to be equal, in fact they are not equal."

Although his idea may seem controversial, Brown is not seeking to add to the tensions or bad feelings which have too often existed among commercial, sports and subsistence users. His ultimate

goal is "to bring an end to competition and begin a peaceful cooperation between the different users."

Brown's more immediate aim is to make sports fishermen's groups recognize the possible benefits of rod-and-reel subsistence use.

"There has been an attempt to set sports groups and subsistence groups against one another. But true sport is non-consumptive; it's hook and release. If you kill the fish and use it for yourself or even barter it, then you are subsistence fishing. The two types of fishing are not competitive," Brown explains.

"If rod-and-reel subsistence methods were allowed, it would immediately access 99 percent of Alaska's population to subsistence fishing. But it would not

See Angler, page E-3

Angler

Continued from page E-1

have to impact sports fishing," he adds. "The two groups can be cooperative."

Brown says that the rod and reel could easily be added to the list of "approved subsistence gear."

"The subsistence law says that fish may be taken by 'gill net, seine, fishwheel, long line or other means defined by the Board of Fisheries. Only the Board of Fisheries can deny your use of rod and reel,'" Brown wrote in a question-and-answer explanation to his proposed regulation.

Blk Bonney, a member of the Board of Fisheries, isn't so sure the problem is that simple.

"The problem is that there are legislative statutes which designate the rod and reel as a sports fishing method. You'll need legislative action to change it so that rod and reel can be a subsistence method," Bonney says. "But I don't think the chances of such a bill going through are very good. I think it will be blocked by the commercial fishery interests.

"Putting recreational fishing in a priority position over commercial gives it an unfair advantage. I don't think (rod and reel) fishing should have that priority. The concept is great and it may be proposed as a bill. But I don't think it will pass this year."

Brown, meanwhile, argues that it has been the sports and

frustrated

subsistence groups which have been put at a disadvantage during the past decade.

"It's been the commercial group which has benefited the most from the board's regulations," he says. "This (rod-and-reel subsistence use) would provide the chance to reverse the numbers. It would finally provide a chance for subsistence users — and thus sports users, who can be

Bog Hollow
Homer, Alaska
April 10, 1985

Board of Fisheries

Hello,

After consideration and consultation with others even more expert in the feild then myself, and in order to clarify issues which were not spelled out in my origional petition to you I am requesting that you accept this amended version of the proposed regulation I submitted to you in March. The text is as follows:

WHEVEVER, WHENEVER, AND IN WHAT EVER MANNER BE IT BY BAIT, LURE OR FLY, THAT FISHING HAS TAKEN PLACE LEGALLY IN 1984 USING ROD AND REEL, A SUBSISTENCE FISHERY SHALL BE ESTABLISHED TO COINCIDE WITH THAT FISHERY SUCH THAT ROD AND REEL SHALL BE THE METHOD OF CATCH USING THE SAME GEAR RESTRICTIONS, BAG LIMITS AND HOURS OF FISHING.

As you see this version is much clearer in its intent and execution then that which I submitted previcusly. Thank you for your help, I am

Sincerely yours

Thomas F. Brown
P.O.Box 657
Homer, Alaska 99603

TRANSCRIPT OF POLITICS IN PERSPECTIVE, ALASKA PUBLIC RADIO
MARCH 17, 1985

DON COLLINGSWORTH, COMMISSIONAR OF FISH AND GAME

" WE HAVE NO IDEA AT THIS TIME HOW MANY PEOPLE WILL CHOOSE TO PARTICIPATE IN THE SUBSISTENCE FISHERY USING THE TRADITIONAL SUBSISTENCE GEAR WHICH IS NET GEAR."

" THE PROBLEM WILL BE IF WE HAVE A NEW FISHERY THAT IS FAIRLY LARGE THAT IS IN FRONT OF ANOTHER FISHERY THAT IS IN COOK INLET IN THE SPORT FISHERY THEN IN ORDER TO ASSURE THAT WE GET OUR ESCAPEMENT THEN WE WILL HAVE TO MAKE OUR MANAGEMENT ADJUSTMENT IN THE LAST FISHERY IN LINE IN THIS CASE IN COOK INLET IN THE SPORT FISHERY."

" THE THING TO NOTE IS THAT UNDER ALASKA STATUTE RECREATIONAL FISHING IS DEFINED IN A SPECIFIC WAY AND WITH ROD AND REEL, SPORT FISHING IS DEFINED AS USE OF ROD AND REEL."

THE TRANSCRIPT ABOVE INDICATES SOME FACTS WHICH NEED CLARIFICATION. FIRST, THE STATUTE FOR SPORT FISHING IS "SPECIFIC" IN ITS MENTION OF "HOOK AND LINE HELD IN THE HAND, HOOK AND LINE ATTACHED TO A ROD OR POLE, AND OTHER MEANS DEFINED BY THE BOARD OF FISHERIES."

SECOND, WHILE PRESENT MANAGEMENT STRATEGY PENALIZES THE "LAST FISHERY IN LINE", UNDER THE SUBSISTENCE LAW STRATEGY WILL BE TO FRONT LOAD FISHERIES WITH FISH FOR SUBSISTENCE HARVEST WHICH WHEN IT OCCURS IN COINCIDENCE WITH A SPORT FISHERY WILL HAVE THE EFFECT OF PROVIDING FOR BOTH.

"Be it enacted..."

THE SUBSISTENCE LAW

LAWS OF ALASKA

1978

Source: SCS CSHB 960 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

(continued)

"Sustained yield" definition
will be used to change

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 resources 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 (e) of this section;

- (3) makes the information provided for in (e) 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

(continued on page 29)

ding with the management and utilization of a herd of caribou as large as the Western Arctic herd, limitation of the language and utilization of numbers becomes a problem for both Fish and Game biologists and residents of northern Alaska who harvest caribou.

The impact of the three major changes described earlier (firearms, distribution and expansion of utilization, and snowmobiles) contributed to and may have been a major cause of the decline in the size of the Western Arctic herd between 1970 (est. population 100,000) and 1976 (est. population 30,000). A major drop in numbers was first noted in 1975 when Game Department biologists estimated herd size as 100,000 animals. Many residents of northern Alaska refused to believe these estimates and the seriousness of the problem. In view of the limitations of the local language to deal with large numbers and the fact that in the fall of 1975 well over 100,000 caribou migrated a few miles inland from the coast (south of Point Hope to the Kiana River) close to several villages, it is no wonder that doubts arose about the accuracy of caribou estimates. By 1976 the population was estimated to be 65,000 (minimum). The annual harvest had been 25,000. Recognizing that this was a serious problem, the Board of Game in 1976 set a bag limit on the bull by permit only with a maximum of 3,000 permits being issued. In 1977 these regulations were modified in response to a new ruling, but the total allowable harvest remained the same. The 1977 caribou population estimate was 75,000. In 1978 the Board set the bag limit to two bulls and the quota to 5,000 bulls but kept the permit system. The 1978 population estimate rose again to 90,000.

Although compliance with the bag limits and stipulations of the permit system have been far from perfect, the fact remains that the annual harvest has been

drastically reduced and the problem of crippling and waste (killed but unretrieved, mainly), observed by Department biologists and others in 1975-76 and prior years, has been significantly curtailed. Both have occurred with little or no enforcement by the State—it has been accomplished by the residents themselves. This, it seems to me, is a noteworthy achievement.

Finally, the question of need must be addressed. I am often asked if northern Alaskans still need the resources they claim they need. To a large extent, the answer is yes. Although the amount of meat needed per household has probably decreased as a result of their getting rid of dog teams, the people still need to eat. In most villages, there are limited opportunities to earn cash, and prices for food in local stores are extremely high. For example, in Barrow hamburger currently sells for \$3.20 per pound, white bread \$2.20 per loaf, eggs \$2.30 per dozen, milk \$3.20 per half gallon and butter \$2.80 per pound. In outlying villages, these items, if available, sell for higher prices than these; but

usually, these and many other items are unavailable for weeks at a time. There are many reasons why village stores are poorly stocked. Two common ones are: a lack of capital to pay for a large, well-balanced stock, or lack of storage space to stock enough food for periods when freight can't be delivered to the village. Thus, there remains an absolute need for as high quality food as can be obtained from local resources. However, with the redistribution, concentration and increase in village population size, some restraints on resource utilization must be observed. The days of no closed season and no bag limit, especially for highly-prized species like caribou, are probably gone forever.



Herb Melchior has an A.B. in biology, and an M.S. in plant ecology from the University of New Hampshire. He has conducted a variety of ecological studies in northern and northwestern Alaska and has taught animal behavior at San Diego State. He began working for ADF&G in 1971.

(continued from page 8)

"Be it enacted..."

for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or share 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



§ 16.05.940

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Fish and Game unless

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to a person, other than
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chapter;

er this chapter and the

a resident;

no mention of reel
not "specific" to rod & reel

§ 16.05.940

FISH AND GAME

§ 16.05.940

(13) "operator" means the individual by law made responsible for the operation of the vessel;

(14) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained his voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this chapter, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this chapter;

(15) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under this chapter by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

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

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

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

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

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

(21) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state;

(22) "visitor" means a nonresident or alien temporarily sojourning in the state as a visitor or tourist;

(23) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(24) "fish derby" means a contest in which prizes are awarded for catching fish;

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Box 39214
Ninilchik, Alaska 99639
April 24, 1985

Senator Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I hope that I can say what is on my mind in a reasonable fashion. I would once again like to address criteria for the Board of Fisheries. Allow me to preface my remarks by saying that when speaking of the ordinances for proper Christian living we go to our guidebook--the Bible--where the apostle Peter says, "I will not be negligent to put you always in remembrance of these things..."--going back a little he says, "For if these things be in you, and abound, they make you that ye shall neither be barren nor unfruitful." [in the knowledge of our Lord Jesus Christ]. As legislators, you also have basic guidebooks or documents written for the express purpose of channeling your thoughts and actions in the proper directions under our American system of government.

Permit me to quote from our Declaration of Independence: "When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government and to provide new guards for their future security." Because we now have these guards in place in our American system of government, it seems only proper that when an increasingly heavy burden of arbitration falls upon a segment of population and evinces a design to reduce them by despotic means, that it is time for those of you who watch for our souls, or are supposed to, to take it upon themselves to provide new guards for our future security.

I say this with the knowledge that we have been very successful in our arbitration with the state and little note seems to be taken of it, but when the state loses, as in the Madison case, attempts are made to arouse public furor through grossly misrepresented statements made by our state officials with no supporting evidence that any problem is really lingering in the wings at this point.

On the other hand, the increasingly successful amount of arbitration against the Board of Fisheries, because of rash and biased judgment, is a clear indication that steps need to be taken soon within the legislative process to alleviate the problem. It is clear and apparent from your express purpose as legislators, that such guards can only come by a pure mandate of law. The board process is fraught with special interest, which, by the way, is probably the next litigation to be taken up in court, and I encourage all of you to follow it with interest as to the outcome.

Senator Arliss Sturgulewski
Page 2
April 24, 1985

Let me say in closing that the legislature represents our only place of real rest on these issues of criteria for the board process, and that arbitration is not peace, it just leads from one court battle to the next. I invite you to be looking with bated breath for court decisions and to be looking at the mandating of criteria for managing the resource by a professional board process with the Department of Fish and Game as an integral part of the hierarchy so that their expertise and advice cannot be ignored in the decision making process.

Sincerely,

MIKE SUTTON

Mike Sutton

MS:cbs

c.c. Senator Bettye M. Fahrenkamp
Senator Jack Coghill
Senator Jan Faiks
Senator Richard I. Eliason
Senator Vic Fischer
Senator Rick Halford
Senator Fred F. Zharoff
Senator Paul Fischer

APR 23 1985

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

April 18, 1985

Alaska State Legislature
Pouch V
Juneau, Alaska 98111

Dear Senator:

On April 18th, 1985 the Valdez Chamber of Commerce Membership voted in support of House Bill No. 288 and Senate Bill No. 231 on subsistence which was introduced in the Fourteenth Legislature of the State of Alaska.

This Act relating to taking of fish and game for subsistence and personal use and providing for an effective date is an important issue for all Alaskan communities. The Valdez Chamber of Commerce recognizes the need for subsistence fishing rights, however, we do not believe it should adversely affect the commercial fishing industry. We believe the two groups can and should exist harmoniously.

The need for this legislation to pass quickly is imperative to many Alaskans. We urge you to help in the passage of these bills.

Thank you for your support in this issue.

Sincerely,



William J. Simpson
President, Valdez Chamber of Commerce

APR 23 1985

SOUTHEASTERN ALASKA
SEINE BOAT OWNERS & OPERATORS

8 WATER STREET
TCHIKAN, ALASKA
99901

April 19, 1985

Senator Arliss Sturgulewski
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgulewski:

We support SB 231, the Governor's bill to place in statute the Board of Fisheries' ruling on subsistence and personal use.

We recognize that defining "subsistence uses" as the customary and traditional uses by rural residents may not be a perfect solution to the question of who is entitled to be a subsistence user, however, we think it to be the most reasonable and most workable.

We urge you to support this bill.

Sincerely,

Executive Board of Directors
SOUTHEASTERN ALASKA SEINE BOAT OWNERS & OPERATORS

GEORGE E. HALE, M.D., Inc.

A PROFESSIONAL CORPORATION

501 L STREET

ANCHORAGE, ALASKA 99501

APR 18 1985

TELEPHONE (907) 272-6525

April 16, 1985

GENERAL SURGERY

Senator Arliss Sturgulewski
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Most of the many hunting and fishing sportsmen of Alaska are hunting and fishing with hook and line for subsistence which is actually for personal consumption.

We voted for subsistence as the highest State priority in 1978, believing that we were voting for our personal consumption hunting and "sport" fishing as the highest priority.

The State officials disenfranchised us after the vote by defining subsistence as fishing with nets instead of hook and line.

Most of the "sport" hunters and fishermen came to Alaska primarily to continue to enjoy their sport as a means of obtaining food for themselves and their families.

Most of the 250,000 hook and line fishermen of the State would like to see this situation corrected, which could be done by properly defining subsistence hunting and fishing.

Hunting for meat and fishing with hook and line to feed one's family is the highest and best way to use the fish and game resources of the State. I hope it will be recognized as such by the officials of the State of Alaska.

George Hale



The days of 'magic' mon

By Jan

EDITOR'S NOTE: This is the first in a series of on-going columns in which members of the Anchorage Municipal Assembly will discuss local issues. The columns will be published on Wednesdays, and

all assembly members will participate on a rotational basis. The initial submission, which follows, is from Chairman Jane Angvik. Assemblyman Paul Baer will write next week's column.

Letters to the editor

State constitution guarantees equality when it comes to taking the fish

Dear Editor:

With the recent Supreme Court decision, the state now has the direction and opportunity to assure to all Alaskans the equal consideration to take fish and game for their own personal consumptive use. This decision supports the state constitution's provision that "Wherever occurring in their natural state fish, wildlife and waters and reserved to the people for common use."

The court stressed that common "use" and not priority "users" was the main intent and should be the effect of the subsistence regulations. The court found that all consumptive users, and not just rural residents, are eligible priority subsistence users.

But the same politics that supported the illegal discriminatory subsistence regulations are at work to speedily fix their court failure. Their main weapon, now as in the past, is their threats aimed at the majority of Alaskans.

One such threat is that the over 200,000 sportfishermen will be severely impacted by the Supreme Court decision. The court, in fact, said that all personal consumptive users were to be given equal consideration. As most so-called sport fishermen eat the fish that they catch, any priority

subsistence use must include them.

And those "pure sport fishermen" who catch and release are not harvesters of the resource, therefore have a negligible impact. With an annual harvest of well over 100,000,000 salmon, all Alaskans should be entitled to the equal opportunity to take fish for their own dinner table.

Another political threat used is that the federal government will deny our state the right to manage our fish and game unless the subsistence priority is based on rural residency. When the feds mandate that the resource must be managed as they say, the state has in fact already lost the right of management authority.

This restriction resulted from state politics that requested and supports such residency discrimination. When Ron Sommerville was Alaska's representative during the early days of D-2 and ANILCA, and opposed this federal mandated discrimination, he was removed from his Washington, D.C., post. Gov. Hammond admitted in a public meeting of the Boards of Fish and Game that Sommerville was removed because of native pressure.

His replacement, John Katz, has compromised the Alaskan public's constitutional rights on

this and many other issues. For the state not to politically and judicially oppose this discriminatory action, which specifically denies equality to all residents of Anchorage, Fairbanks, Juneau and Ketchikan, shows a planned sell-out of our rights.

This plan includes the continued lobbying action of Larry Spengler of the attorney general's office supporting a priority subsistence use of Alaska's fish and game to be as discriminatory and restrictive as has been politically motivated. Alaska would be better served if our attorney general would be motivated by a responsibility to assure that all residents are not discriminatorily restricted in their rights.

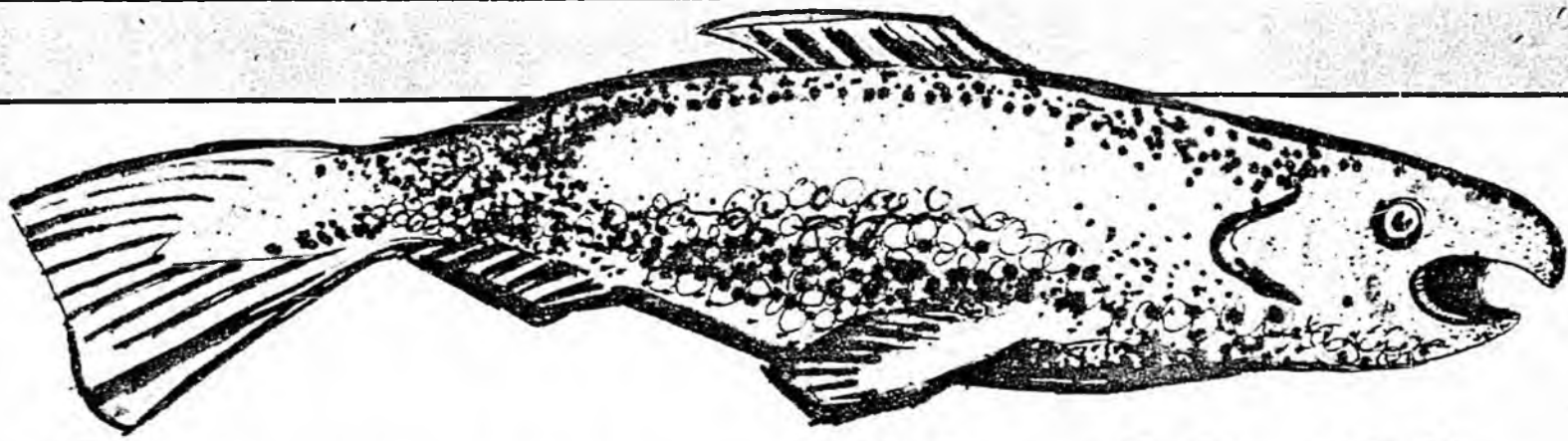
The history of Gov. Sheffield's stern actions has been a well known threat to any state employee who would question these unconstitutional subsistence regulations. He fired Fish and Game Commissioner Ron Skoog and Game Division Chief Ron Sommerville because of their private personal stands against these regulations.

And he then requested the resignations of all Board of Fish and Game members when they began questioning the blatant directions ordered by Larry Spengler.

It is time that all Alaskans are again equal under the law, no matter where they reside, and that such equality is promoted by our state and is not necessitated by continued court challenges by its residents.

Dale Bondurant
Chugiak

'Your leadership is demanded'



Governor Sheffield,

What is your true long-term position on equal rights?

In South Africa, the government has identified areas and communities whose residents are assigned, by law, rights and opportunities **INFERIOR** to those available to all other residents of that nation. This policy of discrimination against the vast majority of that nation's people is called —**APARTHEID**

Our Federal and State governments have identified areas (urban) and communities (specifically named are Anchorage, Fairbanks, Ketchikan and Juneau) whose residents are assigned, by regulation, rights and opportunities that are **INFERIOR** to those available to all other residents of this State. This policy of discrimination against the vast majority of Alaska's residents is called —**PRIORITY SUBSISTENCE**

The Alaska Supreme Court has now found that these regulations, of the past five years, are **ILLEGAL**. And they also ruled that now all Alaskan residents who take fish and game for their personal consumption are —**EQUAL UNDER THE LAW**

In defiance to the Alaska Supreme Court ruling, Governor Sheffield's hand picked Board of Fisheries have refused to recognize All Alaskan residents as equal personal consumptive users of our fish. They have instructed the Commissioner of Fish and Game, to use emergency power, to treat the fish wheel and gill net fishermen as **PRIVILEGED** class citizens, the dip net fishermen as **SECOND** class citizens, and the over 250,000 hook and line fishermen as —**NON-CITIZENS**

Governor Sheffield, who opposes the Supreme Court ruling has now requested the State legislature to reimpose this inferior right of opportunity against the vast majority of Alaskans, with a law based on the same —**RESIDENCY DISCRIMINATION**

The right of **EQUALITY UNDER THE LAW** and equal opportunity of **COMMON USE** of our fish and game must again be one of our government's high —**CONSTITUTIONAL PRIORITIES**

Solution:

LEGISLATIVE REPEAL OF THE 1978 SO-CALLED PRIORITY SUBSISTENCE LAW



PAID ADVERTISEMENT BY:

SAM MCDOWELL

DALE BONDURANT

WARREN OLSON

Constitutional Legal Defense Fund
5961 Orth Circle
Anchorage, Alaska 99516

APR 16 1985

Copy for the Legislators
Dear Editor,

4/8/85

Even though Sportsman rights, preferences and beneficial uses are clearly set out in the Constitution and the fact that hunters and fishers are licensed, and regulated by the State, pay excise tax on sporting goods and ammunition buy game tags, permits and waterfowl stamps, they get very little protection from the State.

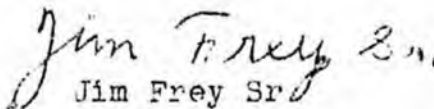
In spite of patient financial dedication to wildlife conservation and management the Legislature, the game board, the administration and the Courts have consistently favored a minority group who are unlicensed, unregulated, and contribute only negative rhetoric and unconstitutional regulations.

The environmentalist have spent enormous sums in political donations and lobbying to violate basic rights and freedoms of travel, access and navigation, the right of Discovery, personal and commercial use of natural resources except for a minority who can comply with Alaskas apartheid, based on "local, rural and prior use".

It is more effective in controlling the majority then apartheid based on color or race, for it sets the city majority against rural minority, the Natives against the whites and effects special persecution for miners, loggers and the Super Cub.

The Civil Rights section in the State Constitution, Art. I sec. 3 forbids denial of any Civil or Political right because of race, color, creed, sex or national origin. Sex was added in 1972 and I think we have to add one more word "apartheid".

Sincerely


Jim Frey Sr.

Ph. 822 3019
Bx. 970
Slana, AK.
99586

P.S. I made a mistake in because and sex but I am not going to abort it, lots of people make mistakes because of sex.

APR 16 1985

4/4/85

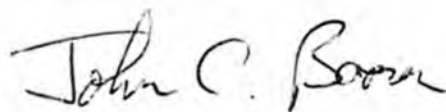
Dear Senator,

I would like to urge you to support SB-231 or any legislation that will keep the Alaska Board of Fish and Game as managers and regulators of our fish and game. I live in Cordova and fishing is my only means of making a living. I have four months to make a years waige and the Copper River fishery makes up to 70% of my income. If we loose any time fishing, especially the first part of the run, where 50% of the fish go up river in 2-3 weeks, it is definately going to make it hard, if not impossible, to make my financial ends meet.

Please support SB-231 and please push to get the issue resolved this season. Fishing is scheduled to begin May 13, 1985.

Thank-you very much,

Sincerely,

A handwritten signature in cursive script that reads "John C. Booren". The signature is written in dark ink and is positioned above the printed name.

John C. Booren

COPY

Thomas D. Lonner, Ph.D.
2212 B Great Western Street
Douglas, AK 99824
907-364-2558
November 14, 1985

Representative Jack Fuller
Chairman
Special Committee on Subsistence

Dear Jack,

It's difficult to sit at a computer and place on the screen, in a very few words, something that will help you resolve the subsistence "crisis." One of the reasons that I have hesitated to testify before the Special Committee is that I have written so much on the topic of subsistence management in Alaska that I feel I have little new to say. Other reasons include the amount of the Committee's time I would take up, the amount of outrage and disappointment that I feel over the failure of administrative agencies to faithfully carry out the purposes of the Legislature, and my inability to find a politically acceptable direct route through the minefield prepared for you by administrators judges, and lawyers. While I have the reputation as an advocate of subsistence (it should not need advocates). my principal concern has not been with subsistence but with turning a non-punitive legislative action into a positive social action.

You in the Legislature are in a position now where professional administrators have rewritten your 1978 law and are telling you that you must rewrite that law. In essence, they are telling you that you have written a bad law, that they have used every means at their disposal to faithfully implement the intent of that law, and that now you must rewrite the law to save the situation. I do not believe that it is a bad law; I am not sure that it was faithfully implemented, except in the case of Copper River.

If it were such a bad law, how is it that the courts, who can read the English language, are uniformly untroubled by its intent, structure, and language? How is it that the various courts concur about its meaning and requirements while regulatory agencies find it one of the major mysteries of the modern world, a clouded crystal ball more suitable for Ripley's Believe or Not than for the management of public good? Why do regulatory agencies, having failed in their ingenuity to solve one problem, not return to the drawing board to try again rather than, in a panic, run to the Legislature and ask for Daddy to save them? Do they really have no alternatives, in the same way they suggest that you have no alternative but to blindly support their actions against your own wishes and intents?

I do not doubt that you may rewrite the law, but I do not think that revision will save the situation. The alternative revisions before you will reduce the political, administrative, and legal conflict but at the cost of damaging subsistence, even though the purpose of the law is to protect subsistence. In addition, you clearly have the power in the Legislature to define, in law, subsistence as an exclusively "rural" phenomenon; as a non-lawyer. I doubt whether such a definition, either in law or regulation, would withstand a constitutional challenge based on due process, non-discrimination, or the right to travel.

Is there a problem with the law? Of course, there is. The basic problem with the law is that it did not clearly identify who the beneficiaries of the law were to be. If the Alaska State Constitution had provided for ethnic distinctions in law, as federal law provides, you would have identified the beneficiaries to be Alaska Natives and their continuing traditional economic pursuits. You would have generously added those residents whose economic pursuits were essentially indistinguishable from those of Alaska Natives.

Not having this latitude, you took the next best step. You defined subsistence as best you could, in the tradition of deliberative bodies, and assigned the refinement of administration to paid administrators. You created a new scientific body in ADFG to collect information and report to the Boards on the identification of subsistence uses and users.

What is interesting in the law that you wrote was that you did not copy the language in Title 8 of ANILCA. You did not talk about "rural" people. You intended, if I understand it, to protect subsistence in Alaska wherever it appeared. That seems very enlightened to me. Was the federal government wrong, then, in putting "rural" and "Native" into ANILCA? Not at all. They had very good reason to use "rural" because, for practical purposes, federal lands were in "rural" areas and they intended subsistence hunting on those lands to be restricted to nearby rural communities and their residents. This was a practical decision, based on geography, not a matter of ideology.

Why, then, is the state law different? Because state fish and game management governs all Alaska lands, waters, and communities, both urban and rural. As in many other cases, federal management is both more restrictive than state law and is still consistent with it. There is no tension between federal and state laws on subsistence as long as the state does not violate these tighter federal restriction on federal lands. In reviewing the very poor administrative regulations which were to implement your law, the Alaska courts gave an interpretation, by inference, of what the Alaska law meant and, thereby, they placed the state in nonconformance with federal law. The problem, however, is not with the law but with the terrible regulations.

Why should the state law not restrict subsistence to rural communities? In the past fifty years, major urban areas have arisen in the state, particularly in Cook Inlet, hiding from view the small villages that they overwhelmed. The villages, or subcommunities, still remained and still relied upon subsistence. You told the Subsistence Division, in the law, to identify all subsistence and recommend regulations to protect all subsistence. While this was a difficult task, it was clearly not impossible. Recognizing and protecting subsistence use, in this case fishing, by villages-within-urban-settings did not upset the existing federal policy because the fishing did not occur on federal lands. In addition, recognizing and protecting subsistence hunting did not violate federal policy because the federal government had already identified and limited those who could enter federal lands for that purpose.

What are the long-term implications of your endorsing the administration's additional concepts by incorporating them into law? As the original author of those famous implementing criteria, with the one exception of "rural residency," I think that the other criteria fall clearly within the definitional tasks within the law that you assigned to the Subsistence Division and, by inference, to the powers of Boards. The sole requirement of these criteria is that, when they

discriminate among people as they must, the discrimination be necessary, minimal, and based on sound facts and sound reasoning. The court, as I read it, found the "rural" distinction meeting none of these criteria and thereby being arbitrary in the extreme. I absolutely agree with the court, both in philosophy and the reading of the facts.

I do not agree that, by inference or implication, all Alaskans, while hunting or fishing for personal as distinct from commercial use, are considered to be engaged in subsistence. The definitional tasks assigned to the Subsistence Division clearly suggest the desire and need for greater definition. What we need are better regulations which regulate according to necessity, not laws which discriminate without necessity.

Restricting subsistence to a "rural" reality will result in two effects. It will immediately eliminate, by law, the intended protections to be accorded to a significant portion of subsistence adjacent to "urban" areas. It will also endanger the continuation of subsistence for those communities throughout the state (e.g., Nome, Kotzebue, Bethel) which, due to population growth, later become defined by the state as "urban." These are inevitable consequences of the "rural" distinction.

When the Legislature passed the subsistence law, what events did it expect to take place? First, it expected that the Subsistence Division would collect information and report to the Boards on all existing uses and users. Then, because subsistence occurred throughout the state and was affected or unaccounted for by the very complex set of fishing and hunting regulations, the Boards would begin the arduous process of implementing the subsistence law through regulation reform and revision. Not a pleasant or easy task, but clearly the responsibility of the Boards.

There were two ways to concurrently implement the law into regulation and avoid the press of lawsuits. The first way was to create a sunseting schedule for all regulations. For years, regulations had been growing at an exponential rate. Regulations, once adopted, were reviewed for equity and effectiveness only when brought to the Boards' attention by ADFG or the public. The Boards knew that scheduled sunseting of all regulations (say, by review of 1/4 of all regulations each year for four years) would 1) remove or amend poor regulations and 2) simultaneously implement the subsistence law. In the process, the permit hunts would have been revised at a matter of course, not through lawsuit. Such a sunseting schedule was never established or accomplished.

The second way to implement the law was to act swiftly on particularly nasty subsistence matters, such as Cook Inlet and Copper River. After all, once the major urban-rural issues were resolved with fairness, the remaining conflicts in more remote areas could be handled in a more routine fashion. Because the sunseting schedule was never established, the problems of permit hunts were not discovered until they had reached crisis proportions for both the hunters and, immediately thereafter, the courts which had become impatient with a long series of failures by the Boards to faithfully execute the subsistence law.

The lack of implementation of your law by the Boards and the subsequent implementation by the courts have resulted in the current "crisis". Crisis often results in crazy, unworkable, and short-sighted solutions. People in crisis lose sight of their goal and rush around like the proverbial chicken with its head cut

off. In this case, though, the chicken is passing a spate of incoherent and probably unworkable regulations and designating "subsistence species," "subsistence zones," "subsistence permits," "subsistence eligibility requirements" (as if ADFG were a social service agency), and so on.

Where did all this administrative garbage come from? And was it required to protect subsistence? I don't think so. The intent of the subsistence law was not to divide up geography, resources, or people but to recognize and protect subsistence through sensitive regulation. It is one thing for ADFG to publicly acknowledge that the harvestable surplus of certain resources in certain areas at certain times is fully utilized by local subsistence users without designating those resources as permanently and totally "subsistence resources." Such a designation is neither socially acceptable nor literally true.

If the true test of the subsistence law is its success in resolving issues near urban areas, has the law been totally unsuccessful? Not at all. The first test of the law was in solving the long-standing and very unpleasant Copper River salmon management conflict among dipnetters, fishwheelers, and commercial fishermen. The local fisheries biologist, the Subsistence Division, and the Department of Law combined their efforts and interests to present a biologically, socially, and politically sound management plan which accounted for subsistence use, differences in residency and income, and the vital interests of all user groups. The Board adopted the plan which, I understand, is still being implemented successfully.

I had anticipated that, in 1980, the Board would adopt a similar plan for the outrageously out-of-compliance Cook Inlet Salmon Management Plan, adopted, I believe, in 1976 or 1977. This plan did not even acknowledge the existence of subsistence anywhere in Cook Inlet, including the small, non road-connected villages of English Bay, Port Graham, or Tyonek, to say nothing of smaller road-connected villages and sub-communities on the East Side. Indeed, the Board was flirting with the idea of simply defining subsistence use out of Cook Inlet by regulation and/or policy.

In any event, efforts to provide for subsistence use in Cook Inlet were accomplished not by Board action, but by court intervention when the courts found that Board actions conformed neither to the subsistence law nor the Administrative Procedures Act which governs all of Alaska's administrative bodies. Court action increased the pressure on the Board to adopt a comprehensive management plan which implemented the subsistence law. Such a plan would not have to operate on the same grounds as Board actions in the Copper River case or the Tanana River case, each of which operated according to different principles. Since the organization of vital interests and the history of each place are always different, it is conceivable that no two plans will operate the same way. They do not have to, as long as they meet basic legal requirements.

In trying to solve the Cook Inlet problem, the Subsistence Division, before it was called silent by the Chairman of the Board of Fisheries, suggested eight scientific criteria for the recognition of subsistence by the Board. These were substantially adopted. The criteria clearly established the traditional subsistence use by non-road-connected villages. The Division said that it lacked full documentation of subsistence use by road-connected villages, subcommunities within Homer and Kenai, and even some residents of the greater Anchorage area; it noted that some time and great energy would be required to develop this information base. It suggested that the Board might wish to treat this problem as

a special case and be quite liberal about what it meant by "traditional" in Cook Inlet, due to the rapid growth in resident populations. It suggested that creating a "closed class" of subsistence users, limited to Alaska Native people, poor people, or residents of non-road-connected areas would be unnecessary, inappropriate, unfair, and without a factual basis.

We suggested that, using very liberal guidelines for Cook Inlet fisheries only, the Board include a large number of persons with a specific historical use of certain fisheries as within a traditional subsistence use. These persons would then be protected under subsistence regulations for fishing from that point in time onward. In order to not create a closed class and discriminate against new residents, we suggested the creation of a new "personal use" fishery, parallel to the subsistence fishery and open to all Alaskans. Those Alaskans who, over time, regularly used that fishery, would, at some point in time designated by the Board, be included in the subsistence fishery. This system would guarantee that those in the subsistence category would be clearly defined and protected. That the growth in that fishery would not be unrestrained to the detriment of the vital interests of commercial and recreational users, that the subsistence user group would not be a closed class, and that litigation would be fairly unlikely.

The Board, for its own reasons (which I found quite suspect, in light of the concurrent political drive to repeal the subsistence law entirely), rejected that system in favor of the elimination of urban users entirely through the baseless and obviously discriminatory "rural" restriction. What resulted was the Madison decision, the rejection of the criteria, and the understanding that, until better regulations were devised to implement the law, all Alaskans were to be considered subsistence users. That means that, rather than true definitions of subsistence identifying uses and users, the state is left with geographic and poverty guidelines.

How your subsistence law became a game like Dungeons and Dragons is a small tragedy in state government. Those who were victimized in the process were subsistence people, the Alaska State Legislature, and those who trust that the regulatory agencies of government will be fair, sensitive, and impartial in their actions. However, while I found in 1980 that the enemies of subsistence in and out of government had a certain negative influence on events, right now I am more troubled by the recommendations of the friends of subsistence, that you damage some subsistence use in order to save the rest. How can the law which was to protect subsistence now become the major legal vehicle for its damage? With those kinds of suggestions, subsistence does not need enemies.

By now, if you have been patient with me, you will see that I do not see the necessity or utility of rewriting the law to limit subsistence to "rural" people. Instead, were the State Constitution to allow it, I would search for language to further describe, as Nels Anderson had intended to do through intent language, who were to be the beneficiaries of this law. On the whole, I would not amend the law in any way at this time.

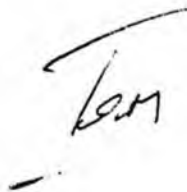
What I would do is return to the regulatory agencies and insist that they find the investigatory and regulatory means to recognize and support traditional subsistence wherever and whenever it has manifested itself in Alaska. That is their job; it is not their job to oppose subsistence, to arbitrarily limit it, to redefine it, to regulate the heart out of it with elaborate administrative procedures and requirements, or to write their own new legislation. I would also

request some counsel from the State Supreme Court about an acceptable schedule for sunseting and revising regulations and thus avoiding regulation by lawsuit.

I continue to trust that the state will find a means to protect its own independence of action in meeting the important needs of its residents and not simply write laws to satisfy exclusively federal interests. If I can be of any assistance to you, your committee, or the Resources Committee, on this matter, please do not hesitate to let me know. I am totally at your disposal.

Best of luck.

Sincerely,

A handwritten signature, likely "Tom", written in dark ink. The signature is stylized with a long horizontal stroke extending to the left and a curved line above the letters.

APR 16 1985

Senator Arliss Sturgulewski

In light of the stand that the A.F.U. took last week in the House Resource Committee teleconference that if SB 231 & HB 288 or similar legislation are not enacted into law A.F.U. will seek Federal Intervention to protect their rural subsistence way of life. The State of Alaska became a state so we could manage our resources ourselves. So far the boards of Fish & Game have been doing a good job of satisfying all user groups of Alaska's renewable resources. Admittedly there are some problem areas, as there is with managing any resource. Regulations adopted by these boards are not set in cement they are open to proposals every year so those problem areas can be worked on. Anyone in the state can propose changes & present grievances with the boards. ReAllocations have been made every year to cope with increased pressure by different User groups. A Personal Use Fishery was implemented to give Urban residents access to the fish while still protecting the rural communities subsistence way of life. Please support SB 231 & HB 288 as a permanent fix. I do not view them as a quick fix. I feel these bills are a permanent & equitable solution allowing change where & when its needed and is imperative to the stability of the Fishing Industry and the State as a whole. The State of Alaska in my view is the greatest State in the Union. Thats why I live here. Lets keep Alaska Great. Support SB 231 & HB 288. We need the Stability. Thank You

John Mehlich
Box 968
Cordova AK 99574

APR 16 1985

April 11, 1985

Dear Senator Sturgulewski, Chairman,

I am writing to ask for your quick support for SB#231. It is very important to me and the City of Cordova, that this bill be passed this session. Our gillnet season will soon be here and if the bill is not passed, I hate to think of the consequences.

Please support SB#231 or any such legislation that will give the power back to Alaska Board of Fish & Game to regulate and manage our fish and game resources.

Thank you,

Jim Merritt

ST. ELIAS
Ocean Products, Inc.

BOX 548
CORDOVA, ALASKA 99574

APR 16 1985

For many years, some confusion has existed about what parts of animals can be used legally for bait. A draft of a bill addressing this problem is enclosed for your consideration. We would appreciate it if you could consider introducing this bill into the Senate/House and assisting us in seeing it through that body.

Most of the confusion over what is legal versus illegal use of game as bait stems from uncertainty about the use of parts of wild animals classified as big game and wildfowl by the Board of Game. Under Alaska Statutes 16.30.010 and 16.30.030(5) edible meat of big game and wildfowl must be salvaged for human consumption and is specifically defined. However, although game as bait is addressed in Board regulations 5AAC81.210 and 5AAC84.170, these regulations do not allow the use of all non-edible portions of big game and wildfowl as bait. For example, although meat of the head of a big game animal is not defined as "edible meat" under statute, it is prohibited to use such meat as bait. In other words, although you are not violating the law if you leave the head of a moose in the field from a moose hunt, you would be in violation if you used the head (or meat from it) as bait for a trap set. Another example is that under statute the only "edible meat" a hunter needs to retrieve from wildfowl is "the meat of the breast" but a trapper can not use the rest of the bird as bait. many additional examples of the discrepancy between what a hunter must salvage and what that hunter or trapper can use as bait could be given but these two make the point. The attached draft

THE ALASKA TRAPPER

3560 Ida Lane
Star Route Box 10220
Fairbanks, Alaska 99701

bill is intended to solve this problem, for hunters, trappers, and Fish and Wildlife Protection officers, by allowing "non-edible meat" to be used as bait.

There are two solutions to the problem. One is to correct the game regulations and the other is to amend the statutes. The Alaska Trappers Association is persuing both approaches. However, since "edible meat" is defined in statute, not by regulation, it seems to us that "non-edible meat" should also be defined in statute so that no further confusion develops over what can and cannot be legally used as bait.

Thank you for considering this request.

Sincerely,

Alaska Trappers Association

A BILL

For an Act entitled: "An Act relating to the use of wild game for bait."

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

Section 1. AS 16.30 is amended by adding a new section to read:

AS 16.30.014 Game As Bait.

The following game or parts of game may be used as bait:

- (1) the hide, skin, viscera or bones of any game;
- (2) the skinned carcasses of bear or fur animals;
- (3) hares, rabbits, red squirrels, and legally taken unclassified game;
- (4) non-edible parts of big game animals as defined in AS 16.30.030 (3) or wild fowl as defined in AS 16.30.030 (9).

Section 2. AS 16.30.030 is amended by adding a new section to read:

AS 16.30.030 Definitions In This Chapter:

- (10) "non-edible meat" means those parts of big game animals or wild fowl not defined as edible meat in AS 16.30.030 (5).