

SB484

SB 483

~~SENATE CS FOR CS FOR HOUSE BILL NO. 470 (FINANCE) am S~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE ^S~~HOUSE~~ FINANCE COMMITTEE

Amended: 5/12/92

Offered: 5/10/92

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act making supplemental and special appropriations for the expenses of state
 2 government; making, amending, and repealing appropriations; and providing for an effective
 3 date."

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

5 * Section 1. Section 40, ch. 73, SLA 1991, page 10, lines 13 - 14 is amended to read:

	APPROPRIATION	GENERAL	OTHER
	ALLOCATIONS	ITEMS	FUND FUNDS
8 Commissions/Special Offices		<u>1,387,900</u>	<u>1,313,800</u> 74,100
9		[1,356,400]	[1,282,300]
10 Human Rights Commission	<u>1,101,200</u>		
11 (18 Positions)	[1,069,700]		

12 * Sec. 2. (a) Section 40, ch. 73, SLA 1991, page 10, line 24 is amended to read:

	APPROPRIATION	GENERAL	OTHER
	ITEMS	FUND	FUNDS

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 6/15/92

FURTHER: Finance

DATE TURNED INTO OFFICE: 6/18/92

Senate Committee of the Whole considered SB 484

Relating to the taking of fish and game; efd.

and recommends:

replace with _____ CS _____

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

- same title
- new title
- technical title change (HB only)

to pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes: zero fiscal notes _____

fiscal notes _____

DO/PASS:

[Handwritten signatures]

Chair: Signature and Recommendation

OTHER RECOMMENDATIONS:

[Handwritten notes and signatures]

3) Al Adams - DO NOT F...

SENATE FINANCE COMMITTEE REPORT

DATE: 6/18/92

FURTHER:

DATE TURNED INTO OFFICE: 6/18/92

The Finance Committee considered SENATE BILL NO. 484

"An Act relating to the taking of fish and game; and providing for an effective date."

rept be as plus

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous _____ CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

DO PASS:

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

FIA 285.4

FIA 413.0

fiscal notes *OPS - 0*

LAW 116.5

Cost 20.0

OTHER RECOMMENDATIONS:

Do Not Pass

Alcedas - DO NOT PASS

Quinn - DO NOT PASS

Do Not Pass

1. *Pat Kane*
Co-Chair: Signature/Recommendation

2. *J. Kerth*
Co-Chair: Signature/Recommendation

Pres. Gov's all previous Gov's

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO

Revision Date: Department Affected: Fish and Game

Title: An Act relating to the taking BRU: Subsistence

of fish and game for subsistence Component: Subsistence

Sponsor: Rules Committee

Requestor: COMPONENT SERIAL NO.

4	8	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	229.9	222.4	218.4	193.8	200.3	206.8
TRAVEL	8.5	7.5	6.5	5.5	5.5	5.5
CONTRACTUAL	27.5	25.5	23.5	22.0	22.0	22.0
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	17.0	3.0	3.0	2.5	2.5	2.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	285.4	260.9	253.9	226.3	232.8	239.3

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	285.4	260.9	253.9	226.3	232.8	239.3
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	285.4	260.9	253.9	226.3	232.8	239.3

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME	3.0	3.0	2.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year impact: No impact in FY 92

ANALYSIS: (Attach a separate page if necessary.) See attached analysis.

Prepared By: Robert Bosworth, Director Phone: 465-4147

Division: Division of Subsistence Date: 2/20/92

Approved by Commissioner:

Agency: Department of Fish and Game Date: 2/20/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

FISCAL NOTE ANALYSIS: Division of Subsistence

Development of a Subsistence Permitting Program:

OVERVIEW:

The Governor's subsistence bill creates a new system by which subsistence qualification criteria are applied to individual applicants in the urbanized areas of Alaska, and in some smaller communities where the economy is not based on subsistence. This individual application system is expected to draw in excess of 10,000 applicants in the first year or two, and a lesser number of applicants thereafter. Implementation of the proposed subsistence permitting program is anticipated to have a cost of \$285,378 for the first year, FY 93. By FY 98, the cost is expected to have dropped to \$239,342 as the permitting system assumes a normal regulatory presence and acceptance. A subsistence application program staff, with initial support from other Division of Subsistence staff, will have responsibility for the preparation, distribution, scoring, and issuing of subsistence permits. In addition, the staff will review applications for completeness and accuracy, evaluate responses, and hold findings of fact in disagreements involving issuance of permits.

PROCESS:

The unit charged with issuing subsistence permits will consist of a core of four individuals: a hearing officer, an analyst/programmer, a data processing clerk, and a clerk typist. Duties of the staff relate to two primary functions. (1) the mechanics of issuing permits and (2) the rectification of disagreements. The issuance of permits requires the design and printing of applications, a distribution system to provide the public with ready access to the applications, a means to rapidly evaluate applications, and issue permits to qualified applicants. The rectification of disagreements over the issuance of permits requires a systematic process in which applicants have adequate recourse to resolving disputes prior to seeking judicial relief.

To provide the applicant with the greatest opportunity of receiving the benefits to which they are entitled, the permitting system provides a series of safe guards. The oversight process begins with receipt of the application and its initial review. Applications lacking vital information or incomplete responses will be returned with letters of explanation. Applicants who do not receive a permit as confirmation of meeting the subsistence criteria will receive notification of their rejection and the opportunity to provide additional support to their claim of subsistence priority. If the unsuccessful applicant provides additional support, the application will be re-evaluated and the applicant informed of the results. Should the applicant still be rejected, they may seek an appearance before the hearing officer in order to determine the facts of the case. If the hearing officer still decides against the applicant, the applicant can appeal to the Commissioner of Fish and Game. In the event the Commissioner affirms the original denial, the decision would be final for the Department and the applicant could appeal to the state Superior Court.

CORE STAFFING:

Hearing Officer: The hearing officer (HO) is a range 21 employee with responsibilities for determining findings of facts. This position will design and implement the necessary procedures to see that the intent of the legislation is met and that applicants who are denied a subsistence permit are assured of due process. The position receives clerical support from the clerk typist position and investigative support from the analyst programmer position.

Analyst Programmer III: The analyst programmer (A/P III) is a range 17 with responsibilities for the design of the application, creation of the necessary data management procedures and programs, and the

collection of administrative information relevant to the applicant. Using hunting license and permit information within the Department of Fish and Game, the programmer will provide the hearing officer with data relevant to applications in dispute. The position will also undertake a random review of successful awardee to ensure that the system is meeting its objective of providing a subsistence priority to qualified applicants. The analyst/programmer will have co-responsibility with the hearing officer for preparation of documentation on applicant cases. The position will provide immediate supervision of the data processing clerk and those functions of clerk exclusive of the hearing process.

Data Processing Clerk II: The data processing clerk II (DPC II) is a range 9 with responsibilities for the accurate review and entry of information provided by the applicant. Following data entry, the position will archive all materials in accordance with administrative procedures. As required, the data processing clerk will provide support for the distribution of applications and permits.

Clerk III: The clerk III is a range 9 with responsibilities for maintaining administrative functions of the unit, responding to public inquiries, and facilitating the activities of the hearing officer through the recording and preparation of transcripts of all hearings.

SUPPORT STAFF:

During the initial years of the program, the unit will draw upon some staff resources of the Division of Subsistence. The Division's current research director and AP IV will develop and analyze options for the subsistence application and scoring system for presentation to the Boards of Fisheries and Game, who are authorized in the bill to finalize the application and scoring system. These and other support functions will be subsumed within the Division's current budget. Subsistence Resource Specialist (SRS) IIs and clerical staff will provide regional support in facilitating the public's awareness of the process and responding to inquiries of local residents. In the first year, eight months of SRS support is provided. This drops to four months in the second year, and a single month in the third year. After the third year, the permitting process will involve only the core, four-member staff.

BUDGET--Division of Subsistence:

FY 93

The initial budget provides for three full time employees: the analyst/programmer III, the data processing clerk II, and the clerk III. This group will prepare and distribute the application forms, respond to public inquiries, and score the applications received. The hearing officer will be brought onto staff immediately prior to the receipt of applications. With the subsistence permitting unit based in Anchorage, additional regional support to respond to public inquiries will be provided by subsistence resource specialists (SRS) and clerical staff (C III) in other regions of the state. Funding in the amount of four months each is provided for each of the two employee classes. Total personnel costs are projected at \$229,878.

A travel budget of \$8,500 provides opportunities for program outreach in affected portions of the state, and the appearance of the hearing officer for hearings as required.

Contractual services for the printing and distribution of applications, permits, and other correspondence, and communications totals \$27,500. Total contractual expenses are \$27,500.

Providing for office expendibles will entail \$2,500 per year. The creation of a new organization requires the acquisition of the necessary equipment and furniture to allow the staff to perform their required functions. Seventeen thousand dollars (\$17,000) is designated to meet this one-time need for equipment.

The total budget for the first year of operation is \$300,378.

FY 94:

Staff expenses during the second year decline to \$222,416 as the additional SRS and clerical support is reduced. An additional \$3,000 reduction occurs for lines 200 and 300 (travel and services) as the number of applicants declines. Equipment expenses decline to \$3,000. The total cost of implementing the program in the second year is \$260,916, a reduction of over 8% from the previous year.

FY 95:

Further personnel savings accrue during the third year as outside support is reduced to a single month of SRS time. Travel and services decline by an additional \$3,000. Supplies and equipment expenses are unchanged from the previous year. The total cost of program implementation in the third year is \$253,921, a reduction of 2.5% from the previous year.

FY 96:

The third year is projected to show a decline of nearly \$25,000 in personnel costs from the previous year as outside assistance is eliminated and the hearing officer position reduced to half-time as the need for additional rectification declines. Supplies and services decline by another \$2,500. The total program cost for the year is \$226,315, a 10% reduction from the prior year.

FY 97 and FY 98:

No additional personnel savings are projected as the program is managed by three and a half full time employees. All other expenditures remain stable. In FY 97, the budget is \$232,828, and in FY 98 it is \$239,342. The modest increment is due to personnel longevity charges.

DIVISION OF BOARDS

ANALYSIS

The Board of Fisheries and the Board of Game meeting individually and together as the Joint Board would require approximately seventy days of meetings over a three year period to implement the new subsistence bill. In future years, the new bill would add approximately ten days to the overall board schedule. This estimate is based on board consideration of rural designations and customary and traditional use during the 1980s. It is important to note that since 1989 both boards have deferred most proposals dealing with subsistence in anticipation of legislation that would allow for a defensible approach to proposals. Over this same time period there have been reductions in the Division of Boards budget that have reduced the capability of the boards to meet. With the advent of new subsistence legislation, the boards will have to deal with subsistence issues as well as maintaining a full workload in other regulatory areas.

The items in the proposed legislation requiring the greatest effort on the part of the boards, in descending order, are:

(1) "The boards shall by regulation, jointly identify and delineate areas of the state, utilizing game management unit, portion of game management unit, or community, as follows:

(1) areas where the human population of each community is less than 2,500 and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area, and that are not part of an urban area.

(2) communities where the human population is 2,500 to 7,000 and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community, and that are not part of an urban area." 20 DAYS

(2) "Upon receipt of recommendations from the commissioner, the Boards of Fish and Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally used for subsistence in the areas and communities of the state identified by the boards under (e)(1) and (e)(2) of this section." 40 DAYS

(3) "Upon receipt of a recommendation from the commissioner, the boards shall, by regulation, adopt procedures by which the commissioner shall determine the qualification of subsistence users to subsistence hunt and fish in a specific subsistence use area." 10 DAYS

Other items affecting cost estimates:

(1) With the loss of federal funding, Boards Division has eliminated two regional coordinators in the FY93 budget. The cost estimates include reactivation of these two coordinators. The regional coordinators are essential to provide for increased advisory committee meetings. Implementation will add at least one more meeting for each advisory committee. This increase, plus increased board meeting days, are beyond staff's capability to provide adequate support.

(2) If the bill were to bring the state into compliance with ANILCA, we could anticipate that a portion and perhaps all of the estimated costs could come from the federal government.

COSTS - FY93

<u>Personal Services:</u>	115.0
overtime for existing staff	
two regional coordinators	
<u>Travel:</u>	192.0
travel and per diem for board members,	
Boards staff, and advisory committee	
meetings	
<u>Contractual:</u>	100.0
meeting space, printing and postage for	
proposal books, telephone and legal	
notice of meetings	
<u>Supplies:</u>	5.0
office supplies	
TOTAL	<u>412.0</u>

COSTS - FY94:

Personal Services	120.0
Travel	199.5
Contractual	104.0
Supplies	5.0
TOTAL	<u>428.5</u>

COSTS - FY95:

Personal Services	125.0
Travel	172.0
Contractual	100.0
Supplies	5.0

TOTAL 402.0

COSTS - FUTURE YEARS

Personal Services	130.0
Travel	97.0
Contractual	57.0
Supplies	2.0

TOTAL 286.0

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Department Affected: Public Safety
 Title: "An Act relating to the taking of fish and game for subsistence" BRU: Fish & Wildlife Protection
 Component: Enforcement & ISU
 Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact is anticipated.

Prepared By: Captain Conrad G. Seibel Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/20/92
 Approved by Commissioner: *Richard L. Burton* Richard L. Burton
 Agency: Department of Public Safety Date: 2/20/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to the taking of fish and game for subsistence..." BRU: Legal Services
 Sponsor: Request of the Governor Component: Operations
 Requestor: Governor's Office COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	85.0	85.0	85.0	45.0	45.0	
TRAVEL	5.0	5.0	5.0	3.0	3.0	
CONTRACTUAL	17.6	17.6	17.6	12.6	12.6	
SUPPLIES	2.4	2.4	2.4	2.4	2.4	
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	116.5	110.0	110.0	63.0	63.0	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	116.5	110.0	110.0	63.0	63.0	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	1.0	1.0	1.0	-0-	-0-	-0-
PART-TIME				1.0	1.0	-0-
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 20, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 20, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill provides a broad statutory framework that gives subsistence use of fish and game a preference over other consumptive uses of the state's fish and game resources. The bill establishes subsistence dependence standards, defines several terms that have been subject to litigation, and provides a rational scheme for determining those Alaskans whose reliance upon fish and game for subsistence purposes is actual and substantial. The bill also directs the Department of Fish and Game and the Boards of Fish and Game to take affirmative action in situations where a stock or population is not sufficient to provide for both subsistence and nonsubsistence uses, and to formulate plans for recovery of the resource sufficient to provide for all users, if possible.

The bill uses individual eligibility requirements to determine qualification for the subsistence preference. While the bill uses community characteristics to determine the paperwork requirements for qualification, an individual's demonstrated actual and substantial reliance on fish and game in the last twelve months is what determines ultimate qualification as a preferred subsistence user. Urban residents who meet the requirements will also be preferred users. This is an abrupt departure from the state's previous (rural versus urban) attempts to provide a subsistence preference. Furthermore, the bill represents a fair and manageable way of complying with the spirit of ANILCA, without violating special provisions in Alaska's constitution requiring equal access to fish and game and management according to the sustained yield principle.

Because of the controversies that have surrounded and continue to surround subsistence, this bill will be vigorously challenged in court if it is enacted. Although the bill will eliminate many uncertainties that currently involve subsistence, the bill will have a significant, ongoing fiscal impact on the Department of Law over the first four of five years of implementation. That is because the department must defend the bill against court challenges, assist the Boards of Fisheries and Game in drafting, and then reviewing, a substantial body of evolving regulations, and also advise and defend the Department of Fish and Game in disputes resulting from adverse preference qualification determinations. Consequently, the Department of Law will require the additional services of an attorney.

Position Title Attorney IV		No. of Positions 1	Range / Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7 through 15
TYPE OF EXPENDITURE		Amount		
Salary		64,056		
Benefits		20,969		
Premium Pay				
Other				
Total Personal Services		85,025		
Travel		5,000		
Contractual		17,600		
Commodities		2,400		
Equipment		6,500		
Other				
Total Cost		116,525		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
C.F. Match 1003				
General Fund 1004		116,525		
I-A Receipts 1007				
CII* Receipts 1061				
Other				
Justification Implementation of the subsistence preference law will require the full-time services of an attorney to handle: (1) court challenges of the law; (2) drafting and reviewing of a substantial body of regulations; and (3) representation of ADF&G and the Fish and Game Boards in disputes resulting from adverse preference qualification determinations. All of this work will require journey-level services of an Attorney IV.				

**Request For
New Position**

AGENCY Department of Law

BRU Legal Services

COMPONENT Operations

FY 93

Page 1 of 2

Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Bill No. SB 484

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the taking of fish and game BRU: Trial Courts
 Sponsor: Governor Components: _____
 Requestor: _____ COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 96	FY 96	FY 97	FY 98
PERSONAL SERVICES	20.0	15.0	10.0	5.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	20.0	15.0	10.0	5.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	20.0	15.0	10.0	5.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	20.0	15.0	10.0	5.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)
 See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 06/16/92

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 06/16/92
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA COURT SYSTEM

SB 484

Analysis

ANALYSIS

This legislation provides a statutory priority for subsistence use of fish and game, relative to other consumptive uses of the state's fish and game resources.

Because of the continuing controversies surrounding this issue, it can be anticipated that the bill will face a vigorous legal challenge if it is enacted. It can also be anticipated that regulations adopted to implement this legislation will face legal challenge.

As drafted, the bill limits participation in a subsistence harvest to persons who meet certain qualifications. The Department of Law has indicated that actions by the state to challenge the presumptive qualifications of specific individuals would be by declaratory judgement brought in superior court.

The fiscal note reflects pro tem judge costs that will be incurred in handling these matters expeditiously.

SENATE BILL NO. 484

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 6/15/92
Referred: Senate Committee on the Whole

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking of fish and game; and providing for an effective date."

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

3 * Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

4 (1) there are Alaskans, both Native and non-Native, who have a traditional, social, or
5 cultural relationship to and dependence upon the wild renewable resources produced by Alaska's land
6 and water; the harvest and use of fish and game for personal and group consumption is an integral part
7 of those relationships;

8 (2) although customs, traditions, and beliefs vary, these Alaskans share ideals of respect
9 for nature, the importance of using resources wisely, and the value and dignity of a way of life in which
10 they use Alaska's fish and game for a substantial portion of their sustenance; this way of life is
11 recognized as "subsistence";

12 (3) customary and traditional uses of Alaska's fish and game originated with Alaska
13 Natives, and have been adopted and supplemented by many non-Native Alaskans as well; these uses,
14 among others, are culturally, socially, spiritually, and nutritionally important and provide a sense of

1 identity for many subsistence users;

2 (4) while Alaska's fish and game are generally still plentiful, these resources are not
3 unlimited and cannot provide for every desired use, now or in the future; competition for and the level
4 of effort on these resources have required the legislature and the Board of Fisheries and Board of Game
5 to establish a preference for subsistence among the various beneficial uses of fish and game in the state;

6 (5) in most areas of the state, a preference for subsistence can be provided without an
7 overly burdensome intrusion upon other consumptive uses of fish and game;

8 (6) among persons who take fish and game, a large majority of those living in areas
9 described in AS 16.05.268(f)(1), a majority of those living in areas described in AS 16.05.268(f)(2), and
10 a small minority of those living in areas described in AS 16.05.268(f)(3) depend upon the subsistence
11 taking of fish and game;

12 (7) in determining dependence upon the subsistence taking of fish and game, the
13 application of different levels of presumptions based on categories is logical, does not deny any person
14 the opportunity to demonstrate dependence on subsistence use, focuses on persons who depend on
15 subsistence use, is administratively efficient, and is compatible with existing management measures
16 without needlessly interfering with other uses of fish and game resources; and

17 (8) the application of presumptions, based on areas of domicile, to facilitate
18 determinations of a person's qualifications as a subsistence user will maximize the state's management
19 efforts.

20 (b) It is the purpose of this Act

21 (1) to develop and maintain healthy fish stocks and game populations through
22 management based on the sustained yield principle;

23 (2) to provide for a preference for subsistence use over other consumptive uses of fish
24 and game resources;

25 (3) to provide for the participation in the subsistence taking of fish and game by those
26 Alaskans who actually and substantially depend upon that subsistence taking;

27 (4) to maximize the state's management efforts by applying presumptions based on
28 subsistence characteristics of areas to reduce the need for case-by-case individual determinations of
29 dependence on subsistence in those areas of the state that have a high proportion of subsistence users
30 who meet the qualifications set out in this Act.

31 (c) It is the intent of the legislature

1 (1) that subsistence uses of Alaska's fish and game resources are given the highest
2 preference, in order to accommodate and perpetuate those uses;

3 (2) to clarify the statutory protection for actual, substantial dependence on fish and game
4 for subsistence; and

5 (3) that this Act not result in significant reallocations of fish and game in Alaska.

6 * Sec. 2. AS 16.05 amended by adding a new section to read:

7 Sec. 16.05.268. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME. (a)

8 The Board of Fisheries and the Board of Game shall identify the fish stocks and game
9 populations, or portions of stocks or populations, that are customarily and traditionally taken for
10 subsistence in the areas of the state identified by the boards under (f)(1) and (2) of this section.

11 The commissioner shall provide recommendations to the boards concerning the stock and
12 population identifications. The boards shall make identifications required under this subsection
13 after receipt of the commissioner's recommendations.

14 (b) The appropriate board shall determine whether a portion of a stock or population
15 identified under (a) of this section can be harvested consistent with sustained yield, and

16 (1) if the harvestable portion of the stock or population is sufficient to provide
17 for all consumptive uses, the appropriate board

18 (A) shall adopt regulations that provide a reasonable opportunity to
19 participate in the subsistence uses of those stocks or populations;

20 (B) shall adopt regulations that provide for other consumptive uses of
21 those stocks or populations, subject to preferences among beneficial uses; and

22 (C) may adopt regulations to differentiate among consumptive uses;

23 (2) if the harvestable portion of the stock or population is sufficient to provide
24 for subsistence uses and some, but not all, other consumptive uses, the appropriate board

25 (A) shall adopt regulations that provide a reasonable opportunity to
26 participate in the subsistence uses of those stocks or populations;

27 (B) may adopt regulations that provide for other consumptive use of those
28 stocks or populations; and

29 (C) shall adopt regulations to differentiate among consumptive uses and
30 provide for a preference for the subsistence uses, if regulations are adopted under (B) of
31 this paragraph;

1 (3) if the harvestable portion of the stock or population is sufficient to provide
2 for subsistence uses, but no other consumptive uses, the appropriate board shall adopt regulations
3 that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence
4 uses; and

5 (4) if the harvestable portion of the stock or population is not sufficient to provide
6 a reasonable opportunity for all subsistence uses, the appropriate board shall

7 (A) adopt regulations eliminating all consumptive uses, other than
8 subsistence uses;

9 (B) distinguish among subsistence users, through limitations based on

10 (i) the customary and direct dependence on the fish stock or game
11 population by the subsistence user for human consumption as a mainstay of life;

12 (ii) the proximity of the domicile of the subsistence user to the
13 stock or population; and

14 (iii) the ability of the subsistence user to obtain food if subsistence
15 use is restricted or eliminated.

16 (c) If the harvestable portion of a stock or population is insufficient to provide both for
17 a reasonable opportunity for subsistence and for all other consumptive uses, the department shall
18 prepare a plan to facilitate the recovery of that stock or population to allow for increased
19 consumptive uses as soon as possible. The department shall provide recommendations to the
20 appropriate board for necessary regulatory changes. If subsistence use of a stock or population
21 has been eliminated to achieve sustained yield, the appropriate board shall adopt regulations to
22 allow subsistence uses when that board determines that the stock or population has recovered
23 sufficiently to allow the taking for any consumptive use, consistent with sustained yield.

24 (d) The subsistence use area for a stock or population is the subunit of a game
25 management unit in which the fish or game may be taken under subsistence regulations adopted
26 under (b) of this section, together with contiguous game management subunits, unless the
27 appropriate board identifies and delineates a subsistence use area with different boundaries for
28 a particular fish stock or game population under (e) of this section.

29 (e) Each board shall consider subsistence use area boundaries described in (d) of this
30 section. Each board shall delineate a different boundary for a particular stock or population if
31 the appropriate board determines that the boundary of a subsistence use area is inconsistent with

1 established patterns of taking and use of that fish stock or game population for subsistence, or
2 is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the
3 customary and traditional taking and use of fish and game for subsistence.

4 (f) The boards shall, by regulation, for the state, jointly identify and delineate areas, using
5 game management units, portions of game management units, or communities, into the following
6 categories:

7 (1) category 1, an area where the human population of each community in the
8 area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is
9 a principal characteristic of the economy, culture, and way of life of the area;

10 (2) category 2, an area that consists of a single community that has a human
11 population of 2,500 to 6,999, is not part of an urban area, and where dependence upon
12 subsistence is a principal characteristic of the economy, culture, and way of life of the
13 community;

14 (3) category 3, an area that is

15 (A) an urban area, or a single community, where the human population
16 is 7,000 or greater; or

17 (B) an area or community where dependence upon subsistence is not a
18 principal characteristic of the economy, culture, and way of life of the area or community.

19 (g) In determining whether dependence upon subsistence is a principal characteristic of
20 the economy, culture, and way of life of an area under (f) of this section, the boards shall jointly
21 consider the relative importance of subsistence compared to the totality of the following socio-
22 economic characteristics of the area:

23 (1) the social and economic structure;

24 (2) the stability of the economy;

25 (3) the extent and the kinds of employment for wages, including full-time, part-
26 time, temporary, and seasonal employment;

27 (4) the amount and distribution of cash income among those domiciled in the
28 area;

29 (5) the cost and availability of goods and services to those domiciled in the area;

30 (6) the variety of fish and wildlife species used by those domiciled in the area;

31 (7) the seasonal cycle of economic activity;

1 (8) the percentage of those domiciled in the area participating in hunting and
2 fishing activities or using wild fish and game;

3 (9) the harvest levels of fish and game by those domiciled in the area;

4 (10) the cultural, social, and economic values associated with the taking and use
5 of fish and game;

6 (11) the geographic locations where those domiciled in the area hunt and fish;

7 (12) the extent of sharing and exchange of fish and game by those domiciled in
8 the area;

9 (13) additional similar factors the boards establish in regulation to be relevant to
10 their determinations under this subsection.

11 (h) Participation in a subsistence harvest in a subsistence use area is limited to persons
12 who meet the requirements for qualification under (i) and (j) of this section for that subsistence
13 use area, with the following presumptions and requirements:

14 (1) a person who is domiciled in the subsistence use area in an area identified
15 under (f)(1) of this section, and who intends to take fish or game for subsistence purposes is
16 presumed to meet the requirements for qualification under (i) and (j) of this section for that
17 subsistence use area; this presumption may be rebutted only by the state by clear and convincing
18 evidence, and the boards may not require a permit or filing of a statement affirming that the
19 person meets the requirements for qualification under (i) and (j) of this section;

20 (2) a person who is domiciled in the subsistence use area in an area identified
21 under (f)(2) of this section, and who intends to take fish or game for subsistence purposes is
22 rebuttably presumed to meet the requirements for qualification under (i) and (j) of this section
23 for that subsistence use area upon that person's signing a statement, on a form provided by the
24 department, affirming that the person meets those requirements; the state may rebut this
25 presumption by a preponderance of the evidence that the person does not meet those qualification
26 requirements;

27 (3) a person domiciled in an area identified under (f)(3) of this section or who
28 is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery
29 or hunt in that subsistence use area only upon certification by the commissioner that the person
30 meets the requirements for qualification under (i) and (j) of this section.

31 (i) The boards shall jointly, by regulation, adopt procedures by which the commissioner

1 shall determine the qualification of a person to subsistence fish or hunt in a specific subsistence
2 use area. The commissioner shall provide recommendations to the boards on qualification
3 procedures. The boards shall jointly adopt the regulations required by this subsection after the
4 receipt of the commissioner's recommendations. The boards shall adopt, by regulation, a
5 weighted point system to determine a person's eligibility. The boards shall structure the point
6 system so that the minimum points required for qualification exceed the total points received for
7 meeting the mandatory minimum requirements in (1) - (4) of this subsection. The point system
8 shall be based on the following criteria and restrictions:

9 (1) the quantity of fish and game consumed by the person in the preceding 12
10 months, with a mandatory minimum of 125 pounds consumed in that period;

11 (2) the number of species and groups of species of fish and game from the
12 subsistence area used by the person in the preceding 12 months, with a mandatory minimum
13 number of species, or groups of species, as determined jointly by the boards by regulation; the
14 mandatory minimum number, and any grouping of species, may vary by geographical region of
15 the state, based on the diversity of species in a region;

16 (3) the number of days in the preceding 12 months that the person engaged in the
17 taking of fish or game in the subsistence use area, or the processing of that fish or game, with
18 a mandatory minimum of 30 days in that period;

19 (4) the number of months in the preceding 12 months in which the person
20 engaged in the taking of fish or game in the subsistence use area, with a mandatory minimum
21 of four months in that period;

22 (5) the number of weeks in the preceding 12 months during which the taking or
23 processing of fish or game was the person's principal work effort, with no additional
24 consideration given beyond a maximum of 26 weeks;

25 (6) the number of households, other than the person's household, with which the
26 person shared or from which the person received fish and game in the preceding 12 months, with
27 no additional consideration given beyond a maximum of 10 households; and

28 (7) whether the person's taking of fish and game occurred solely in the
29 subsistence use area.

30 (j) A person who does not meet the mandatory minimum requirements of each of (i) (1) -
31 (4) of this section does not meet the requirements for qualification under (i) of this section.

1 (k) For the purposes of (h) and (i) of this section, the taking, processing, or use of the
2 fish and game must have been legal, noncommercial, and characterized by efficiency and
3 economy of effort, cost, and transportation. For the purposes of (i)(1), (2), and (6) of this
4 section, the fish and game may not have been purchased for money or other monetary
5 consideration. The boards shall jointly adopt regulations allowing a person who has been unable
6 to meet the criteria of (h) or (i) of this section because of hospitalization, or military service or
7 full-term attendance at an educational institution outside the relevant subsistence use area to base
8 responses on the 12 months immediately preceding the commencement of the circumstance.

9 (l) The commissioner shall provide, by regulation, for an expedited review procedure for
10 a person who is determined by the department not to meet the qualifications as a subsistence
11 user.

12 (m) Fish stocks and game populations, or portions of fish stocks and game populations
13 not identified under (a) of this section may be taken only under nonsubsistence regulations.

14 (n) Taking and use of fish and game authorized under this section are subject to
15 regulations regarding open and closed areas, seasons, methods and means, marking and
16 identifications requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations.
17 Takings and uses of resources authorized under this section are subject to AS 16.05.831 and
18 AS 16.30.010.

19 (o) For purposes of

20 (1) subsection (b) of this section, "reasonable opportunity" is an opportunity, as
21 determined by the appropriate board,

22 (A) allowing a subsistence user to participate in a subsistence hunt or
23 fishery that provides a normally diligent participant with a reasonable expectation of
24 success of taking of fish or game, but does not guarantee the taking of fish or game; the
25 conditions of the hunt or fishery; or the taking of all the fish and game that the participant
26 wants or needs; and

27 (B) based on the findings of the appropriate board on each of the
28 following factors:

29 (i) resource population and management objectives;

30 (ii) estimated harvest per unit of effort by participants in the
31 fishery or hunt;

- 1 (iii) patterns and levels of customary and traditional taking and use
2 of the fish or game;
3 (iv) migratory patterns and availability of fish or game;
4 (v) competition for the fish or game from other subsistence and
5 nonsubsistence uses; and
6 (vi) other factors that the appropriate board considers relevant.

7 (2) subsection (i) of this section, "preceding 12 months" means for a person
8 described

9 (A) in (h)(1) of this section, the 12 months preceding the taking of the fish
10 or game resource;

11 (B) in (h)(2) of this section, the 12 months preceding the date of signing
12 of the required statement;

13 (C) in (h)(3) of this section, the 12 months preceding the date of signing
14 the application to the commissioner.

15 * Sec. 3. AS 16.05.251(d) is amended to read:

16 (d) Regulations adopted under (a) of this section must, consistent with sustained yield
17 and the provisions of AS 16.05.268 [AS 16.05.258], provide a fair and reasonable opportunity
18 for the taking of fishery resources by personal use, sport, and commercial fishermen.

19 * Sec. 4. AS 16.05.255(d) is amended to read:

20 (d) Regulations adopted under (a) of this section shall provide that, consistent with the
21 provisions of AS 16.05.268 [AS 16.05.258], the taking of moose, deer, elk, and caribou by
22 residents for personal or family consumption has preference over taking by nonresidents.

23 * Sec. 5. AS 16.05.940(29) is amended to read:

24 (29) "subsistence fishing" means the taking [OF, FISHING FOR,] or possession,
25 by a qualified resident, of fish, shellfish, or other fisheries resources [BY A RESIDENT
26 DOMICILED] in a subsistence use [RURAL] area of the state, in accordance with regulations
27 adopted under AS 16.05.268, for subsistence uses with gill net, seine, fish wheel, long line, or
28 other means defined by the Board of Fisheries, except for rod and reel;

29 * Sec. 6. AS 16.05.940(30) is amended to read:

30 (30) "subsistence hunting" means the taking [OF, HUNTING FOR,] or possession,
31 by a qualified resident, of game [BY A RESIDENT DOMICILED] in a subsistence use

1 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for
2 subsistence uses by means defined by the Board of Game;

3 * Sec. 7. AS 16.05.940(31) is amended to read:

4 (31) "subsistence [USES]" means the noncommercial, customary and traditional
5 taking in a subsistence use area of the state, and the customary and traditional uses, of fish
6 and game [WILD, RENEWABLE RESOURCES] by a resident [DOMICILED IN A RURAL
7 AREA OF THE STATE] for direct, noncommercial, personal or family consumption as food,
8 [SHELTER, FUEL,] clothing, [TOOLS,] or transportation, for the making and selling of
9 handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal
10 or family consumption, for noncommercial sharing, and for barter and [THE] customary trade
11 of a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for
12 personal or family consumption; in this paragraph, "family" means persons related by blood,
13 marriage, or adoption, and a person living in the same household on a permanent basis;

14 * Sec. 8. AS 16.05.940 is amended by adding new paragraphs to read:

15 (36) "customary and traditional" means the noncommercial, long term, consistent,
16 and ongoing dependence on the taking and use of fish or game in a specific area and the use
17 patterns and harvest levels of that fish or game that have been established over at least one
18 preceding generation of users;

19 (37) "customary trade" means the limited, noncommercial exchange, for minimal
20 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested
21 primarily for personal or family consumption; "customary trade" does not include sales in
22 commercial channels; the terms of this paragraph do not restrict money sales of furs or
23 furbearers;

24 (38) "game management unit" is the same as an area of the state established as
25 a game management unit by the Board of Game under AS 16.05.255;

26 (39) "sustained yield" means the management principle of utilization,
27 development, and maintenance, applied to naturally occurring fish and game resources, that
28 provides beneficial consumptive uses in perpetuity, subject to preferences among such uses, and
29 seeks to provide for desired population increases and prevent undesired declines, for the purpose
30 of maintaining healthy, self-perpetuating stocks or populations.

31 * Sec. 9. AS 16.05.258 and AS 16.05.940(26) are repealed.

1 * Sec. 10. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,
2 Board of Game, and Department of Fish and Game shall adopt regulations necessary to implement the
3 provisions of this Act.

4 * Sec. 11. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the
5 Board of Game expeditiously adopt regulations necessary to implement this Act.

6 (b) Any regulations adopted by the Board of Fisheries, Board of Game, or Department of Fish
7 and Game after July 1, 1992, may not be inconsistent with the provisions of this Act.

8 (c) Regardless of whether regulations adopted under the authority of AS 16.05.251, 16.05.255,
9 or 16.05.258 and in effect on July 1, 1992 are inconsistent with the provisions of this Act, they may
10 continue to be implemented and enforced until the effective date of sec. 2 of this Act.

11 * Sec. 12. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a
12 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature
13 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the
14 governor no later than June 1, 1994.

15 (b) This review period is intended to allow for further research and to gain experience in
16 implementing the Act and regulations adopted under it. It is the intent of the legislature that the
17 governor convene a representative group to provide recommendations to the governor before the end of
18 the review period. It is the intent of the legislature that representatives of the legislature and persons
19 with a history in the formulation of subsistence legislation in this state participate in the group.

20 (c) It is the intent of the legislature that the review under this section occur with public input
21 and participation.

22 (d) No later than September 1, 1994, the governor shall provide a report to the legislature on
23 the results of the review and any proposed recommendations for statutory amendments.

24 * Sec. 13. Sections 10 and 11 of this Act take effect immediately under AS 01.10.070(c).

25 * Sec. 14. Sections 1 - 9 and 12 of this Act take effect on the effective date of regulations first
26 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

June 19, 1992

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
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The Honorable Pat Pourchot
Co-Chairman
Senate Finance Committee
Alaska State Legislature
Juneau, AK 99801-1182

Dear Senator Pourchot:

At this morning's hearing on SB 484 and SB 485, the Senate Finance Committee inquired about the penalty if a person falsified his or her application for a "Tier II" subsistence permit.

Our criminal division advises that the overwhelming majority of violations of this nature are covered by AS 16.05.420. The penalty for such violations is included in Court Administration Rule 43.2, which is the fish and game bail forfeiture schedule. The schedule provides for a maximum bail forfeiture of \$200. Then cases are handled as citations and, in accordance with Rule 43.2, they are not handled as criminal cases.

State prosecutors rarely use AS 11.56.210, the unsworn falsification statute, for these kinds of cases and then only for the most egregious violations. Unsworn falsification is a class A misdemeanor and has a maximum penalty of one year imprisonment and a \$5,000 fine.

I have attached the relevant statutes and the Court Administration Rule for your information.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Richard I. Pegues*
Richard I. Pegues, Director
Administrative Services

CEC:RIP:djd

Attachments/3

2nd SS SFC-92 6/18/92
Attachment A

DEPARTMENT OF LAW
June 19, 1992

The following is a list of significant subsistence lawsuits, indicating in parenthesis after the case in what court they were filed, and by an asterisk preceding the cases which are still open:

1980

Tyonek (State Superior Court)

Gjosund I (State Superior Court)

Francis (State Superior Court)

Ewan (State Superior Court)

1981

Gjosund II (State Superior Court)

Madison (State Superior Court)

1982

Hydaburg (Federal District Court)

Moonin (State District Court) (Year approximate)

1983

McDowell (State Superior Court)

Madison (Alaska Supreme Court)

1984

Eluska (State District Court)

Eluska (Court of Appeals)

1985

Bobby (Federal District Court)

Eluska (State Supreme Court)

1986

Skuse (State District Court)

John (Federal District Court)

Kenaitze (Federal District Court)

1987

McDowell (State Supreme Court)

Association of village Council Presidents (State Superior Court)

Kenaitze (Ninth Circuit Court of Appeals)

1988

Tanana Fish and Game Association (Federal District Court)

1989

Tanana Fish and Game Association (Ninth Circuit)

Kenaitze (United States Supreme Court)

Mills (Federal District Court)

Outdoor Council (Federal District Court)

Payton (State Superior Court)

* Payton (State Supreme Court)

Dot Lake (State Superior Court)

* Morry (State District or Superior Court)

* Peninsula Marketing Association (State Superior Court)

1990

* Kwethluk IRA Council (United States District Court)

* Ketzler (Alaska Superior Court)

* Kluti Kaah (United States District Court)

* Shepherd (Alaska Superior Court)

1991

* Tanana Fish and Game Ass'n (Alaska Superior Court)

* Pitka (Alaska Superior Court)

* Coy (Alaska Superior Court)

* Interior Fish and Wildlife Ass'n (Alaska Superior Court)

- * Nenana (Alaska Superior Court)
- * Sorenson (Alaska Superior Court)
- * John (II) (United States District Court)
- * Native Village of Sleetmute (Alaska Superior Court)
- * Sumner Strait Advisory Committee (Alaska Superior Court)
- * Kluti Kaah (Alaska Superior Court)
- * State v. Kluti Kaah (Alaska Supreme Court)
- * Kenaitze Indian Tribe (Alaska Superior Court)
- * United States v. Didrickson (United States District Court)

1992

- * United Cook Inlet Drift Ass'n (Alaska Supreme Court)
- * Cantwell (Alaska Superior Court)
- * Ketzler (United State District Court)
- * Native Village of Tooksook Bay (Alaska Superior Court)
- * Native Village of Elim (Nome Superior Court)
- * Fish and Game Fund v. State (United States District Court)