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COMMITTEE REPORT  
SENATE

FURTHER: RESOURCES  
JUDICIARY

5/6/85

Date FEBRUARY 4, 1986

Mr. President

The Committee on STATE AFFAIRS considered CSHB 288(Jud) am

taking of fish and game for subsistence and personal use; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt s CS for CS HBN288 (SA)
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to RESOURCES Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

*John W. ...*

*Tim ...*

*W. Fischer NR*

*Bill Ray DO NOT PASS*

*UNLESS AMENDED / SLOTT*

*WORKMANSHIP*

*[Signature]*

Chairman

*[Signature]*

Chairman recommendation

NATIONAL RIFLE ASSOCIATION E HUB  
1600 RHODE ISLAND AVE NORTHWEST  
WASHINGTON DC 20036 10AM

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*MIRA*  
*M*

HONORABLE MITCH ABOOD, CHAIRMAN  
ALASKA SENATE STATE AFFAIRS COMMITTEE  
ROOM 423C  
ALASKA STATE CAPITOL BLDG  
JUNEAU AK 99801

DEAR SENATOR,

AS THE ALASKA LEGISLATIVE SESSION COMES TO A CLOSE, THE NRA WOULD LIKE TO THANK YOU FOR YOUR SUPPORT OF THE SPORTSMEN IN YOUR STATE.

WE ARE ESPECIALLY GRATEFUL FOR YOUR RESOLVE IN SEEKING LONG-TERM SOLUTIONS TO THE PROBLEMS CREATED BY HOUSE BILL 288. SUCH PROBLEMS DESERVE CAREFUL STUDY, AND IN-PUT FROM SPORTSMEN IS ESSENTIAL IN ORDER TO DEVELOP THE APPROPRIATE LONG-TERM SOLUTIONS.

NRA STANDS READY TO ASSIST IN THESE EFFORTS.

SINCERELY,  
MICHAEL J LASHBROOK, DIRECTOR STATE AND LOCAL AFFAIRS DIVISION

1555 EST

NO/COMP NO



Official Business

COMMITTEE:

DATE:

# SIGN-IN

Subject of meeting:

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Woody Morrison Jr.	1736 Davis - Juneau	780-4963	self	yes ✓
Martz Jensen	2630 Embury Lane Juneau	789-7853	Self	yes ✓
Robert Rausch	P.O. Box 2602 Juneau	789-3764	Self	yes ✓
Susan Arthur	Box 2662 Juneau	789-3764	Self	yes ✓
Bob Armentrout	Juneau	9-3450	AK. Outdoor Council	yes ✓
Dennis Kelso	P.O. Box 3-2000 Juneau AK 99802	465-4100	Department of Fish and Game	yes ✓
Larri Spangler	Pouch K, Juneau	465-3600	Department of Law	yes ✓
Rep Goll	Pouch V Juneau 99811	465-4975	Self	yes ✓
Bob Blake	314 Seward Juneau	586-7870	United Fishermen of Alaska	yes ✓
Carl McQueen	P.O. Box 3-2000 Juneau, AK 99802	465-4147	Dept of Fish & Game	-



# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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

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

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

May 10, 1985

The Honorable Mitchell Abood  
Chairman  
Senate State Affairs Committee  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: CS HB 288(Jud) am -- sub-  
sistence and personal use  
Our file nos. 366-375-85  
and 377-176-85

Dear Senator Abood:

There appears to be some confusion about my testimony and the testimony of Dennis Kelso, Deputy Commissioner, Department of Fish and Game, on CS HB 288(Jud) am, relating to subsistence and personal use, to the Senate State Affairs Committee. The Department of Law and the Department of Fish and Game support CS HB 288 (Jud) am, because the bill would provide the statutory authority that will solve both the ANILCA and management problems which resulted from Madison v. Alaska Department of Fish and Game, \_\_\_ P.2d \_\_\_, Op. No. 2911, (Alaska Feb. 22, 1985). In addition, the definition of "subsistence uses" contained in the bill would be defensible against an equal protection challenge.

If you have any questions about this, please contact me at your convenience.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

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

Honorable Mitchell Abood  
366-375-85 and  
377-176-85

May 10, 1985  
Page 2

LIS:dln

cc: Commissioner Collinsworth  
Deputy Commissioner Kelso  
Honorable Norman C. Gorsuch

JUNEAU TLINGIT & HAIDA COMMUNITY COUNCIL  
3235 HOSPITAL DRIVE  
JUNEAU, ALASKA 99801

May 9, 1985

Re: SB 231

Senator Mitch Abood  
Pouch V  
Juneau, Alaska 99811

Dear Senator Abood:

My name is Cyril R. Manamaker. I am the President of the Juneau Tlingit & Haida Community Council. I represent the approximately 5000 urban members of the Alaska Native Community who live in Juneau.

We are urging you to support and help to Pass SB 231. We urge your support because SB 231 responsibly satisfies the need for a subsistence law for Alaska.

This bill will provide the Boards of Fish and Game the right to make decisions and allocate resources. It will create a personal use fishery for non-rural residents. It defines rural communities so that it allows for the responsible management of the resources and it will put Alaska back in compliance with ANILCA.

In light of these important attributes we think SB 231 should be passed.

Sincerely,

*Cyril R. Manamaker*

Cyril R. Manamaker  
President, JTHCC

I would like to testify in opposition to Senate Bill 231. It is quite distressing to see such a flawed piece of legislation even considered for passage. Not only does this bill create an unreasonable and arbitrary classification of its residents but it favors special interest groups that derive a cash livelihood from a public resource. This public resource is reserved by the State constitution for use by all of the people for common benefit. When those needs have been met other uses in support of commerce and industry are provided for.

The haste with which this bill is being hustled makes me wonder if any of those persons favoring it have taken the time to analyze what they are doing. Having no other definition for the word "rural", and it seems that this one word is their panacea, than Webster's New World dictionary: I see that this bill will exclude all persons living in towns or cities, all persons not engaged in agricultural type pursuits, in essence all persons not living in the country. This encompasses all people in Haines, Hoonah, Juneau, Sitka, Angoon, Kake, Petersburg, Ketchikan, Wrangell, etc. Who does it leave? Those few individuals not living in any of the towns, villages, or cities.

As our population continues to grow, and our industries expand our fish and game resources must not only receive the highest priority for habitat protection but the resultant reduced per capita allocation of fish and game resources must be equitable distributed to all residents of the State. Special interest users must take a second position to the peoples basic priority ownership of the resources.

*Greg L. Young*  
GREG L. Young

May 8, 1985  
Robert A. Rausch  
P.O. Box 2662  
Juneau, Alaska 99803

The issue before us, the 1978 subsistence statute, and the Governor's current effort to bandaid one of its many legal shortcomings, is one that I have testified on or spoken on almost annually. I expect that many more individuals will agonize over this ill-conceived and fatally flawed concept before it passes into history as one of the most wrong-minded attempts to categorize Alaskans in our recorded history.

Basically I have only one message--it is the same message that I gave to the legislature in 1976 and 1978 and subsequently to then candidate, Bill Sheffield in the summer of 1982. That message is THE ISSUE WILL NOT GO AWAY UNTIL ALL CITIZENS of Alaska are treated equally and fairly in the allocation of fish and game resources. The existing statute fails to do this and the "bandaid" proposal constitutes an even more flagrant violation of fairness.

*at least by the Governor's proposal*  
The 1978 subsistence statute will never function satisfactorily because it is bad social and conservation law. It is bad because it is illogical. The law takes one of the many uses of fish and game resources, uses that presumably fall within the constitutionally mandated "beneficial uses," and accords it the highest priority of use for all time, in every case and in every situation, without regard for other beneficial uses so long as the resource isn't eliminated. Of course, other uses can continue so long as subsistence use is fully satisfied. But in the face of rapidly expanding human populations especially in some of our resource poor regions, the end of other beneficial uses is merely a matter of time.

I submit that the legislature should never have created an absolute use priority for any fish or game population, let alone for all of them.

Without a mandated priority of use the Board(s) of Fisheries and Game managed from 1959-1978 with far fewer altercations over resource use, fewer lawsuits and better rapport among users. Certainly the system was not without problems. But no system responsible for the welfare of Alaska's diverse fish and game populations and their uses will satisfy everyone. However, the current system is on the verge of alienating everyone.

A part of the problem stems from the rather abstruse terminology associated with the statute and its proposed successor. "Subsistence use" has never been satisfactorily defined in spite of the Boards' best efforts. Certainly they have come forth with definitions or characterizations of subsistence but all such efforts contain elements that are, in <sup>all</sup> probability, unconstitutional in that they almost invariably rely upon one's area (geography) of residence, past practices (length of residency) or other nebulous terminology. We may not like it but we can no longer draw lines on maps or calendars to determine your eligibility to be a fully participating citizen. Perhaps we need a constitutional amendment authorizing limited entry subsistence permits fully patterned after the fisheries limited entry system; certainly such an approach would stimulate our flagging economy. Finding a definition for the term "rural" is at least as problematic as defining "subsistence" and perhaps fraught with more legal pitfalls.

I wonder if it isn't time, once again, to step back and ponder what it is that we are trying to do? Is this merely an attempt to benefit "rural" people? Does it have anything to do with ethnicity? Is welfare (need) a part of the problem? Are some Alaskan citizens more equal than others? It seems to me that the purpose of the activity has become fuzzy. Are we really trying to perpetuate a life style and if so, is it necessary to gradually eliminate all other uses?

If it should be a life style that is at issue I suggest it has already largely disappeared. "Rural" hunting and fishing today is not a life sustaining activity. Yes, it is important, highly desirable, worthy of some protection, but not indefinitely sustainable given the high technology now employed in the taking of fish and wildlife---do we want to foster as the highest priority of use the taking of walrus from aircraft and from boats with the aid of radios when only the ivory is salvaged--do we wish to accord first priority to the pursuit of flightless waterfowl, caribou, and other game with the most modern all-terrain vehicles---can we perpetuate desirable cultural attributes while fostering multibillion dollar expenditures in the areas that clamor most for subsistence? Has the legislature taken the time and energy necessary to articulate a position that conveys the leadership required to assure the holders of various subsistence viewpoints that all have been considered fully and fairly?

1. The issue is too complex to resolve in the dying days of this session--please don't pass a "rural" bill and thereby force the citizens to once again sue to correct your mistake. Request the public involvement that the administration promised but has denied us.
2. Following extensive hearings throughout the state consider doing what you do best--pass a bill that treats all Alaskans equally and fairly and allow the Board(s) to implement the law. Laws that supplant the Boards' and Department's authority to allocate and manage fish and game rarely are successful because of the rapid fluctuation in animal population numbers and distribution.
3. Problems attendant to defining and administering subsistence will never go away until we build a coalition of supporters whose essential qualifications reek of fairness and equity. Perhaps the very term, subsistence, should be abandoned for a forward looking system that considers all beneficial uses of wild resources whenever allocations are made among the uses. Assigning by law the highest priority of use to subsistence was an error that staggers the imagination. Clearly there are higher uses over time and in certain places. Examples are legion and they change with time and circumstance. In my view a statute directing the Boards of Fisheries and Game to consider all designated beneficial uses whenever allocating fish and game resources comes much closer to the desired goals than does the existing or proposed legislation (the legislature, if it so desired, could spell out designated beneficial uses including subsistence uses, commercial uses, recreational uses, etc.)

Such an approach could also alleviate any potential clash with the federal government as subsistence would be considered with every regulatory action. Of course, it will be necessary to eventually alter federal law in order to lessen the likelihood of expensive suits against ANILCA by citizens. Suits that many legal scholars believe have merit.

TO Chairman and Committee,

May 9, 1980

I have been an Alaskan resident for the last 6 years and a commercial fisherman for the last 10 years.

I myself along with the rest of us here in Cordova support House Bill 288 as it now reads.

I feel the management plan by Fish and Game and the Alaskan Fisheries Board over the last 30 years has worked for the Alaskan Fisheries.

Limited entry enacted in the early 70's has now returned an abundance of fish to the streams, creeks, and Rivers of Alaska.

The historical subsistence catch on the upper upper rivers has worked out fairly in the past 50 years. If there is to be an increased catch of subsistence fish then there should be an income level to define a subsistence user.

I have no problem with a resident catching subsistence needs as long as that person actually needs the fish or game to survive. I would really question the need of a urban resident that makes over \$35,000 a year and drives a Winnebago to catch fish and game to survive.

Anyone in the state of Alaska that is a resident can get a low interest loan and become a Commercial Fisherman.

Don't give a priority basis to a user group that could be made up of the Total population of Alaska. (over)

All it takes is 30 days to become a  
resident and once that is known a  
lot more people will move to Alaska  
to take advantage of the favorable  
natural resources that ~~exists~~ <sup>(still)</sup> there.

Thank you

James F. Ryland

Box 1241

Cordova, AK. 99574

424-7115

4/25/85

BY

Halford

IN THE SENATE

A bill

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

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of stocks and populations;

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents in rural areas for personal and family consumption by reasonable economic means is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

\*Section 2. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Whenever it is necessary to restrict the taking of a fish population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Fisheries shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62).

\*Sec. 3. AS 16. 05. 251 is amended by adding new subsections to read:

(c) If the harvestable surplus of a fish population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence 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.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

(e) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or

proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 4. AS 16.05.255 is repealed and reenacted to read:

(a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart game reserve areas, refuges and sanctuaries in the waters or on the lands of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas, bag limits, harvest levels, sex, age, and size limitation on the taking of game;

(5) classifying game as game birds, song birds, big game animals, fur bearing animals, predators or other categories;

(6) methods, means, and harvest levels necessary to control predation and competition among game in the state;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of game;

(8) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;

(9) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of

permits and registrations between registration areas and game management units or subunits is allowed.

(b) Wherever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence 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.

Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(e) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 4. AS 16.05.940 (23) is amended to read:

(23) "subsistence uses" means the customary and traditional taking and use by Alaska residents in rural areas of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

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

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, 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."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "resident net fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).