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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
 Component: Operations
 Sponsor: Request of the Governor
 Requestor: Governor's Office COMPONENT SERIAL NO.

		9	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	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:						
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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.

FISCAL NOTE

BILL NO. _____

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Fish and Game

Title: An Act relating to the taking
of fish and game for subsistence

BRU: 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.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____

Department Affected: Fish and Game

Title: An Act relating to the taking
of fish and game for subsistence

BRU: Boards

Component: Board Services

Sponsor: Rules Committee

Requestor: _____

COMPONENT SERIAL NO.

1	2	0	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	9.0	9.4	8.0	3.0	3.0	3.0
TRAVEL	180.0	187.5	160.0	85.0	85.0	85.0
CONTRACTUAL	90.0	93.5	90.0	37.0	37.0	37.0
SUPPLIES	1.8	1.9	1.6	.5	.5	.5
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	280.8 .0	292.3 .0	259.6	125.5	125.5	125.5 0.0

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

GENERAL FUND	280.8	292.3	259.6	125.5	125.5	125.5
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	280.8	292.3	259.6	125.5	125.5	125.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Laird Jones *Laird A. Jones*

Phone: 465-4110

Division: Division of Boards

Date: 2/20/92

Approved by Commissioner: *[Signature]*

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).

DIVISION OF BOARDS
FISCAL NOTE FOR SUBSISTENCE BILL

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

COSTS - FY93

<u>Personal Services:</u>	9.0
overtime for existing staff	
<u>Travel:</u>	180.0
travel and per diem for board members, Boards staff, and advisory committee meetings	
<u>Contractual:</u>	90.0
meeting space, printing and postage for proposal books, telephone and legal notice of meetings	
<u>Supplies:</u>	1.8
office supplies	
TOTAL	<u>280.8</u>

COSTS - FY94:

Personal Services	9.4
Travel	187.5
Contractual	93.5
Supplies	1.9
TOTAL	<u>292.3</u>

COSTS - FY95:

Personal Services	8.0
Travel	160.0
Contractual	90.0
Supplies	1.6
TOTAL	<u>259.6</u>

COSTS - FUTURE YEARS

Personal Services	3.0
Travel	85.0
Contractual	37.0
Supplies	.5
TOTAL	<u>125.5</u>

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.

	4	9	0
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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
REVENUE	0	0	0	0	0	0
FUND SOURCE:						

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

Thursday, March 5, 1992

The Governor gave a brief statement concerning SB 443. Main points included the Subsistence Advisory Council members, the direction they took and the direction he wants the Legislature to take. He stressed that this piece of legislation is not the ideal piece for any one group or person but it is legislation which protects the resources, the interests of every group and can pass.

Senator Adams asked if the AFN could make a remark. Senator Jones declined stating they were not taking testimony today. Senator Adams then asked if he could make a statement. Senator Jones okay'd and Adams proceeded to read AFN's position himself.

McKie Campbell went through the bill section by section with the committee.

Friday, March 6, 1992

The Resources committee met without a quorum. Campbell continued through the bill.

Saturday, March 7, 1992

Today was the beginning of public testimony. Below are the comments.

Julic Kitka, Anchorage, AFN President
does not support the bill
wants long term protection for survival of their people
does supports state getting management back of its resources
needs amended constitution
the guarantee to rural is less than the current Federal policy
protection by exemption of certain species
does not like individual qualifications
the F & G Board has too much power

Don Mitchell, Anchorage, Attorney
if bill passes we'd be in our current situation still
not constitutional, conflicts w/ McDowell

no Attorney General comments or overview of this bill

Dick Bishop, Fairbanks, AK Outdoor Council

opposes legislation

will monitor however

preference to place of residency is unfair

bill does not protect resources

opposes any constitutional amendment

unconstitutional

Mike Swenson, Sitka

supports the bill

need to get management back to Alaska

Pete Schaffer, Kotzebue

Opposes (creates bureaucratic nightmare)

Benny Nageak, Barrow, Eskimo Walrus Committee

opposes the bill

Must amend the constitution

George Yaska, Fairbanks, Dir. of Wildlife and Parks

opposes bill

too much power to the board

presumption of living in a rural area in too broad

Robin Samuelson, Dillingham

opposes bill

too broad & political

pg. 7(i) - where are you going to find a commissioner that will take this on. One shouldn't have such discretionary power.

Grace Johnson, Nome

the bill will be okay with a few changes

prefers a constitutional amendment

Marvin Clark,

wait for the court ruling

equal opportunity of all

Nick

blends lifestyle and residency better than current law

supports

Bob Polasky, Anchorage, RURAL CAP
opposes bill
clearly does not comply with Fed law
eliminates entire areas of state for subsistence use

Susie Erlich (?), Kotzebue, NW Arctic Borough
opposes the bill
agrees with Sen. Adams
bill is not forcible not implementable

Greg,?, Director of Natural Resources
opposes
present form is totally unworkable

John Ottness, Ketchikan
basic agreement with the legislation

Ted Smith, Bristol Bay
opposes
agrees with AFN and Adams

Eileen Nobert, Nome
opposes the bill
board is too powerful

Jack Polster, Homer
bill needs to be reviewed
does the bill define right or grant of privilege?

Warren Olson, Anchorage
repeal 86 subsistence law

Walter Sampson, Kotzebue
opposes bill
please listen to the people

Paul Gregory, Bethel
does not understand the bill's individual requirements

Terry Hefferly, Dillingham, Bristol Bay Native Assoc.
opposes the bill in present form

Matthew Nickoli, Anchorage
opposes the bill as written
need a constitutional amendment

Myron Matting, Bethel, Village Council President
opposes the bill
does not recognize subsistence livelihood of Native people

Matthew ?, Nome
Supports AFN stance

Theo Matthews, Soldotna, UFA, Cook Intel Comm. Salmon Fisherman
supports 443 as is!
was a member of the task force
defines the wording very well

Kayla Phinoway, Kotzebue
opposes the bill

Jordon Eto, Kotzebue
opposes the bill
not in support of Native interests

Vern Kudrick (?), Nome
opposes bill

Eugene Smith, Kotzebue
opposes the bill

Lorena Williams, Kotzebue area
opposes

General Notes from today's meeting:

According to McKie this bill gives the Board less discretion than current law. Their role is more defined and offers more guidance. He also stated that AG Cole believes the bill is constitutional.

After the meeting: McKie said that if the bill does not pass this session there is a very good chance the Legislature will be back this summer.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 21, 1992

The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to subsistence.

Among the fifty states, only Alaska has a significant portion of its population who, in large part, live off the land. Subsistence is unique and special to Alaska. Because of the importance of subsistence to Alaska, both the United States Congress and past Alaska legislatures, have passed laws giving a preference to subsistence over other consumptive uses of the same resources.

Despite the general agreement that subsistence should have a preference, there has been monumental disagreement on how that preference should be implemented. For too many years, Alaskans on different sides of the subsistence issue have talked about each other, but never to each other. The effect of conflicting court opinions, federal Alaska National Interest Lands Conservation Act mandates, and legislative gridlock have produced a crisis in the management of our fish and game. We have a current situation where everyone loses.

For the past year, an outstanding group of citizens has been meeting steadily to try to resolve this problem. There are nine members of the Governor's Subsistence Advisory Council and all of Alaska owes a debt to them. The members are:

The Honorable Jay S. Hammond, Port Alsworth
Mr. Dick Bishop, Fairbanks
Mr. John James Burns, Fairbanks
Mr. Mitch Demientieff, Nenana
Mr. Eric Forrer, Juneau
Mr. Matthew Iya, Nome
Mr. Byron Mallott, Juneau
Mr. Theo Matthews, Kenai
Mr. Gene Peltola, Bethel

These nine members represent all sides of the subsistence issue. While some members were nominated by specific groups, I asked each member to participate as an individual.

The Honorable Richard Eliason
February 21, 1992
Page 2

The group had a goal that is simple to define, but very difficult to achieve: it was to find the best possible subsistence solution for Alaska. Many observers thought that was an impossible dream, that the members could never agree. There were times during meetings, when that appeared to be true, but the council members did not give up. Today I am introducing subsistence legislation that the council drafted. Every part of this legislation is the result of consensus among the members.

The legislation is not what any one member, any one group, nor I, by myself, would have drafted. It is legislation that protects the resource, the interests of every group, and can pass. In designing this statute, great emphasis has been placed on how it will actually work. Extensive time has been spent with the Alaska Departments of Fish and Game (ADF&G) and Law.

The legislation is designed for species protection, to function with a minimum of disruption for users, for ease of administration by the Board of Fisheries and the Board of Game, for management by the ADF&G, enforceability by the Department of Public Safety, and defensibility in court. The legislation will reduce the constant barrage of subsistence court cases by making the state's actions more defensible, but, much more importantly, by laying out clear guidelines for the boards and reducing the problems which caused people to sue.

A packet of material describing and explaining the bill will be provided to the Senate Secretary and Chief Clerk.

I realize the legislature has a constitutional responsibility to consider and, if necessary, amend bills to make them the best possible legislation. Neither I nor the council make any claim that this legislation is perfect, but every word in it has been the subject of hours or days of debate. The two things I ask of the legislature, are to maintain the goal of the advisory council by passing the best possible piece of subsistence legislation, and to act swiftly to solve the subsistence crisis and help heal Alaska.

Sincerely,

S/S Walter J. Hickel
Walter J. Hickel
Governor



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 6, 1992

Mr. Mitch Demientieff
P. O. Box 249
Nenana, AK 99760

Dear Mitch,

For too many years, the politics of subsistence divided our state. When the Subsistence Advisory Council first met, there were skeptics who said there was no solution. As we wrap up the proposed legislation and conclude the Council's final meeting, it is clear the skeptics were wrong.

You have served as a shining example of how Alaskans of good faith and good sense can work together and solve problems, no matter how tough. You have performed a tremendous service for Alaska.

In about a week and a half, I will introduce legislation you have helped to draft. As we conclude the Council's deliberations and begin the legislative process, I hope each of you will continue to be involved, both individually and on behalf of the interests you have so ably represented. I appreciate the Council's willingness to reassemble, if necessary, as we continue through the process and in two years to review how the law has functioned. Passage of subsistence legislation continues as a top priority for me. I want you and Kathleen to join me for a great party at the signing ceremony.

I know that there are parts of the draft that each Council member would do differently if it were left to him alone. Each of you will have to deal with friends and associates who will feel you should have prevailed on every point. I also understand that while some members were nominated by specific groups, each of you participated as individuals, and each interest group will have to make its own decision.

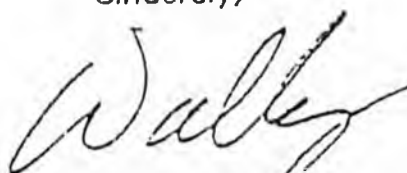
I asked you to draft the best possible subsistence legislation for Alaska, and I think you have done it. I sat at the table as meeting after meeting you hammered out the hard points and forged a document that works. Most important, you have proved that all users of our fish and game can work together for a common purpose.

Mr. Mitch Demientieff
February 6, 1992
Page 2

I have previously told you I feel the Council has made the most important contribution to Alaska of any group since the Constitutional Convention, and I meant it. Thank you for your service. We are all in your debt.

With warm regards.

Sincerely,



Walter J. Hickel
Governor

A similar letter to...

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A Brief Introduction to HB 552 and SB 443 (Subsistence)

How would the new law work?

Participation would be limited to qualified subsistence users. Qualification is based on a point system applied across the state with three different levels of presumption. The new system would provide that communities and areas in the state be classified into one of three groups, and apply presumptions as follows:

Group 1 consists of areas where the population of each community in the area is less than 2,500 and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life.

A person who hunts or fishes and lives in an area identified under group 1 is presumed to meet the subsistence eligibility standards. No permit or filing of a statement affirming the person's compliance with the standards is required.

Group 2 consists of communities where the population is 2,500 to 7,000 and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life.

A person who hunts or fishes and lives in a community identified under group 2 is rebuttably presumed to meet the standards upon signing a statement affirming his or her compliance with the standards.

Group 3 consists of communities or urban areas where the population is 7,000 or greater or communities where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life.

A person who lives in a community or in an area identified under group 3 may qualify by applying to the Department of Fish and Game and demonstrating that he or she meets the qualification standards.

What are the qualification standards?

Qualification will be based on a weighted point system of 7 criteria. The boards will adopt the point system by regulation. Qualification requires more points than just meeting the minimums in the first four criteria, but anyone who fails to meet each of the minimums would be disqualified. The last three criteria do not have minimums. The seven criteria are:

- (1) the quantity of fish and game consumed by the person in the preceding twelve months, with a mandatory minimum of 125 pounds;
- (2) the number of species and groups of species of fish and game from the subsistence use area consumed by the person in the preceding twelve months, with a mandatory minimum set by the boards by region;

- (3) the number of days in the preceding twelve months that the person engaged in taking fish or game in the subsistence use area or spent processing that fish or game, with a mandatory minimum of 30 days;
- (4) the number of months in the preceding twelve months in which the applicant engaged in taking fish or game in the subsistence use area, with a mandatory minimum of four months;
- (5) the number of weeks, in the preceding twelve months, during which the taking or processing of fish and game was the applicant's principal work effort, to a maximum of 26 weeks;
- (6) the number of households, other than the person's household, with which the person shared or received fish and game in the preceding twelve months, with a maximum of 10 households; and
- (7) whether the person's taking of fish and game occurred solely in the subsistence use area for which they are qualifying.

As indicated above, in group 3 communities a person must fill out an application and score sufficient points to demonstrate his or her eligibility; in group 2 communities, signature of a statement affirming the person's qualification creates a rebuttable presumption that the person is qualified; and in group 1 areas, no paper work is required and the presumption is that all persons who hunt or fish meet the minimum standards.

Where would people be able to go for subsistence hunting and fishing?
People would normally qualify for the subsistence use area in which they live, but could qualify for another area by application. Subsistence use would be on fish stocks and animal populations that have customarily and traditionally been used for subsistence. This would allow qualified subsistence users to hunt and fish as they have in the past. Group 3 areas would be closed to subsistence hunting and fishing, but urban residents who qualify as subsistence users would be able to subsistence hunt and fish in portions of the subsistence use area in which they live that are not classified in group 3 and thus closed to subsistence taking.

What are the advantages of this approach?

It protects the resource. It does not divide villages. It protects residents of regional centers from growing out of subsistence, and it allows the small minority of urban residents who are subsistence users to participate. It complies with our constitution. Most importantly, because this legislation has been worked out with the help of all sides, it will protect subsistence and subsistence users while reducing the division and political instability that has plagued this issue.

GOVERNOR'S SUBSISTENCE BILL

SECTION-BY-SECTION DESCRIPTION

February 21, 1992

Section 1

Section 1 of the bill sets out findings for, and the purpose and intent of the proposed new law.

Section 2

Section 2 sets out proposed new AS 16.05.268, which contains the crux of the new subsistence law. An analysis of the proposed new statute, by subsection, follows.

Proposed AS 16.05.268(a):

This subsection is very similar to existing AS 16.05.258(a). Under this new subsection, the Board of Fisheries and the Board of Game are to identify fish stocks and game populations that have been subject to customary and traditional subsistence use. The term "customary and traditional" is defined in proposed AS 16.05.940(36) (sec. 6 of the bill). The commissioner is to make recommendations to the boards concerning the identification of stocks and populations and whether they have been subject to customary and traditional subsistence use.

There are definitions of "fish stock" and "game population" in existing law; those definitions are left unchanged. Existing law also already requires the boards to identify the stocks and population used for subsistence.

The identification of fish stocks and game populations subject to subsistence regulations is a situation where all 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 the subsistence preference is protected.

The identification of subsistence stocks leaves those that are not identified to be harvested by all Alaskans under nonsubsistence regulations. 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 recently transplanted (not reestablished) game; and some steelhead and trout stocks and brown bear populations. There are also fish stocks and game populations in areas of the state so remote from any village or community that there is no established use of them. As in existing

law, whether or not fish or game are or are not subsistence stocks and populations is a factual determination made by the boards.

Fish stocks and game populations in urban areas of the state or in areas where dependence upon subsistence is not a principal part of the economy, culture, and way of life of the area will not be subject to subsistence hunting under the statute. (See the discussion of subsecs. (f) and (g), below.) Fish and game in nonsubsistence areas will continue to be available under general hunting regulations and sport, personal use, and commercial fishing regulations. The subsection does not affect where subsistence users may live. They can live anywhere in the state. Subsistence use areas overlap areas closed to subsistence taking. Qualified subsistence users who live in an area of the state where there is no taking for subsistence in the immediate area would continue to have access to fish and game under subsistence regulations in areas proximate to the closed area and other areas of the state.

Proposed AS 16.05.268(b):

This proposed subsection is very similar to existing AS 16.05.258(b)(1). That existing statute requires the boards to determine "what portion" of the resource can be harvested consistent with sustained yield. Some had interpreted this as a requirement for an exact determination of the number of animals that could be harvested. Such an exact number is normally beyond calculation with the biological information that is available. The language in proposed AS 16.05.268(b) is designed to conform to the actual capabilities of the boards and the ability of the Department of Fish and Game to provide information to the boards, and omits language that could be interpreted to require a determination of exact numbers.

As in existing law, this subsection requires the boards to provide a preference for subsistence uses, although even subsistence use may be curtailed to protect stocks or populations and achieve sustained yield. Subsistence hunting and fishing regulations must provide a reasonable opportunity to participate. "Reasonable opportunity" is defined in proposed AS 16.05.268(o), discussed later.

The subsistence preference does not work like the Endangered Species Act, mandating limitation or closure of any other fishery or hunt that is believed to contain even a single member of the subsistence stock or population. The subsistence preference applies when a stock becomes a stock, in other words, wherever it becomes manageable as a unit. While this point may seem self-evident from the existing definitions of stock and populations, some have argued that the courts should eliminate all downriver and marine fisheries on certain fish stocks that spawn, for example, in

the headwaters of the Yukon. Management of mixed stocks and populations is far better left to the boards than to the courts.

Subsection (b) authorizes the boards to also adopt regulations allowing other consumptive uses of stocks and populations identified as subject to subsistence, after subsistence uses have been provided for. These regulations would provide for nonsubsistence harvest of the stock or population to the extent that the harvest does not interfere with reasonable opportunity for subsistence uses.

AS 16.05.268(b) (1):

Paragraph (b) (1) addresses the happy situation where fish and game is so plentiful that all subsistence uses and all other consumptive uses can be allowed. The board would provide for a reasonable opportunity for subsistence uses, and is permitted but not required to adopt separate subsistence regulations that differentiate subsistence uses from other consumptive uses. For example, if caribou in a subsistence use area were plentiful and the existing general bag limit was five caribou per hunter during a year-round season, and the Board of Game determined that such a bag limit and season provided a reasonable opportunity for subsistence use of caribou, no separate subsistence regulation would be required. If, at some time in the future, the general season or bag limit was changed by the board, the board would need to consider whether the change impinged on the reasonable opportunity for subsistence, and if so, would need to create a separate subsistence regulation at that time.

AS 16.05.268(b) (2):

This paragraph addresses the situation where a stock or population is sufficient to provide for all subsistence uses, but not all other consumptive uses. This is commonly known as "Tier I," and is the most common situation across the state. In this situation, the appropriate board would be required to adopt separate subsistence regulations that differentiate between consumptive uses and provide a preference for subsistence.

AS 16.05.268(b) (3):

This paragraph deals with the situation where a stock or population is sufficient to provide for all subsistence uses, but no other consumptive uses. In that case, this paragraph makes it clear that the appropriate board must eliminate all nonsubsistence uses in order to protect the subsistence preference.

AS 16.05.268(b)(4):

Paragraph (b)(4) describes what is commonly known as the "Tier II" situation, in which, to protect sustained yield, it is necessary to limit the harvest of a stock or population to a level that does not provide a reasonable opportunity for subsistence for all qualified subsistence users. This paragraph is very similar to language in existing AS 16.05.258(c), with several modifications to make it clearer.

This paragraph makes it explicit that other consumptive uses of a particular stock or population must be prohibited in a "Tier II" situation. If a board has eliminated all consumptive uses other than subsistence uses, and it is still necessary to reduce the subsistence harvest, then the board has to limit the number of subsistence users who may hunt or fish on the affected stock or population by applying three criteria: (1) customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of life; (2) the proximity of the domicile of the subsistence user to the resource; and (3) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

The three criteria are taken from existing AS 16.05.258(c)(1) - (3), but have been modified for clarity. Existing AS 16.05.258(c)(3) and Title VIII of ANILCA (Alaska National Interest Lands Conservation Act; P.L. 96-487) both use the phrase "availability of alternative resources" as the third criteria. Some have tried to interpret this as a question only of whether or not a person has access to a similar animal from a different population. The new language makes the intent and meaning clear.

Several additional points need to be made about this subsection. First, most of the Tier II hunts that occurred after the decision in McDowell v. State, 785 P.2d 1 (Alaska 1989) will no longer be in Tier II status. The need for most Tier II hunts will be eliminated by dramatically reducing the number of hunters eligible to participate in subsistence hunts. The effect of this will be to leave more game available under general hunting regulations.

Second, as in existing AS 16.05.258 and the federal law, the subsistence preference is only a preference over other consumptive uses. 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.

Both the 1986 state law (AS 16.05.258) and Title VIII of ANILCA give a preference that is stock and population specific (Title VIII uses population to describe fish as well as game). This legislation is also stock or population specific. The state

definitions of fish stock, AS 16.05.940(15), and game population, AS 16.05.940(18), were enacted in 1978 and 1975 respectively, and both refer to species, subgroup, etc., that are "manageable as a unit." This bill is not intended to further limit the discretion the boards have in defining what fish or game is manageable as a unit.

Proposed AS 16.05.268(c):

Subsection (c) requires additional affirmative action from the department and the appropriate board in situations where a stock or population is not sufficient to provide for both subsistence and nonsubsistence uses. The department is instructed to formulate a plan for the recovery of the stock or population to provide for increased consumptive uses. There may be cases where the habitat of the particular stock or population or other limitations make an increase impossible. In those cases, the department would simply report those facts in the plan. However, in cases where increases are feasible, the department would be required to develop a plan for achieving increased levels of the stock or population and to make recommendations to the appropriate board for regulations necessary to implement the plan.

The last sentence of subsec. (c) addresses the extreme situation, where stock or population levels are so low that all uses, including subsistence uses, have been eliminated to try to achieve sustained yield of the stock or population. When population levels begin to rise again, the appropriate board is to allocate to subsistence uses when there are enough animals to allow a hunt or fishery, and not ignore the subsistence preference by keeping the seasons closed until there are enough animals to provide for every kind of use. This does not mean that the boards must allow taking as soon as a minimal sustained yield is reached; the definition of "sustained yield" in this bill makes that clear. Subsection (c) is intended to prevent disregard of the subsistence preference in favor of other consumptive uses.

Proposed AS 16.05.268(d):

Subsection (d) establishes a game management subunit (GMSU) and its contiguous GMSU's as the subsistence use area for fish or game to be taken under subsistence regulations in that GMSU, unless the appropriate board establishes a different area. GMSU's are based on natural drainages and tend to fit natural travel and use patterns of most fish stocks and game populations.

The Department of Fish and Game has examined a large number of specific hunts and fisheries and the associated patterns of subsistence use. In general, a GMSU and the surrounding subunits provide an area properly sized to be consistent with the definition

of subsistence. Game management units and subunits tend to be larger in remote parts of the state, but that is consistent because, in those parts of the state, subsistence users have historically been able to travel farther in pursuit of resources without coming into conflict with other established groups of users.

GMSU-based subsistence use areas are large enough to provide access to subsistence resources even for subsistence users who live in areas closed to subsistence taking under subsection (a). The use of GMSU based subsistence use areas provides use areas that can be immediately implemented while the board examines use areas throughout the state and make adjustments as necessary. GMSU's which touch only in marine waters should not be considered contiguous.

Proposed AS 16.05.268(e):

For some specific fish stocks or game populations, the appropriate board may decide that a subsistence use area established by GMSU is too small or is otherwise inconsistent with established patterns of taking and use of a particular fish stock or game population, or is too large and is inconsistent with travel limits and means inherent with the efficient and economical nature of subsistence. If the use pattern for a particular fish stock or game population changes over time, the board could adjust the boundaries of the use area.

In these cases the appropriate board should establish different boundaries for the particular stock or population which are large enough to include both where a particular stock or population is normally taken and where it is normally used, but not so large as to violate the definition of subsistence. The Board of Fisheries may wish to use fish districts to describe areas for specific fish stocks if a GMSU based area is not appropriate.

Proposed AS 16.05.268(f), (g), and (h):

These subsections all deal with the classifying of areas and communities to facilitate the administrative determination of a person's qualification to subsistence hunt and fish. Residence in a particular community or area of the state does not determine a person's qualification to subsistence hunt and fish. It does, however, determine the amount of administrative paperwork the person will be required to submit.

AS 16.05.268(f):

This subsection requires the boards jointly to look at all areas and communities in the state and to classify them, using communities and game management units or subunits, into one of three categories. Under subsec. (f) (1), the boards would identify areas where the population of each community in the area is less than 2,500 people. The 2,500 population figure came from information collected by the Department of Fish and Game and will include most rural villages and towns in Alaska. The population figures in this subsection also mesh with population breaks used by the federal government. In addition to the population requirement, the boards would also evaluate all the information it had about the communities and area, to determine whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area. To make this determination, the communities and area would be tested under the criteria set out in subsec. (g), which will be discussed in more detail below. The boards also must determine that the area is not part of an urban area. An area or community that is a suburb of a larger city or is so close to a larger city that there is little characteristic difference from the larger city will not qualify as a subsec. (f) (1) area. The status of such an area will be determined along with the boards' consideration of the larger city under subsec. (f) (2) or (f) (3).

It is anticipated that, as the boards evaluate the subsistence dependency of various areas, they will identify communities of under 2,500 in population that are not significantly dependent on subsistence. A community that is within a larger area of subsistence dependence may be specifically excluded from the otherwise qualified area. For example, if the boards identify a remote military installation that, as a community, does not depend on subsistence hunting and fishing, it would be excluded from classification under subsec. (f) (1) and would fit into the (f) (3) category.

Under subsec. (f) (2), the boards would identify communities with a population of 2,500 to 6,999 and then determine whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community, again using the criteria in subsec. (g). If a community does not meet the subsistence dependence standards of subsec. (g), it will be classified under subsec. (f) (3). The non-urban requirement would also apply to these communities. For example, if a community of 3,500 in population were part of or a suburb of a city of 7,000 or more in population, the smaller community would be classified under subsec. (f) (3).

Communities with a population of at least 7,000 and smaller communities that do not qualify under subsec. (f) (1) or (f) (2) because they do not meet the subsistence dependence standards of subsec. (g) will be classified under subsec. (f) (3). Communities of at least 7,000 in population have a large enough population to

support more business enterprises and services that tend to change the character of the community away from subsistence dependence.

It should be remembered that the classification of an area or community under subsecs. (f) and (g) does not determine the subsistence qualification of the individuals who reside in those areas or communities.

Proposed AS 16.05.268(a):

Under subsec. (g), the boards are given criteria to use in determining whether dependence upon subsistence use of fish and game is a principal characteristic of the economy, culture, and way of life of an area or community. The boards are to use these criteria to evaluate the subsistence dependence of the area or community in light of all the socio-economic characteristics of the area or community. The boards will evaluate all of the listed characteristics of the community, including characteristics they may add to the list under subsec. (g)(13), and decide whether dependence on subsistence is a principal defining characteristic of the community. Any factors added by the boards must be adopted as regulations and must be similar in spirit to the characteristics listed by the legislature. The authority to add new characteristics is permissive. The boards are not required to add new factors.

The use of the words "a principal characteristic" may be somewhat unusual, as "principal" is often used to signify the first or highest in rank. The language here is somewhat similar to the earlier language in the definition of "rural area" in AS 16.05.940(26), but that does not mean that the boards should make determinations under (g) as they did under the "rural" statutory definition and interpreting regulation, the former 5 AAC 99.012. While some of the criteria are similar to those in the former 5 AAC 99.012, the criteria are not the same and should be evaluated independently.

By using the phrase "a principal characteristic" as opposed to "the principal characteristic," it is intended that dependence on subsistence need not be the one dominant characteristic, but should be a very important, major, and substantial characteristic, and more than merely significant. Some communities that might have a more dominant characteristic, such as commercial fishing, might still meet the criteria if, in the boards' judgment, subsistence dependence is also a very important characteristic.

To qualify under subsec. (f)(1) or (f)(2) as a subsistence-dependent community or area, subsistence must be a principal characteristic of all three listed aspects of the community or area: (1) economy, (2) culture, and (3) way of life of the community or area. While the term "culture" is often associated in

Alaska with Alaska Natives, the term is to be interpreted more broadly in this case. A community or area need not be predominantly Native to be classified as subsistence dependent. A dictionary definition such as the following might be helpful: "The totality of socially transmitted behavior patterns, arts, beliefs, institutions, and all other products of human work and thought characteristic of a community or population." The American Heritage Dictionary, New College Edition, at 321. The term "way of life" is included to emphasize the broadness of culture and also to require ongoing subsistence hunting and fishing. Having hunting and fishing enshrined in the culture of a community will not be sufficient without an ongoing actual dependence on fish and game.

Dependence on subsistence must also be a principal characteristic of the economy of the community or area.

Proposed AS 16.05.268(h):

Subsection (h) establishes the significance of the identification of communities under subsecs. (f) and (g). It establishes presumptions in the law that direct and focus the management and enforcement efforts at those areas of highest concern.

A person who lives in a subsec. (f)(1) area is presumed to individually qualify for subsistence hunting and fishing for the subsistence use area in which the person lives; no application or signed statement need be submitted before subsistence hunting or fishing. The presumption is not conclusive and can be challenged by the state, but the person will be allowed to subsistence hunt and fish in the subsistence area in which they live unless and until the state demonstrates, by clear and convincing evidence, that the person is not qualified. Proof by clear and convincing evidence is a civil evidentiary standard commonly used by the courts, and is a higher standard than "preponderance of the evidence" but lower than the criminal standard of "beyond a reasonable doubt." It is expected that many, if not most, clearly unqualified persons living in a subsec. (f)(1) area will voluntarily refrain from subsistence hunting or fishing, especially as, in most areas of the state, there will be general, sport, and personal use hunts and fisheries available for nonsubsistence users. In those cases where clearly unqualified persons choose to subsistence hunt or fish, the state will be able legally to take steps to stop them.

A person living in a subsec. (f)(2) community who wishes to subsistence hunt or fish must first sign a statement, in a form to be supplied by the department, averring that the person meets the individual qualification standards of subsec. (i). Once a person signs such a statement, the person is rebuttably presumed to qualify to subsistence hunt and fish in the subsistence use area in which the person lives. This presumption can be rebutted by the

normal civil evidentiary standard of "proof by a preponderance of the evidence." It is anticipated that a work-sheet will be furnished so that the person can satisfy himself or herself that the person does, in fact, qualify. The person will be able to hunt or fish upon signing the statement. Just as in signing a hunting or fishing license, by signing the statement the person subjects himself or herself to prosecution for unsworn falsification if the statement of professed qualification is in fact false.

A person living in a subsec. (f)(3) area (a larger city or urban area, or a smaller community that does not have a demonstrated dependence on subsistence) must qualify to subsistence hunt and fish under an application procedure. The burden of proof rests upon the applicant. Such a person may not subsistence hunt or fish until the person is certified, by the commissioner of fish and game, to be qualified. The procedures, point system, and criteria for qualification are provided for in subsec. (i).

This system of differing presumptions amounts to an administrative scheme to focus the state's efforts to weed out unqualified users onto those areas where most of the unqualified reside. Based on the information collected by the Department of Fish and Game, use of the three sets of standards will result in identifying communities or areas with a large majority of residents that would individually qualify as subsistence users under subsec. (f)(1); communities with a majority of qualified subsistence users under subsec. (f)(2), and communities with a very a small minority of qualifying individuals under (f)(3). Statutory findings based upon this information are contained in sec. 1 of the bill.

It would be very burdensome for the state to implement a statewide application system. Under this statutory scheme, only residents of urban areas and nonsubsistence communities would be required to submit applications. Evidence collected by the Department of Fish and Game indicates that relatively few such people actually and substantially rely on subsistence hunting and fishing. Although there are more people living in urban areas than in rural areas in the state, it is improbable that a large percentage of urban residents will apply for qualification to subsistence hunt and fish, given past history. The department will have a "relatively" small number of applications to review and adjudicate. It is anticipated that most of the applications will be filed in urban centers, where department staff are concentrated.

On the other hand, if applications were required for those living in subsec. (f)(1) communities, a very large majority would undoubtedly apply, and a very large majority would undoubtedly qualify, according to the department's information. The department would have to review and adjudicate thousands of applications collected from all over the state, to little effect. The same would be true, to a lesser degree, in subsec. (f)(2) communities.

The signed statement requirement should deter many unqualified users in those communities.

The presumptions established in subsec. (h) are reasonable and have a strong factual basis. The presumptions will not exclude any person who qualifies as a subsistence user under subsec. (i) from participating in subsistence fishing or hunting.

Proposed AS 16.05.268(i):

This subsection sets out the criteria the Board of Fisheries and Board of Game are to use in jointly setting up a system for individual qualification. Although the language of this subsection is itself fairly specific, the boards will have to adopt regulations setting out procedures and establishing a weighted point system based on criteria set out in this subsection.

Because the Department of Fish and Game is charged with implementing the procedures and making the determinations of individual qualification, this subsection directs the commissioner of the Department of Fish and Game to make recommendations for the procedures to be adopted by the boards.

Under the procedures and point system, an individual's qualification to subsistence hunt and fish in a specific subsistence use area will be determined. The statute does not provide for qualification on a statewide basis; hunting and fishing in one subsistence use area will not qualify the user to subsistence hunt and fish in another area. While it may be technically possible for a person to qualify in more than one subsistence use area under this subsection, it is generally contemplated that the vast majority of users will qualify for only one area. The criteria are designed to protect use that has concentrated in one area.

After receiving the commissioner's recommendations, the boards jointly will adopt regulations that will assign weights to the points earned under the various criteria and will designate the total number of points required to qualify. It is expected that this threshold should be set at a number that will be likely to match the characteristics of a large majority of users living in areas identified under (f)(1), a majority of users living in communities identified under (f)(2), and a small minority of those living in communities identified under (f)(3).

The statute contemplates that a person living in a subsec. (f)(1) community who wishes to subsistence hunt or fish will apply for qualification, and the application will be evaluated by the Department of Fish and Game. It is anticipated that a person living in a subsec. (f)(2) community who wishes to subsistence hunt or fish will be provided a form to use to calculate the person's

qualifications before signing the statement required under subsec. (h) (2).

Most of the criteria focus on a person's activities in the preceding 12 months. The one-year period is a reasonable measure because all fishing and hunting seasons are covered, and it is a reasonable time period for gauging bona fide reliance, as opposed to temporary ventures. The effect of the mandatory minimums in subsec. (i) (1) - (4) is explained in the discussion on subsec. (j). Just meeting each of the minimums, however, will not give a person enough points to qualify unless points are earned in the other three categories. Alternatively, a person might qualify if he or she just meets the minimum in one or two categories, but substantially exceeds the minimums in the others. The categories in subsec. (i) (5) - (7) do not contain minimums; a person could still qualify if he or she earns zero points in one or more of these categories but has high numbers in the other categories. The maximums in subsec. (i) (5) and (6) are included to keep the criteria meaningful and to prevent abuse of any one particular criterion.

Under subsec. (i) (1), a person receives points for the pounds of fish and game eaten by the user in the preceding 12 months. The taking of that fish and game must have been noncommercial. Fish and game taken in a subsistence use area other than the area for which qualification is sought could be counted if the fish or game was received as a gift or bartered for, but not if it was purchased for money. Fish and game used for purposes other than personal consumption by the applicant would not be counted. The mandatory minimum of 125 pounds is a reasonable threshold for demonstrating actual and substantial reliance on fish and game.

The subsistence division of the Department of Fish and Game has done extensive research on pounds of consumption of various wild resources. The average yearly per capita consumption of meat, fish, and fowl in western states is 222 pounds. The average yearly per capita consumption of meat, fish, and fowl by subsistence-reliant users in Alaska in the past has been much higher, because alternate protein sources such as milk and dairy products are not as readily available, and subsistence users tend to consume fish and game for caloric value as well.

The 125-pound minimum was selected as a threshold that would not arbitrarily exclude subsistence-reliant users, but would provide a meaningful filter. Consumption, in both the western states figures and the division of subsistence research, is defined as pounds brought into the kitchen. Pounds of consumption should be measured similarly for the purposes of this statute.

Under subsec. (i) (2), a person receives points for the number of species from the subsistence use area for which qualification is sought that are consumed by the person. The taking of the fish and

game must have been noncommercial, and the fish and game may not have been purchased for money. Dependence on a wide variety of fish and game species indicates a higher reliance on wild fish and game to meet a wider spectrum of nutritional needs. The boards, by regulation, jointly will set the mandatory minimum number of species or groups of species that must be consumed, and may consider regional diversity of species in setting the minimum. To avoid situations where the number of species of an animal or fish is so high that this criterion would become meaningless, the boards are allowed to group some species together for the purposes of determining points under the criterion. For example, the boards may decide to group species in a manner such as the following:

- all species of upland birds,
- all species of water fowl,
- all species of fresh water fish,
- all species of salmon,
- all species of non-salmon salt water fish,
- all species of crab,
- all species of other marine invertebrates,
- all species of small game,
- each individual species of big game, furbearers, or marine mammals.

These are only possibilities; the boards are not required to make such groupings.

Under subsec. (i)(3), a person earns points for the days spent taking fish or game in the subsistence use area for which qualification is sought. Points are also earned for days spent processing that fish and game, although the processing, as opposed to taking, need not take place in the subsistence use area. It is not necessary that the person spend the entire day engaged in taking or processing for that day to count toward points, but at least part of the day must be spent in those activities. The mandatory minimum of 30 days engaged in taking or processing fish or game is a reasonable indicator of actual and substantial reliance on fish and game.

Under subsec. (i)(4), a person receives points for the number of months during which he or she hunts or fishes in the subsistence use area for which qualification is sought. This criterion is intended to reward use that occurs throughout the year, as opposed to use in only one or two forays. Year-round use ties in with a wide diversity of use and tends to reflect a higher degree of reliance on fish and game resources. The mandatory minimum of four months is considered a basic threshold and could be easily met by a person hunting or fishing only once in each season of the year. There is no requirement that the hunting, fishing, or processing occur in any specific month.

Under subsec. (i) (5), a person earns points for the number of weeks during which his or her work effort is principally directed toward hunting and fishing activity, rather than other work such as employment or other business activity. Work effort is to be distinguished from the value of income received during the week. It is not necessary that the market value of fish or game taken be higher than cash income received during the week; it is necessary that the user exert more effort on harvesting fish and game resources than on pursuing any other work effort.

Under subsec. (i) (6), a person scores points for the number of households with which he or she shares, or from which he or she receives, fish or game. The taking of the fish and game must have been noncommercial, and the fish and game may not have been purchased for money. This criterion recognizes that a person may well rely on the fish and game he or she takes to meet family and social obligations. The reliance of the person and those who receive the shared resources should be recognized and protected. The 10-household maximum is designed to prevent abuse of this criterion through minimal sharing with many households.

Under subsec. (i) (7), a person will score a set number of points if all of the fish and game taken by that person comes from the subsistence use area for which qualification is sought. This criterion indicates whether the person has a higher degree of reliance on fish and game in that area than does a person who relies on fish and game from other areas of the state as well.

Proposed AS 16.05.268 (i):

The criteria in subsecs. (i) (1) - (i) (4) set out mandatory minimums. Subsection (j) specifies that all of those minimums must be met in order for a person to meet the requirements for qualification to subsistence hunt and fish in a particular subsistence use area. Failure to meet any one of the minimums disqualifies the person, regardless of the number of points that might be earned in other categories. The minimums are considered to be so basic that anyone who does not meet them could not have the actual and substantial reliance on subsistence hunting and fishing protected by this proposed statute.

Proposed AS 16.05.268 (k):

Subsection (k) authorizes the boards to develop the procedures and any forms in such a way as to ensure that hunting and fishing activity used to satisfy the criteria of subsec. (i) was legal, noncommercial, and efficient and economical. This does not rule out a person's ability to count activity that involves airplane travel to reach the subsistence use area for which qualification is sought, or that involves use of specific types of gear such as rod

and reel for fishing, if the use is efficient and economical. It does mean that the boards may include questions on an application form which will exclude certain methods or means for certain species, because of the clear inefficiency. Questions may also exclude activity involving certain types of travel and equipment that clearly show reliance is not efficient or economical.

If hospitalization during the relevant time period has prevented a person from meeting the qualification requirements of subsec. (i), or if military service or full-term attendance at an educational institution outside the subsistence use area for which qualification is sought has made it impossible to meet the criteria, the person may rely on activity during the 12 months immediately preceding the hospitalization or absence.

Proposed AS 16.05.268(l):

The department's regulations are to provide for an expedited review procedure, most likely by way of an appeal to the commissioner for a decision within 30 days, for persons who have been denied qualification. If the commissioner affirms the original denial, the decision would be final for the department and the person could appeal to the superior court under the Alaska Rules of Appellate Procedure. This subsection contemplates that the person will be given a meaningful opportunity to present relevant evidence supporting qualification. It does not require an adjudication of individual qualification under the Administrative Procedure Act (AS 44.62), which applies only to Department of Fish and Game functions relating to the protection of fish habitat under AS 16.05.870. (See AS 44.62.330(a)(18)).

Proposed AS 16.05.268(m):

Subsection (l) provides that fish stocks and game populations that are not identified as subsistence stocks and populations under subsec. (a) may be harvested only under nonsubsistence regulations. This subsection would apply to all fish stocks and game populations in areas identified by the boards under subsec. (f)(3), as well as fish stocks and game populations in subsec. (f)(1) and (f)(2) areas which are not identified by the boards under subsec. (a) as subsistence stock and populations.

Proposed AS 16.05.268(n):

Subsection (n) is similar to existing AS 16.05.258(f), but it adds a reference to all the major regulatory tools available to the Board of Fisheries under AS 16.05.251 and to the Board of Game under AS 16.05.255. Existing AS 16.05.258(f) specifically lists only "seasons, catch or bag limits, and methods and means." The

language of proposed subsec. (n) clarifies that the boards may also use marking and identification requirements, quotas, harvest levels, and sex, age and size limitations in regulating subsistence. The reference to wanton waste statutes is identical to the existing statute.

Proposed AS 16.05.268(o):

Paragraph (1):

The lack of a definition of "reasonable opportunity" has been a continuing source of controversy in the administration of subsistence law under existing AS 16.05.258. The new definition in subsec. (o)(1), in connection with new AS 16.05.268(b), establishes the legal standard for the boards in adopting fish and game regulations to provide a preference for subsistence uses.

The Board of Fisheries and Board of Game are composed of individuals who are picked in part because they are particularly knowledgeable in matters relating to fish and game. When they make their decisions, they usually have the benefit of testimony and advice from the local and regional advisory boards, the Department of Fish and Game, and the public. This provision allows them to apply that knowledge to make good management decisions.

The standard of a "normally diligent participant" is used to clarify that the boards do not have to tailor hunts or fisheries to satisfy the requirements of inefficient users. This concept ties back to the terms of "efficiency and economy of effort, cost, and transportation" expressed in subsec. (k) and inherent in subsistence hunting and fishing. The hunting or fishing permitted by the board should provide a normally diligent hunter or fisher with a "reasonable expectation of success," but the language goes on to explain that there is no guarantee of taking fish or game, the conditions of the hunt or fishery, or taking all that the user wants or even needs. These qualifications may seem self-evident, but clarity is needed to avoid contrary court interpretations.

The boards are required to make findings when they make reasonable opportunity determinations. These findings need not be in writing, but should be evident on the record of the proceedings of each board. In making its findings, a board considers the factors listed in subsec. (o)(1)(B). These are the factors believed to be important in providing a reasonable opportunity. The criteria listed in subsec. (o)(1)(B)(iii) are not intended to require the boards to match any historic use. While it is expected that the boards will provide hunts and fisheries that correspond generally with customary and traditional seasons and harvest levels, as long as the season is long enough to provide a normally diligent hunter or fisher with a reasonable chance of success, it need not last the entire season of the year. For example, if data shows that hunts have historically occurred both in the fall and winter, with at least a few animals taken in every month, the board is not required

to keep the season open during all fall and winter months. A hunt of reasonable duration during the fall and another hunt of reasonable duration during the winter would generally be sufficient.

Competition from other subsistence and nonsubsistence users is listed as a factor in subsec. (o)(1)(B)(v). This provision is included to allow the board to create seasons separate from general or sport seasons if necessary to provide a reasonable opportunity for subsistence users. Competition for subsistence users might be a reason to lengthen a season or structure it in such a way as to spread the hunting or fishing effort out over time or place.

Paragraph (2):

This paragraph provides a definition of the term "preceding 12 months," which is used in the qualification criteria in subsec. (i).

Sections 3 and 4:

These sections set out the definitions of subsistence fishing and hunting. Both existing definitions are amended to delete "domiciled in a rural area of the state," consistent with the ruling by the Alaska Supreme Court in McDowell.

The use of the terms "qualified resident" and "in accordance with AS 16.05.268 and regulations adopted under that statute" are to clarify that subsistence taking is authorized only under state regulations. The subsistence statutes do not of themselves authorize any hunting or fishing. They authorize and guide the boards' actions in providing for subsistence hunts and fisheries. Hunting or fishing may occur only in accordance with those board regulations. This language reaffirms the intent of existing AS 16.05.259 and the holding in State v. Eluska, 724 P.2d 514 (Alaska 1986) that subsistence not be used as a defense to hunt contrary to regulations. This bill does not create individual rights to hunt or fish absent regulation. It is not intended that any of the provisions of this bill be used as a defense in a criminal prosecution for taking fish or game. A person who is dissatisfied with a board regulation should submit a proposal to the appropriate board, or may challenge the regulation under AS 44.62.300.

In 1986, the legislature extensively debated and rejected the idea of use of rod and reel as a means of subsistence fishing. Section 3 of the bill includes that distinction.

Section 5:

The existing definition of "subsistence" has been amended in this section in part to comply with the Alaska Supreme Court's ruling in McDowell deleting the rural criteria: "subsistence use area" has been substituted for "rural area." The terms "fish and game" have been substituted for "wild renewable resources" because this bill does not purport to allocate other renewable resources.

"Shelter," "fuel," and "tools" have been deleted because, while other wild renewable resources are used for such purposes, this legislation only regulates uses of wild fish and game.

The language has also been changed to clarify that, while sharing is unrestricted, barter and customary trade may be for only a portion of fish and game that has been harvested primarily for personal family consumption. This language, along with the statutory definition of "customary trade," is included to emphasize that customary trade and barter are not to be used to commercial fish or hunt under the guise of subsistence.

Section 6:

This section adds the following new definitions to existing AS 16.05.940:

Customary and traditional: The intent of this definition is that any stock or population that is presently used for subsistence be classified as such, but classification not occur just because there have been incidental or random takes for subsistence at some time in the past. Application of the factual information about stocks and populations to this statutory definition is to be a judgment call by the boards, relying on their experience and expertise.

For example, if there is a caribou herd whose migration pattern sometimes brings the animals within range of a village and people in the village harvest the animals every time the herd comes in range, that is a consistent and continuing pattern. Similarly, a temporary break in harvest caused by circumstances beyond the users' control (such as regulations temporarily prohibiting harvest to protect sustained yield) would not automatically disqualify the stock or population from classification for subsistence.

The boards have previously used the concept of multi-generational use in establishing which stocks and populations are subject to subsistence use. The standard dictionary definition of the length of one generation is 30 years.

Customary trade: Customary trade is noncommercial. It includes only sales for minimal amounts of money, as restricted by the boards. This definition should eliminate the possibility that commercial fishing or hunting could occur under the guise of

subsistence. No sales to commercial processors, wholesalers, or retailers are allowed at all, nor are sales that result in the fish or game being delivered to such enterprises. Sales of small amounts of game and fish to other subsistence users, neighbors, or other consumers may be allowed by the boards. This definition intentionally corrects the misinterpretation of this section by several federal district court criminal cases and the Ninth Circuit Court of Appeals decision in United States v. Alexander, 938 F.2d 942 (9th Circuit, 1991).

Customary trade is allowed only on a portion of subsistence harvest that has been taken primarily for personal or family consumption rather than sale. This is consistent with the definition of "subsistence" uses both in this bill and existing state law.

Trapping of furs and furbearers is recognized as unique under existing statutes and regulations. The terms of this definition do not purport to regulate the sale of furs or furbearers.

Sustained yield: No use of Alaska's wild fish and game, whether it be commercial, sport, personal use, or subsistence, may violate the principle of sustained yield. Article VIII, sec. 4, of Alaska's Constitution, requires that the state's replenishable resources be utilized, developed, and maintained on the sustained use principle, subject to preferences among beneficial uses. The constitutional convention purposely left the definition of sustained yield to the legislature.

In this definition, "utilization, development, and maintenance," and "beneficial uses" are from the constitution. "Self-perpetuating" is the essence of sustained yield. "Healthy" and "naturally occurring" are federal terms, included so the federal government cannot assert that "sustained yield" is a lower standard than the federal terms.

The constitutional convention was very clear that management to intentionally increase or decrease the size of a specific stock or population is part of sustained yield. The definition allows for such management. This definition is included to clarify that the boards have authority to regulate for growth of fish stocks and game populations and are not required to allow for maximum harvest as soon as a stock or population can be steadily maintained at minimal levels.

For example, only five animals might be available each year from a caribou herd without decreasing the overall size of the herd, but by restricting the harvest for several years the size of the herd and the allowable annual take could be substantially increased. Conversely, a caribou herd might have grown too large and be overgrazing its range. Based on the biologic advice of the Department of Fish and Game, the board could allow a harvest level

that would intentionally reduce the size of the herd while being consistent with the principle of sustained yield.

Section 7:
(Repealers)

AS 16.05.258 is the existing state subsistence law, which this bill replaces. AS 16.05.940(26) contains the definition of "rural area" that was effectively invalidated by the McDowell decision.

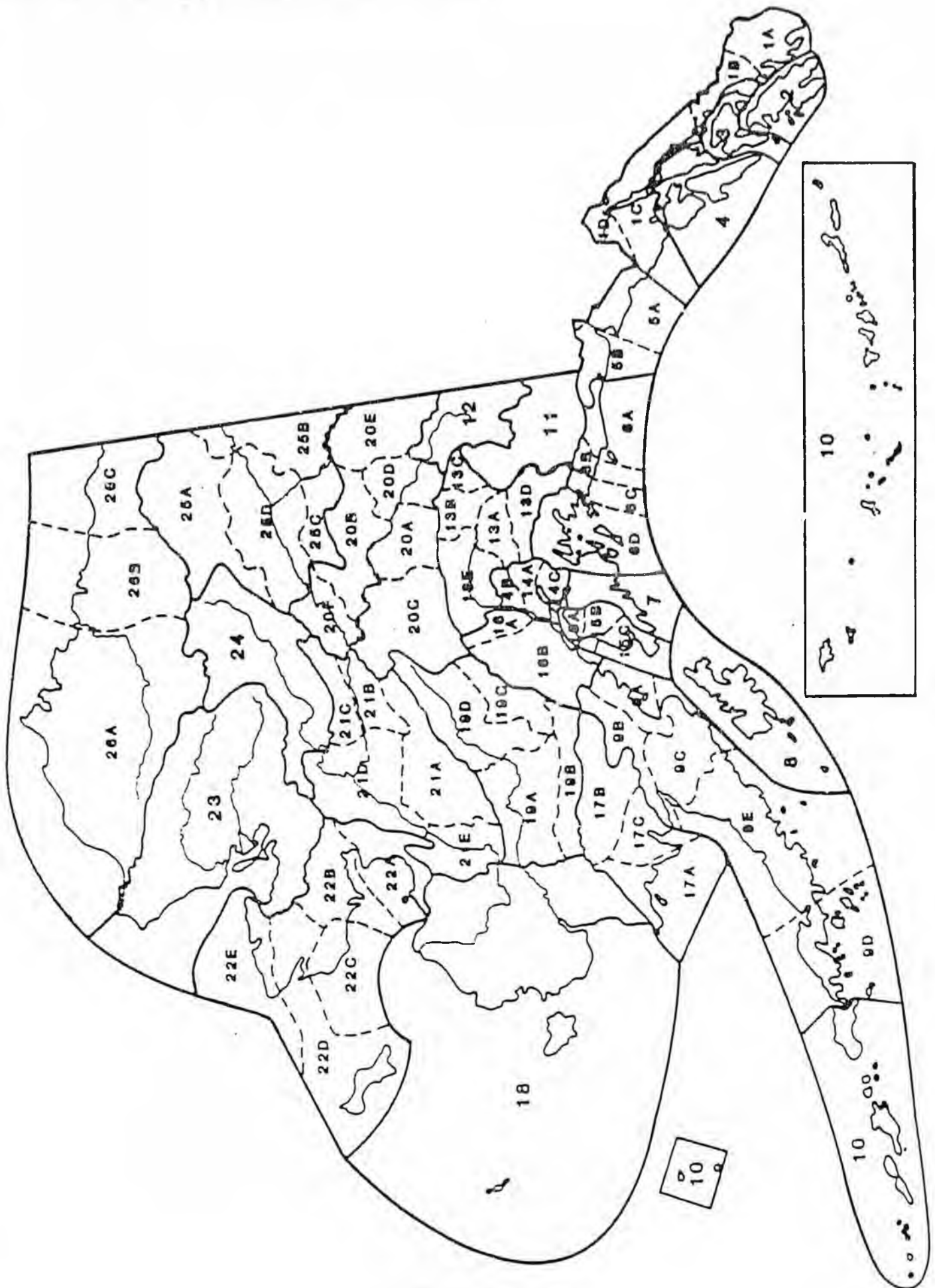
Sections 8, 9, 11, and 12:

These four sections deal with the transition between the new subsistence law and the old law. These sections recognize that the boards cannot immediately implement the provisions of this bill. While it is required that all regulations the boards adopt after June 1, 1992 must be consistent with the new law, there are many existing hunts and fisheries that can still occur while the boards are reviewing and updating the regulations that govern those hunts and fisheries. Many existing determinations of the boards can be used by the boards and the department in the implementation of this bill. The boards now operate on cycles that cover all the species in every area of the state every two or three years.

Section 10:

This section provides for a formal review process of the new subsistence law.

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX A
GAME MANAGEMENT UNITS AND SUBUNITS



SECTIONAL ANALYSIS
APPENDIX A "MAP"

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX B

PRELIMINARY LISTING OF ALASKA COMMUNITIES GROUPED BY TYPE OF COMMUNITY IN THE GOVERNOR'S SUBSISTENCE BILL

February 1992

This report presents a preliminary listing of Alaska communities and areas grouped into the three types of communities and areas described in the Governor's subsistence bill. The report is designed to illustrate how this part of the bill might be implemented by the Boards of Fisheries and Game.

Three Types of Communities and Areas

The Governor's subsistence bill describes three types of communities and areas:

(e)(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.

(e)(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.

(e)(3) communities or urban areas where the human population is 7,000 or greater or areas or communities where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community.

The subsistence bill states that the Boards of Fisheries and Game "shall by regulation, jointly identify and delineate areas of the state, utilizing game management unit, portion of game management unit, or community", placing them into each of the three categories.

To place areas and communities into the three categories, the Boards of Fisheries and Game will consider information about population size and "the relative importance of subsistence compared to the totality of the following socio-economic characteristics of the area:

- (1) the social and economic structure;
- (2) the stability of the economy;
- (3) the extent of employment for wages and kinds of wage jobs including full-time, part-time, temporary and seasonal employment;
- (4) the amount and distribution of cash income among residents;
- (5) the cost and availability of goods and services to residents;
- (6) the variety of fish and wildlife species utilized by residents;
- (7) the seasonal cycle of economic activity;
- (8) the percentage of residents participating in hunting and fishing activities or using wild resources;

- (9) the harvest levels of fish and game by residents;
- (10) the cultural, social, and economic values associated with the taking and use of fish and game;
- (11) the geographic areas where residents hunt and fish;
- (12) the extent of sharing and exchange of fish and game by area residents;
- (13) additional similar factors the boards establish in regulation to be relevant to their determinations under this subsection."

While the exact end results of the Boards' future classifications under these procedures cannot be predicted, one can anticipate within some level of confidence which categories most Alaska communities will probably be placed by the Boards. This is because the Boards went through a similar procedure under the state's previous subsistence statute in 1986. At that time, they categorized communities and areas as to whether the use of wild resources was a principal characteristic of the economy of the community or area. Using the 1986 Board findings and making some assumptions with additional updated information, one can make an educated guess about a preliminary listing of communities within each group.

Assumptions for the Preliminary Listing

There are several assumptions that were followed to compile the following listing.

1. Group 1 communities are assumed to be those communities with 1990 populations less than 2,500 people, and in which the use of wild resources was a principal characteristic of the economy as determined by the Boards in 1986, with a few exceptions identified in Group 3 below.
2. Group 2 communities are assumed to be those communities with 1990 populations between 2,500 and 7,000 people, and in which the use of wild resources was a principal characteristic of the economy as determined by the Boards in 1986.
3. Group 3 communities are assumed to be communities or areas with 1990 populations greater than 7,000 people, or areas where wild resource use was not a principal characteristic of the economy as determined by the Boards in 1986. Some exceptions to the above are certain small places (logging camps, mining settlements, and military settlements) which the Boards may determine to be in Group 3, which the Boards classified as subsistence communities in 1986.

The 1990 federal census was used for population numbers. The populations of five areas were aggregated into single units for the purpose of the listing:

1. The road-connected area of the Kenai Peninsula (except that the Seward area was considered a separate entity).
2. The road-connected area of the Kodiak City area.
3. The Ketchikan Borough.
4. The road-connected area of the Matanuska-Susitna Borough.
5. The road-connected area of the Fairbanks North Star Borough.

The Preliminary Listing

Based on the assumptions above, the preliminary listing of communities and areas are presented in Tables 1, 2, and 3. As can be seen, of 297 communities and areas, 257 are in Group 1, 7 are in Group 2, and 33 are in Group 3. Of 550,311 state residents in 1990, 66,798 (12.1 percent) are in Group 1, 23,292 (4.2 percent) are in Group 2, and 460,221 (83.6 percent) are in Group 3 (Table 4). Of the state's 85,964 Alaska Natives, 42,313 (49.2 percent) are in Group 1, 9,948 (11.6 percent) are in Group 2, and 33,703 (39.2 percent) are in Group 3 (Table 4). Of the state's 464,347 non-Native population, 24,485 (5.3 percent) are in Group 1, 13,344 (2.9 percent) are in Group 2, and 426,518 (91.9 percent) are in Group 3 (Table 4). A few comments can be made about each group.

There are 257 communities in Group 1 with a population of 66,798 people (12.1 percent of the state's population) (Table 1). Of this population, 42,313 (66.3 percent) were Alaska Natives and 24,485 people (36.7 percent) were non-Natives (Table 4). There are three communities in Group 1 whose populations are approaching Group 2: Dillingham (2,017), the Haines area (2,117), and Wrangell (2,479).

There are seven communities in Group 2: Cordova (2,579 people), Kotzebue (2,751), Unalaska (3,089), Petersburg (3,230), Barrow (3,469), Nome (3,500), and Bethel (4,674) (Table 2). These mid-sized places had a combined population of 23,292 people in 1990 (4.2 percent of the state's population). Of this population, 9,948 (42.7 percent) were Alaska Natives and 13,344 (47.3 percent) were non-Natives (Table 4).

About 460,221 people were in Group 3 communities and areas (83.6 percent of the state's population) (Tables 3 and 4). Areas with populations greater than 7,000 people include the Anchorage Borough (226,338 people), the Fairbanks North Star Borough (77,720), the Matanuska-Susitna area (39,415), the Kenai Peninsula area (36,651), the Juneau Borough (26,751), the Ketchikan area (13,828), the Kodiak City area (12,230), and Sitka (8,588). There are 21 communities with populations less than 2,500 which were tentatively placed in Group 3 because it was thought that the Board might not consider subsistence to be a principal component of the economy, culture, and way of life. These places primarily are logging camps, mining settlements, and military settlements (Table 3). Of the Group 3 population, 33,703 (7.3 percent) are Alaska Natives and 426,518 (92.7 percent) are non-Natives (Table 4).

TABLE 1
PRELIMINARY LISTING OF COMMUNITIES AND AREAS IN GROUP 1
(< 2,500 PEOPLE AND WHERE DEPENDENCE UPON SUBSISTENCE
IS A PRINCIPAL CHARACTERISTIC OF THE ECONOMY, CULTURE,
AND WAY OF LIFE, AND NOT PART OF AN URBAN AREA)

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Balance of Bristol Bay Census Area	3	100.00	Southwest	Rural
Portage Creek	5	60.00	Southwest	Rural
Solomon	6	100.00	Arctic	Rural
Ugashik	7	85.70	Southwest	Rural
Council	8	82.50	Arctic	Rural
Balance of Lower Kuskokwim Census	10	40.00	Western	Rural
Telida	11	90.90	Interior	Rural
Balance of Barrow-Point Hope Census	13	7.70	Arctic	Rural
Balance of Wade Hampton Census Sub	17	70.60	Western	Rural
Balance of Angoon Census Sub-Area	19	0.00	Southeast	Rural
Balance of Outer Katchikan Census Su	21	9.50	Southeast	Rural
Gakona	25	0.00	Southcentral	Rural
McCarthy	25	4.00	Southcentral	Rural
Port Clarence	26	0.00	Arctic	Rural
Paxson	30	0.00	Southcentral	Rural
Paxson-Sourdough	30	0.00	Southcentral	Rural
Alatna	31	93.60	Interior	Rural
Balance of Lake and Peninsula Borough	31	16.10	Southwest	Rural
Lake Minchumina	32	18.80	Interior	Rural
Balance of Dillingham Census Area	32	31.25	Southwest	Rural
Igiugig	33	78.80	Southwest	Rural
Evansville	33	57.60	Interior	Rural
Wiseman	33	15.20	Interior	Rural
Fagle Village	35	80.00	Interior	Rural
Nikolski	35	82.85	Southwest	Rural
Ivanof Bay	35	94.30	Southwest	Rural
Bottles	36	22.20	Interior	Rural
Moyers Chuck	37	10.80	Southeast	Rural
Mendaltne	37	5.40	Southcentral	Rural
Takotna	38	44.70	Interior	Rural
Chase	38	0.00	Southcentral	Rural
Tomsina	38	18.40	Southcentral	Rural
Point Baker	39	0.00	Southeast	Rural
Birch Creek	42	90.50	Interior	Rural
Pedro Bay	42	90.50	Southwest	Rural
Lime Village	42	95.24	Western	Rural
Annette	43	16.30	Southeast	Rural
Healy Lake	47	85.10	Interior	Rural
Chitina	49	46.90	Southcentral	Rural
Stony River	51	88.24	Western	Rural
Central	52	1.90	Interior	Rural
Red Devil	53	50.94	Western	Rural
Chignik Lagoon	53	56.60	Southwest	Rural
Pilot Point	53	84.90	Southwest	Rural
Hughes	54	92.60	Interior	Rural
Kasaan	54	53.70	Southeast	Rural
Port Alsworth	55	1.80	Southwest	Rural
Balance of McGrath-Holy Cross Census	56	10.70	Interior	Rural
Ferry	56	12.50	Interior	Rural
Ellin Cove	57	1.80	Southeast	Rural
Oscarville	57	91.22	Western	Rural
Clark's Point	60	88.30	Southwest	Rural
Chistochina	60	51.70	Southcentral	Rural
Game Creek Census Designated Place	61	0.00	Southeast	Rural
Port Protection	62	1.60	Southeast	Rural
Siana	63	6.40	Southcentral	Rural
Platinum	64	92.18	Western	Rural
Twin Hills	66	92.40	Southwest	Rural

TABLE 1
 PRELIMINARY LISTING OF COMMUNITIES AND AREAS IN GROUP 1
 (<2,500 PEOPLE AND WHERE DEPENDENCE UPON SUBSISTENCE
 IS A PRINCIPAL CHARACTERISTIC OF THE ECONOMY, CULTURE,
 AND WAY OF LIFE, AND NOT PART OF AN URBAN AREA)

Place Name	1990 Population	Percent Native	Region	Old Rural Status
False Pass	68	76.47	Southwest	Rural
Rampart	68	94.10	Interior	Rural
Kobuk	69	89.90	Arctic	Rural
Chiniak	69	5.80	Southwest	Rural
Battles/Evanville	69	39.10	Interior	Rural
Dot Lake	70	54.29	Interior	Rural
Balance of Aniak Census Sub-Area	71	63.38	Western	Rural
Karluk	71	91.50	Southwest	Rural
Circle	73	86.30	Interior	Rural
Whale Pass	75	2.70	Southeast	Rural
Ekwok	77	87.00	Southwest	Rural
Akhiok	77	93.50	Southwest	Rural
Anvik	82	91.50	Interior	Rural
Nelson Lagoon	83	80.72	Southwest	Rural
Skwentna	85	1.20	Southcentral	Rural
Edna Bay	86	0.00	Southeast	Rural
Balance of Prince William Sound Censu	86	0.00	Southcentral	Rural
Tatlin	87	95.40	Interior	Rural
Balance of Wrangell Census Sub-Area	87	11.50	Southeast	Rural
Northway Junction	88	70.50	Interior	Rural
Chalkyitsik	90	92.20	Interior	Rural
Balance of Yukon Flats Census Sub-Ar	91	38.50	Interior	Rural
Balance of Nome Census Area	92	46.74	Arctic	Rural
Iliamna	94	65.90	Southwest	Rural
Chenega Bay	94	69.20	Southcentral	Rural
Tenakee Springs	94	9.60	Southeast	Rural
Arctic Village	96	93.80	Interior	Rural
Mentasta Lake	96	72.90	Southcentral	Rural
Manly Hot Springs	96	14.60	Interior	Rural
Chuathbaluk	97	89.69	Western	Rural
Atka	98	92.85	Southwest	Rural
Hyder	99	1.00	Southeast	Rural
Lignite	99	0.00	Interior	Rural
Stevens Village	102	91.20	Interior	Rural
Beaver	103	95.20	Interior	Rural
Gulkana	103	59.20	Southcentral	Rural
Levelock	105	82.90	Southwest	Rural
Sleetmute	106	86.79	Western	Rural
Crooked Creek	106	90.56	Western	Rural
Tanacross	106	94.30	Interior	Rural
Dry Creek	106	0.00	Interior	Rural
Perryville	108	94.40	Southwest	Rural
Nikolai	109	88.90	Interior	Rural
Sheldon Point	109	92.70	Western	Rural
Hollis	111	2.70	Southeast	Rural
Northway Village	113	94.70	Interior	Rural
Port Alexander	119	2.50	Southeast	Rural
Port Heiden	119	72.30	Southwest	Rural
Tatitlek	119	86.60	Southcentral	Rural
Balance of Northwest Arctic Borough	122	67.20	Arctic	Rural
Egegik	122	70.50	Southwest	Rural
Northway	123	64.20	Interior	Rural
Koyukuk	126	97.60	Interior	Rural
Golovin	127	92.90	Arctic	Rural
Klukwan	129	86.80	Southeast	Rural
Chignik Lake	133	91.80	Southwest	Rural
Pitka's Point	135	95.80	Western	Rural
South Naknek	136	79.40	Southwest	Rural

TABLE 1
 PRELIMINARY LISTING OF COMMUNITIES AND AREAS IN GROUP 1
 (<2,500 PEOPLE AND WHERE DEPENDENCE UPON SUBSISTENCE
 IS A PRINCIPAL CHARACTERISTIC OF THE ECONOMY, CULTURE,
 AND WAY OF LIFE, AND NOT PART OF AN URBAN AREA)

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Allakaket	138	94.30	Interior	Rural
Saint George	138	94.92	Southwest	Rural
Point Lay	139	81.30	Arctic	Rural
Shageluk	139	94.90	Interior	Rural
Chickaloon	145	6.20	Southcentral	Rural
Larsen Bay	147	84.40	Southwest	Rural
Cantwall	147	22.50	Interior	Rural
Cold Bay	148	5.40	Southwest	Rural
Kokhanok	152	90.10	Southwest	Rural
Nightmute	153	95.42	Western	Rural
Tyonak	154	92.20	Southcentral	Rural
Deering	157	94.30	Arctic	Rural
English Bay	158	91.10	Southcentral	Rural
Nowhalen	160	94.40	Southwest	Rural
Wales	161	88.90	Arctic	Rural
Coperville	163	26.40	Southcentral	Rural
Port Graham	166	90.40	Southcentral	Rural
Eagle	168	3.00	Interior	Rural
Ruby	170	74.10	Interior	Rural
Allakaket/Alatna	170	94.10	Interior	Rural
McKinley Park Village	171	2.90	Interior	Rural
Upper Kalskag	172	84.88	Western	Rural
Mekoryuk	177	99.44	Western	Rural
Nondalton	178	89.30	Southwest	Rural
Diomedea	178	93.80	Arctic	Rural
Shaktolik	178	94.40	Arctic	Rural
White Mountain	180	87.80	Arctic	Rural
Koliganek	181	96.10	Southwest	Rural
Venetie	182	93.90	Interior	Rural
Alaknagik	185	83.20	Southwest	Rural
Coffman Cove	186	6.90	Southeast	Rural
Chignik Bay	188	45.20	Southwest	Rural
Brevig Mission	198	92.40	Arctic	Rural
Huslia	207	90.80	Interior	Rural
Newtok	207	93.24	Western	Rural
Grayling	208	93.30	Interior	Rural
Ouzinkie	209	85.20	Southwest	Rural
Atkasuk	216	93.10	Arctic	Rural
Minta	218	97.30	Interior	Rural
Port Lions	222	67.60	Southwest	Rural
Pelican	222	29.30	Southeast	Rural
Shungnak	223	94.60	Arctic	Rural
Kaktovik	224	84.40	Arctic	Rural
Balance of Petersburg Census Sub-Area	225	0.00	Southeast	Rural
Teller	230	91.30	Arctic	Rural
Koyuk	231	94.80	Arctic	Rural
Kaltag	240	92.50	Interior	Rural
Goodnews Bay	241	95.85	Western	Rural
Russian Mission	246	94.70	Western	Rural
Balance of Aleutians East Borough	247	91.09	Southwest	Rural
Tazlina	247	23.10	Southcentral	Rural
Eek	254	95.67	Western	Rural
Atmautluak	258	96.89	Western	Rural
Gustavus	258	3.90	Southeast	Rural
Anaktuvuk Pass	259	84.90	Arctic	Rural
Elim	264	91.70	Arctic	Rural
Marshall (Fortuna Lodge)	273	92.70	Western	Rural
Holy Cross	277	93.50	Interior	Rural

TABLE 1
 PRELIMINARY LISTING OF COMMUNITIES AND AREAS IN GROUP 1
 (<2,500 PEOPLE AND WHERE DEPENDENCE UPON SUBSISTENCE
 IS A PRINCIPAL CHARACTERISTIC OF THE ECONOMY, CULTURE,
 AND WAY OF LIFE, AND NOT PART OF AN URBAN AREA)

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Kwigillingok	278	94.96	Western	Rural
Old Harbor	284	88.70	Southwest	Rural
Akiak	285	97.19	Western	Rural
Lower Kalskag	291	98.28	Western	Rural
Kongiganak	294	97.28	Western	Rural
Saint Michael	295	91.20	Arctic	Rural
Tuntutuliak	300	96.66	Western	Rural
Ambler	311	89.70	Arctic	Rural
Balance of Hoonah-Yakutat Census Su	311	15.40	Southeast	Rural
Tununak	316	96.20	Western	Rural
Seldovia	316	15.20	Southcentral	Rural
Kivalina	317	97.50	Arctic	Rural
Napakiak	318	94.34	Western	Rural
Buckland	318	94.90	Arctic	Rural
Chefornak	320	97.50	Western	Rural
Nepaskieik	328	94.82	Western	Rural
Noatak	333	96.70	Arctic	Rural
Scammon Bay	343	96.50	Western	Rural
Tanana	345	78.30	Interior	Rural
Nuiqsut	354	92.70	Arctic	Rural
Tuluksak	358	95.53	Western	Rural
Nulato	359	96.90	Interior	Rural
Nunapitchuk	378	97.09	Western	Rural
Hydaburg	384	89.10	Southeast	Rural
Kiana	385	93.50	Arctic	Rural
Manokotak	385	95.60	Southwest	Rural
New Stuyahok	391	95.90	Southwest	Rural
Nenuna	393	47.80	Interior	Rural
Stebbins	400	94.80	Arctic	Rural
Toksook Bay	420	95.48	Western	Rural
Kenny Lake	423	9.70	Southcentral	Rural
Kasigluk	425	95.29	Western	Rural
Saint Marys (Andreatsky)	441	82.90	Western	Rural
Balance of Prince of Wales Census Sub	442	7.00	Southeast	Rural
Copper Center	449	34.50	Southcentral	Rural
Glennallen	451	5.70	Southcentral	Rural
King Cove	451	39.25	Southwest	Rural
Shishmaref	456	94.50	Arctic	Rural
Kotlik	461	96.90	Western	Rural
Pilot Station	463	95.00	Western	Rural
Kipnuk	470	97.45	Western	Rural
Akiacnak	483	95.03	Western	Rural
Healy	487	1.40	Interior	Rural
Wainwright	492	94.30	Arctic	Rural
Quinhagak	501	93.81	Western	Rural
Balance of Copper River Census Sub-A	504	0.90	Southcentral	Rural
Savoonga	519	95.20	Arctic	Rural
Gambell	525	96.70	Arctic	Rural
McGrath	528	46.90	Interior	Rural
Noorvik	531	93.80	Arctic	Rural
Yakutat	534	55.10	Southeast	Rural
Aniak	540	70.74	Western	Rural
Alakanuk	544	95.80	Western	Rural
Kwethluk	558	96.42	Western	Rural
Thorne Bay	569	1.20	Southeast	Rural
Naknek	575	41.00	Southwest	Rural
Fort Yukon	580	85.00	Interior	Rural
Balance of Koyukuk-Middle Yukon Cen	589	11.60	Interior	Rural

TABLE 1
 PRELIMINARY LISTING OF COMMUNITIES AND AREAS IN GROUP 1
 (<2,500 PEOPLE AND WHERE DEPENDENCE UPON SUBSISTENCE
 IS A PRINCIPAL CHARACTERISTIC OF THE ECONOMY, CULTURE,
 AND WAY OF LIFE, AND NOT PART OF AN URBAN AREA)

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Akutan	589	13.58	Southwest	Rural
Selawik	596	95.50	Arctic	Rural
Chevak	598	92.90	Western	Rural
Togiak	613	87.30	Southwest	Rural
Anderson	628	3.70	Interior	Rural
Angoon	638	82.30	Southeast	Rural
Point Hope	639	91.90	Arctic	Rural
Emmonak	642	92.10	Western	Rural
Mountain Village	674	91.10	Western	Rural
Skagway	692	5.50	Southeast	Rural
King Salmon	696	15.50	Southwest	Rural
Kake	700	73.40	Southeast	Rural
Unalakleet	714	81.80	Arctic	Rural
Klawock	722	54.30	Southeast	Rural
Saint Paul	763	66.05	Southwest	Rural
Hoonah	795	67.20	Southeast	Rural
Galena	833	4.50	Interior	Rural
Hooper Bay	845	95.90	Western	Rural
Sand Point	878	49.31	Southwest	Rural
Tok	935	12.50	Interior	Rural
Craig	1260	22.90	Southeast	Rural
Metlakatla	1426	82.90	Southeast	Rural
Dillingham	2017	55.80	Southwest	Rural
Haines Area	2117	13.2	Southeast	Rural
Wrangell	2479	20.00	Southeast	Rural

**TABLE 2
 PRELIMINARY LISTING OF COMMUNITIES AND AREAS IN GROUP 2
 (2,500-7,000 PEOPLE AND WHERE DEPENDENCE UPON SUBSISTENCE
 IS A PRINCIPAL CHARACTERISTIC OF THE ECONOMY, CULTURE,
 AND WAY OF LIFE, AND NOT PART OF AN URBAN AREA)**

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Cordova Area	2579	10.52	Southcentral	Rural
Kotzeb	2751	75.10	Arctic	Rural
Unalaska	3089	8.38	Southwest	Rural
Petersburg	3230	10.10	Southeast	Rural
Barrow	3489	63.90	Arctic	Rural
Nome	3500	52.10	Arctic	Rural
Bethel	4674	63.89	Western	Rural

TABLE 3
 PRELIMINARY LISTING OF COMMUNITIES AND AREAS IN GROUP 3
 (> 7,000 PEOPLE OR WHERE DEPENDENCE UPON SUBSISTENCE
 IS NOT A PRINCIPAL CHARACTERISTIC OF THE ECONOMY,
 CULTURE, AND WAY OF LIFE)

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Amchitka	25	8.00	Southwest	Rural
Deadhorse	28	11.50	Arctic	Rural
Alcan	27	0.00	Interior	Rural
Circle Hot Springs Station	29	0.00	Interior	Rural
Port Alice	30	6.70	Southeast	Rural
Balance of Aleutians West Census Area	33	20.00	Southwest	Rural
Prudhoe Bay	47	8.50	Arctic	Urban
Dora Bay	57	3.50	Southeast	Rural
Freshwater Bay	68	10.30	Southeast	Rural
Saint John's Harbor	69	1.50	Southeast	Rural
Naukatli Bay	93	1.10	Southeast	Rural
Balance of Prudhoe Bay-Kaktovik Cens	101	8.90	Arctic	Rural
Rowan Bay	133	6.80	Southeast	Rural
Polk Inlet	135	13.30	Southeast	Rural
LaBouchere Bay	149	1.30	Southeast	Rural
Cuba Cove	156	5.80	Southeast	Rural
Whitestone Logging Camp	164	3.70	Southeast	Rural
Hobart Bay	187	6.40	Southeast	Rural
Long Island	198	4.50	Southeast	Rural
Whittier	243	12.40	Southcentral	Urban
Shemya Station Census Designated Pla	664	0.45	Southwest	Rural
Seward Area	3357	13.89	Southcentral	Urban
Delta Area	4008	2.79	Interior	Urban
Valdez	4068	5.90	Southcentral	Urban
Adak Station	4633	1.20	Southwest	Rural
Sitka	8588	20.90	Southeast	Rural
Kodiak City Area	12230	10.45	Southwest	Rural
Ketchikan Area	13878	13.73	Southeast	Urban
Juneau	26751	12.90	Southeast	Urban
Kenai Peninsula Area	36651	7.35	Southcentral	Urban
Matsu Area	39415	4.91	Southcentral	Urban
Fairbanks North Star Borough	77720	6.80	Interior	Urban
Anchorage	226338	6.44	Southcentral	Urban

TABLE 4
 CULTURAL DIVERSITY OF POPULATION
 BY TYPE OF COMMUNITY
 BASED ON PRELIMINARY LISTING

	NON-NATIVES		ALASKA NATIVES		STATE TOTALS	
GROUP 1	24485	5.3%	42313	49.2%	66798	12.1%
GROUP 2	13344	2.9%	9948	11.6%	23292	4.2%
GROUP 3	426518	91.9%	33703	39.2%	460221	83.6%
STATE TOTAL	464347	100.0%	85964	100.0%	550311	100.0%

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX C
The following illustrates an example of an application for a subsistence permit for applicants from Type 2 communities.

STATE OF ALASKA
SUBSISTENCE HARVEST PERMIT APPLICATION CERTIFICATION
FOR APPLICANTS FROM TYPE 2 COMMUNITIES

I certify that I am a qualified subsistence user. My pattern of taking and use of wild fish and game in a subsistence use area during the last 12 months meets enough of the criteria established in statute and regulation so that my score on the state subsistence application would exceed the qualifying point level and each of the mandatory minimums, including the following criteria:

(A) Personal consumption of a substantial quantity of wild fish and game during the past twelve months, with a mandatory minimum of 125 lbs;

(B) Use of a wide diversity of species and groups of species of fish and game in the past twelve months, with a mandatory minimum of 6 species or groups of species;

(C) Expenditure of a substantial number of days during the last twelve months engaged in taking fish or game in a subsistence use area or processing that fish and game, with a mandatory minimum of 30 days;

(D) Taking fish and game in a subsistence use area in a number of different months, with a mandatory minimum of 4 months;

(E) Expenditure of weeks in the last twelve months during which the taking or processing fish or game was the applicant's principal work effort, with no minimum required to a maximum of 26 weeks (optional criterion);

(F) Sharing or receiving fish and game in the past twelve months with a number of households other than the applicant's, with no minimum required to a maximum of ten households (optional criterion);

(G) Taking fish and game solely in the subsistence use area (optional criterion).

My taking and processing of fish and game described above was legal, noncommercial, and characterized by efficiency and economy of effort, cost, and transportation.

CERTIFICATION

Signature of Applicant _____

Signature of Witness _____

(Note: Providing false information is subject to a maximum penalty of either \$1,000 fine or 6 month imprisonment, or both, per 16.05.430.)

**STATE OF ALASKA, SUBSISTENCE WORKSHEET
FOR SUBSISTENCE HARVEST PERMIT APPLICATION CERTIFICATION**

This worksheet can be used by you to see if you qualify as a subsistence user. You do not have to return this worksheet with the application; it is for your use only. To see if you qualify, answer each question and follow the instructions below. A person must score at least 100 points to qualify as a subsistence user. A person must also score higher than the minimums for each question.

1. How many pounds of wild fish and game did you consume during the last 12 months?
(Scoring: 1 point for every 10 lb. There is a 125 lbs minimum.)
2. How many different species of wild fish and game did you use during the last 12 months?
(Scoring: 3 points for every species. There is a 6 species minimum.)
3. How many days did you spend engaged in taking fish or game in your subsistence use area, or spent processing that fish and game during the last 12 months?
(Scoring: 1 point for every day. There is a 30 days minimum.)
4. In how many different months did you hunt or fish during the last 12 months?
(Scoring: 1 point for every month. There is a 4 months minimum.)
5. During the last 12 months, how many weeks was the taking or processing of fish or game your principal work effort?
(Scoring: 1 point for each week. There is no minimum; there is a 26 weeks maximum.)
6. With how many different households outside your own did you share or receive fish and game in the past 12 months?
(Score: 2 points per household. There is no minimum; there is a 10 households maximum.)
7. Did your taking of fish and game occur entirely within the subsistence use area for which you are now applying?
(Score: yes = 5 points, no = 0 points. There is no minimum.)

To figure your score, fill in your answers below, do the formulas, and add up the total.

Question	Your Answer	Formula	Your Score	Minimum
1. Quantity of fish and game consumed		10 =		125
2. Number of species used		x 3 =		6
3. Days spent taking or processing		x 1 =		30
4. Number of months when taking occurred		x 1 =		4
5. Weeks when taking/processing fish/game was main work		x 1 =		0
6. Households receiving or giving		x 2 =		0
7. Taking was in subsistence use area? y = 5, n = 0		x 1 =		0
ADD UP YOUR TOTAL.				
A person must score more than 100 points to qualify.				
A person must score more than each minimum to qualify.				

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX D

The following illustrates an example of an application for a subsistence permit for applicants from Type 3 communities.

**STATE OF ALASKA
SUBSISTENCE HARVEST PERMIT APPLICATION
FOR APPLICANTS FROM TYPE 3 COMMUNITIES
(PAGE 1)**

Preamble

If you live in a community or urban area where the human population is 7000 people or greater, or if you live in a community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area, there is a rebuttable presumption that you do not qualify as a subsistence user. You may apply for a subsistence harvest permit using this application. However, the burden of proof is placed on the applicant to demonstrate that the applicant's personal history of wild resource use qualifies the person to be a subsistence user.

STATE OF ALASKA
SUBSISTENCE HARVEST PERMIT APPLICATION
(PAGE 2)

A. Background Questions

- A1. What is your name? Please print clearly. (First Name, MI, Last Name)
- A2. What is your mailing address? (Street or Post Office Box, Community, Zip Code)
- A3. Where is your permanent domicile, if different from your mailing address?
(Location, Community)
- A4. List the Game Management Subunit in which your permanent domicile is located.
(See accompanying map and table.)
- A5. List the Game Management Subunits contiguous to the Game Management Subunit
in which you are domiciled. (See accompanying map and table.)
- A6. Other than the Game Management Subunits listed in A4 and A5 above, list any
Game Management Subunit(s) in which you believe you have established a personal
history of subsistence harvesting.
- A7. What is your date of birth? [This number is used for cataloging and tracking
applicants.]
- A8. How long have you lived in Alaska? (Applicants must be Alaska residents for at
least one year.)
- A9. What is your daytime or message phone?
- A10. What is your social security number? [This number is used for cataloging and
tracking applicants.]
- A11. How many people are in your household? [This number is used in validating use
levels in question C1.]
- A12. If you applied for a subsistence permit in the past, did you qualify as a
subsistence user the last time you applied? (yes, no, did not apply) Indicate the most
recent year you applied.

STATE OF ALASKA
SUBSISTENCE HARVEST PERMIT APPLICATION
(PAGE 3)

B. Instructions for Questions C1 through C8

While answering Questions C1 through C8 below:

- a. Do not count commercial fish.
- b. Do not count wild fish and game purchased from a store or commercial dealer.
- c. Do not count fish or game harvested by you or household members outside the game management subunit in which you are domiciled (question A4 above), contiguous game management subunits (question A5 above), or the game management subunits identified in question A6 above.
- d. Count only fish or game harvested with means characterized by efficiency and economy of effort, cost, and transportation, as conditioned by local circumstances. For example: (1) in most instances, traveling to Game Management Subunits or harvest areas with aircraft does not qualify as efficient or economical; (2) in most instances, rod and reel fishing in open water does not qualify as efficient or economical; (3) in most instances, guided hunting and fishing does not qualify as efficient and economical. The burden of proof is on the applicant to demonstrate that harvests by means such as these may be counted.

STATE OF ALASKA
SUBSISTENCE HARVEST PERMIT APPLICATION QUESTIONS
(PAGE 4)

C. Qualifying Questions

C1. Over the last 12 months, how many pounds of wild fish and game did you consume?

Pounds ____

(Note: Please show the amounts of wild meat and fish used by you in Worksheet D, questions D1, D2, and D3 to support your answer.)

C2. Over the last 12 months, how many different types (species) of wild fish and game were eaten by you?

Number of types of fish and game: ____ types

(Note: Please show how you calculated this number on Worksheet D, question D4.)

C3. Were the methods of harvesting the fish and game reported in questions C1 and C2 characterized by efficiency and economy of effort, cost, and transportation?

Yes ____

No ____

(Note: Please show methods on Worksheet D, question D1. In general, use of airplanes, rod and reel, or paid guides are not considered efficient and economical means.)

C4. During the past 12 months, how many days did you spend engaged in taking fish or game in your subsistence use area, or spent processing that fish or game?

Days ____

(Note: Please show dates on Worksheet D, questions D1 and D5 in support of your answer.)

STATE OF ALASKA
SUBSISTENCE HARVEST PERMIT APPLICATION
(PAGE 5)

C5. In how many different months did you hunt or fish in your subsistence use area during the last 12 months?

Months _____

(Note: Partial months may be counted as one month. Please indicate the months on Worksheet D, questions D1 and D6 in support of your answer.)

C6. During the last 12 months, how many weeks was the taking or processing of fish or game your principal work effort?

Weeks _____

(Note: Please indicate the weeks on Worksheet D, questions D1 and D7 in support of your answer.)

C7. With how many different households outside your own did you share or receive fish and game in the past 12 months?

Number of households _____

(Note: Please indicate the households on Worksheet D, questions D2 and D8 in support of your answer.)

C8. Did your taking of fish and game in the last 12 months occur entirely within the subsistence use area for which you are now applying?

Yes _____

No _____

(Note: Please indicate areas on Worksheet D, question D1 in support of your answer.)

STATE OF ALASKA
 SUBSISTENCE HARVEST PERMIT APPLICATION QUESTIONS
 (PAGE 7)

D2. In this table, list the types of wild, non-commercial fish and game your household received or gave during the last 12 months. In column A, indicate the types (species) of fish and game received or given. In column B, for species received, indicate the pounds consumed by you. In column C indicate the name of one person in the household from whom you received the fish or game, or the name of one person in the household to whom you gave the fish or game. In column D indicate the communities of the households.

	A. Species Given or Received	B. Pounds Eaten by You	C. Name of Person in Household	D. Household's Community
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____
9.	_____	_____	_____	_____
10.	_____	_____	_____	_____
11.	_____	_____	_____	_____
12.	_____	_____	_____	_____
13.	_____	_____	_____	_____
14.	_____	_____	_____	_____
15.	_____	_____	_____	_____
16.	_____	_____	_____	_____
17.	_____	_____	_____	_____
18.	_____	_____	_____	_____
19.	_____	_____	_____	_____
20.	_____	_____	_____	_____
21.	_____	_____	_____	_____
22.	_____	_____	_____	_____
23.	_____	_____	_____	_____
24.	_____	_____	_____	_____
25.	_____	_____	_____	_____

**STATE OF ALASKA
SUBSISTENCE HARVEST PERMIT APPLICATION
(PAGE 6)**

D. Worksheets: Supporting Documentation

You must complete questions D1 through D8 as support for your answers on questions C1 through C8.

D1. In this table, list the kinds of wild, non-commercial fish and game harvested by members of your household during the last 12 months. In column A list the type (species) of fish and game harvested. In column B indicate the numbers taken of each species. In column C indicate the pounds (usable weight) of the harvest consumed by you. In column D indicate the Game Management Subunit(s) where the harvest occurred. In column E indicate the harvest methods used for taking fish (see list below). In column F indicate whether aircraft was used to travel from your permanent domicile to or within the Game Management Subunit where the harvest occurred. In column G, indicate the dates you were engaged in taking or processing fish and game (for instance, if the dates were February 5 through February 8, February 20, and March 3 through March 4, you would enter "2/5-2/8, 2/20, and 3/3-3/4").

	A.	B.	C.	D.	E.	F.	G.
	Species	Number Taken	Lbs Eaten by You	Sub-unit(s) of the Harvest	Method Used for Fish*	Air-craft Used? (yes, no)	Dates You Spent in Taking or Processing (Enter all Months/Days)
1.	_____	_____	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____	_____	_____
11.	_____	_____	_____	_____	_____	_____	_____
12.	_____	_____	_____	_____	_____	_____	_____
13.	_____	_____	_____	_____	_____	_____	_____
14.	_____	_____	_____	_____	_____	_____	_____
15.	_____	_____	_____	_____	_____	_____	_____
16.	_____	_____	_____	_____	_____	_____	_____
17.	_____	_____	_____	_____	_____	_____	_____
18.	_____	_____	_____	_____	_____	_____	_____
19.	_____	_____	_____	_____	_____	_____	_____
20.	_____	_____	_____	_____	_____	_____	_____

* Types of fishing methods: gill net, dip net, seine net, fishwheel, set line, jigging (through the ice), fish trap, gaff, rod and reel, etc.

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D3. To calculate how much wild fish and game you consumed in the last twelve months, add the lbs in column C of question D1 with the lbs in column B in question D2, and enter the number below:

_____ Number of lbs of fish and game you consumed

(Note: This is the answer to question C1.)

D4. To calculate how many different types (species) of wild, non-commercial fish and game were eaten by you, count the number of different types of wild fish and game listed in D1 and D2 which you ate and enter the number below:

_____ Types of fish and game

(Note: This number is the answer to question C2)

D5. To calculate the number of days you were engaged in taking or processing fish and game, count the number of different dates listed in column G in question D1 and enter the number below:

_____ Number of different dates

(Note: Partial days count as one day. Do not count days outside of the subsistence use area. This number is the answer to question C4.)

D6. To calculate the number of different months during which you were engaged in taking fish and game, count the number of different months listed in column G in question D1 and enter the number below:

_____ Number of different months

(Note: Any time spent in a month counts as one month. Do not count months outside of the subsistence use area. This number is the answer to question C5.)

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D7. If you claimed any time in question C6, list the weeks in which the taking of fish or game was your principal work effort below, and describe your employment situation during those times:

D8. To calculate the number of households with which you shared or received fish and game, count the number of different households listed in column C, question D2 and enter it below:

_____ Number of different households

(Note: This is the answer to question C7.)

NOTIFICATION OF POSSIBLE ADDITIONAL MATERIALS

The State of Alaska may use additional materials at some later date to verify your answers. Verification materials you may be asked to provide at some later date include the following:

1. Names, addresses, and phone numbers of persons who can corroborate your sharing and receiving information, and
2. Names, addresses, and phone numbers of persons who can corroborate your hunting and fishing days.

In addition, the state may check the following additional sources to verify your answers:

1. Game harvest records in ADF&G data files to validate your big game harvests; and
2. Fishing permit records or salmon harvest calendar records in ADF&G data files to verify you salmon harvests.

CERTIFICATION

I hereby certify that all of the above information is true and correct and that I understand this information is subject to public disclosure. (Note: Providing false information is subject to a maximum penalty of either \$1,000 fine or 6 month imprisonment, or both, per 16.05.430.)

Signature of Applicant _____

Signature of Witness _____

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX E

APPLICANT CASE EXAMPLES SUBSISTENCE PERMIT APPLICATIONS AND SCORES

The following eight case examples illustrate how an applicant for a subsistence permit might be scored using the example permit application. The cases were real households documented in the early 1980s through research of the Division of Subsistence, Alaska Department of Fish and Game in Sitka, the Kenai City area, Homer, and Nome. The original cases were published in a scientific report which contains a number of other cases for comparison (Robert J. Wolfe and Linda J. Ellanna (compilers), Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau, 1983). Although these cases are a decade old, they are examples of types of fishing and hunting patterns that still exist in Alaska communities.

Because the cases were documented in the early 1980s, certain information was not gathered that is necessary to complete the subsistence permit application. For this exercise, assumptions were made to fill in the missing information consistent with the content of the cases and how one might expect the applicants to represent themselves. Therefore, the cases cannot be taken to be exact representations of actual applicants, but only case illustrations of types of applicants that might be expected to apply for subsistence permits.

It is also important to state that the application form and scoring systems are preliminary examples illustrating the general type of application form and scoring system that may be created to implement the state subsistence statute. Ultimately, the Boards of Fisheries and Game are mandated to create the application and scoring system. Should a different set of questions or weighting system be adopted by the Boards, then there may be some differences in the outcomes for particular case applicants.

In this analysis, a person needs a minimum of 100 points on the application, covering seven criteria.

- (A) Quantity of fish and game consumed. One point for every 10 lbs consumed. A minimum of 125 pounds is required, or an applicant is not a subsistence user.
- (B) Number of species used. Three points for each species or species group. Under the terms of the Governor's bill, a minimum qualification threshold will be set by the Boards of Fisheries and Game for this criteria. This analysis assumes a minimum of 6 species or species groups is required. The species groups used for the purpose of this analysis are consistent with Appendix G, Table 1. For example, all varieties of crab are counted as one species group.
- (C) Days spent taking or processing. One point for each day spent hunting, fishing, gathering, or processing. A minimum of 30 days is required.
- (D) Number of months in which the taking or processing occurred. Two points for each month.
- (E) Number of weeks during which the taking or processing of fish and game was the applicant's principal work effort. One point per week. Maximum of 26 weeks.
- (F) Households with which the applicant gave or received fish or game. Two points per household. Maximum of ten households.
- (G) Whether the taking was in the subsistence use area. Five points if the taking was in the subsistence use area for which the applicant is applying for a permit.

Each case follows a similar format. First, a narrative for each case's pattern of fish and game use is presented (these narratives originally appeared in Wolfe and Ellanna (1983: 116-117, 144-148, 243-244, 166). Second, the person's assumed scores on the subsistence application questions are presented, with each applicant's final score and status. A brief listing of assumptions used for scoring follows each case study.

A summary of the final status of each case is as follows, a "yes" indicating a "subsistence user" and a "no" indicating "not a subsistence user":

Case 1. Sitka. Yes.	Case 3. Soldatna. No.	Case 5. Kenai. No.	Case 7. Nome. No.
Case 2. Sitka. Yes.	Case 4. N. Kenai. No.	Case 6. Homer. No.	Case 8. Nome. Yes.

Case 1. This Sitka household consists of a couple and their four-year-old daughter. The husband was born in Alaska 52 years ago and the family has been living in Sitka for the past 22 years. Both adults are employed full time: he as a planner and she as an accounts clerk. Their joint household income is more than \$50,000 per year. The household's level of involvement in use of local food resources has remained constant over the last five years.

"Cost savings is probably the most important reason for hunting, fishing and gathering, although our lifestyle places us where there is a good supply of subsistence foods and wood. By using subsistence foods, they have become important in our diet and are not available any other way or elsewhere."

An estimated 60 percent of the household's meat, 100 percent of the fish, and 5 percent of the fowl used in the past year came from hunting and fishing. They reported obtaining eight deer and twelve ducks, a good return for the 6-10 times they went out hunting. They fished about 25 times in the past year and obtained 70 salmon (10 kings, 35 silvers, and 25 sockeye); 10 snapper; 10 halibut; 10 ling cod; 10 Dolly Varden; 10 king crab and 30 dungeness crab; 10 pounds of shrimp; 50 pounds of herring roe, and 10 pounds of smelt. From the intertidal zone they gathered clams, scallops, abalone, cockles, two types of seaweed and kelp. They also gathered salmonberries, huckleberries, and cranberries. To preserve their food, the household uses a freezer, smokehouse and methods of pickling and canning. They also exchange harvested foods with relatives and friends.

		Applicant		Applicant	
Criterion	Minimum	Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	350	/ 10 =	35	21%
B. Number of species used	6	16	x 3 =	48	29%
C. Days spent taking or processing	30	45	/ 1 =	45	27%
D. No. of months when taking occurred	4	6	x 2 =	12	7%
E. Weeks when taking fish/game was main work	0	0	x 1 =	0	0%
F. Households receiving or giving	0	10	x 2 =	20	12%
G. Taking was in subsistence use area? y=5, n=0	0	5	x 1 =	5	3%
TOTAL				165	100%

This case qualifies as a subsistence user, scoring a total of 165 points (exceeding the 100 points threshold), and meeting minimum thresholds for each criteria.

Case 1 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used 16 resource categories with the following weights: deer (640), ducks (18), king salmon (153), silver salmon (270), sockeye salmon (108), snapper (20), halibut (150), Dolly Varden (27), crab (145), shrimp (10), herring roe (50), smelt (10), clams (?), cockles (?), scallops (?), and abalone (?). (categories not counted included: seaweed, kelp, salmonberries, huckleberries, and cranberries because they are not fish and game)
- (2) the applicant consumed about 350 lbs personally, as the total household harvest weighed about 1,600 lbs, or about 533 lbs per member, and the household gave foods to relatives and friends
- (3) 45 days were spent taking or processing (25 days fishing, 10 days hunting, 10 days gathering)
- (4) the harvest occurred in 6 different months

- (5) there were no weeks where taking fish and game was the main activity
- (6) the applicant shared with the maximum of 10 households
- (7) all taking occurred locally

Case 2. This Sitka household includes a couple with their three children, school aged and below. The parents have lived in the Sitka area all their lives. The household reported an annual income of between \$20,000 and \$25,000. The father is employed as a foreman. The household reported that hunting, fishing, and gathering are fundamental to their way of life and essential for the continuation of Tlingit culture. They saw those things as fundamental Native rights. They reported that all of the fish and fowl, and much of the meat they eat comes from hunting and fishing. They exchange these foods with other community members. They have become more involved in the use of local food resources than they were five years ago. In the past year they hunted and obtained three deer, six hair seal, and one sea lion. In addition to utilizing the meat and pelt, seal oil was rendered from the seal fat. The family fished about 15 times in the past year and harvested salmon with a net (25 pinks, 8 kings, 10 silvers, 25 chum, and 25 sockeye); three halibut and five red snapper. The family also gathered a small quantity of herring and herring roe. They gathered a small quantity of clams, sea urchins, and abalone, black and red seaweed, salmonberries, blueberries, huckleberries, and edible plants. They put their food up by canning, pickling, salting, fermenting, freezing, and smoking. They have their own freezer, smokehouse, and maintain an off-road vehicle used for hunting.

		Applicant		Applicant	
Criterion	Minimum	Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	300	/ 10 =	30	22%
B. Number of species used	6	14	x 3 =	42	30%
C. Days spent taking or processing	30	30	/ 1 =	30	22%
D. No. of months when taking occurred	4	6	x 2 =	12	9%
E. Weeks when taking fish/game was main work	0	0	x 1 =	0	0%
F. Households receiving or giving	0	10	x 2 =	20	14%
G. Taking was in subsistence use area? y=5, n=0	0	5	x 1 =	5	4%
TOTAL				139	100%

This case qualifies as a subsistence user, scoring a total of 136 points (exceeding the 100 point threshold), and meeting minimum thresholds for each criteria.

Case 2 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used 14 resource categories with the following weights: deer (210), seal (540), sea lion (150), pink salmon (55), king salmon (122), silver salmon (77), chum salmon (155), sockeye salmon (108), halibut (45), red snapper (10), herring-herring roe (?), clams (?), sea urchins (?), abalone (?) (categories not counted included: red and black seaweed, salmonberries, blueberries, huckleberries, and edible plants because they are not fish and game)
- (2) the applicant consumed about 300 lbs personally, as the total household harvest weighed about 1,472 lbs, or about 294 lbs per member
- (3) 30 days were spent taking or processing (15 days fishing, 10 days hunting, 5 days gathering)
- (4) the harvest occurred in 6 different months
- (5) there were no weeks where taking fish and game was the main activity
- (6) the applicant shared with the maximum of 10 households
- (7) all taking occurred locally

Case 3 is a Kenai household. This household consists of a Native woman, age 64, who is a lifelong resident of the community. She formerly fished a commercial set net, but is now retired. Her daughter and son-in-law, both in their 40s, live on an adjacent lot. The older woman shares many of the following resources with her daughter and son-in-law.

The woman ideally could use 30 king salmon each year which she smokes, cans, pickles, and freezes. Kings, however, are difficult to get because she is no longer engaged in commercial fishing, does not have a boat for trolling in Cook Inlet, and has never learned to fish in rivers with a rod and reel. In addition, she considers salmon in the rivers to be too decomposed to eat. As a result, the woman has had to purchase most of her kings from commercial fishermen during the last three or four years. This year, kings sold for \$1.25 a pound; the household purchased \$400 worth. She prefers the early kings that arrive in May, because these have traditionally been used by Kenai residents, are the first fresh salmon available, and run when the weather is cool and dry enough for smoking. However, there is no commercial or non-commercial season on these early kings and, hence, salt water kings are not available. The household also has started using other salmon species, including 18 silvers this year from her son-in-law's commercial gillnetter and 10 reds, which she obtained in five days of fishing with three other people in the new Kasilof River "personal use" gillnet fishery. The woman gets some of her salmon by smoking other people's fish for a one-half share. She distributes fish widely to her many relatives in the community and to old and sick people who cannot get their own. She said salmon is very important to her because she has eaten and preserved it this way all her life.

The woman and her daughter use about four cases of clams each year which they usually harvest from Clam Gulch or Ninilchik. This year, however, they did not go clam digging because they had some remaining from last year. The older woman puts out a hooligan (eulachon) net on Salamatof Beach in April and May, eating what she wants fresh. She also lets friends and neighbors use her net to get hooligan.

The two households usually use a moose every year. The older woman and her now deceased husband formerly hunted moose, but now she relies on her daughter and son-in-law for moose. However, this year the daughter and her husband had only a week to hunt, because the husband was working on the North Slope, and for the first time they were not successful harvesting a moose. Frequently it takes them 10 to 20 days to harvest a moose, and they usually hunt in the Swanson River area. She rarely buys meat in the store. She said she seldom receives fish or game, even though she frequently shares fish with others. "People don't share like they used to, not even relatives," she said.

Criterion	Minimum	Applicant Answer	Formula	Applicant Score	Percent
A. Quantity of fish and game consumed	125	90	$\frac{90}{125} =$	9	9%
B. Number of species used	6	6	$\frac{6}{6} =$	18	17%
C. Days spent taking or processing	30	40	$\frac{40}{30} =$	40	38%
D. No. of months when taking occurred	4	5	$\frac{5}{4} =$	10	10%
E. Weeks when taking fish/game was main work	0	2	$\frac{2}{0} =$	2	2%
F. Households receiving or giving	0	10	$\frac{10}{0} =$	20	19%
G. Taking was in subsistence use area? y=5, n=0	0	5	$\frac{5}{0} =$	5	5%
TOTAL				104	100%

This case does not qualify as a subsistence user, failing to meet the 125 pounds minimum consumption threshold of criteria (A).

Case 3 Assumptions

To score this case, the following assumptions were made:

- (1) the households of the applicant and her daughter used at least the minimum of 6 resource categories with the following weights: silver salmon (86), red salmon (40), clams (80), hooligan (20), and two others from sharing (king salmon was not counted because it was purchased from commercial fishermen)
- (2) the applicant consumed about 90 lbs personally, as the total harvests of the two cooperating households weighed about 226 lbs, or about 75 lbs per member, and the households gave and received some foods (on other years, a moose was reported taken; however, during the application year, no moose was reported taken or used)
- (3) 40 days were spent taking or processing (35 days fishing or processing fish, 0 days hunting, 5 days gathering)
- (4) the harvest occurred in 5 different months
- (5) there were 2 weeks where taking fish and game was the main activity
- (6) the applicant shared with the maximum of 10 households
- (7) all taking occurred locally

Case 4 is a North Kenai household that takes salmon with their commercial set net. The household includes a husband and wife, both in their 40s, and four daughters. The entire family works a commercial set net in summer in North Kenai. The husband also fishes the commercial herring season, but neither he nor his wife works at other remunerative employment in winter. The household has lived in North Kenai since 1966.

The household annually uses 50 to 60 red salmon which they retain from their commercial set net harvests; these are first frozen, then canned or smoked when the family has time after commercial season closes. The household also fishes for silvers with a rod and reel in the Swanson River in late August and September, mainly, they say, for recreation. Before they had a set net, the household harvested all the salmon they used with a rod and reel. They generally do not give away much fish, except the silvers taken with a rod and reel if the household already has enough for the winter. These are given to friends and neighbors who do not have time to fish for themselves. The household also has fished in the local August subsistence or non-commercial gillnet fishery when it was open in previous years. The household said they eat fish two or three times weekly year-round; they prefer it to other kinds of meat because it tastes better and is healthier.

The household uses 150 to 200 pounds of halibut each year. The husband previously fished the commercial halibut season, keeping part of his catch for the household. This year the family fished for halibut with a rod and reel in late August from a friend's boat off Deep Creek. In total, they harvested 280 pounds of halibut, half of which their friend kept.

The household occasionally sets crab and shrimp pots in Kachemak Bay, about 90 miles distant. The household says that the cost of gasoline and a boat makes this activity more recreational than economical because depletion of resources in the Bay means that it is no longer possible to harvest enough crab and shrimp to compensate for the costs. The household occasionally digs clams at Clam Gulch for pleasure but generally gives them away because they do not like to eat clams. In winter, the household fishes for pleasure through the ice on local lakes for land-locked silvers.

The husband tried to get a moose each year but does not consider himself an "aggressive" hunter. He hunts very near his house, considering it is dangerous to be in the woods with all the inexperienced hunters. The husband has not harvested a moose in three years. He hunts spruce grouse locally in fall, using as many as he gets. In the fall, the family also gathers low- and high-bush cranberries, raspberries, currants, and blueberries, making about three to four cases of jam which they use each year. The household harvests wild resources, they say, because they enjoy the activities and value the self-sufficiency resulting from wild food harvests. Because the household works seasonally, they have time to take these resources.

Criterion	Minimum	Applicant		Applicant	
		Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	98	$\div 10 =$	9.8	12%
B. Number of species used	6	4	$\times 3 =$	12	14%
C. Days spent taking or processing	30	40	$\div 1 =$	40	47%
D. No. of months when taking occurred	4	6	$\times 2 =$	12	14%
E. Weeks when taking fish/game was main work	0	0	$\times 1 =$	0	0%
F. Households receiving or giving	0	3	$\times 2 =$	6	-
G. Taking was in subsistence use area? y=5, n=0	0	5	$\times 1 =$	5	6%
TOTAL				84.8	100%

This case does not qualify as a subsistence user, failing to meet the minimum threshold of criteria (A) and (B), and having a point total less than 100 points.

Case 4 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used 4 resource categories with the following weights: red salmon (240), halibut (140), grouse (10), and clams (?) (categories not counted included: silver salmon because it was taken with inefficient rod and reel; crab and shrimp because they were taken on inefficient recreational boat trips; and cranberries, raspberries, currents, and blueberries because they are not fish and game)
- (2) the applicant consumed about 98 lbs personally, as the total household harvest weighed about 390 lbs, or about 98 lbs per member
- (3) 40 days were spent taking or processing (20 days fishing, 10 days hunting, 10 days gathering)
- (4) the harvest occurred in 6 different months
- (5) there were no weeks where taking fish and game was the main activity
- (6) the applicant shared with 3 other households
- (7) all taking occurred locally (Kachemak Bay was considered "local")

Case 5 is a Kenai city household that heavily uses wild resources but does most of their harvesting in non-local areas. The husband, a Native, is a lifelong Kenai resident; the wife moved to Kenai from Oregon in 1967. The husband is a Cook Inlet gillnetter and fishes the commercial herring, halibut, and salmon seasons. Depending on his income from fishing and the availability of jobs, the husband frequently works as a millwright in winter, often locally but occasionally on the North Slope or in Valdez. The wife has no wage occupation. The income of this household is probably fairly high, though not always dependable due to the variability of commercial fishing income.

Each year this household uses three to four cases of salmon (about 5-15 fish total), which they smoke, can, or freeze. Although they prefer kings because the husband has eaten them all his life, the household also will use silvers. They seldom use other salmon species because they consider these to be of inferior quality. The household gets their fish from the husband's commercial catch. This year, however, he caught only two kings, so the household smoked chum salmon for the first time. The husband does nearly all the salmon harvesting and preserving; salmon are very important to him, he reported. However, the wife has not eaten salmon all her life, does not consider it so important, and does not know how to harvest or process fish.

The household uses halibut which they get from the husband's catch, usually eating it twice monthly, year-round. The husband gets clams about twice yearly across Cook Inlet at Polly Creek, which he reaches in his floatplane. He said he prefers to dig clams there because the clams are bigger and taste better. The household does not like to clean clams, however, so they keep enough for a meal and give the rest away to friends and relatives. The household occasionally uses crab or shrimp which the husband harvests while commercial fishing for other species. The household likes hooligan, but the husband is commercial fishing during the run and has no time for harvest activities. The household occasionally receives hooligan from friends or relatives because it is easy to get and people tend to harvest more than they can use, but the household would use more if it were available. As with salmon, the wife has no interest in or knowledge of harvesting and processing hooligan. In winter the husband occasionally fishes through the ice for rainbow trout on local lakes, mainly, he says, for pleasure.

The husband hunts elk in the fall on Afognak Island which he reaches in his floatplane. He considers elk to be easier to get and more tender than moose. If the husband cannot get elk, he hunts either moose in Stony River area or caribou across Cook Inlet. The household rarely buys meat in the store; only once in the last 15 years have they not have enough wild game. If wild game were not available, however, they would buy a side of beef. Although it is expensive to fly to hunt, the husband says it is almost impossible to get a moose locally because there is too much competition, so he has given up trying. The household does not think it is more expensive to fly to hunt than to buy beef in the store. In addition, wild game is important to the husband, he says, because he has eaten it all his life. He does not consider himself a "recreational" hunter. The family also gathers cranberries, blueberries, and raspberries in the fall.

Because the wife has little interest in or knowledge of wild food harvesting, the husband does nearly all the harvesting and preservation. Because of the limited knowledge of and interest in wild resources on the part of the wife, the amount of wild resources the household uses depends on how much time the husband has. Although the husband has many relatives in the area, the household does not receive much fish or game. With a relatively high income, the household can afford equipment such as a floatplane, which gives the husband access to harvest areas not available to most local residents and facilitates his resource harvesting activities.

Criterion	Minimum	Applicant		Applicant	
		Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	65	$/ 10 =$	6.5	9%
B. Number of species used	6	6	$\times 3 =$	18	25%
C. Days spent taking or processing	30	30	$/ 1 =$	30	41%
D. No. of months when taking occurred	4	7	$\times 2 =$	14	19%
E. Weeks when taking fish/game was main work	0	0	$\times 1 =$	0	0%
F. Households receiving or giving	0	2	$\times 2 =$	4	6%
G. Taking was in subsistence use area? y=5, n=0	0	0	$\times 1 =$	0	0%
TOTAL				72.5	100%

This case does not qualify as a subsistence user, failing to meet the 125 lb. minimum consumption threshold, and scoring less than the 100 points threshold.

Case 5 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used the minimum of 6 resource categories with the following weights: king salmon (32), chum salmon (74), halibut (24), crab (?), shrimp (?), and hooligan (?) (categories not counted included: clams, elk, moose, and caribou because they were taken with inefficient air transportation; trout because it was taken with inefficient rod and reel; and cranberries, blueberries, and raspberries because they are not fish and game)
- (2) the applicant consumed 65 lbs personally, as the total household harvest weighed about 129 lbs, or about 65 lbs per member (only harvests taken with efficient gear were counted)
- (3) the minimum of 30 days were spent taking or processing (30 days fishing)
- (4) the harvest occurred in 7 different months
- (5) there were no weeks where taking fish and game was the main activity
- (6) the applicant shared with 2 households
- (7) some of the taking occurred non-locally

Case 6. This Homer household consists of a single female and her teenage daughter. The family moved to the city of Homer five years ago, after living elsewhere in Alaska, because of a business opportunity and an environment they found appealing. The mother is the owner of a local business, and is able to take time off whenever she desires to fish or gather resources. Having no family members locally, they participate with friends in the August subsistence fishery on Kachemak Bay, fishing for silver salmon on the beach below their bluff home at Miller's Landing. They put up 10 to 15 fish by freezing and canning. They gather mussels on the same beach throughout the year and eat them fresh. They fish for halibut by skiff off the same beach, catching and freezing about 50 to 150 pounds per year. With the skiff they also fish in saltwater with hook and line for trout, catching a dozen through the summer. They often give these to friends who bring them gifts of shrimp and crab. During the spring and summer they dig clams on the Homer spit, as the clams and cockles there are considered better than the redneck clams at Miller's landing. They also gather greens for immediate consumption including nettles, goose tongue, and wild parsley. The family conducts extensive berry picking in late summer and fall, and these are frozen as well as used fresh. This household does not hunt moose or other wild game, stating they have neither the equipment nor the knowledge of how to go about it. They say they enjoy resource harvesting because it brings them closer to the country, as well as helping them financially.

Criterion	Applicant		Formula	Applicant	
	Minimum	Answer		Score	Percent
A. Quantity of fish and game consumed	125	110	/ 10 =	11	14%
B. Number of species used	6	7	x 3 =	21	27%
C. Days spent taking or processing	30	20	/ 1 =	20	23%
D. No. of months when taking occurred	4	6	x 2 =	12	16%
E. Weeks when taking fish/game was main work	0	0	x 1 =	0	0%
F. Households receiving or giving	0	4	x 2 =	8	10%
G. Taking was in subsistence use area? y=5, n=0	0	5	x 1 =	5	6%
TOTAL				77	100%

This case does not qualify as a subsistence user, failing to meet the minimum threshold for criteria A and B, and scoring less than the 100 point threshold.

Case 6 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used 7 resource categories with the following weights: silver salmon (72), halibut (150), clams (?), cockles (?), mussels (?), crab (?), shrimp (?) (categories not counted included: trout because it was taken with inefficient rod and reel gear; greens and berries because they are not fish and game)
- (2) the applicant consumed about 110 lbs personally, as the total household harvest weighed about 220 lbs, or about 110 lbs per member
- (3) 20 days were spent taking or processing (10 days fishing, 10 days gathering)
- (4) the harvest occurred in 6 different months
- (5) there were no weeks where taking fish and game was the main activity
- (6) the applicant shared with 4 households
- (7) all taking occurred locally

Case 7. This case represents a Nome household which harvests five to ten categories of resources. The household is composed of a 48-year-old retired military officer and his 48-year-old wife. Their only child, a son in his 20s, now lives in a separate household in Anchorage. Husband and wife work for city and state government agencies respectively, and together they earn in excess of \$70,000 net annually. They have lived in Alaska for nine years, eight of which have been in Nome.

Their primary resource harvest activity is fishing. "I love fishing," the wife said. "I'm down at the mouth of that river [the Nome River] at 5:00 every morning when the silver salmon are running." She fishes more than her husband, and recalls she had her first fishing pole at the age of five, whereas her husband did not begin fishing or hunting until ten or fifteen year ago, and then did so only sporadically. This year the household members harvested approximately 100 pink salmon, 50 to 60 silver salmon, 50 to 60 Dolly Varden, four to five grayling, a portion of a shared moose, and an undetermined quantity of blueberries and cranberries. Most of their hunting, fishing, and gathering activities take place along the road system, especially at the Nome, Stuk, and Snake rivers and occasionally inland on the Pilgrim River. They have a boat but have not used it for three years. They also have a snowmobile but usually use their four-wheel-drive vehicle for resource harvest related transportation.

Interestingly, neither eats much fish except for Dolly Varden. Most salmon are smoked and given away to two or three older people in town or to other friends. Salmon are also preserved by freezing. In the winter, friends give them crab, which are taken with handlines or pots through the ice in winter. "It's too spooky out there on the sea ice for me," the wife states. This year they were unsuccessful in harvesting a moose, but their son in Anchorage did and shared it with them. If they had been successful and their son had not, they would have reciprocated. Moose is preserved by freezing. Summer is their busiest resource harvesting period, primarily because of resource availability, road access, and time not committed to work (longer days, vacation time). To this household the ability to use and harvest local resources is an important part of living in northwest Alaska.

Criterion	Minimum	Applicant		Applicant	
		Answer	Förmula	Score	Percent
A. Quantity of fish and game consumed	125	130	/ 10 =	13	21%
B. Number of species used	6	2	x 3 =	6	11%
C. Days spent taking or processing	30	10	/ 3 =	10	18%
D. No. of months when taking occurred	4	1	x 2 =	2	4%
E. Weeks when taking fish/game was main work	0	0	x 1 =	0	0%
F. Households receiving or giving	0	10	x 2 =	20	6%
G. Taking was in subsistence use area? y = 5, n = 0	0	5	x 1 =	5	9%
TOTAL				56	100%

This case does not qualify as a subsistence user, failing to meet the minimum thresholds for criteria (B), (C), and (D), and scoring less than 100 points total.

Case 7 Assumptions

To score this case, the following assumptions were made:

(1) the applicant's household used 2 resource categories with the following weights: moose (250 lbs. received from son in Anchorage) and crab (10) (categories not counted included: pink salmon, silver salmon, Dolly Varden, and grayling because they were harvested with inefficient rod and reel; blueberries and cranberries because they are not fish and game)

- (2) the applicant consumed about 130 lbs personally, as the household's moose and crab were assumed to weigh about 260 lbs, or about 130 lbs per member
- (3) 10 days were spent taking or processing (10 days hunting; 0 days fishing were counted because it was recreational in nature)
- (4) the moose hunting occurred during 1 month
- (5) there were no weeks where taking fish and game was the main activity
- (6) the applicant shared with the maximum of 10 households
- (7) all taking occurred locally

Case 8. This Nome household is composed of a husband in his late 30s, his wife in her early 40s, an adult son, and a six-year-old son. The husband is Eskimo and has lived in Nome all his life. The wife is not Native, but she has lived in Alaska for 22 years, 9 of which have been in Nome. Both husband and wife are professional educators, although the husband was unemployed at the time of the survey. The older son is employed as a laborer for the city and carves part-time. The combined household annual net income varies depending on whether or not their contracts extend into the summer months, but averages between \$40,000 and \$50,000.

This household estimates that during most years 75 percent of their protein foods are derived from locally harvested fish and game. This summer, however, the husband had to attend school in Fairbanks for three months and their four-wheel-drive vehicle was broken down, so only about 50 percent of this winter's protein is composed of locally harvested resources. The household has two canips, one at Cape Nome (18 miles east of town). This summer (June 15 to the end of August), they seined for salmon at Fort Davis with a non-related fishing partner, together harvesting 200 pinks, 150 chums, 25 silvers, and one king. Their half of the fish was dried, requiring the occasional help of a married son and his wife and an average of 2-3 hours' labor a day to care for the drying fish. Much of the salmon was distributed to XYZ (an organization which provides meals to elderly Native people) and to individual older households without adequate resource support. Some dried fish and moose meat are traded for marine mammal products such as walrus meat and belukha muktuk.

Other fish taken by this household include arctic cod ("tomcod") which are taken through the sea ice in winter, dried, and shared with others (75 were harvested this last winter); whitefish, harvested by the older son in nearby rivers; or capelin ("cigar fish") taken on the beach in late July; and arctic char, taken from rivers with a seine or rod and reel and smoked (an activity often undertaken simultaneously with moose hunting). This household uses both a seine and rod and reel for fishing, but reports that the outcome of both techniques is the same, a means for obtaining food. The wife states, "I wouldn't catch a fish I wasn't going to eat; it would be a silly waste of time." They would like to fish through the river ice in winter, but lack adequate knowledge about where the holes are located.

Moose are very important to this household, and they are successful in harvesting at least one every year. Moose meat is also shared with XYZ and with people they "owe things to."

Although marine mammals are used for food and raw materials by household members, the husband does not own a boat and so can hunt only when there is room for him on a friend's boat. He was unable to participate this spring, but, as previously mentioned, obtained some food through trade of other resources.

Waterfowl are not as accessible as the household would like because they have no boat, but someone in the household will harvest various species if they have a chance to hunt with someone else while visiting a village. Husband and wife normally eat ptarmigan, but this year they were scarce and only five were taken. All household members will participate in crabbing for king crab through the ice, but the last couple of years crab have not been abundantly available in nearshore waters; and, according to this household, many people in town are both discouraged and think it is too risky to go out on the necessary three or so miles of ice to harvest this resource. Blueberries, salmonberries, mossberries, greens, and roots are also harvested in summer, primarily by the wife.

Not only does this household provide resources to other households both within and without Nome, but they participate as recipients in a resource distribution network that spans hundreds of miles. The husband's mother and sister reside in Homer and share halibut, clams, and occasionally seal with this Nome household. Cousins in Kotzebue send two to three sacks of sheefish and caribou (as much as they can after they have met their own family's needs) each year.

Although this household states they could physically "survive" without local resources, to do so, in their view, would dramatically reduce the quality of every aspect of their lives: nutritional, economic, social and cultural. The wife learned to harvest and depend on resources in Washington state with her family, and came to live and work in rural Alaska to continue that life. Her husband grew up in an Eskimo family, and values the harvest and use of local resources above almost all other things in his life. As his wife states, "I don't know any

Eskimo male who would be happy if he couldn't participate in resource harvest. It is not simply a matter of choice but rather a reason to exist."

Criterion	Minimum	Applicant		Applicant	
		Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	300	/ 10 =	30	17%
B. Number of species used	6	17	x 3 =	51	29%
C. Days spent taking or processing	30	50	/ 1 =	50	28%
D. No. of months when taking occurred	4	9	x 2 =	18	10%
E. Weeks when taking fish/game was main work	0	2	x 1 =	2	1%
F. Households receiving or giving	0	10	x 2 =	20	11%
G. Taking was in subsistence use area? y=5, n=0	0	5	x 1 =	5	3%
TOTAL				176	100%

This case qualifies as a subsistence user, scoring more than the 100 point threshold and meeting minimum thresholds for each criteria.

Case 8 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used 17 resource categories with the following weights: pink salmon (460), chum salmon (675), silver salmon (115), king salmon (12), tom cod (16), moose (540), ptarmigan (4), walrus (?), beluga (?), whitefish (?), capelin (?), arctic char (?), waterfowl (?), crab (?), halibut (?), sheefish (?), caribou (?), (berries, greens, and roots were not counted because they are not fish and game)
- (2) the applicant consumed a minimum of about 300 lbs personally, as the total household harvest which was used weighed about 1,191 lbs (an additional 631 lbs of salmon was assumed to be given away), or about 298 lbs per member, and the household received additional foods from relatives and friends
- (3) 50 days were spent taking or processing (40 days fishing, 10 days hunting)
- (4) the harvest occurred in 9 different months
- (5) there were 2 weeks where taking fish and game was the main activity
- (6) the applicant shared with the maximum of 10 households
- (7) all taking occurred locally

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX F

COMMUNITY SIZE, ECONOMY, AND NUMBER OF SUBSISTENCE USERS

February 1992

The Governor's subsistence bill states that there are relationships between patterns of wild resource use and types of communities in Alaska. This paper discusses some of the evidence in support of these relationships.

The "Findings, Purpose, and Intent" section of the Governor's subsistence bill states:

(6) among persons who hunt and fish, a large majority of those living in areas described in AS 16.05.268(e)(1); a majority of those living in communities described in AS 16.05.268(e)(2); and a small minority of those living in communities or areas described in AS 16.05.268(e)(3), depend upon the subsistence taking of fish and game.

The subsistence bill describes the three types of areas referenced above:

(e)(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 areas, and that are not part of an urban area.

(e)(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.

(e)(3) communities or urban areas where the human population is 7,000 or greater or areas or communities where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community.

For subsistence permits, residents of the three types of communities are accorded different procedures by the subsistence bill. A person who hunts or fishes living in Type 1 communities (e)(1) "is presumed to meet" subsistence user criteria, rebuttable only by "clear and convincing evidence", so no permit or paperwork is required (g)(1). A person who hunts or fishes living in Type 2 communities (e)(2) "is rebuttably presumed to meet" subsistence user criteria, upon signing a statement affirming the person's compliance, rebuttable by a preponderance of evidence (g)(2). A person who hunts or fishes living in Type 3 communities (e)(3) is presumed not to meet subsistence user criteria, and is qualified only upon certification that the person meets the subsistence user criteria (g)(3).

In general, studies by the Division of Subsistence show that there are strong relationships between community size, economy, and percent of subsistence users in Alaskan communities. These relationships are outlined in this paper, with references to research which provide more detailed data on these issues.

Communities < 2,500 people with Mixed, Subsistence-Cash Economies

Most small, rural communities in Alaska are supported by mixed, subsistence-cash economies (cf, Wolfe and Ellanna 1983; Wolfe and Walker 1987; Wolfe and Bosworth 1990; Schroeder et al 1987). In these communities, a large majority of residents are subsistence users. Mixed, subsistence-cash economies have several characteristics:

1. domestic mode of production of wild foods (family-based groups produce wild foods)
2. extensive non-market distribution and exchange of wild food products among consuming households
3. high participation rates in consumption of wild foods
4. a traditional seasonal cycle of harvesting and processing wild foods
5. a wide diversity of wild resources produced and consumed
6. moderate to high volumes of wild foods produced and consumed
7. household specialization in production ("the super-household phenomenon," the "30-70 rule")(Wolfe 1987)
8. small-scale, efficient technologies for harvesting and processing
9. integration of subsistence production with cash
 - a. use of income to invest in equipment to harvest and process wild foods
 - b. insecure sources of monetary incomes for some families over the long term is common
 - c. low income levels for a substantial proportion of families is common
 - d. limited private sector employment is common
 - e. high costs of imported goods and limited retail stores are common
10. traditional subsistence territories and rules of access to common property resources ("customary law")
11. traditional knowledge and value systems

Of the approximately 278 Alaska communities with a population less than 2,500 in 1990, about 251 had mixed, subsistence-cash economies with these types of characteristics in 1986, as determined by the Alaska Boards of Fisheries and Game.

In general, research by the Division of Subsistence has found that a large majority of residents participate as consumers of subsistence products in small communities with mixed, subsistence-cash economies (cf, Wolfe and Ellanna 1983; Wolfe and Walker 1987; Wolfe and Bosworth 1990; Fall, Foster, and Stanek 1984; Schichnes and Chythlook 1988; Sumida and Andersen 1990; Leghorn and Kookesh 1986; Schroeder et al 1987). Most wild foods are produced by a subset of very productive households in the community (it is common that about 30 percent of the households produce about 70 percent or more of the wild foods). Wild foods are typically shared by highly productive households with less productive households, most commonly along kinship lines and also through other traditional distribution means. Because of extensive kinship ties connecting households in most small communities, almost all persons in the community become consumers of subsistence products. Exceptions include relatively new residents who may be in the process of integrating into the local system, temporary residents primarily living in the community for employment reasons (such as school teachers or construction workers), and the occasional non-conforming resident household.

A case example of a small community with a mixed, subsistence-cash economy is Kaktovik, an arctic slope community with 224 people in 1990, of which 84.4 percent were Alaska Native, primarily from Inupiat cultural traditions. In 1986, the Division of Subsistence interviewed 42 of 53 households in Kaktovik to document the past 12-month's subsistence patterns. Based on that survey, 90.5 percent of Kaktovik households reported harvesting some wild foods in 1985-86. In terms of use, 100 percent of households used subsistence fish, 100 percent used big game, 88.1 percent used marine mammals, and 88.1 percent used wild birds. Most subsistence foods were harvested by a subset of the community's households: 30 percent of Kaktovik's households produced 70 percent of the harvest by weight. Wild foods were widely shared among households, so that use of major species was reported by a large majority of households. For instance, all households (100 percent) reported using char, 95.2 percent used caribou, 69.0 percent used ringed seal, and 61.9 percent used spotted seal. The community landed no bowhead whales that year, yet 83.3 percent of households used bowhead whale which were shared from other communities on the north slope. While 7.2 percent of Kaktovik households harvested moose, 45.2 percent of households used moose. While 2.4 percent of households harvested muskox, 42.9 percent used muskox. While no one reported harvesting broad whitefish, 47.6 percent used whitefish, received from other communities. Kaktovik residents harvested an average of about 328 lbs of wild foods per person in 1985-86, which contained 213 percent of an individual's recommended daily allowance of protein and 31 percent of the daily allowance of calories. The survey did not ask for estimates of individual or household consumption levels. However, because of the wide-spread sharing of wild foods, the mean per capita harvest estimate is probably a reasonable estimate of per capita consumption as well. Kaktovik's cash sector was relatively strong during the 1980s compared with most other small Alaska communities, due to employment generated from North Slope Borough oil revenues. The mean taxable income per income tax return in Kaktovik from 1981-85 was \$25,591, compared to \$6,629 for Venetie, a neighboring village to the south, and compared to \$24,677 for Fairbanks, an urbanized area to the south. The cost of food in Kaktovik is estimated to be 228 percent of prices in Anchorage. The Alaska Boards of Fisheries and Game determined that Kaktovik had a mixed, subsistence-cash economy during deliberations in 1986. State regulations provide for subsistence hunting and fishing in the Kaktovik area.

Kaktovik is just one example of the approximately 278 small communities with mixed, subsistence-cash economies in the state. Other communities show differences in terms of types of species used, harvest quantities, and the integration of subsistence activities with the pattern of local employment (Wolfe and Ellanna 1983; Wolfe and Walker 1987). However, most small communities are similar to Kaktovik in regards to the general characteristics of the mixed, subsistence-cash economy listed above. The Division has conducted studies in over 200 small communities, reported in the Division's technical paper series. Examples of other case communities for comparison with Kaktovik include Tyonek in the southcentral region (Fall, Foster, and Stanek 1984), Manokotak in the southwest region (Schichnes and Chythlook 1988), Fort Yukon in the interior region (Sumida and Andersen 1990), and Tenakee Springs in the southeast region (Leghorn and Kookesh 1986).

Communities with 2,500-7,000 people and Mixed, Subsistence-Cash Economies

There were seven mid-sized communities in Alaska with populations of 2,500-7,000 people in 1990: Cordova (2,579), Kotzebue (2,751), Unalaska (3,080), Petersburg (3,230), Barrow (3,469), Nome (3,500), and Bethel (4,674). Dillingham, with a growing population of 2,017 people, was approaching the 2,500 level. In 1986,

the Alaska Boards of Fisheries and Game determined each of these communities to have mixed, subsistence-cash economies. Studies have been done in most of these communities (cf, Ellanna 1983; Fall, Schichnes, Chythlook, and Walker 1986; Stratton 1989; Smythe 1988; Wolfe 1986). These studies have shown that, in general, in these communities, a majority of residents who hunt and fish probably meet the criteria of a subsistence user; however, some residents who hunt and fish in these communities probably do not. In general, the mixed, subsistence-cash economies of these communities share the characteristics of smaller communities, listed above, with a few important additions:

1. more employment opportunities commonly exist in the community in comparison with smaller communities, especially in government services, transportation, and/or commercial fishing;
2. greater between-household diversity exists in resource use patterns, due to greater cultural diversity in the population and more economic options;
3. other cultural traditions are found within segments of the population that affect a household's resource use patterns, such as the recreational-sport outdoors tradition and commercial fishing traditions of industrial-capitalism.

In general, research by the Division of Subsistence has found that most residents participate as consumers of wild resource products in mid-sized communities (2,500-7,000 people) with mixed, subsistence-cash economies. For instance, in Cordova in 1985, 73.3 percent of households used non-commercial salmon, 69.9 percent used halibut, 79.6 percent used big game, and 80.1 percent used marine invertebrates. In Petersburg in 1987, 96.9 percent used salmon, 81.4 percent used halibut, 76.1 percent used big game, and 80.3 percent used marine invertebrates. As in small villages, most wild foods are produced by a subset of very productive households in the community. Wild foods are commonly shared by highly productive households with less productive households, most frequently along kinship lines.

However, in general, the populations of mid-size communities are more culturally mixed in comparison with small communities, due to in-migrations of new residents during the past decades. Because of this, some households in the community fall outside of the extensive kinship networks used for sharing that characterize subsistence-cash systems. Some portion of households in mid-sized communities do not consume subsistence foods for this reason. In addition, some portion of households do not participate in the community's resource use pattern because they choose to participate solely in the cash sector of the community's economy. This choice appears to be due to the personal cultural background and economic situation of the household. Some segment of the population of mid-size communities engage in wild resource harvests from cultural traditions which are different from subsistence customs and traditions. In particular, some households hunt and fish primarily from a Euro-American recreational-sports outdoors tradition. Some households harvest fish primarily as part of the commercial fishing tradition of industrial-capitalism. Some households in these segments of the population may express ideologies in opposition to subsistence traditions, and disagree with laws providing special subsistence preferences. Therefore, although research supports the conclusion that a majority of residents in mid-size communities who fish and hunt are participants in a subsistence-type pattern of wild resource use, a portion of the residents in mid-sized communities who hunt and fish do not.

A case example of a mid-size community with a mixed, subsistence-cash economy is Kotzebue, a community in northwest Alaska with 2,751 people in 1990, of which 75.1 percent were Alaska Native, primarily from Inupiat cultural traditions.

Kotzebue served as a regional center to 11 villages of the northwest arctic. It provided a center for services, government, commerce, transportation, and administration of a developing regional minerals industry. Wage-paying jobs linked to these government-financed services and administrative functions are more numerous in Kotzebue in comparison with surrounding villages, and mean incomes were correspondingly larger. The mean taxable income per income tax return in Kotzebue from 1981-85 was \$20,444, compared to \$9,858 for Selawik, a neighboring village, and compared to \$24,457 for Anchorage, an urbanized area to the southeast. The cost of food in Kotzebue is estimated to be 155 percent of prices in Anchorage.

In 1986, the Division of Subsistence interviewed a random sample of 90 of 765 households in Kotzebue to document the past 12-month's subsistence patterns. Based on that survey, 78.5 percent of Kotzebue households reported harvesting some wild foods in 1986. In terms of use, 95.1 percent of households used subsistence fish, 88.1 percent used big game, 64.3 percent used marine mammals, and 64.0 percent used wild birds. Most subsistence foods were harvested by a subset of the community's households: 30 percent of Kotzebue's households produced 70 percent of the harvest by weight. Wild foods were widely shared among households, so that use of major species was reported by a large majority of households. For instance, 95.4 percent of households reported using salmon, 76.0 percent used sheefish, and 88.1 percent used caribou. Bearded seal was used by 47.2 percent. The community landed no bowhead whales (some Kotzebue residents helped Point Hope hunt), yet 41.1 percent of Kotzebue households used bowhead whale which was shared from Point Hope. While 8.4 percent of Kotzebue households harvested moose, 42.0 percent of households used moose. While 45.2 percent of households harvested caribou, 88.1 percent used caribou. Kotzebue residents harvested an average of about 398 lbs of wild foods per person in 1986, which contained 258 percent of an individual's recommended daily allowance of protein and 37 percent of the daily allowance of calories. The survey did not ask for estimates of individual or household consumption levels. However, because of the wide-spread sharing of wild foods, the mean per capita harvest estimate is probably a reasonable estimate of per capita consumption as well. The Alaska Boards of Fisheries and Game determined that Kotzebue had a mixed, subsistence-cash economy during deliberations in 1986. State regulations provide for subsistence hunting and fishing in the Kotzebue area.

There are substantial differences between the seven communities in this mid-size class in terms of how wild resources are integrated into each community's culture, economy, and way of life. These use patterns are influenced by the community's history and cultural composition. But underlying these differences in detail appear to be the characteristics common to mixed, subsistence-cash economies, listed above. Other mid-size communities where the Division of Subsistence has conducted studies which can be compared with Kotzebue include Nome (Ellanna 1983), Cordova (Stratton 1989), Petersburg (1988), and Bethel (Wolfe 1986). Dillingham, a community almost within this category, can also be compared (Fall, Schichnes, Chythlook, and Walker 1986).

Communities > 7,000 People

In 1990, about 441,521 people lived in Alaskan communities larger than 7,000 people, which was about 80.2 percent of the state's population. Areas with populations greater than 7,000 people include the Anchorage Borough (226,338), the Fairbanks North Star Borough (77,720), the Matanuska-Susitna area (39,415), the Kenai Peninsula area (36,651), and the Juneau Borough (26,751). In 1986, the Boards of

Fisheries and Game found that the use of non-commercial fish and game did not comprise a principal part of the economies of these areas. In general, these areas are supported by industrial-capital economies (cf, Wolfe and Ellanna 1983; Wolfe and Walker 1987; Schroeder et al 1987). Other large Alaska communities include the Ketchikan area (13,828), the Kodiak City area (12,230), and Sitka (8,588). In 1986, the Alaska Boards of Fisheries and Game determined that Ketchikan did not have a subsistence-cash economy, while Sitka and Kodiak City did.

In large urbanized areas with industrial-capital economies, the great majority of residents who hunt and fish are probably not subsistence users. In general, the pattern of resource uses of most residents in large urbanized areas with industrial-capital economies show certain characteristics:

1. fishing and hunting are primarily for commercial uses, recreational-sport uses, and personal uses (limited fishing for food)
2. small volumes of wild foods are produced and consumed by most fishers and hunters, with most meat and fish purchased from stores
3. distribution and exchange of wild foods products between households are relatively limited
4. hunting and fishing are typically intermittent breaks from regular wage employment work schedules, rather than a traditional seasonal cycle of harvesting and processing activities
5. a relatively narrow diversity of wild resources is produced and consumed by most households
6. fishing and hunting methods are commonly geared for "fair chase" recreational values, rather than efficient food production
7. both local and relatively wide-ranging land use patterns are common, especially using the public highway systems and aircraft for transportation
8. fishing and hunting values commonly derive from a Euro-American "sports-outdoors" tradition
9. wage employment in an industrial-capital economy provides the primary mode of food production for residents
 - a. strong cash sectors commonly provide wage employment opportunities to most households
 - b. there are relatively lower costs of imported goods and well-stocked retail stores
 - c. commonly there are secure sources of monetary incomes for families over the long term
 - d. commonly there are moderate to high income levels for a substantial proportion of families

In general, many residents of large Alaskan communities with industrial-capital economies fish and hunt. For instance, in 1989 there were an estimated 124,257 resident sport anglers in the Anchorage-Matsu area (West Cook Inlet-Lower Susitna Drainage) and an estimated 24,211 resident sport anglers in the Kenai Peninsula area (Mills 1990). While the numbers participating in fishing and hunting are substantial, estimates of mean per capita harvests in large, urbanized areas are relatively low compared with small communities (Anchorage -- 10 lbs per capita; Fairbanks -- 22 lbs per capita; Kenai -- 37 lbs per capita) (Wolfe and Walker 1987). Mean per capita harvest levels were significantly higher in communities like Sitka (146 lbs) and Kodiak City (147 lbs) for a number of economic, ecological, and cultural reasons (Division of Subsistence, Community Profile Database).

In general, most of the populations of urbanized communities fish and hunt as part of a Euro-American "sport-outdoors" tradition. However, there exists cultural and economic diversity between households in many large communities. In some large communities, there are households who are part of minority enclaves or social groups whose members continue to practice a distinct cultural tradition, such as using traditional wild foods in the home and in ceremonial occasions (Schroeder 1983). Some members of Alaska Native groups with subsistence traditions are examples of these residents. In some communities, there are households who choose to practice an Alaskan "homestead" tradition (or "frontiers tradition"), which includes harvesting for one's household to achieve cultural values of "self-sufficiency" and "healthful foods" from wild resources (Caulfield 1983; Schroeder 1983; Georgette 1983; Reed 1983, 1985). These kinds of households may desire to continue these traditions although it is more difficult in large, populated areas than small communities. Finally, there are some households in certain urbanized areas whose individual household economies resemble the "mixed, subsistence-cash economic systems" of rural communities, but at the domestic household level (Schroeder 1983). These households fish and hunt because it provides a more secure economic base than if they did not.

Thus, there are at least three cultural traditions that explain how subsistence users may exist in urbanized areas: "Alaska Native cultural traditions", an Alaskan "homestead (or frontier) tradition", and the "mixed subsistence-cash economic tradition" at the household level. Although the large majority of residents of large urbanized communities who fish and hunt do so as part of a sports-outdoors tradition, a minority of residents who hunt and fish may do so from these three other types of cultural and economic traditions.

There are differences among the communities in this third category in how fish and game uses are integrated into each community's economic and cultural patterns. Unfortunately, detailed household surveys have not been conducted in the largest urbanized areas (Anchorage, Fairbanks, and Matanuska-Susitna Borough) which are comparable to the surveys conducted in small Alaska communities (but see Caulfield 1983; Schroeder et al 1987). Comparative studies are available for Kodiak City (Kodiak Area Native Association 1983), the Kenai Peninsula area (Georgette 1983; Reed 1983, 1985), and Sitka (Gmelch, Gmelch, and Neison 1984; Schroeder 1983).

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GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX G

THRESHOLD LEVELS AND BASIC RESOURCE LISTS FOR MEASURING RESOURCE DIVERSITY OF SUBSISTENCE USERS

February 1992

Resource Diversity

"Resource diversity" is the number of different kinds of wild resources used by families for food, raw materials, and other subsistence uses during the year. A relatively wide resource diversity can be used as one defining characteristic of a subsistence use pattern. Resource diversity can be measured by counting the number of different resource categories used by a person during the past year (a list of resource categories are shown in Table 1, discussed below).

Threshold Levels

The Governor's subsistence bill recommends that the Boards of Fisheries and Game establish threshold levels of resource diversity for subsistence users. This means that applicants for a subsistence permit with resource diversity counts below a certain number would not qualify as subsistence users. The threshold level would be set to meet certain standards: a large majority of residents in communities with populations of less than 2,500 people should be above the threshold; a majority of residents in communities with populations of 2,500 to 7,000 people should be above the threshold; and a small minority of residents in communities with greater than 7,000 people should be above the threshold. The threshold levels also could be specific to particular regions, to deal with variability in species availability between regions.

Measures of resource diversity by the Division of Subsistence, Alaska Department of Fish and Game are summarized in another report (*Resource Diversity As A Characteristic of Subsistence Uses*, by Robert J. Wolfe, Division of Subsistence, Alaska Department of Fish and Game, Juneau, 1992). Tables 2 and 3 derive from that report.

Table 2 presents a measure of resource diversity at the community level. It counts the resource categories used by 50 percent or more of sampled households in particular communities where the Division has conducted research. It illustrates that at the community level, the diversity of resources varies substantially by place and area. For instance, there were six resources used by 50 percent or more of sampled households in Kotzebue in 1987 (1990 population, 2,751 people). By comparison, there were 13 resources used by 50 percent or more of sampled households in Point Lay, and only 2 resources used by 50 percent or more of sampled households in Anderson. In general, this community-level data supports the assertion that resource diversity increases in smaller communities with subsistence-cash economies. As shown in Table 2, most small communities with subsistence-cash economies have community-level counts greater than 6 resources. However, a few are near or below that level, such as Haines (4), Tok (4), Copper Center (6), Gulkana (7), Chignik Bay (7), Galena (9), and Tanana (9) (see Table 2 for the complete list).

Table 3 presents a measure of resource diversity at the household level. It counts the percent of households using a certain number of resources for 15 selected communities where data are available. Resource categories are counted in two different ways in Table 3. The first list is full species list, while the second removes "plants" and "berries" and combines all salmon

species into a single category (the issue of counting resource categories is discussed below). As shown in Table 3, resource diversity at the household level (as measured by the first list) differs substantially between households within a community. For example, in Tanana, 7.8 percent of households used 5 or fewer resources, 51.6 percent of households used 10 or fewer resources, and 81.6 percent used 15 or fewer resources. By comparison, in Kotzebue, 20.6 percent of households used 5 or fewer resources, 45.9 percent used 10 or fewer resources, and 77.0 percent used 15 or fewer resources. As a third comparison, in Copper Center, 31.9 percent of households used 5 or fewer resources, 70.7 percent of households used 10 or fewer resources, and 93.1 percent used 15 or fewer resources.

The data in Tables 2 and 3 are similar to the types of information that the Boards of Fisheries and Game would be provided as they established minimum thresholds and scoring systems for this subsistence user criterion. For instance, if the Boards established a minimum threshold level of 6 for households in the northwest arctic region, then about 79 percent of Kotzebue households look like they exceed that level, according to Table 3 (that is, about 21 percent of Kotzebue households reported using 5 or fewer resources). The data in Tables 2 and 3 suggest that the Boards may want to consider establishing region-specific threshold levels. Region-specific thresholds may provide more sensitive measures of resource diversity than a statewide standard, because they would factor in differences in the availability of resources between areas of the state.

Basic Resource Lists

Measuring resource diversity is affected by the way resources are counted, as shown by comparing household frequencies in the first list with the second list in Table 3. To measure the resource diversity of a subsistence applicant, the Alaska Boards of Fisheries and Game must develop a systematic method for counting resource categories used by an applicant. As part of this method, the Boards must identify a standard list of resource categories for counting.

Table 1 is an example of a list of basic resource categories that might be considered by the Boards. The basic list contains about 90 different categories of wild resources which are commonly reported used within particular Alaska communities, according to Division of Subsistence surveys. Table 1 also lists about 115 other subsistence resource categories which are not included in the basic list, either because they are subsumed under a more general resource category or because the Boards may not choose to count the category for the purpose of measuring resource diversity.

As shown in Table 1, over two dozen species of migratory birds have been grouped into the general categories of "ducks" and "geese" in the basic list. Several varieties of shellfish have been grouped into the general categories of "clams", "cockles", and "crabs" in the basic list. A number of freshwater and saltwater fish species which are less commonly used are grouped into "other non-salmon fish" (including fish such as sturgeon, sea perch, shark, and needlefish). Trout are not included in the basic list because the Boards do not recognize them as subsistence species for most areas of the state.

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
Chum Salmon	
Coho Salmon	
Chinook Salmon	
Pink Salmon	
Sockeye Salmon	
Salmon Roe	
Blackfish	
Burbot	
Cisco	
Grayling	
Pike	
Sheefish	
Sucker	
Whitfish, Broad	
Whitfish, Alaska-Humpback-Lake	
Whitfish, Round	
Black Cod-Sablefish	
Lingcod	
Tom Cod	
Pacific Cod-Gray Cod	
Halibut	
Herring	
Herring Roe on Kelp, Hemlock, Eelgrass	
Rockfish	
Red Snapper (Yelloweye Rockfish)	
Sculpin	
Smelt	
Eulachon (Hooligan)	
Arctic Char	
Dolly Varden	
Other Non-salmon Fish	
	Capelin
	Green Sturgeon
	White Sturgeon
	Whiting
	Flounder
	Sole
	Herring Sack Roe
	Blue Rockfish
	Sea Bass
	Sea Perch
	Surf Smelt
	Rainbow Smelt
	Greenling
	Wolf Eel
	Blenny Eel
	Lamprey Eel
	Dogfish
	Shark
	Pollock
	Skates
	Silver Hake
	Black Bass
	Blue Fin
	Tuna/Mackerel
	Needlefish
	Cutthroat Trout
	Lake Trout
	Rainbow Trout
	Steelhead

TABLE 1
 SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
 BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
 AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
Black Bear	
Brown Bear	
Caribou	
Deer	
Goat	
Moose	
Muskox	
Sheep	
Arctic Fox	
Red or Cross Fox	
Beaver	
Coyote	
Arctic Hare	
Snowshoe Hare	
Land Otter	
Lynx	
Marmot	
Marten	
Mink	
Muskrat	
Porcupine	
Weasel	
Wolf	
Wolverine	
Tree Squirrel	
Parka Squirrel (ground)	
Ermine	
Belukha	
Bowhead	
Bearded Seal	
Fur Seal	
Harbor Seal	
Ringed Seal	
Spotted Seal	
Seal Oil	
Wulrus	
Polar Bear	
Sea Lion	
Sea Otter	
	Gray Whale
	Black Fin Whale
	Ribbon Seal
	Porpoise/Dolphin
Grouse	
Ptarmigan	
Ducks	
Geese	
Swan	
Crane	
Bird Eggs	
	Snowy Owl
	Eider
	Scoter
	Harlequin
	Goldeneye
	Bufflehead
	Merganser
	Scup
	Mallard
	Pintail

TABLE 1
 SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
 BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
 AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
	Wigeon
	Teal
	Gadwall
	Oldsquaw
	Shoveler
	Canvasback
	Redhead
	Ringneck
	Brant
	Emperor Geese
	Snow Geese
	Whitefronted Geese
	Taverners
	Cacklers
	Lessers
	Vancouver
	Dusky Geese
	Alutian Geese
	Whistling (Tundra) Swan
	Trumpeter Swan
	Whooper Swan
	Snipe
	Plover
	Cormorants
	Loons
	Puffins
	Gulls
	Kittiwakes
	Murre
	Tern
	Grebe
	Great Blue Heron
	Murre Eggs
	Gull Eggs
	Cormorant Eggs
	Puffin Eggs
	Tern Eggs
	Plover Eggs
	Snipe Eggs
	Crane Eggs
	Duck Eggs
	Geese Eggs
	Swan Eggs
Abalone	
Clams	
Crabs	
Cockles	
Scallops	
Mussels	
Chiton	
Octopus	
Sea Cucumber	
Sea Urchin	
Shrimp	
Other Marine Invertebrates	
	Butter Clams
	Razor Clams
	Steamer Clams
	Little Neck Clams
	Softshell Clams

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

<u>BASIC LIST</u>	<u>OTHERS</u>
	Pinkneck Clams
	Horse Clams (Gaper)
	Dungeness Crab
	King Crab
	Tanner Crab
	Opis Crabs
	Hair Crab
	Box Crab
	Basket Cockles
	Heart Cockles
	Geoducks
	Blue Mussels
	Snails
	Limpets
	Squid
	Oyster
	Whelk
	Berries
	Plants/Greens/Mushrooms
	Black Seaweed
	Sea Ribbons
	Bull Kelp

Table 2
 Count of the Resources Used by 50 Percent or More of Sampled Households
 By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Subsistence ADIG

Community	Region	Big Game	Birds & Eggs	Marine		Non-Salmon Fish	Plants & Berries	Salmon	Small Game/Furbearers	Total Count	Total Count, No Plants/Berries	Total Count
				Invertebrates	Mammals							Salmon One Category, No Plants/Berries
Kotzebue	Arctic	1	0	0	0	3	1	1	0	6	5	5
Nuiqsut	Arctic	1	2	0	2	5	1	1	0	12	11	11
Kaktovik	Arctic	3	5	0	3	2	0	0	0	13	13	13
Point Lay	Arctic	1	5	0	4	2	1	0	0	13	12	12
Shishmaref	Arctic	1	5	1	2	4	2	0	0	15	13	13
Brevig Mission	Arctic	1	4	0	3	4	2	2	0	16	14	13
Golovin	Arctic	2	6	1	3	5	2	1	1	21	19	19
Anderson	Interior	1	0			1	0	0	0	2	2	2
Healy	Interior	1	0			1	1	0	0	3	2	2
Tok	Interior	2	1			1	0	0	0	4	4	4
McKinlay Park Village	Interior	2	0			1	2	0	0	5	3	3
Galena	Interior	1	3			0	1	3	1	9	8	5
Tanana	Interior	1	3			1	1	2	1	9	8	6
Chisana	Interior	1	0			3	3	2	1	10	7	6
Fort Yukon	Interior	2	2			2	1	2	1	10	9	8
Northway	Interior	2	2			3	2	0	1	10	8	7
Tanacross	Interior	2	1			3	2	1	1	10	8	8
Totlin	Interior	1	1			3	3	0	2	10	7	7
Dot Lake	Interior	2	1			4	3	1	1	12	9	9
Parks Highway South	Southcentral	0	0	0	0	0	1	1	0	2	1	1
Glennallen	Southcentral	1	0	0	0	0	1	1	0	3	2	2
Talkeetna	Southcentral	0	0	0	0	0	1	2	0	3	2	1
Tazlina	Southcentral	0	0	0	0	0	1	2	0	3	2	1
East Glenn Highway	Southcentral	1	0	0	0	0	2	1	0	4	2	2
Chistochina	Southcentral	2	0	0	0	0	2	1	0	5	3	3
Kenny Lake	Southcentral	0	0	0	0	1	2	2	0	5	3	2
Chitna	Southcentral	0	0	0	0	1	3	2	0	6	3	2
Copper Center	Southcentral	2	0	0	0	1	1	2	0	6	5	4
Petersville Road	Southcentral	1	1	0	0	1	2	1	0	6	4	4
Slana	Southcentral	2	0	0	0	1	2	1	0	6	4	4
Slana Homestead 5	Southcentral	1	1	0	0	1	2	1	0	6	4	4
Totnam	Southcentral	2	0	0	0	1	2	1	0	6	4	4

Table 2

Count of the Resources Used by 50 Percent or More of Sampled Households
By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Substructure ADIG

Community	Region	Big Game	Birds & Eggs	Mammals Invertebrates	Mammals	Non-Salmon Fish	Plants & Berries	Salmon	Small Game/Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
Trapper Creek	Southcentral	1	0	0	0	2	1	2	0	6	5	4
Gulkana	Southcentral	2	0	0	0	1	2	2	0	7	5	4
Lake Louise	Southcentral	1	0	0	0	4	2	0	0	7	5	5
Sierra Homestead N	Southcentral	1	1	0	0	1	2	2	0	7	5	4
West Glenn Highway	Southcentral	2	0	0	0	2	2	1	0	7	5	5
Hurricane Broad Pass	Southcentral	1	0	0	0	2	3	2	0	8	5	4
Mentasta Pass	Southcentral	2	1	0	0	1	3	1	0	8	5	5
Chase	Southcentral	1	1	0	0	3	3	1	0	9	6	6
Gakona	Southcentral	2	1	0	0	2	2	2	0	9	7	6
McCarthy Road	Southcentral	2	1	0	0	1	3	1	1	9	6	6
Mentasta	Southcentral	2	1	0	0	2	3	1	0	9	6	6
Paxson	Southcentral	2	2	0	0	3	1	1	0	9	8	8
Sourdough	Southcentral	2	1	0	0	2	2	2	0	9	7	6
South Wrangell Mtn	Southcentral	2	1	0	0	2	3	1	0	9	6	6
Gold Creek	Southcentral	1	2	0	0	3	3	1	0	10	7	7
Nabusna Road	Southcentral	3	1	0	0	3	2	1	1	11	9	9
Chenega Bay	Southcentral	2	1	5	2	3	2	0	0	15	13	13
San Juan Bay	Southcentral	2	1	2	1	4	1	4	0	15	14	11
Port Graham	Southcentral	1	0	5	1	3	3	5	0	18	15	11
Tattler	Southcentral	2	1	2	3	4	2	5	0	19	17	13
English Bay	Southcentral	2	1	5	1	6	4	5	0	24	20	16
Sitka	Southeast	0	0	0	0	0	1	0	0	1	0	0
Skagway	Southeast	0	0	2	0	1	0	0	0	3	3	3
Haines	Southeast	0	0	0	0	2	1	1	0	4	3	3
Collman Cove	Southeast	1	0	2	0	2	1	1	0	7	6	6
Tenakee Springs	Southeast	1	0	2	0	2	1	1	0	7	6	6
Wrangell	Southeast	1	0	1	0	1	1	1	0	7	6	6
Craig	Southeast	1	0	2	0	3	1	1	0	8	7	7
Hyder	Southeast	0	0	1	0	2	2	1	0	8	6	6
Metchikilla	Southeast	1	0	1	0	1	1	2	0	8	7	6
Spartan	Southeast	1	0	1	0	2	2	2	0	8	6	5
Trask	Southeast	1	0	1	0	2	2	2	0	9	7	6

Table 2
 Count of the Resources Used by 50 Percent or More of Sampled Households
 By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Substance ADIG

Community	Region	Big Game	Birds & Eggs	Mammals Invertebrates	Mammals	Non-Salmon Fish	Plants & Berries	Salmon	Small Game/Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
Klawock	Southeast	1	0	2	0	2	2	2		9	7	6
Thorne Bay	Southeast	1	0	2	0	3	2	1		9	7	7
Petersburg	Southeast	1	0	4	0	1	2	2		10	8	7
Point Baker	Southeast	1	0	3	0	3	2	1		10	8	8
Whale Pass	Southeast	1	0	4	0	2	2	1		10	8	8
Hollis	Southeast	1	0	4	0	2	2	2		11	9	8
Klukwan	Southeast	0	0	0	0	5	2	4		11	9	6
Angoon	Southeast	1	0	4	0	2	2	3		12	10	8
Port Alexander	Southeast	1	0	2	0	3	4	2		12	8	7
Meyers Chuck	Southeast	1	0	4	0	3	2	3		13	11	9
Ellin Cove	Southeast	1	0	6	0	3	2	2		14	12	11
Kake	Southeast	1	0	4	1	2	3	3		14	11	9
Pelican	Southeast	1	0	5	0	4	2	2		14	12	11
Hoonah	Southeast	1	0	3	1	5	2	3		15	13	11
Kasaan	Southeast	1	0	5	0	4	3	2		15	12	11
Port Protection	Southeast	1	0	3	0	3	4	4		15	11	8
Yakutat	Southeast	1	0	4	1	3	3	3		15	12	10
Hydaburg	Southeast	1	0	5	0	5	3	3		17	14	12
Beecher Pass	Southeast	1	1	5	0	4	3	4		18	15	12
Edna Bay	Southeast	1	0	7	0	4	3	3		18	15	13
Dillingham	Southwest	2	0	0	0	0	1	3	0	6	5	3
Cragnik Bay	Southwest	1	0	2	0	1	1	2	0	7	6	5
Egegik	Southwest	1	2	0	0	0	1	3	0	7	6	4
Kodiak City	Southwest	1	0	5	0	1	0	2	0	9	9	8
Chinak	Southwest	1	0	3	0	3	0	3	0	10	10	8
Nelson Lagoon	Southwest	1	3	2	0	1	1	2	0	10	9	8
Port Heiden	Southwest	1	3	1	0	1	1	3	0	10	9	7
Port Lions	Southwest	1	1	4	0	2	0	3	0	11	11	9
Levelock	Southwest	2	5	0	1	3	2	0	0	13	11	11
Aklavik	Southwest	1	3	5	2	1	0	3	0	15	15	13
Chignik Lagoon	Southwest	2	1	2	0	2	2	4	0	15	13	10
Elsie	Southwest	2	0	0	0	6	1	4	2	15	14	11

Table 2

Count of the Resources Used by 50 Percent or More of Sampled Households
By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Subsistence ADFG

Community	Region	Big Game	Birds & Eggs	Mammal Inverte brates	Mammal Mammals	Non- Salmon Fish	Plants & Berries	Salmon	Small Game/ Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
New Stuyahok	Southwest	2	1	0	1	4	1	4	2	15	14	11
Old Harbor	Southwest	1	2	5	2	1	0	4	0	15	15	12
Chignik Lake	Southwest	3	3	2	1	1	3	3	0	16	13	11
Pilot Point	Southwest	1	7	0	0	1	1	4	2	16	15	12
Koliganek	Southwest	2	3	0	1	4	1	4	2	17	16	13
Larson Bay	Southwest	1	1	6	1	5	0	4	0	18	18	15
Ugashik	Southwest	2	8	0	0	2	0	3	4	19	19	17
Ouzinkie	Southwest	1	2	6	1	5	0	4	1	20	20	17
Fulse Pass	Southwest	1	6	5	1	3	2	4	0	22	20	17
Perryville	Southwest	3	2	5	1	4	3	4	0	22	19	16
Karluk	Southwest	1	4	5	2	7	0	4	0	23	23	20
Manokotak	Southwest	2	3	1	2	11	2	4	2	27	25	22
Ivanof Bay	Southwest	2	5	8	1	5	3	7	1	32	29	23

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX H

BIBLIOGRAPHY OF SOME SUBSISTENCE STUDIES RELATED TO COMMUNITY SIZE, ECONOMY, AND AND CULTURE

February 1992

The Governor's subsistence bill states that there are relationships between patterns of wild resource use, types of communities, types of economy, and cultures in Alaska. This bibliography lists some subsistence studies done by the Division of Subsistence, Alaska Department of Fish and Game, which serve as basic references on subsistence use patterns within Alaska communities. A complete listing of subsistence studies published by the Division of Subsistence is contained in the abstracts of their Technical Paper Series, cited below. All technical papers are available on request from the Division of Subsistence headquarters office in Juneau (Division of Subsistence, ADF&G, Box 25526, Juneau, AK 99802-5526; 465-4147).

Basic Listing of Subsistence Studies

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DIVISION OF LEGAL SERVICES

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MEMORANDUM

March 27, 1992

SUBJECT: SB 443; Definition of "Sustained Yield"
TO: Senator Lyman Hoffman
FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether it is necessary that SB 443 contain a definition of "sustained yield."

It is not necessary that SB 443 contain a definition of "sustained yield." Sustained yield is a concept well understood by resource managers and does not need to be defined in statute. The Alaska Supreme Court has had no trouble understanding the constitutional concept of sustained yield and determining that a statutory definition of "sustained yield" in AS 41.17 was potentially violative of the constitutional concept. Southeast Alaska Conservation Council v. State, 665 P.2d 544, 548 n. 12 (Alaska 1983).

The definition of "sustained yield" contained in SB 443 incorporates several concepts from the Alaska Constitution and federal policy. The melding of these diverse concepts reflects substantive policy choices that are more appropriately addressed in a substantive provision of the bill, rather than in a definition. By moving the definition of "sustained yield" into the substantive provisions of SB 443, the policy choices made by the definition of "sustained yield" are more evident and more subject to open discussion.

If it is the intent of the legislature to include a definition of "sustained yield" in SB 443, a concise definition that does not incorporate so many issues into a single concept would be more comprehensible and easier to implement by resource managers.

The definition of "sustained yield" is applicable to sport and subsistence hunting and to sport, commercial, personal use, and subsistence fishing. For this reason the definition of sustained yield is outside of the title of SB 443. The Alaska Constitution

Senator Lyman Hoffman
March 27, 1992
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requires that a bill express its contents. Article II, sec. 13. The purpose of this provision of the constitution is to give the legislature and the people fair notice of the contents of a bill. Without mentioning in the bill title that SB 443 is defining "sustained yield," the legislature and people are not given notice that the bill is defining the term for purposes other than subsistence. To cure the defect in the title of the bill, the definition can be eliminated from the bill or made applicable to only subsistence use of fish and wildlife, or the title of the bill can be amended.

If I can provide further assistance, please advise.

GU:pl
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MEMORANDUM

March 23, 1992

SUBJECT: Consistency of the Governor's subsistence bill with the Alaska National Interest Lands Conservation Act (SB 443)

TO: Senator Lloyd Jones, Chair
Senate Resources Committee

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether the Governor's subsistence bill is consistent with the subsistence provisions of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3111 - 3126).

SHORT ANSWER

SB 443 is not consistent with ANILCA in regard to who is eligible to participate in subsistence hunting and fishing. This inconsistency is very significant and requires either an amendment of ANILCA or a change to SB 443 in order to make the state and federal statutes consistent.

SB 443 applies only to subsistence uses of fish and wildlife, while ANILCA speaks in terms of subsistence uses of wild, renewable resources. This discrepancy may be significant.

There are also several instances where the provisions of SB 443 vary from those of ANILCA, but it is not clear how significant these variations are. It is possible that in many instances these provisions may be construed as consistent with each other.

DISCUSSION

The subsistence provisions of ANILCA have been the standard against which the state subsistence law was measured for determining whether the state retained management of subsistence use of fish and wildlife on federal public land.

State management of subsistence uses of fish and wildlife on federal public land, was contingent upon enactment and implementation of state laws which were consistent with ANILCA's provisions relating to a definition of subsistence (16 U.S.C. 3113), a preference for subsistence use of fish and wildlife (16 U.S.C. 3114), and for local and regional participation in management of subsistence (16 U.S.C. 3115).

ANILCA is ambiguous as to whether the state can regain management of subsistence uses of fish and wildlife on federal public land without action by the Congress. Under 16 U.S.C. 3115(d), the state could retain management of subsistence on federal public land if the state enacted and implemented laws consistent with ANILCA by December 2, 1981. The state could then retain management until the consistent state subsistence law was repealed. The McDowell decision of the Alaska Supreme Court effectively repealed the consistent state subsistence law. McDowell v. State, 785 P.2d 1 (Alaska 1989). ANILCA does not provide for reinstatement of state management authority over subsistence on federal public lands once the state has failed to comply with ANILCA. It is possible that the federal agencies responsible for implementing ANILCA (Department of the Interior and Department of Agriculture) may construe 16 U.S.C. 3115(d) in such a way as to allow the state to regain management authority at any time, provided that the state had a consistent subsistence law before December 2, 1981. However, if it is determined that ANILCA does not authorize the federal agencies to return management to the state, the state cannot regain management until the Congress amends ANILCA to provide such authority.

DEFINITION OF SUBSISTENCE

The ANILCA definition of subsistence, in essence, defines "subsistence uses" as the customary and traditional uses by rural Alaska residents of wild, renewable resources for (1) direct personal or family consumption as food shelter, fuel, clothing, tools, or transportation; (2) making and selling of handicrafts from nonedible byproducts of fish and wildlife; (3) barter or sharing for personal or family consumption; and (4) customary trade. The definition of "subsistence uses" also included definitions of "family" and "barter."

SB 443 defines the term "subsistence" as the noncommercial, customary and traditional taking and uses of fish and game by a resident in a subsistence use area of the state for (1) direct personal or family consumption as food, clothing, or transportation; (2) the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; (3) sharing; and (4) barter and customary trade of a portion of fish or game resources harvested primarily for personal or family consumption. The fact that SB 443 defines the term "subsistence" instead of "subsistence uses" is probably inconsequential.

The most significant difference between the ANILCA definition and SB 443's definition is that SB 443 does not limit subsistence to rural residents. The bill provides that any resident of the state whether the person resides in a rural or urban area of the state may qualify for subsistence use of fish and wildlife, if the person can show the requisite history of use and dependence on fish and wildlife. The fact that a resident who lives in an area that is traditionally considered rural can be barred from subsistence activities and the fact that a resident of an urban area can engage in subsistence activities makes SB 443 inconsistent with ANILCA. The federal court of appeals has already determined that the former state system, which limited participation in subsistence activities to residents of rural areas where subsistence was a principal element of the local economy, was inconsistent with ANILCA. Kenaitze Indian Tribe v. State of Alaska, 860 P.2d 312 (CA 9 1989). The court construed ANILCA literally to require that all rural residents of the state be eligible for subsistence activities regardless of the nature of the economy or degree of dependence on subsistence in the area where the person lived.

SB 443 also deletes references to "wild, renewable resources" and to "shelter," "fuel," and "tools". The bill essentially deletes these terms because they are not relevant in the context of subsistence uses of fish and wildlife. The deletion of these terms from the definition of "subsistence uses" or "subsistence" may or may not be significant. In approving the state subsistence law in the past, the federal government did not express any concerns over the fact that the Department of Fish and Game had no authority to provide for these other uses of other renewable resources. If the state must provide for subsistence use of these other renewable resources, the legislature would have to provide for such uses through the Department of Natural Resources --the Department of Fish and Game has jurisdiction over only fish and wildlife.

SB 443 also defines the terms "customary and traditional" and "customary trade." The definition given to these terms by SB 443 varies from the definition of these terms in federal subsistence regulations. It is possible that the definition of these terms in SB 443 is inconsistent with the meanings ANILCA intended to apply to these terms.

PREFERENCE FOR SUBSISTENCE USES OF FISH AND WILDLIFE

ANILCA provides that the taking of fish and wildlife for nonwasteful subsistence uses has a priority over takings of fish and wildlife for other purposes. If it is necessary to restrict the taking of fish and wildlife for subsistence uses, then the priority is implemented by applying the following criteria: (1) customary and direct dependence upon the resource as a mainstay of livelihood; (2) local residency; and (3) the availability of alternative resources.

SB 443 does not expressly provide, outside of the bill's statements of findings, purpose, and intent, that subsistence is a priority use of fish and game. That omission may not be significant. The bill provides that, except in cases of shortages of fish and

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game, a reasonable opportunity to engage in subsistence hunting and fishing shall be accorded to subsistence users. It is not clear whether the "reasonable opportunity" standard represents a significant deviation from the subsistence preference provisions of ANILCA. The bill provides that subsistence users always have access to fish and wildlife resources and that they are the last user group to have their harvest opportunities reduced when there is a shortage of fish or wildlife.

In the event that available fish or wildlife is not sufficient to provide for all subsistence uses, SB 443 provides that the available resources are to be allocated on the bases of (1) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of life; (2) the proximity of the domicile of the subsistence user to the stock or population; and (3) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated. For the most part, these provisions are substantially similar to those in ANILCA. The one possible exception is that SB 443 considers the ability of the subsistence user to obtain food, while ANILCA considers the availability of alternative resources. It is not clear whether ANILCA would take into consideration the ability to obtain food through the cash economy, like SB 443 evidently does. ANILCA may be referring only to availability of alternative fish and wildlife resources.

LOCAL AND REGIONAL PARTICIPATION IN SUBSISTENCE MANAGEMENT

SB 443 does not propose any changes to the existing framework for local and regional participation in subsistence management. The current system for local and regional participation exists largely in regulations of the Department of Fish and Game. The current system should still be consistent with the requirements of ANILCA.

If I may be of further assistance, please advise.

GU:mi
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MEMORANDUM

March 23, 1992

SUBJECT: Constitutional issues raised by the Governor's Subsistence Bill.
(SB 443)

TO: Senator Lloyd Jones, Chair
Senate Resources Committee

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether SB 443, the Governor's subsistence bill, is consistent with the Alaska Constitution?

SHORT ANSWER

One, SB 443 provides for the establishment of dozens of subsistence use areas. The mandatory minimum eligibility standards for subsistence hunting and fishing proposed by SB 443 establish each subsistence use area as a separate use area and limit admission to the user group for that area to only those persons who have an extensive history of use in the area. The mandatory minimum eligibility standards pose a significant infringement on the open access values of the Alaska Constitution. There is a substantial risk that the mandatory minimum eligibility standards are unconstitutional.

Two, under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into fish and game user groups, they may inhibit equal and open access to fish and game resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

Three, numerous provisions of SB 443 establish fixed standards or criteria to determine whether a person is eligible to engage in subsistence hunting and fishing or establish the conditions under which the person may apply for subsistence privileges or may engage in subsistence hunting and fishing. Each of these provisions is potentially subject to challenge on equal protection grounds by a person who is

adversely affected by that standard or criteria. The legislature can enhance the ability of the state to defend SB 443 against such challenges by developing a record of careful consideration of each element of the bill to demonstrate that the element was adopted for specific reasons and not arbitrarily, and by paying particular attention to the goal that the legislature is seeking to achieve in each element of the bill and to the means that it chooses to achieve the goal.

Four, the title of SB 443 fails to fully express the contents of the bill and should be amended accordingly.

DISCUSSION

This memorandum addresses the constitutional issues raised by SB 443.^{1/} SB 443 relates to the subsistence use and allocation of fish and game resources. The bill establishes an intricate system for controlling entry into subsistence user groups and distributing the activities of those user groups throughout the state. The bill provides that persons with a history of dependence on and use of fish and game resources will be able to continue their subsistence activities while leaving an opportunity for new persons to qualify for subsistence activities. Minimizing the administrative burden on the individual subsistence user and the Department of Fish and Game is also an important element of the bill.

The bill provides for subsistence use of fish and game resources under the legislature's authority to provide for the utilization, development, and conservation of natural resources.^{2/} Subsistence is not a constitutionally mandated or protected use of fish and game resources. As a statutorily created use of fish and game resources, any system for management of subsistence use and allocation of fish and game for subsistence use must be consistent with the Alaska Constitution. Of particular relevance to the subsistence use of fish and game are the "open access" provisions of the Alaska Constitution: common use section^{3/}, no exclusive right of

^{1/} This memorandum does not address issues of statutory construction or legislative draftsmanship that do not implicate the Alaska Constitution. Those issues can be addressed later, if you wish.

^{2/} Article VIII, sec. 2:

General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

^{3/} Article VIII, sec. 3:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

fishery clause^{4/}, and uniform application section^{5/}. Although the ramifications of these provisions are varied, they share at least one meaning: exclusive or special privileges to take fish and game are prohibited. The no exclusive right of fishery clause states this explicitly with regard to fisheries. The proceedings of the Alaska Constitutional Convention show that this same meaning was intended with respect to fish and game under the common use section and the uniform application section. McDowell v. State, 785 P.2d 1 (Alaska 1989).

The bill avoids creating an obviously closed class of subsistence users like the rural resident preference that the Alaska Supreme Court struck down in McDowell. Instead, the bill establishes a system in which any person, ostensibly, may engage in subsistence use of fish and game provided that the person satisfies the prescribed eligibility criteria.

ELIGIBILITY CRITERIA FOR SUBSISTENCE

SB 443 proposes seven fundamental considerations for determining who is eligible to engage in subsistence hunting and fishing. SB 443, Sec. 2. Sec. 16.05.268(i); page 7, line 3 - page 8, line 1. The Board of Fisheries and the Board of Game are to jointly establish the actual criteria and a concomitant point system for determining eligibility based on the fundamental considerations. Though the boards jointly develop the actual eligibility criteria, four of the fundamental considerations in SB 443 are in fact specific mandatory minimum standards that a person must satisfy in order to qualify for subsistence hunting and fishing:

(1) the quantity of fish and game consumed by the person in the preceding 12 months, with a mandatory minimum of 25 pounds consumed in that period;

(2) the number of species and groups of species of fish and game from the subsistence [use] area consumed by the person in the preceding 12 months, with a mandatory minimum number of species, or groups of species, as determined jointly by the boards by regulation; the mandatory minimum number, and any grouping of species, may

^{4/} Article VIII, sec. 15, in relevant part:

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

^{5/} Article VIII, sec. 17:

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

vary by geographical region of the state, based on the diversity of species in a region;

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

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

SB 443, Sec. 2, Sec. 16.05.268(i)(1) - (4); page 7, lines 12 - 24.

Notably three of the four mandatory standards (Sec. 16.05.268(i)(2) - (4)) set specific minimum requirements on the number of species of fish and game consumed and the number of days and months engaged in hunting and fishing activities (at least a total of 30 days during any four months) and requires that each of the three standards be satisfied in a single subsistence use area during the preceding 12 months.^{6/} Once an applicant for subsistence privileges satisfies these mandatory minimum standards in a subsistence use area and the other criteria adopted by the boards, the applicant is then eligible to participate in subsistence hunting and fishing in that subsistence use area. If an applicant wants to engage in subsistence hunting and fishing in an additional subsistence use area or to move subsistence activities to a new subsistence use area, the applicant must then satisfy the three mandatory standards in the new area as well as the other criteria established by the boards. The applicant can satisfy the three mandatory standards in the new subsistence use area by engaging in sport or personal use fishing or sport hunting in the area, taking the prescribed number of species in the area, spending the required amount of time fishing and hunting in the area or processing fish and game taken in the area.

By combining standards for eligibility to engage in subsistence hunting and fishing with a requirement that the standards be satisfied in the subsistence use area in which the applicant wishes to use for subsistence hunting and fishing, the three mandatory standards establish each subsistence use area as a separate subsistence hunting and fishing area open only to certain persons and closed to all others. In fact the standards establish separate user groups for each subsistence use area and then limits admission to the user group to those persons who have a history of recent and

^{6/} A subsistence use area is the subunit of a game management unit together with the contiguous game management subunits, unless a board describes a different subsistence use area for a particular fish stock or game population. SB 443, Sec. 2, Sec. 16.05.268(d) and (e). There are currently 69 game management subunits in the state and thus a possible 69 different subsistence use areas. The actual number of subsistence use areas will probably be less because certain areas (urban areas) are closed to subsistence use of fish and game and subsistence use areas may not be established for those areas. See, SB 443, Sec. 2, Sec. 16.05.268(a).

extensive use in the area. An otherwise qualified subsistence user does not have the freedom to choose which subsistence use area the person will hunt or fish in. The person is confined to that subsistence use area in which he has established the requisite history of use.^{7/} All other persons are barred from using the area for subsistence hunting and fishing. Each subsistence use area becomes an exclusive use area open to use by only a few eligible persons and as such confers a "special privilege" to use the fish and game in the area on those persons.

A system for determining eligibility for engaging in subsistence hunting and fishing which opens participation for some and closes participation for others "will necessarily create tension with article VIII." McDowell, 785 P.2d at 9. Limits on admission to user groups are subject to scrutiny under the article VIII equal access provisions (State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichek v. State, 763 P.2d 488, 492 (Alaska 1988)), because the provisions of article VIII were intended to guarantee the broadest possible access to and use of fish and game (Owsichek, 763 P.2d at 492 - 93) and to prohibit exclusive or special privileges to take fish and game (McDowell, 785 P.2d at 6). "The history of the common use clauses, . . . , reveals anti-monopoly intent to prevent 'exclusive grants' and 'special privilege[s],' wholly apart from the limits imposed by other constitutional provisions." Owsichek, 763 P.2d at 496.

In Owsichek, the Alaska Supreme Court struck down exclusive guide areas and joint use areas, because these areas were grants of monopolies or special privileges based on a guides previous use, occupancy, and investment in the area. "To grant such a special privilege based on seniority runs counter to the notion of 'common use'." Owsichek, 763 P.2d at 496. In McDowell, the Alaska Supreme Court struck down the rural residency requirement for subsistence because it amounted to an exclusive or special privilege prohibited by the open access provisions of the Alaska Constitution. McDowell, 785 P.2d at 9. In lieu of the rural residency requirement for determining eligibility for subsistence use of fish and game, SB 443 uses the three mandatory minimum requirements to require recent and extensive use in the subsistence use area as a precondition for eligibility. Just as the rural residency requirement precluded nonrural residents from engaging in subsistence activities, the

^{7/} For example, a subsistence user in Kotzebue who moves to Tok must continue to return to Kotzebue to engage in subsistence hunting and fishing, until the user establishes the prerequisite history of use in the Tok area. (This assumes that the state does not deny the person's right to continue to engage in subsistence hunting and fishing in the Kotzebue area, because travelling from Tok to Kotzebue no longer satisfies the economical and efficient requirement for subsistence activities.)

For example, if a tier I subsistence user is closed out of his/her area because of a resource shortage that user may not move his/her subsistence activities to another subsistence use area, even though the person has a continuing need to engage in subsistence hunting and fishing.

recent and substantial use requirement of SB 443 precludes all other persons who are similarly situated but who do not have a recent and substantial history of use in the area from engaging in subsistence hunting and fishing in the subsistence use area. The fact that any nonrural resident could move to a rural area and thus qualify for subsistence was ineffective in saving the former rural residency requirement from invalidity. McDowell, 785 P.2d at 7. Likewise the ability of an otherwise qualified person to establish a recent and substantial history of use, of a new or an additional subsistence use area does not prevent the requirement for such a history of use as a condition precedent to use of the new area, from being an excessive infringement on open access provisions of the Alaska Constitution.

Review of the three mandatory standards according to equal protection analysis under the uniform application section requires the following procedure. First, the three mandatory standards must have a legitimate purpose. The purposes of SB 443 that seem relevant to the mandatory standards are protection of healthy fish stocks and game populations and allowing participation in the subsistence taking of fish and game by those who actually and substantially depend on subsistence use of fish and game. SB 443, Section 1(b). These purposes are legitimate purposes. Owsichek, 763 P.2d at 496 - 97; McDowell, 785 P.2d at 13 (concurring opinion). Second, the importance of the individual interest involved must be determined. The individual interest in equal access to fish and game is a highly important interest running to each person within the state. McDowell, 785 P.2d at 10; Owsichek, 763 P.2d at 492 n. 10. Third, the importance of the state's purpose must be balanced against the individual interest involved. McDowell, 785 P.2d at 10. The state's purpose must be at least important to overcome the highly important individual interest at stake. Fourth, the means to further the important state purpose must be carefully drawn and designed for the "least possible infringement on article VIII's open access values." McDowell, 785 P.2d at 10.

Assuming that the state's purpose underlying the three mandatory standards is sufficiently important to countervail the highly important individual interest at stake, it would appear that the means chosen to achieve the state's purpose is not the least possible infringement on open access to fish and game resources. The three mandatory standards allow otherwise qualified individuals to engage in subsistence hunting and fishing in only those subsistence use areas where the individual has a recent and extensive history of use. The remaining dozens of subsistence use areas are closed to this individual.^{8/}

^{8/} This result is intentional. The Section-By-Section Description of the Governor's Subsistence Bill, dated February 21, 1992, states at page 11:

The statute does not provide for qualification on a statewide basis; hunting and fishing in one subsistence area will not qualify the user to subsistence hunt and fish in another area. While
(continued...)

In my opinion, there is a substantial and unnecessary risk that the three mandatory standards contained in SB 443 are an impermissible infringement on open access to fish and game resources and thus would violate the open access provisions of the Alaska Constitution.

It is the creation of dozens of separate, albeit slightly overlapping, subsistence use areas that are each subject to distinct area specific criteria for access that infringes upon the open access provisions of article VIII. Those persons who ultimately qualify for subsistence hunting and fishing privileges in a subsistence use area receive a "special privilege" that is denied to all other persons. Those persons who are not qualified for subsistence hunting and fishing in the area are denied access to the user group for that subsistence use area because they have not established the requisite history of use.

The utilization of past use or activities in an area, as criteria for granting or denying access to fish and game resources has been rejected by the Alaska courts in Owsichek (guide exclusive use and joint use areas) and in Bozanich v. Noerenberg, (Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971; state may not bar entry into a salmon net fishery by requiring prior experience in that fishery).

The primary shortcoming of the three mandatory standards is that they combine determinations on access to a user group with determinations on allocation of the fish and game resource. The Alaska Supreme Court is supportive of the state's power to allocate fish and game resources under the sustained yield section of the Alaska Constitution^{2/} (Gilbert v. State Department of Fish and Game, 803 P.2d 391 (Alaska 1990); Meier v. State, Board of Fisheries, 739 P.2d 172 (Alaska 1987)), provided that the allocations are not arbitrary and unreasonable and are consistent with and reasonably necessary to the conservation and development of fish and game resources (Gilbert, 803 P.2d at 399; Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897, 903 (Alaska 1981)). However, the authority to make

^{8/}(...continued)

it may be technically possible for a person to qualify in more than one subsistence use area under this subsection [SB 443, Sec. 2, Sec. 16.05.268(i)], it is generally contemplated that the vast majority of users will qualify for only one area.

^{2/} Article VIII, sec. 4:

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

allocation decisions does not imply a power to limit admission to a user group. State v. Hebert, 803 P.2d 863, 866; (Alaska 1990) McDowell, 785 P.2d at 7 - 8;^{10/}

The two determinations could be separated by eliminating the requirement that the three mandatory standards be satisfied in a single subsistence use area. If the two determinations were separated a fundamental weakness of SB 443 would be avoided and SB 443 would better withstand challenges under article VIII of the Alaska Constitution. SB 443 can be amended to include criteria for determining where qualified subsistence users may engage in subsistence hunting and fishing or for establishing procedures for allocating fish and game resources among subsistence users. Prior use of a subsistence use area for the taking of fish and wildlife could be among the factors used to determine where a person may engage in subsistence fishing and hunting.

PROOF OF ELIGIBILITY

Though the criteria for establishing eligibility to engage in subsistence activities are relatively uniform, SB 443 provides that the proof necessary satisfy the criteria varies significantly depending on where a person lives.

A person who lives in a category 1 area^{11/} is presumed to satisfy all eligibility criteria without having to establish more than the person's place of residence. The person may engage in subsistence activities until it is proven by clear and convincing evidence that the person is not qualified to engage in subsistence. SB 443, Sec. 2, Sec. 16.05.268(h)(1); page 6, lines 17 - 22.

^{10/} The requirement that a person must engage in subsistence activities in a specific subsistence use area is somewhat analogous to the superexclusive fishing districts established by the Board of Fisheries for the Bering Sea herring sac roe fisheries. The board established two superexclusive herring sac roe fishing districts. If a fisherman chose to fish in either of these fisheries, the fisherman could not fish in any other herring sac roe fishing districts. The Alaska Supreme Court upheld the use of the superexclusive use fisheries for the purpose of allocating the harvest of herring between competing groups of commercial fisherman. State v. Hebert, 803 P.2d 863 (Alaska 1990). The court found that superexclusive fishing districts were consistent with the Alaska Constitution because it did not limit admission to a user group, because the fisherman was free to choose which fishing district to fish in. Hebert, 803 P.2d at 866.

^{11/} A category 1 area is an area where the human population of each community in the area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area. SB 443, Sec. 2, Sec. 16.05.268(f)(1); page 5, lines 9 - 11.

A person who resides in a category 2 area^{12/} is presumed to satisfy all eligibility criteria and need only sign a document affirming that the person does indeed qualify. SB 443, Sec. 2, Sec. 16.05.268(h)(2); page 6, lines 23 - 29. The person may engage in subsistence activities until it is proven by a preponderance of the evidence that the person is not qualified to engage in subsistence.^{13/}

A person who resides in a category 3 area^{14/} may engage in subsistence activities only after the person has convinced the commissioner of fish and game that the person satisfies the eligibility criteria adopted by the joint boards. SB 443, Sec. 2, Sec. 16.05.268(h)(3), page 6, line 30 through page 7, line 2.

Under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into the class of subsistence users, they may inhibit equal and open access to subsistence resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

The rural preference of the former subsistence law was struck down in part because it was an "extremely crude" method to provide for the need to engage in subsistence activities. McDowell, 785 P.2d at 10. The classification scheme inherent in the category 1, 2, and 3 areas is subject to similar criticism. Residents in category 1 areas are presumed to qualify for subsistence activities regardless of their individual characteristics. Even those unqualified residents of a category 1 area who engage in subsistence are not penalized or sanctioned for their activities. An unqualified resident of a category 2 area is at least potentially subject to criminal prosecution for falsely alleging their qualifications. It is only the residents of a category 3 area that are evaluated on their individual qualifications. The category 1, 2, and 3 area concept is not the "classification scheme employing individual characteristics" which

^{12/} A category 2 area is an area that consists of a single community that has a human population of 2,500 to 6,999, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community. SB 443, Sec. 2, Sec. 16.05.268(f)(2); page 5, lines 12 - 15.

^{13/} If it is proven that the person is not qualified for subsistence and that the person was aware of the lack of qualifications, the person is potentially subject to criminal prosecution for unsworn falsification under AS 11.56.210.

^{14/} A category 3 area is an area that is
(A) an urban area or a single community where the human population is 7,000 or greater; or
(B) an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. SB 443, Sec. 2, Sec. 16.05.268(f)(3); page 5, lines 16 - 21.

the McDowell court proposed as being "less invasive of Article VIII open access values." McDowell, 785 P.2d at 11. The category 1, 2, and 3 area concept classifies persons as a group based on where they live in the state.

The purpose for this burden on equal access to fish and game resources under article VIII must be, at the minimum, an important purpose. McDowell, 785 P.2d at 10.

According to the Section-By-Section Description of the Governor's Subsistence Bill,^{15/} the primary purpose of the category 1, 2, and 3 areas is to simplify the task of determining who is eligible to engage in subsistence activities. This purpose amounts to promoting administrative convenience. Administrative convenience is generally accepted as legitimate purpose for legislation and regulations but is not necessarily an important purpose. See, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980); Deubelbeiss v. Commercial Fisheries Entry Commission, 689 P.2d 487, 489 (Alaska 1984). Administrative convenience may not be sufficient to justify the burdens imposed by the category 1, 2, and 3 area classification system.

Assuming that the court does find administrative convenience or some other purpose behind the category 1, 2, and 3 area classification system to be important, it is then necessary to establish that the classification system is "designed for the least possible infringement on article VIII's open access values." McDowell 785 P.2d at 10. Though the classification system may be better than the rural-urban distinction made by the former law, it is not the system based on individual characteristics that the Alaska Supreme Court was looking for. In light of the purpose of the uniform application clause "to exclude an especially privileged status for any person in the use of natural resources subject to disposition by the state"^{16/} it is possible that the courts will require less disparity among residents of the state based on their place of residence than provided in SB 443.

A challenge to the category 1, 2, and 3 areas classification system on equal protection grounds under the uniform application section may result in an adverse decision from the courts because the system places different burdens on residents of the state based on where they live and not on their individual qualifications to engage in subsistence hunting and fishing. A system that required all residents to establish their eligibility to engage in subsistence in the same manner or that gave all residents the benefit of the same presumptions would provide fewer grounds for judicial challenge and be less susceptible to unanticipated judicial constructions.

^{15/} Page 10 - 11.

^{16/} Owsichuk, 763 P.2d at 498 n. 17; quoting 6 Proceedings of the Alaska Constitutional Convention, app. V, at 99 (Commentary); emphasis added by court.

OTHER ISSUES

In addition to the specific issues discussed above, several provisions of SB 443 may generate challenges on equal protection grounds. Any provision of the bill that establishes a fixed standard or criteria to determine whether a person is eligible to engage in subsistence hunting and fishing or establishes the conditions under which the person may apply for subsistence privileges or may engage in subsistence hunting and fishing is potentially subject to challenge by a person who is adversely affected by that standard or criteria. For the most part, these challenges will be based on either the state equal protection clause (article I, sec. 1) or the state uniform application section (article VIII, sec. 17).

In order to survive such challenges, the state must be able to show that the standard or criteria is reasonable and not arbitrary, bears an appropriate relationship to a sufficiently important state purpose, and bears an appropriate nexus to the state purpose. The ability of the state to make such showings is dependent in large part upon the extent of review and consideration that the legislature accords to each of the standards and criteria. A record of careful consideration of each element of SB 443 will provide the evidence necessary to establish that an element was adopted for specific reasons and not arbitrarily. It is also important that the legislature pay particular attention to the goals that it is seeking to achieve in each element of the bill and the means that it chooses to achieve the goal. The closer the relationship between the goal and the means chosen to achieve it, the greater is the likelihood that element of the bill will survive scrutiny under the equal protection clause or the uniform application section.

TITLE OF SB 443

According to the title of SB 443, the bill relates "to the taking of fish and game for subsistence." However two provisions of the bill define the terms "game management unit" and "sustained yield". SB 443, Sec. 6, Sec. 16.05.940(38) and (39), page 10, lines 17 - 23. These newly defined terms are intended to apply to subsistence and sport hunting and to subsistence, commercial, sport, and personal use fishing. To the extent that these newly defined terms apply to more than subsistence, the terms are outside of the title of the bill. Article II, section 13 of the Alaska Constitution requires that the subject of each bill be expressed in its title. The purpose of this provision is to give the legislature and the people fair notice as to the contents of the bill. Without mentioning in the bill title that the bill is defining "sustained yield" and "game management unit", the legislature and the people are not aware that those terms are being defined for purposes not related to subsistence. It is unlikely that a court would declare the entire bill unconstitutional for the failure to express the entire contents of the bill in the title. A court is more likely to find the bill

Senator Lloyd Jones
March 23, 1992
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constitutional, but to limit the application of the terms "game management unit" and "sustained yield" to the subsistence context.

The title problem is easily corrected by adding the phrase "defining 'sustained yield' and 'game management unit:'" to the title.

* * *

You also asked that I speak with Attorney General Cole regarding the perspective of the Department of Law on the constitutional issues raised in this memorandum. I have spoken with Attorney General Cole and Lance Nelson of the Department of Law and have discussed with them the issues raised in this memorandum. It is the opinion of the Department of Law that SB 443 is defensible against challenges based on issues raised in this memorandum and that SB 443 is constitutional.

If I may be of further assistance, please advise.

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Alaska State Legislature



Official Business

Senator Al Adams

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State Capitol
Juneau, Alaska 99801-1182
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OUT OF SESSION
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TO: Senator Rick Hulford, Chair, and members of the
Senate Judiciary Committee

FROM: Senator Al Adams *AA*

RE: Senate Bill 443, Subsistence legislation

DATE: April 7, 1992

I am circulating the attached memorandum from our legal counsel in consideration of the subsistence bill in committee today.

Thank you.

cc: Committee members

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 16, 1992

SUBJECT: Constitutional issues raised by the Governor's Subsistence Bill.
(SB 443)

TO: Senator Lyman Hoffman

FROM: George Utermohle 
Legislative Counsel

You have asked whether SB 443, the Governor's subsistence bill, is consistent with the Alaska Constitution?

SHORT ANSWER

One, SB 443 provides for the establishment of dozens of subsistence use areas. The mandatory minimum eligibility standards for subsistence proposed by SB 443 establish each subsistence use area as a separate use area and limit admission to the user group for that area to only those persons who have an extensive history of use in the area. The mandatory minimum eligibility standards pose a significant infringement on the open access values of the Alaska Constitution. There is a substantial risk that the mandatory minimum eligibility standards are unconstitutional.

Two, under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into fish and game user groups, they may inhibit equal and open access to fish and game resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

Three, the title of SB 443 fails to fully express the contents of the bill and should be amended accordingly.

DISCUSSION

This memorandum addresses the constitutional issues raised by SB 443.^{1/} SB 443 relates to the subsistence use and allocation of fish and game resources. The bill establishes an intricate system for controlling entry into subsistence user groups and distributing the activities of those user groups throughout the state. The bill provides that persons with a history of dependence on and use of fish and game resources will be able to continue their subsistence activities while leaving an opportunity for new persons to qualify for subsistence activities. Minimizing the administrative burden on the individual subsistence user and the Department of Fish and Game is also an important element of the bill.

The bill provides for subsistence use of fish and game resources under the legislature's authority to provide for the utilization, development, and conservation of natural resources.^{2/} Subsistence is not a constitutionally mandated or protected use of fish and game resources. As a statutorily created use of fish and game resources, any system for management of subsistence use and allocation of fish and game for subsistence use must be consistent with the Alaska Constitution. Of particular relevance to the subsistence use of fish and game are the "open access" provisions of the Alaska Constitution: common use section^{3/}, no exclusive right of fishery clause^{4/}, and uniform application section^{5/}. Although the ramifications of

^{1/} This memorandum does not address issues of statutory construction or legislative draftsmanship that do not implicate the Alaska Constitution. Those issues can be addressed later, if you wish.

^{2/} Article VIII, sec. 2:

General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

^{3/} Article VIII, sec. 3:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

^{4/} Article VIII, sec. 15, in relevant part:

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

these provisions are varied, they share at least one meaning: exclusive or special privileges to take fish and game are prohibited. The no exclusive right of fishery clause states this explicitly with regard to fisheries. The proceedings of the Alaska Constitutional Convention show that this same meaning was intended with respect to fish and game under the common use section and the uniform application section. McDowell v. State, 785 P.2d 1 (Alaska 1989).

The bill avoids creating an obviously closed class of subsistence users like the rural resident preference that the Alaska Supreme Court struck down in McDowell. Instead, the bill establishes a system in which any person, ostensibly, may engage in subsistence use of fish and game provided that the person satisfies the prescribed eligibility criteria.

ELIGIBILITY CRITERIA FOR SUBSISTENCE

SB 443 proposes seven fundamental considerations for determining who is eligible to engage in subsistence hunting and fishing. SB 443, Sec. 2, Sec. 16.05.268(i); page 7, line 3 - page 8, line 1. The Board of Fisheries and the Board of Game are to jointly establish the actual criteria and a concomitant point system for determining eligibility based on the fundamental considerations. Though the boards jointly develop the actual eligibility criteria, four of the fundamental considerations in SB 443 are in fact specific mandatory minimum standards that a person must satisfy in order to qualify for subsistence hunting and fishing:

- (1) the quantity of fish and game consumed by the person in the preceding 12 months, with a mandatory minimum of 125 pounds consumed in that period;
- (2) the number of species and groups of species of fish and game from the subsistence [use] area consumed by the person in the preceding 12 months, with a mandatory minimum number of species, or groups of species, as determined jointly by the boards by regulation; the mandatory minimum number, and any grouping of species, may vary by geographical region of the state, based on the diversity of species in a region;
- (3) the number of days in the preceding 12 months that the person engaged in the taking of fish or game in the subsistence use

S/(...continued)

S/ Article VIII, sec. 17:

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

area, or the processing of that fish or game, with a mandatory minimum of 30 days in that period;

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

SB 443, Sec. 2, Sec. 16.05.268(i)(1) - (4); page 7, lines 12 - 24.

Notably three of the four mandatory standards (Sec. 16.05.268(i)(2) - (4)) set specific minimum requirements on the number of species of fish and game consumed and the number of days and months engaged in hunting and fishing activities (at least a total of 30 days during any four months) and requires that each of the three standards be satisfied in a single subsistence use area during the preceding 12 months.^{6/} Once an applicant for subsistence privileges satisfies these mandatory minimum standards in a subsistence use area and the other criteria adopted by the boards, the applicant is then eligible to participate in subsistence hunting and fishing in that subsistence use area. If an applicant wants to engage in subsistence hunting and fishing in an additional subsistence use area or to move subsistence activities to a new subsistence use area, the applicant must then satisfy the three mandatory standards in the new area as well as the other criteria established by the boards. The applicant can satisfy the three mandatory standards in the new subsistence use area by engaging in sport or personal use fishing or sport hunting in the area, taking the prescribed number of species in the area, spending the required amount of time fishing and hunting in the area or processing fish and game taken in the area.

By combining standards for eligibility to engage in subsistence hunting and fishing with a requirement that the standards be satisfied in the subsistence use area in which the applicant wishes to use for subsistence hunting and fishing, the three mandatory standards establish each subsistence use area as a separate subsistence hunting and fishing area open only to certain persons and closed to all others. In fact the standards establish separate user groups for each subsistence use area and then limits admission to the user group to those persons who have a history of recent and extensive use in the area. An otherwise qualified subsistence user does not have the freedom to choose which subsistence use area the person will hunt or fish in. The

^{6/} A subsistence use area is the subunit of a game management unit together with the contiguous game management subunits, unless a board describes a different subsistence use area for a particular fish stock or game population. SB 443, Sec. 2, Sec. 16.05.268(d) and (e). There are currently 69 game management subunits in the state and thus a possible 69 different subsistence use areas. The actual number of subsistence use areas will probably be less because certain areas (urban areas) are closed to subsistence use of fish and game and subsistence use areas may not be established for those areas. See, SB 443, Sec. 2, Sec. 16.05.268(a).

person is confined to that subsistence use area in which he has established the requisite history of use.⁷ All other persons are barred from using the area for subsistence hunting and fishing. Each subsistence use area becomes an exclusive use area open to use by only a few eligible persons and as such confers a "special privilege" to use the fish and game in the area on those persons.

A system for determining eligibility for engaging in subsistence hunting and fishing which opens participation for some and closes participation for others "will necessarily create tension with article VIII." McDowell, 785 P.2d at 9. Limits on admission to user groups are subject to scrutiny under the article VIII equal access provisions (State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichek v. State, 763 P.2d 488, 492 (Alaska 1988)), because the provisions of article VIII were intended to guarantee the broadest possible access to and use of fish and game (Owsichek, 763 P.2d at 492 - 93) and to prohibit exclusive or special privileges to take fish and game (McDowell, 785 P.2d at 6). "The history of the common use clauses, . . . , reveals anti-monopoly intent to prevent 'exclusive grants' and 'special privilege[s],' wholly apart from the limits imposed by other constitutional provisions." Owsichek, 763 P.2d at 496.

In Owsichek, the Alaska Supreme Court struck down exclusive guide areas and joint use areas, because these areas were grants of monopolies or special privileges based on a guides previous use, occupancy, and investment in the area. "To grant such a special privilege based on seniority runs counter to the notion of 'common use'." Owsichek, 763 P.2d at 496. In McDowell, the Alaska Supreme Court struck down the rural residency requirement for subsistence because it amounted to an exclusive or special privilege prohibited by the open access provisions of the Alaska Constitution. McDowell, 785 P.2d at 9. In lieu of the rural residency requirement for determining eligibility for subsistence use of fish and game, SB 443 uses the three mandatory minimum requirements to require recent and extensive use in the subsistence use area as a precondition for eligibility. Just as the rural residency requirement precluded nonrural residents from engaging in subsistence activities, the

⁷ For example, a subsistence user in Kotzebue who moves to Tok must continue to return to Kotzebue to engage in subsistence hunting and fishing, until the user establishes the prerequisite history of use in the Tok area. (This assumes that the state does not deny the person's right to continue to engage in subsistence hunting and fishing in the Kotzebue area, because travelling from Tok to Kotzebue no longer satisfies the economical and efficient requirement for subsistence activities.)

For example, if a tier I subsistence user is closed out of his/her area because of a resource shortage that user may not move his/her subsistence activities to another subsistence use area, even though the person has a continuing need to engage in subsistence hunting and fishing.

recent and substantial use requirement of SB 443 precludes all other persons who are similarly situated but who do not have a recent and substantial history of use in the area from engaging in subsistence hunting and fishing in the subsistence use area. The fact that any nonrural resident could move to a rural area and thus qualify for subsistence was ineffective in saving the former rural residency requirement from invalidity. McDowell, 785 P.2d at 7. Likewise the ability of an otherwise qualified person to establish a recent and substantial history of use, of a new or an additional subsistence use area does not prevent the requirement for such a history of use as a condition precedent to use of the new area, from being an excessive infringement on open access provisions of the Alaska Constitution.

Review of the three mandatory standards according to equal protection analysis under the uniform application section requires the following procedure. First, the three mandatory standards must have a legitimate purpose. The purposes of SB 443 that seem relevant to the mandatory standards are protection of healthy fish stocks and game populations and allowing participation in the subsistence taking of fish and game by those who actually and substantially depend on subsistence use of fish and game. SB 443, Section 1(b). These purposes are legitimate purposes. Owsichek, 763 P.2d at 496 - 97; McDowell, 785 P.2d at 13 (concurring opinion). Second, the importance of the individual interest involved must be determined. The individual interest in equal access to fish and game is a highly important interest running to each person within the state. McDowell, 785 P.2d at 10; Owsichek, 763 P.2d at 492 n. 10. Third, the importance of the state's purpose must be balanced against the individual interest involved. McDowell, 785 P.2d at 10. The state's purpose must be at least important to overcome the highly important individual interest at stake. Fourth, the means to further the important state purpose must be carefully drawn and designed for the "least possible infringement on article VIII's open access values." McDowell, 785 P.2d at 10.

Assuming that the state's purpose underlying the three mandatory standards is sufficiently important to countervail the highly important individual interest at stake, it would appear that the means chosen to achieve the state's purpose is not the least possible infringement on open access to fish and game resources. The three mandatory standards allow otherwise qualified individuals to engage in subsistence hunting and fishing in only those subsistence use areas where the individual has a recent and extensive history of use. The remaining dozens of subsistence use areas are closed to this individual.^{8/}

^{8/} This result is intentional. The Section-By-Section Description of the Governor's Subsistence Bill, dated February 21, 1992, states at page 11:

(continued...)

In my opinion, there is a substantial and unnecessary risk that the three mandatory standards contained in SB 443 are an impermissible infringement on open access to fish and game resources and thus would violate the open access provisions of the Alaska Constitution.

It is the creation of dozens of separate, albeit slightly overlapping, subsistence use areas that are each subject to distinct area specific criteria for access that infringes upon the open access provisions of article VIII. Those persons who ultimately qualify for subsistence hunting and fishing privileges in a subsistence use area receive a "special privilege" that is denied to all other persons. Those persons who are not qualified for subsistence hunting and fishing in the area are denied access to the user group for that subsistence use area because they have not established the requisite history of use.

The utilization of past use or activities in an area, as criteria for granting or denying access to fish and game resources has been rejected by the Alaska courts in Owsichek (guide exclusive use and joint use areas) and in Bozanich v. Noerenberg, (Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971; state may not bar entry into a salmon net fishery by requiring prior experience in that fishery).

The primary shortcoming of the three mandatory standards is that they combine determinations on access to a user group with determinations on allocation of the fish and game resource. The Alaska Supreme Court is supportive of the state's power to allocate fish and game resources under the sustained yield section of the Alaska Constitution^{8/} (Gilbert v. State Department of Fish and Game, 803 P.2d 391 (Alaska 1990); Meier v. State Board of Fisheries, 739 P.2d 172 (Alaska 1987)), provided that the allocations are not arbitrary and unreasonable and are consistent with and reasonably necessary to the conservation and development of fish and game resources (Gilbert, 303 P.2d at 399; Kenai Peninsula Fisherman's Cooperative Association, Inc.

^{8/}(...continued)

The statute does not provide for qualification on a statewide basis; hunting and fishing in one subsistence area will not qualify the user to subsistence hunt and fish in another area. While it may be technically possible for a person to qualify in more than one subsistence use area under this subsection [SB 443, Sec. 2, Sec. 16.05.268(i)], it is generally contemplated that the vast majority of users will qualify for only one area.

^{9/} Article VIII, sec. 4:

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

v. State, 628 P.2d 897, 903 (Alaska 1981)). However, the authority to make allocation decisions does not imply a power to limit admission to a user group. State v. Hebert, 803 P.2d 863, 866; (Alaska 1990) McDowell, 785 P.2d at 7 - 8;^{10/}

The two determinations could be separated by eliminating the requirement that the three mandatory standards be satisfied in a single subsistence use area. If the two determinations were separated a fundamental weakness of SB 443 would be avoided and SB 443 would better withstand challenges under article VIII of the Alaska Constitution. SB 443 can be amended to include criteria for determining where qualified subsistence users may engage in subsistence hunting and fishing or for establishing procedures for allocating fish and game resources among subsistence users. Prior use of a subsistence use area for the taking of fish and wildlife could be among the factors used to determine where a person may engage in subsistence fishing and hunting.

PROOF OF ELIGIBILITY

Though the criteria for establishing eligibility to engage in subsistence activities are relatively uniform, SB 443 provides that the proof necessary satisfy the criteria varies significantly depending on where a person lives.

A person who lives in a category 1 area^{11/} is presumed to satisfy all eligibility criteria without having to establish more than the person's place of residence. The person may engage in subsistence activities until it is proven by clear and convincing evidence that the person is not qualified to engage in subsistence. SB 443, Sec. 2, Sec. 16.05.268(h)(1); page 6, lines 17 - 22.

^{10/} The requirement that a person must engage in subsistence activities in a specific subsistence use area is somewhat analogous to the superexclusive fishing districts established by the Board of Fisheries for the Bering Sea herring sac roe fisheries. The board established two superexclusive herring sac roe fishing districts. If a fisherman chose to fish in either of these fisheries, the fisherman could not fish in any other herring sac roe fishing districts. The Alaska Supreme Court upheld the use of the superexclusive use fisheries for the purpose of allocating the harvest of herring between competing groups of commercial fisherman. State v. Hebert, 803 P.2d 863 (Alaska 1990). The court found that superexclusive fishing districts were consistent with the Alaska Constitution because it did not limit admission to a user group, because the fisherman was free to choose which fishing district to fish in. Hebert, 803 P.2d at 866.

^{11/} A category 1 area is an area where the human population of each community in the area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area. SB 443, Sec. 2, Sec. 16.05.268(f)(1); page 5, lines 9 - 11.

A person who resides in a category 2 area^{12/} is presumed to satisfy all eligibility criteria and need only sign a document affirming that the person does indeed qualify. SB 443, Sec. 2, Sec. 16.05.268(h)(2); page 6, lines 23 - 29. The person may engage in subsistence activities until it is proven by a preponderance of the evidence that the person is not qualified to engage in subsistence.^{13/}

A person who resides in a category 3 area^{14/} may engage in subsistence activities only after the person has convinced the commissioner of fish and game that the person satisfies the eligibility criteria adopted by the joint boards. SB 443, Sec. 2, Sec. 16.05.268(h)(3), page 6, line 30 through page 7, line 2.

Under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into the class of subsistence users, they may inhibit equal and open access to subsistence resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

The rural preference of the former subsistence law was struck down in part because it was an "extremely crude" method to provide for the need to engage in subsistence activities. McDowell, 785 P.2d at 10. The classification scheme inherent in the category 1, 2, and 3 areas is subject to similar criticism. Residents in category 1 areas are presumed to qualify for subsistence activities regardless of their individual characteristics. Even those unqualified residents of a category 1 area who engage in subsistence are not penalized or sanctioned for their activities. An unqualified resident of a category 2 area is at least potentially subject to criminal prosecution for falsely alleging their qualifications. It is only the residents of a category 3 area that

^{12/} A category 2 area is an area that consists of a single community that has a human population of 2,500 to 6,999, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community. SB 443, Sec. 2, Sec. 16.05.268(f)(2); page 5, lines 12 - 15.

^{13/} If it is proven that the person is not qualified for subsistence and that the person was aware of the lack of qualifications, the person is potentially subject to criminal prosecution for unsworn falsification under AS 11.56.210.

^{14/} A category 3 area is an area that is
(A) an urban area or a single community where the human population is 7,000 or greater; or
(B) an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. SB 443, Sec. 2, Sec. 16.05.268(f)(3); page 5, lines 16 - 21.

are evaluated on their individual qualifications. The category 1, 2, and 3 area concept is not the "classification scheme employing individual characteristics" which the McDowell court proposed as being "less invasive of Article VIII open access values." McDowell, 785 P.2d at 11. The category 1, 2, and 3 area concept classifies persons as a group based on where they live in the state.

The purpose for this burden on equal access to fish and game resources under article VIII must be, at the minimum, an important purpose. McDowell, 785 P.2d at 10.

According to the Section-By-Section Description of the Governor's Subsistence Bill,^{15/} the primary purpose of the category 1, 2, and 3 areas is to simplify the task of determining who is eligible to engage in subsistence activities. This purpose amounts to promoting administrative convenience. Administrative convenience is generally accepted as legitimate purpose for legislation and regulations but is not necessarily an important purpose. See, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980); Deubelbeiss v. Commercial Fisheries Entry Commission, 689 P.2d 487, 489 (Alaska 1984). Administrative convenience may not be sufficient to justify the burdens imposed by the category 1, 2, and 3 area classification system.

Assuming that the court does find administrative convenience or some other purpose behind the category 1, 2, and 3 area classification system to be important, it is then necessary to establish that the classification system is "designed for the least possible infringement on article VIII's open access values." McDowell 785 P.2d at 10. Though the classification system may be better than the rural-urban distinction made by the former law, it is not the system based on individual characteristics that the Alaska Supreme Court was looking for. In light of the purpose of the uniform application clause "to exclude an especially privileged status for any person in the use of natural resources subject to disposition by the state"^{16/} it is possible that the courts will require less disparity among residents of the state based on their place of residence than provided in SB 443.

A challenge to the category 1, 2, and 3 areas classification system on equal protection grounds under the uniform application section may result in an adverse decision from the courts because the system places different burdens on residents of the state based on where they live and not on their individual qualifications to engage in subsistence

^{15/} Page 10 - 11.

^{16/} Owsichek, 763 P.2d at 498 n. 17; quoting 6 Proceedings of the Alaska Constitutional Convention, app. V, at 99 (Commentary); emphasis added by court.

Senator Lyman Hoffman

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hunting and fishing. A system that required all residents to establish their eligibility to engage in subsistence in the same manner or that gave all residents the benefit of the same presumptions would provide fewer grounds for judicial challenge and be less susceptible to unanticipated judicial constructions.

TITLE OF SB 443

According to the title of SB 443, the bill relates "to the taking of fish and game for subsistence." However two provisions of the bill define the terms "game management unit" and "sustained yield". SB 443, Sec. 6, Sec. 16.05.940(38) and (39), page 10, lines 17 - 23. These newly defined terms are intended to apply to sport hunting and to commercial, sport, and personal use fishing. To the extent that these newly defined terms apply to more than subsistence, the terms are outside of the title of the bill. Article II, section 13 of the Alaska Constitution requires that the subject of each bill be expressed in its title. The purpose of this provision is to give the legislature and the people fair notice as to the contents of the bill. Without mentioning in the bill title that the bill is defining "sustained yield" and "game management unit", the legislature and the people are not aware that those terms are being defined for purposes not related to subsistence. It is unlikely that a court would declare the entire bill unconstitutional for the failure to express the entire contents of the bill in the title. A court is more likely to find the bill constitutional, but to limit the application of the terms "game management unit" and "sustained yield" to the subsistence context.

The title problem is easily corrected by adding the phrase "defining 'sustained yield' and 'game management unit,'" to the title.

If I may be of further assistance, please advise.

GU:pl

92-176.plm

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 27, 1992

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The Honorable Lyman F. Hoffman
Senate Bush Caucus Chair
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The Honorable Georgianna Lincoln
House Bush Caucus Chair
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Re: Subsistence Legislation, Senate Bill 443, House
Bill 552

Dear Senator Hoffman and Representative Lincoln:

In your letter of March 16, 1992 to Attorney General Cole, you raised several concerns about the constitutionality of the provisions of the subsistence legislation drafted by the Governor's Subsistence Advisory Council and introduced by Governor Hickel as Senate Bill 443 and House Bill 552. Attorney General Cole asked me to respond to your letter.

Our department has reviewed the fish and game subsistence bill and it is our opinion that the bill is consistent with the constitutions of the United States and the State of Alaska. We do not believe that a constitutional amendment will be necessary to implement the provisions of this bill. The bill does raise several possible constitutional issues that have not been fully resolved by the courts, but we are prepared to fully defend the bill and expect favorable results. We have briefly analyzed below what are likely to be the most controversial issues, including those raised in your letter.

Community-Based Presumptions

One potential issue is whether the presumptions based on where a user lives, as outlined in the proposed AS 16.05.268(h), are consistent with the Alaska Constitution's provisions for equal access to fish and game. We believe that they are.

In subsections (f), (g), and (h), the new subsistence statute establishes presumptions based on community characteristics.

Under subsection (f), every area and community in the state will be classified into one of three categories.¹ Small communities that are subsistence dependent will be in category 1. Medium sized communities that are subsistence dependent will be in category 2. All other communities, large cities and suburbs or smaller and medium sized communities that are not subsistence dependent, will be in category 3. Subsection (g) lists factors the boards will use to determine subsistence dependence.²

¹ Subsection (f) states:

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

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

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

(3) category 3, an area that

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

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

² Subsection (g) states:

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

(1) the social and economic structure;

(2) the stability of the economy;

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

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

Subsection (h) establishes administrative presumptions about the qualifications of individuals living in the communities in the categories.³ Only those who qualify under the individual

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

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

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

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

(7) the seasonal cycle of economic activity;

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

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

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

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

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

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

³ Subsection (h) states:

(h) Participation in a subsistence harvest in a subsistence use area is limited to persons whose taking and use of fish and game in that subsistence use area meets the requirements for qualification under (i) of this section, with the following presumptions and requirements:

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

(2) a person who is domiciled in the subsistence

requirements in (i) are authorized to subsistence hunt and fish, but (h) establishes presumptions about individual users based on where they live. Those who live in category 1 areas are presumed to individually qualify for subsistence hunting and fishing for the subsistence use area in which they live, but not for any other subsistence use area. They will not be required to submit any application or signed statement before hunting or fishing. The presumption is not conclusive and can be challenged by the state, but they will be allowed to subsistence hunt and fish in the subsistence area in which they live unless and until the state demonstrates, by clear and convincing evidence, that they are not qualified.

Those persons living in category 2 communities who choose to subsistence hunt and fish must first sign a statement in a form to be supplied by the department averring that they meet the individual qualifications standards of (i). Once they sign such a statement they are rebuttably presumed to qualify to subsistence hunt and fish in the subsistence use area in which they live, but not any other subsistence use area. Signing a false statement subjects the signer to prosecution for unsworn falsification. This presumption can be rebutted by the normal civil evidentiary standard: proof by a preponderance of the evidence.

Those persons living in category 3 communities, which will be larger cities or urban areas, smaller communities that do not have a demonstrated dependence on subsistence, or communities outside the subsistence use area, will qualify to subsistence hunt and fish under an individual application procedure outlined in subsection (i). They may not subsistence hunt or fish until their application is approved by the department.

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

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

This system of differing presumptions amounts to an administrative scheme to focus the state's efforts to weed out unqualified users onto those areas where most of the unqualified reside. Based on the information presented to the legislature, use of the three sets of standards will result in identifying, under (f)(1), communities or areas with a large majority of residents that would individually qualify as subsistence users in the subsistence use area in which they live; under (f)(2), communities with a majority of qualified subsistence users; and under (f)(3), communities with a very a small minority of qualifying individuals. Communities outside the subsistence use area are also expected to have very few people who would qualify. It is expected that the legislature will make statutory findings based upon this information.

The presumptions in this statute are reasonable and have a strong factual basis. The presumptions will not exclude any qualified subsistence user from access to fish and game. Residence in a particular community or state does not determine a person's qualification to subsistence hunt and fish; it does, however, determine the amount of administrative paperwork the person will be required to submit. It will impose a higher administrative burden on those users who are domiciled in areas that have been determined to have no significant dependence on subsistence; but the status of the community will not be determinative of whether an individual finally qualifies as a subsistence user.

While there is some difference in treatment of the individual based on community standards, the actual access to fish and game for subsistence is equal. No qualified user will be excluded. All those who actually and substantially rely on subsistence uses of fish and game in a particular area will receive the subsistence preference. All those who are similarly situated with respect to the fish and game resources in an area are given equal opportunity to take that fish and game.

The legislation generally requires that qualifying dependence be current. This will mean that some people that have had reliance in the past, but have not recently relied on fish and game in a subsistence use area, will not qualify for the preference. This does not present a constitutional problem. The situations of these people with respect to the fish and game are not similar to the situation of those who have a current reliance. See Article VIII, section 17 of the Alaska Constitution. Of course, once the past user demonstrates a current reliance, he qualifies for the preference.

We believe that this statutory scheme satisfies the concerns expressed in McDowell v. State, 785 P.2d 1 (Alaska 1989). In that case, the supreme court of Alaska held that qualification for a subsistence preference based conclusively and solely on an individual's residence in a rural area violated the provisions of the

Alaska Constitution requiring equal access to natural resources. In Part A of the decision, three justices of the Alaska Supreme Court ruled that sections 3, 15, and 17 of article VIII of the Alaska Constitution⁴ prohibited the grant of exclusive or special privileges based on the characteristics of the community in which a user resides. Id. at 9.

We think that the new subsistence legislation is consistent with the principles laid out in the McDowell decision. The critical right in McDowell was the "equal right to participate in [hunts and] fisheries, regardless of where one resides." Id. Under the new subsistence legislation, the right to participate in subsistence hunts and fisheries is the same for all people who actually and substantially rely on fish and game for subsistence purposes. The differentiation in treatment based on residence does not involve the right to hunt or fish; no qualified person will be excluded. The only difference in treatment comes in the extent of paperwork required of residents in different kinds of communities.

The McDowell decision also found fault in the old law because it limited admission to a user group based on residence. 785

⁴ Section 3 of article VIII of the Alaska Constitution provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 15 of article VIII provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 17 of article VIII provides:

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

P.2d at 8. With the new legislation, admission to the subsistence user group is not limited by residence.

Section 17 of article VIII of the Alaska constitution requires equal treatment of "all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." Under the new legislation, all those who actually and substantially rely on the fish and game in an area will qualify for the subsistence preference. In McDowell, that was not the case. Urban users were excluded even though their reliance on fish and game may have been as substantial as that of rural users.

The difference in paperwork requirements for residents of different kinds of communities does not violate the equal access provisions. First of all, the paperwork requirements are not determinative of access to fish and game. Nor are any of the requirements so burdensome as to be an effective obstacle to access. The right affected by the discrimination under the new law is not the right of access to fish and game as was the case in McDowell and Owsichek v. State, 763 P.2d 488 (Alaska 1988), but only the right to equal treatment under the law common to all equal protection issues. An individual's right to equal paperwork requirements is certainly not as important as the equal right to take fish and game, and is probably not an "important" interest in the context of equal protection analysis.

The Alaska courts use a "uniform-balancing" test for reviewing equal protection challenges under the state constitution. The "uniform balancing" test places a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved. Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984). The minimum burden that the state must meet is the substantial relationship test: the state must show that the classification is reasonable and not arbitrary and is based on some ground of difference having a fair and substantial relation to the object of the legislation. State v. Ensearch Alaska Construction, Inc., 787 P.2d 624, 632 n.12 (Alaska 1990). In this case the right to equal paperwork, unlike the right to access to fish and game, is probably not an important individual right. A classification would, therefore, only have to meet the substantial relationship test.

The classification for purposes of paperwork requirements based on residence meets the substantial relationship test. The requirements are more burdensome for category 2 residents than category 1 residents and more burdensome for category 3 residents than the other two categories. But this graduated burden is fairly and substantially related to the purpose of the requirements: to direct the state's enforcement resources to those areas representing the biggest threat to the goal of preferring only actual and

substantial reliance. The lighter burden on category 1 residents is based on the fact that a large majority will qualify. The heavier burden on category 2 residents is based on the fact that a high percentage of category 2 residents are not qualified. The even heavier burden on category 3 residents and residents of communities outside the subsistence use area is directly related to the fact that an extremely high percentage of category 3 residents are certainly not qualified. A tougher standard for category 2 and 3 residents will result in preventing the highest number of unqualified persons from subsistence hunting and fishing. The discrimination in the paperwork requirements bears a fair and substantial relationship to the object of the requirements: preventing subsistence hunting and fishing by the most clearly unqualified users. We, therefore, believe that these provisions would pass constitutional muster should the bill become law.

Limitations to Subsistence Use Areas

Under the provisions of the bill, the entire state would be divided up into subsistence use areas. Every fish stock and game population would be within a subsistence use area. There is no danger that someone would be precluded from subsistence use of fish or game because it was not within a subsistence use area. It is true that fish and game within a category 3 community located in a particular subsistence use area would not be subject to the subsistence preference. Section 2, Line 11, SB 443. That was also the case with the 1986 subsistence law. AS 16.05.258(a) states:

The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence in each rural area identified by the boards.

(Emphasis added). The McDowell court did not strike down this provision; it struck down the priority to rural users, not the limitation of the subsistence preference to rural animals.⁵ The

⁵ Upon remand of the McDowell case, superior court judge Beverly Cutler, in ruling on the question of severability, did state, in an unfortunate diversion from the issues:

The parties do not address whether the boards now should identify any such stocks or populations anywhere in the state, not merely in rural areas. That the boards should make these determinations anywhere in the state appears to be a logical result of the supreme court's holding in McDowell

Alaska Supreme Court has never required that regulation of seasons, bag limits, methods and means, etc., be uniform for every species throughout the state. There is no constitutional requirement that if a particular kind of use is allowed in one area of the state, the same kind of use must be allowed in all other areas. This point was later clarified by the court in Gilbert v. State, Dep't of Fish and Game, 803 P.2d 391, 398-99 (Alaska 1990).

What the constitution does require is that if a use is allowed, all persons that are similarly situated with respect to the resource and the purpose of the law be treated equally. Article VIII, section 17 of the Alaska Constitution. Gilbert, 803 P.2d at 399. There is no requirement of equal treatment of resources, rather than users of those resources.

There is also no constitutional requirement that once a person qualifies for a subsistence use in one area, she be entitled to a subsistence preference in another area. A person reliant on fish and game in Area A must be treated the same as all others similarly reliant on Area A fish and game; but that person need not be treated the same with respect to fish and game in Area B. Only those who have similar reliance on Area B fish and game must receive equal treatment. The new bill is not significantly different from the 1986 subsistence bill in this respect. Under that law, only residents of communities that had demonstrated customary and traditional uses of a particular fish stock or game population were granted a subsistence preference. See former 5 AAC 99.010 and 5 AAC 99.025. There was no statewide subsistence preference. Nor is there a statewide preference under the federal ANILCA regulations. Temporary Subsistence Management Regulations For Federal Public Lands In Alaska (1991-92). A statewide subsistence preference in state law would, itself, create a conflict between state law and ANILCA.

The Governor's Subsistence Advisory Council did not intend to prefer the reliance of a user who, for example, might take red salmon on the Copper River, king salmon on the Kenai River, chum salmon on the Tanana River, moose in the Innoko River area, deer on Kodiak Island, and caribou on the North Slope. In the advisory

McDowell v. State, Memorandum of Decision Severing Unconstitutional Portions of Statute from Remainder of Statute at 8 (Alaska Super. Ct. June 20, 1990). The obvious reason that the parties did not address the issue on remand is because it was not an issue on appeal. We do not believe that the Alaska Supreme Court would agree with Judge Cutler's ruling on this issue. See Gilbert v. State Dep't of Fish and Game, 803 P.2d 391, 398-99 (Alaska 1990).

council's eyes, that kind of reliance was not as deserving of a preference to fish and game in one of those areas as hunting and fishing that is concentrated in that area. It seems obvious that in deciding who should have a preference in a particular area, the user that gets all or most of his fish and game from the area should rank higher than one who gets only a smaller portion from that particular area. We believe the courts would decide that these two users are not similarly situated with respect to the resource and the purpose of the law. See article VIII, section 17 of the Alaska Constitution. We also believe that, as between a person who has demonstrated reliance on fish and game in Area A and one who has such reliance in another area that is suffering from shortages of fish and game, the person with demonstrated reliance in Area A may be properly preferred over the other user because they are not similarly situated with respect to the resource in Area A and the purpose of the bill.⁶

The Twelve Month Qualification Period

Under the proposed AS 16.05.268(i) and (o), qualifying activity must occur within the preceding twelve months. While it may be technically possible to qualify in as little as four months (taking fish or game in four different months is the longest determinative durational minimum requirement, proposed AS 16.04.268(i)(4)), it is generally anticipated that many users will require closer to the full twelve-month period to qualify. This provision does not create constitutional problems.

At first blush, the twelve-month provision might seem to create a durational residency problem. It does not. Several points must be kept very clear. Under this bill, residence in a particular area is never required for qualification. Residence in the subsistence use area is not required. To the extent that the user's presence, as opposed to residence, in the area is required, those requirements meet "durational residency" standards. Hicklin v. Orbeck, 565 P.2d 159, 162-65 (Alaska 1977) rev'd on other grounds, 437 U.S. 518 (1978).

The twelve-month period is closely related to the patterns of use and fish and game in Alaska and is the only reasonable period for the demonstrations of actual and substantial reliance on fish and game. The goal of the legislation is to give a preference to those who currently, actually, and substantially rely on fish and game in particular areas of the state. It is not the goal to give

⁶ This is the situation posed by George Utermohle of the Legislative Legal Affairs Agency in his March 16, 1992 letter to Senator Lyman Hoffman at page 5, note 7.

There must necessarily be some kind of test to identify actual and substantial reliance on that fish and game. To avoid spurious claims of reliance based on very short-term or only sporadic use, some time requirements are necessarily included. In deciding what time period would make the most sense, the advisory council looked at the patterns of fish and game use in Alaska. Most uses are seasonal. For example, salmon are generally only available during a certain time-span during the year. With game, hunting is generally limited to one or two seasons to get the best quality of meat or to avoid interference with species reproduction. In any case, patterns of use are tied to yearly cycles. If the qualifying time was less than the preceding 12 months, persons in certain areas might be disadvantaged because of the seasonal availability of fish and game. If the time period was longer than twelve month you would expect to see duplication of activity which would be less probative of current reliance. The twelve-month period is obviously the most appropriate for this particular test. It is necessary to identify the kind of use of fish and game the bill is intended to prefer. It is the "least drastic means" to achieve the ends of the statute. Hicklin, 565 P.2d at 165. It is a necessary test of bona fide reliance.

Certainly, the twelve-month provisions, as explained above, meet substantive due process standards that legislative enactments be reasonable and not arbitrary. Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971).

Tier II Criteria

In the proposed AS 16.05.268(b)(4)(B), subsistence use of game populations or fish stocks insufficient to provide for all subsistence uses would be authorized by ranking users by applying three criteria. One of the criteria would be "the proximity of the domicile of the subsistence user to the stock or population". Proposed AS 16.05.268(b)(4)(B)(ii); SB 443, Section 2 at page 4, lines 14-15. The question of the constitutionality of this provision was raised at one meeting of the Senate Resources Committee. We believe that the provision is probably constitutional.

First, it should be noted that the current subsistence law contains a very similar provision expressed simply as "local residency". AS 16.05.258(c)(2). This phrase has been interpreted by the Joint Boards of Fish and Game to mean that those who "live closest to the resource" would be given maximum protection. 5 AAC 99.010(f)(1). "Local residency" is also the language used in ANILCA. 16 U.S.C. Sec. 3114(2). The language of the new legislation is not intended to represent a change from existing law or from ANILCA, but is intended to more clearly state how "local

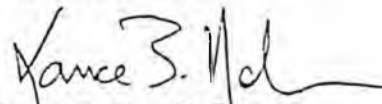
ANILCA. 16 U.S.C. Sec. 3114(2). The language of the new legislation is not intended to represent a change from existing law or from ANILCA, but is intended to more clearly state how "local residency" will be measured. If the Tier II provision of the subsistence legislation did not contain a "local residency/proximity to the resource" criterion it would be in conflict with Section 804 of ANILCA, 16 U.S.C. Sec. 3114(2).

While the Alaska Supreme Court ruled in McDowell that the subsistence preference could not be awarded on the basis of the characteristics of the community in which an individual user resided, there is nothing in that opinion to indicate that the location of an individual's residence in relation to the fish or game could not be a constitutional criterion, especially in the times of extreme shortages envisioned under the Tier II provisions. Upon remand of that case to the superior court, Judge Beverly Cutler ruled that the Tier II provisions did not violate the standards in McDowell.⁷ When there is not enough fish or game to satisfy all qualified subsistence users, further ranking of these users becomes mandatory. Assuming that two users are equal as to the two other criteria of dependence and the ability to obtain other food, it would seem that proximity to the resource would not be an unreasonable way to distinguish between the two otherwise similar users.

If you have further questions about issues raised by the subsistence legislation, we would be happy to discuss these matters with you at your convenience.

CHARLES E. COLE
ATTORNEY GENERAL

By:



Lance B. Nelson
Assistant Attorney General

⁷ Judge Cutler ruled that the Tier II "local residency" criterion did not violate the supreme court's holding in McDowell. McDowell v. State, Memorandum of Decision Severing Unconstitutional Portions of Statute from Remainder of Statute at 7 (Alaska Super. Ct. June 20, 1990).

CONFIDENTIAL**DRAFT**

March 23, 1992

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Representative Georgianna Lincoln
House Bush Caucus Chair
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Re: Subsistence Legislation, Senate Bill 443, House
Bill 552

Dear Senator Hoffman and Representative Georgianna Lincoln:

In your letter of March 16, 1992, you raised several concerns about the constitutionality of the provisions of the subsistence legislation drafted by the Governor's Subsistence Advisory Council and introduced by Governor Hickel as Senate Bill 443 and House Bill 552.

My department has reviewed the fish and game subsistence bill and it is our opinion that the bill is consistent with the constitutions of the United States and the State of Alaska. We do not believe that a constitutional amendment will be necessary to implement the provisions of this bill. The bill does raise several possible constitutional issues that have not been fully resolved by the courts, but we are prepared to fully defend the bill and expect favorable results. We have briefly analyzed below what are likely to be the most controversial issues, including those raised in your letter.

Community-Based Presumptions

One potential issue is whether the presumptions based on where a user lives, as outlined in the proposed AS 16.05.268(h), are consistent with the Alaska Constitution's provisions for equal access to fish and game. We believe that they are.

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In subsections (f), (g), and (h), the new subsistence statute establishes presumptions based on community characteristics. Under subsection (f), every area and community in the state will be classified into one of three categories.¹ Small communities that are subsistence dependent will be in category 1. Medium sized communities that are subsistence dependent will be in category 2. All other communities, large cities and suburbs or smaller and medium sized communities that are not subsistence dependent, will be in category 3. Subsection (g) lists factors the boards will use to determine subsistence dependence.²

¹ Subsection (f) states:

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

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

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

(3) category 3, an area that
(A) is an urban area or a single community where the human population is 7,000 or greater; or
(B) is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community.

² Subsection (g) states:

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

(1) the social and economic structure;
(2) the stability of the economy;
(3) the extent and kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;

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

(5) the cost and availability of goods and

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Subsection (h) establishes administrative presumptions about the qualifications of individuals living in the communities in the categories.³ Only those who qualify under the individual

-
- services to those domiciled in the area;
- (6) the variety of fish and wildlife species used by those domiciled in the area;
 - (7) the seasonal cycle of economic activity;
 - (8) the percentage of those domiciled in the area participating in hunting and fishing activities or using wild fish and game;
 - (9) the harvest levels of fish and game by those domiciled in the area;
 - (10) the cultural, social, and economic values associated with the taking and use of fish and game;
 - (11) the geographic locations where those domiciled in the area hunt and fish;
 - (12) the extent of sharing and exchange of fish and game by those domiciled in the area;
 - (13) additional similar factors the boards establish in regulation to be relevant to their determinations under this subsection.

³ Subsection (h) states:

(h) Participation in a subsistence harvest in a subsistence use area is limited to persons whose taking and use of fish and game in that subsistence use area meets the requirements for qualification under (i) of this section, with the following presumptions and requirements:

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

(2) a person who is domiciled in the subsistence use area in an area identified under (f)(2) of this section, and who intends to take fish or game for subsistence purposes is rebuttably presumed to meet the requirements for qualification under (i) of this section for that subsistence use area upon that person's signing a statement affirming that the person meets those

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requirements in (i) are authorized to subsistence hunt and fish, but (h) establishes presumptions about individual users based on where they live. Those who live in category 1 areas are presumed to individually qualify for subsistence hunting and fishing for the subsistence use area in which they live, but not for any other subsistence use area. They will not be required to submit any application or signed statement before hunting or fishing. The presumption is not conclusive and can be challenged by the state, but they will be allowed to subsistence hunt and fish in the subsistence area in which they live unless and until the state demonstrates, by clear and convincing evidence, that they are not qualified.

Those persons living in category 2 communities who choose to subsistence hunt and fish must first sign a statement in a form to be supplied by the department averring that they meet the individual qualifications standards of (i). Once they sign such a statement they are rebuttably presumed to qualify to subsistence hunt and fish in the subsistence use area in which they live, but not any other subsistence use area. Signing a false statement subjects the signer to prosecution for unsworn falsification. This presumption can be rebutted by the normal civil evidentiary standard: proof by a preponderance of the evidence.

Those persons living in category 3 communities, which will be larger cities or urban areas, smaller communities that do not have a demonstrated dependence on subsistence, or communities outside the subsistence use area, will qualify to subsistence hunt and fish under an individual application procedure outlined in subsection (i). They may not subsistence hunt or fish until their application is approved by the department.

This system of differing presumptions amounts to an administrative scheme to focus the state's efforts to weed out unqualified users onto those areas where most of the unqualified reside. Based on the information presented to the legislature, use of the three sets of standards will result in identifying, under (f)(1), communities or areas with a large majority of residents that

requirements; the department may rebut this presumption by a preponderance of the evidence that the person does not meet those qualification requirements;

(3) a person domiciled in an area identified under (f)(3) of this section or who is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery or hunt in that subsistence use area only upon certification by the commissioner that the person meets the requirements for qualification under (1) of this section.

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would individually qualify as subsistence users in the subsistence use area in which they live; under (f)(2), communities with a majority of qualified subsistence users; and under (f)(3), communities with a very a small minority of qualifying individuals. Communities outside the subsistence use area are also expected to have very few people who would qualify. It is expected that the legislature will make statutory findings based upon this information.

The presumptions in this statute are reasonable and have a strong factual basis. The presumptions will not exclude any qualified subsistence user from access to fish and game. Residence in a particular community or state does not determine a person's qualification to subsistence hunt and fish; it does, however, determine the amount of administrative paperwork the person will be required to submit. It will impose a higher administrative burden on those users who are domiciled in areas that have been determined to have no significant dependence on subsistence; but the status of the community will not be determinative of whether an individual finally qualifies as a subsistence user.

While there is some difference in treatment of the individual based on community standards, the actual access to fish and game for the subsistence is equal. No qualified user will be excluded. All those who actually and substantially rely on subsistence uses of fish and game in a particular area will be receive the subsistence preference. All those who are similarly situated with respect to the fish and game resources in an area are given equal opportunity to take that fish and game.

The legislation generally requires that qualifying dependence be current. This will mean that some people that have had reliance in the past, but have not recently relied on fish and game in a subsistence use area, will not qualify for the preference. This does not present a constitutional problem. The situations of these people with respect to the fish and game are not similar to the situation of those who have a current reliance. Of course, once the past user demonstrates a current reliance, he qualifies for the preference.

We believe that this statutory scheme satisfies the concerns expressed in McDowell v. State, 785 P.2d 1 (Alaska 1989). In that case, the supreme court of Alaska held that a qualification for a subsistence preference based conclusively and solely on an individual's residence in a rural area violated the provisions of the Alaska Constitution requiring equal access to natural resources. In Part A of the decision, three justices of the Alaska Supreme Court ruled that sections 3, 15, and 17 of article VIII of the

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Alaska Constitution⁴ prohibited the grant of exclusive or special privileges based on one's residence. Id. at 9.

We think that the new subsistence legislation is consistent with the principles laid out in the McDowell decision. The critical right in McDowell was the "equal right to participate in [hunts and] fisheries, regardless of where one resides." Id. Under the new subsistence legislation, the right to participate in subsistence hunts and fisheries is the same for all people who actually and substantially rely on fish and game for subsistence purposes. The differentiation in treatment based on residence does not involve the right to hunt or fish; no qualified person will be excluded. The only difference in treatment comes in the extent of paperwork required of residents in different kinds of communities.

The McDowell decision also found fault in the old law because it limited admission to a user group based on residence. 785 P.2d at 8. With the new legislation, admission to the subsistence user group is not limited by residence.

Section 17 of article VIII of the Alaska constitution requires equal treatment of "all persons similarly situated with

⁴ Section 3 of article VIII of the Alaska Constitution provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 15 of article VIII provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 17 of article VIII provides:

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

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reference to the subject matter and purpose to be served by the law or regulation." Under the new legislation, all those who actually and substantially rely on the fish and game in an area will qualify for the subsistence preference. In McDowell, that was not the case. Urban users were excluded even though their reliance on fish and game may have been as substantial as that of rural users.

The difference in paperwork requirements for residents of different kinds of communities does not violate the equal access provisions. First of all, the paperwork requirements are not determinative of access to fish and game. Nor are any of the requirements so burdensome as to be an effective obstacle to access. The right affected by the discrimination under the new law is not the right to take fish and game, but only the right to equal treatment under the law common to all equal protection issues. An individual's right to equal paperwork requirements is probably not an important interest.

The Alaska court use a "uniform-balancing" test for reviewing equal protection challenges under the state constitution. The "uniform balancing" test places a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved. Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984). The minimum burden that the state must meet is the substantial relationship test: the state must show that the classification is reasonable and not arbitrary and is based on some ground of difference having a fair and substantial relation to the object of the legislation. State v. Ensearch Alaska Construction, Inc., 787 P.2d 624, 632 n.12 (Alaska 1990). In this case the right to equal paperwork, unlike the right to access to fish and game, is probably not an important individual right. The classification would, therefore, only have to meet the substantial relationship test.

The classification for purposes of paperwork requirements based on residence meets the substantial relationship test. The requirements are more burdensome for category 2 residents than category 1 residents and more burdensome for category 3 residents than the other two categories. But this graduated burden is fairly and substantially related to the purpose of the requirements: to direct the state's enforcement resources to those areas representing the biggest threat to the goal of preferring only actual and substantial reliance. The lighter burden on category 1 residents is based on the fact that a large majority will qualify. The heavier burden on category 2 residents is based on the fact that a high percentage of category 2 residents are not qualified. The even heavier burden on category 3 residents and residents of communities outside the subsistence use area is directly related to the fact that an extremely high percentage of category 3 residents are certainly not qualified. A tougher standard for category 2 and 3

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residents will result in preventing the highest number of unqualified persons from subsistence hunting and fishing. The discrimination in the paperwork requirements bears a fair and substantial relationship to the object of the requirements: preventing subsistence hunting and fishing by the most clearly unqualified users. We, therefore, believe that these provisions would pass constitutional muster should the bill become law.

Limitations to Subsistence Use Areas

Under the provisions of the bill, the entire state would be divided up into subsistence use areas. Every fish stock and game population would be within a subsistence use area. There is no danger that someone would be precluded from subsistence use of fish or game because it was not within a subsistence use area. It is true that fish and game within a category 3 community located in a particular subsistence use area would not be subject to the subsistence preference. Section 2, Line 11, SB 443. That was also the case with the 1986 subsistence law. AS 16.05.258(a) states:

The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence in each rural area identified by the boards.

(Emphasis added). No court has ever required that regulation of seasons, bag limits, methods and means, etc., be uniform for every species throughout the state. There is no constitutional requirement that if a particular kind of use is allowed in one area of the state, the same kind of use must be allowed in all other areas.

What the constitution does require is that if a use is allowed, all persons that are similarly situated with respect to the resource and the purpose of the law be treated equally. There is no requirement of equal treatment of resources, rather than users of those resources.

There is also no constitutional requirement that once a person qualifies for a subsistence use in one area, she be entitled to a subsistence preference in another area. A person reliant on fish and game in Area A must be treated the same as all others similarly reliant on Area A fish and game; but that person need not be treated the same with respect to fish and game in Area B. Only those who have similar reliance on Area B fish and game must receive equal treatment.

DRAFTMarch 23, 1992
Page 9The Twelve Month Qualification Period

Under the proposed AS 16.05.268(i) and (o), qualifying activity must occur within the preceding twelve months. While it may be technically possible to qualify in as little as four months (taking fish or game in four different months is the only determinative durational minimum requirement, proposed AS 16.04.268(1)(4)), it is generally anticipated that many users will require closer to the full twelve-month period to qualify. This provision does not create constitutional problems.

At first blush, the twelve-month provision might seem to create a durational residency problem. It does not. Several points must be kept very clear. Under this bill, residence in a particular area is never required for qualification. Residence in the subsistence use area is not required. Furthermore, the twelve-month period is closely related to the patterns of use and fish and game in Alaska.

The goal of the legislation is to give a preference to those who currently, actually, and substantially rely on fish and game in particular areas of the state. There must necessarily be some kind of test to identify actual and substantial reliance on that fish and game. To avoid spurious claims of reliance based on very short-term or only sporadic use, some time requirements are necessarily included. In deciding what time period would make the most sense, the advisory council looked at the patterns of fish and game use in Alaska. Most uses are seasonal. For example, salmon are generally only available during a certain time-span during the year. With game, hunting is generally limited to one or two seasons to get the best quality of meat or to avoid interference with species reproduction. In any case, patterns of use are tied to yearly cycles. If the qualifying time was less than the preceding 12 months, persons in certain areas might be disadvantaged because of the seasonal availability of fish and game. If the time period was longer than twelve month you would expect to see duplication of activity which would be less probative of current reliance. The twelve-month period is obviously the most appropriate for this particular test. It is a necessary test of bona fide reliance and we believe it will be upheld by the courts if challenged.

If you have further questions about issues raised by the subsistence legislation, I would be happy to discuss these matters with you at your convenience.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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May 6, 1990

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The Honorable Mike Navarre
Majority Leader, House of Representatives
16th Alaska Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Navarre:

At the House Majority caucus yesterday, you asked me to briefly assess whether the subsistence provisions in ANILCA can be successfully challenged in court. Those provisions require that the federal government take over management of fish and wildlife on federal land unless Alaska enacts a subsistence preference for rural residents, something which the Alaska Supreme Court held in McDowell v. State, 785 P.2d 1 (Alaska 1989), is not permitted by the Alaska Constitution. In my opinion, it is unlikely that the ANILCA subsistence provisions can be successfully challenged.

Two legal questions would be presented in any federal court challenge to ANILCA's subsistence provisions. (Since ANILCA is a federal statute, it would have to be challenged in federal court.) The first is whether the classification between rural residents and urban residents for subsistence purposes satisfies the equal protection guarantee in the United States Constitution. The second is whether, if the rural/urban classification satisfies the federal equal protection guarantee, the threatened federal takeover of fish and wildlife on federal land nonetheless is invalid as an unconstitutional violation of the state's right to manage fish and wildlife.

I. The rural/urban classification for subsistence in ANILCA probably does not violate the federal equal protection guarantee.

When a federal statute is challenged as violating the equal protection guarantee of the United States Constitution, the federal courts apply a very deferential test when no fundamental right (e.g., freedom from racial discrimination) is involved: "[W]e confine our consideration to whether the statutory classification 'is rationally related to a legitimate governmental interest.'" Lyng v. Automobile Workers, 485 U.S. 360, 370 (1988) (citation

Lyng v. Automobile Workers, 485 U.S. 360, 370 (1988) (citation omitted). (That is a substantially more deferential test than the Alaska Supreme Court applies to state legislation challenged under the equal protection guarantee in the Alaska Constitution.) Although the Lyng case involved monetary resources, the Court noted that "our review of distinctions that Congress draws in order to make allocations from a finite pool of resources must be deferential, for the discretion about how best to [allocate those finite resources] to improve the general welfare is lodged in Congress rather than the courts." Id. at 373 (citation omitted). This would appear equally applicable to finite nonmonetary resources, like fish and wildlife.

In section 801 of ANILCA, Congress made a number of findings with respect to the importance of subsistence to rural residents. Such findings are not reweighed by the courts, and the courts will not substitute their judgment for that of Congress. See Kleppe v. New Mexico, 426 U.S. 529, 541 n. 10 (1976). (The Kleppe case also is discussed in connection with the second legal question below.) The evidence before Congress, while some may perhaps dispute it, is that there is a difference between rural residents' reliance on fish and wildlife and urban residents' reliance on those resources. Congress' findings with respect to to the importance of subsistence to rural residents would, I believe, be found by the federal courts to support the ANILCA subsistence preference for rural residents.

II. Congress probably has the constitutional authority to authorize a federal takeover of fish and wildlife management on federal land.

In Kleppe v. New Mexico, 426 U.S. 529, 540-41 (1976) (footnote omitted), a unanimous United States Supreme Court held that the Property Clause, art. IV, sec. 3, cl. 2, of the United States Constitution gives the United States Congress constitutional authority to regulate fish and wildlife on federal land: "In our view, the 'complete power' that Congress has over public lands [under the Property Clause] necessarily includes the power to regulate and protect the wildlife living there."

The Court also rejected New Mexico's argument that interpreting the Property Clause to give Congress the power to regulate fish and wildlife on federal land impermissibly intrudes on state sovereignty. In the Court's view, "when Congress so acts [under the Property Clause], the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause. U.S. Const., Art. VI, cl.2." 426 U.S. at 543 (case citations omitted).

The rationale for this conclusion is that all states consent to the provisions of the United States Constitution, including the Property Clause and the Supremacy Clause, upon

Hon. Mike Navarre
Alaska House of Representatives

May 6, 1990
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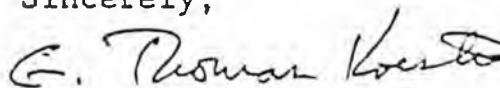
admission to the Union. In art. XII, sec. 13, of the Alaska Constitution, we consented to "[a]ll provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States." These clearly include the specific powers -- such as the Property Clause power over federal land -- which the United States Constitution grants to the national government.

The decision in the Kleppe case was by a unanimous Supreme Court only fourteen years ago. In any action seeking to prevent the federal government from taking over management of fish and wildlife on federal land, the lower federal courts will be bound by the Kleppe decision. They therefore would have to deny any injunction sought to prevent such a takeover unless and until the Supreme Court reverses Kleppe. Because it would take at least three to four years before the case could reach the Supreme Court (assuming it was willing to take it), we would be left with at least that much time during which the federal government would be managing fish and wildlife on federal land.

I have not reached this conclusion lightly. For years, I have been a strong proponent of the state's rights and strenuously resisted attempts by the federal government to diminish those rights. See, e.g., Watt v. Alaska, 451 U.S. 259 (1981) (successful defense of Alaska's entitlement to 90 percent of federal oil and gas leasing revenues from the Kenai National Moose Range); Utah Division of State Lands v. United States, 482 U.S. 193 (1987) (author of amicus brief, in which 32 other states joined, in support of Utah's successful equal footing doctrine claim). If the Kleppe decision had not been decided in 1976, I could and would make very strong arguments that the federal government does not have constitutional authority to enact laws governing fish and wildlife in Alaska, even on federal land, with some substantial possibility of success. In light of the Kleppe decision, however, I believe such arguments will not succeed.

I hope this answers your questions. If I can be of further assistance, please contact me at your convenience.

Sincerely,



G. Thomas Koester
Assistant Attorney General



ALASKA OUTDOOR COUNCIL, INC.

P O Box 34097
Juneau, AK 99803
463-3830

March 20, 1992

Senator Halford
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

As you may know, the Alaska Outdoor Council voted to take no position on the Governor's subsistence bill (SB 443/HB 552) when it was introduced.

Our position reflected concerns about: (1) the constitutionality of differences in individual qualifying procedures related to residence; (2) the lack of a mandate to verify individuals' qualifications in outlying areas; (3) the potential influence on Indian country arguments; (4) modest criteria to qualify for subsistence; (5) the need to make clear that both subsistence and other uses should be provided for when resources have recovered from a low level; and (6) the need for a definition of "urban". We also oppose related constitutional amendments which are unnecessary to make the bill workable and would invite backsliding in terms of equal protection and common use of the fish and game resources. To comply with ANILCA by amending our Constitution does not "return State management". It simply locks in Federal judicial oversight on the State's execution of ANILCA subsistence mandates.

However, the Governor's bill does address many of our concerns and we applaud this progress. Specifically, it establishes individual criteria based on resource dependency, regardless of where a person lives, as the means to qualify for a priority. It clearly limits "customary trade" to non-commercial activities. It makes clear that subsistence uses will be regulated. It mandates increasing fish and game numbers when populations are low. It greatly strengthens resource protection and management.

The Alaska Outdoor Council is participating in your consideration of the legislation. We have recognized the importance of working for a good solution rather than against poor solutions. Recent Council policies and action demonstrate this.

For example:

- 1) We have formally recognized the important of non-commercial use

All Legislators, page 2

of fish and game for food to support people's lifestyles;

- 2) We helped develop the concept of a priority based on a resource dependent subsistence lifestyle;
- 3) We worked constructively with the Governor's Subsistence Advisory Council on this legislation;
- 4) We have sought agreement with Native groups and others regarding resource and habitat enhancement and other management issues;
- 5) We have fought for continued subsistence uses in National Parks as authorized by ANILCA;
- 6) We initiated action to have Alaska represented at the Convention on International Trade in Endangered Species to protect Alaska Natives' subsistence uses of walrus;
- 7) We are supporting HB 446, the wildlife conservation viewing tag bill, that will benefit non-consumptive uses of fish and game; and
- 8) We participated on the public Wolf Management Planning Team in a constructive, good faith effort.

The point is, we are working to resolve subsistence and other fish and game issues in ways that enhance everyone's opportunities to responsibly use fish and game resources.

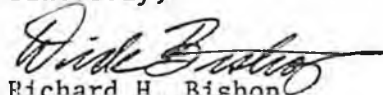
Our goals with regard to the subsistence legislation are to help pass a bill that:

- 1) ensures sound resource perpetuation and management;
- 2) maintains the equal rights, equal protection and common use provisions of our state constitution;
- 3) provides for a subsistence priority for fish and game and for other uses within the bounds of the constitution;
- 4) does not influence Indian country legal arguments; and
- 5) allows people to enjoy the physical and philosophical satisfaction of sustaining their Alaskan lifestyles through the responsible uses of fish and wildlife.

We believe these goals can be met. We believe that in meeting them, other people's goals can also be met. Further, we believe that such a fair and equitable solution will have inherent stability and permanence that cannot be achieved in any other way, not even by constitutional amendment.

We look forward to helping you complete this work that the Governor has started.

Sincerely,


Richard H. Bishop
Legislative Affairs

CC: Governor Hickel
Commissioner Rosier

Testimony to
Alaska Senate Resources Committee
on SB443 - Subsistence Legislation
by Richard H. Bishop
for the Alaska Outdoor Council

My name is Dick Bishop; I live at 1555 Gus's Grind, Fairbanks, 99709.

I am testifying on behalf of the Alaska Outdoor Council, a statewide coalition of over 10,000 Alaskans including 50 groups, who support sound scientific management of fish and wildlife and public access to public resources consistent with Alaska's Constitution.

The Outdoor Council's policy regarding a subsistence priority law is that a priority law is unnecessary to accommodate subsistence uses, but if a priority is established it should be based on individual criteria related to resource dependency, --that is, a subsistence lifestyle--and must be constitutional under the present state Constitution. The Council has never opposed subsistence use; the Council has consistently supported the practice of using the resources of the land to feed one's family. But the Council has consistently opposed the rural priority and other discriminatory criteria.

The Alaska Outdoor Council, at its statewide convention on March 1, voted to take no position on SB443 and HB552 at this time, but ordered its Board of Directors to monitor the legislation and respond to changes as needed.

Concerns expressed by Outdoor Council members were:

1. Different qualifying procedures for subsistence priority applicants would depend on place of residency. Some viewed this as unconstitutional, others saw it as less serious legally but nevertheless unfair. Still others saw it as the basis for legal argument favoring Indian country. The Legislature should be sure that qualifying procedures are fair, constitutional and without Indian country implication. The Outdoor Council has recommended in previous discussions that all applicants file an affidavit similar to the Permanent Fund dividend affidavit which could be questioned by the State if necessary.
2. There is no mechanism in the bill to verify individual qualification in rural areas and regional centers. The bill makes presumptions about the proportions of people who qualify in rural areas and regional centers, based on general background information provided by the Department

of Fish and Game. To be sure these presumptions are correct and are fairly applied in the future, the Department and Boards need a system to verify and periodically update the information. We have recommended that a scientific sampling scheme be developed by the Department to gather information on which periodic recommendations can be made to the Boards regarding the applicability of presumptions made in Section 16.05.268(h).

3. The minimum criteria for individual qualification as a priority user do not characterize someone who "lives off the land" in a subsistence lifestyle. If this law is enacted, we believe experience will demonstrate that the minimum criteria must reflect a greater dependence on fish and game resources.
4. The proposed legislation, as it now stands, must contain a "neutrality statement" clarifying that the Legislature intends that as law it neither adds to or diminishes the legal arguments for Indian country. The difference in administrative requirements for priority use applicants, based upon residency, raises the question. Any legislation which provides benefits to residents of primarily Native communities--and which Natives living in more cosmopolitan areas do not receive--can be used in arguments for Indian country. The 9th Circuit Court of Appeals recently made this clear in its Tyonek ruling wherein they declared that the federal rural priority helped Tyonek meet the "Indian country test".
5. The bill should ensure that subsistence AND other uses should resume when resources recover. Presently, only subsistence uses are required to be reinstated in Section 16.05.268(2).
6. "Urban" should be defined. It is important in deciding how and where the administrative requirements are applied to individuals in Sec. 16.05.268(f).

The long, discriminatory history of the subsistence priority law has so sensitized people that they are extremely wary of continued unfair treatment or loss of privileged use. There is a tendency to see "boogey men" in many provisions of this bill.

However, the Outdoor Council wants to avoid the situation Mark Twain described when he said: "It's easy to find fault, if one has that disposition. There once was a man who, not being able to find any other fault with his coal, complained that there were too many prehistoric toads in it."

There are people determined to find lots of toads in this bill--and there are some, but they do not warrant total rejection

of the bill. Selective toad-squashing can improve the bill.

The principle of basing a priority upon individual criteria related to resource dependency is a quantum leap forward--both legally and ethically.

This bill corrects numerous serious flaws in past legislation. It greatly improves resource protection provisions. It conforms to the principles of basing a priority on resource dependency measured by individual criteria. It allows a person to qualify regardless of residency location. It prohibits commercial sale of subsistence resources, such as salmon roe or herring roe on kelp. It mandates action to increase low fish or game numbers. The bill has strengthened resource protection and management.

From the perspective of your committee's major responsibility of good resource stewardship, we see no reason that it's passage should be delayed. Other committees will address our concerns regarding legal and constitutional issues.

We applaud the Governor for his determination to develop a good subsistence law. We urge the Legislature to follow his lead.

No constitutional amendment is required to make this proposed law workable. The Alaska Outdoor Council opposes any constitutional amendment regarding a subsistence priority.

ALASKA OUTDOOR COUNCIL

Press Release
March 2, 1992

Contacts: Richard Bishop 455-6151
Randy Smith 277-1617

Alaska Outdoor Council Reacts to New Subsistence Bill

The Alaska Outdoor Council voted to take a "wait and see" posture on Governor Hickel's subsistence bill at its annual convention this past weekend in Fairbanks.

In related action the Council opposed all of the legislative resolutions aimed at putting a subsistence priority in the state's Constitution.

Delegates to the Council's convention expressed grave concern over the lack of equal treatment proposed in the bill.

Randy Smith, executive director, noted there are no provisions in the bill to ensure that residents of small communities who are presumed to meet the criteria actually do meet it. He also expressed concern about vague, undefined terms which have caused problems with the previous and current laws.

Delegates were concerned that the bill held no "neutrality statement" with regard to implications for Indian country status and that the individual requirements were far too lenient.

MORE

The delegates did agree that the bill was an improvement over existing state and federal subsistence laws. They were uneasy about taking a position on a bill that is likely to be amended in unpredictable ways during the legislative process.

"The Outdoor Council applauds Governor Hickel's determination to develop a good law on subsistence use," said Smith. "The Governor's bill addresses several of our concerns about current laws on subsistence use of fish and game."

Smith noted three examples. The recent sale of herring roe taken under subsistence regulations and then sold would be prohibited under this bill; the bill allows qualified urban residents to receive the priority; and the Department must take corrective action if fish and game are too low to accommodate both subsistence and other consumptive uses.

The Council ordered its Board of Directors to monitor the legislation and respond to changes as needed.

* * *

SUBSISTENCE LEGISLATION NEEDS A "NEUTRALITY STATEMENT"

...Mary Bishop

presumption: (Law) an inference required or permitted by law as to the existence of one fact from proof of the existence of other facts.

The Governor's proposed subsistence law makes a presumption that virtually ALL residents of villages, MOST residents of mid-sized communities, and FEW residents of large communities meet the individual criteria required for subsistence use.

Correspondingly, the legislation would establish three ways for an individual to attest that he/she meets the criteria: 1) do nothing! 2) sign an affidavit; or 3) hold an approved application.

Individuals would be treated differently on the basis of their residency. Thus, the statute can be used by advocates favoring Indian country--unless a neutrality statement is included.

A reading of the 9th Circuit Court of Appeal's *Tyonek* opinion, as well as the Tanana Chief Conference's brief in the current *Saason Henry* case, makes one point abundantly clear: ANILCA's rural subsistence priority contributed significantly to the courts opinion that the "Indian country test" had been fulfilled.

A key point to understanding Indian law in Alaska is the Indian country test: Whenever residents of a primarily Native American community receive different treatment than do Native Americans living in more cosmopolitan areas--and the different treatment is based upon residency, the community may be judged a "dependent Indian community"--under the governance of its tribal group. (See attachment and 18 USC 1151)

ANILCA demands that Alaska's rural village residents receive a harvest priority that cannot go to Natives living in Anchorage, Juneau, Fairbanks and Ketchikan.

A neutrality statement would say that no provision of the statute can be used to argue for or against tribal governance and Indian country land status. A neutrality statement is included within the "1991" amendment package to the Alaska Native Claims Settlement Act. Similarly, one should be included in any amendment of ANILCA regarding subsistence use.

Neutrality statements have been used in other federal statutes, including the Lacey Act. The effectiveness of those statements, when challenged in court, should be researched.

Opposition to the inclusion of a neutrality statement would seem to indicate that advocates want both subsistence priority and Indian country land status--and are attempting to use the priority as a legal step in gaining Indian country, as is exemplified by the *Tyonek* and *Sawson Henry* case.

The three levels of presumption also seem to stretch the state constitution to or beyond its limit.. Would the Justices rule that the fit between legislative enactment and public interest/equal protection is adequate? Would they rule that the difference in requirements between residents of mid-size and large community too frequently results in unequal treatment of individuals who are similarly situated with respect to the resource?

The proposed legislation should be amended by:

1. deleting the three levels of presumption and providing that everyone attest to the criteria in the same manner; OR
2. including a neutrality statement AND allowing only two levels of presumption (1. residents of areas where virtually everyone can be presumed to meet the criteria; and 2. all other residents) OR
3. including a neutrality statement. (This option seems constitutionally questionable but it may give protection to the state's interest in preventing Indian country status.)



United States Department of the Interior

OFFICE OF THE SOLICITOR
ANCHORAGE REGION
310 L Street, Suite 408
Anchorage, Alaska 99501

IN 2221

April 18, 1978

MEMORANDUM

TO: Superintendent, BIA, Anchorage Agency

FROM: Assistant Regional Solicitor, Anchorage

SUBJECT: Opinion on Enforcement of Rule No. 4--Exclusion of Non-Natives From Native Village of Tyonek

In your memorandum of last September 29th, you requested our opinion as to whether the Village of Tyonek had the authority to exclude a non-Native from the Village pursuant to its Rule No. 4 which reads as follows:

"No. 4: Any white men except government men or outsider coming in is allow to stay only 24 hrs. If weather permits them to go. And is not allowed to bring any Liquor. Article No. 4 have to be put up in posters. And anyone destroying these papers will be subject to penalty. Twenty-Five dollars fine if caught destroying the poster. (sic) Rules for Laws, of Native Village of Tyonek (May 18, 1942)"

Promulgation of Rule No. 4 was an exercise of the Village's power under section 1 of Article IV of the Village Constitution (ratified on November 27, 1939)--

"To control the use by members or nonmembers of any reserve set aside by the Federal Government for the Village and to keep order in the reserve."

The Village Constitution was adopted pursuant to the Indian Reorganization Act of June 18, 1934, as amended by the Acts of June 15, 1935 and May 1, 1936 (25 U.S.C. secs. 473a, 476). Various federal and state court decisions have recognized the Tyonek Natives as a "tribe" whose IRA "Tyonek Tribal Council" constitutes the "local government of the reservation . . . which is recognized by the United States as the spokesman for the people of Tyonek in all reservation affairs." Fondahn v. Native Village of Tyonek, 450 F.2d 520, 521 (9th

298 F. Supp. 17 and 26 (D. Ariz. 1968 and 1969) (tribal order excluding non-Indians from reservation constituted passage of bill of attainder and denial of free speech and property prohibited by Indian Civil Rights Act of 1968); and Dry Creek Lodge, Inc. v. United States, 515 F.2d 926, 933 (10th Cir. 1975) (non-Indians may initiate action under Indian Civil Rights Act of 1968); and Mayer v. Nebraska, 262 U.S. 390, 400 (1923) ("liberty" in due process clause denotes, among other things, the right "to engage in any of the common occupations of life" and "to . . . establish a home").

Notwithstanding the foregoing opinion, it might be helpful to note that if the Tyonek group someday finds itself in a federal court case testing the tribal authority to exclude or remove non-Natives from the Village of Tyonek, the argument might be advanced that even though the lands within the former reserve no longer constitute "Indian country" under tribal jurisdiction, the village itself is a dependent Indian community falling within the second definition of "Indian country" in 18 U.S.C. sec. 1151 (1976) as being "all dependent Indian communities within the borders of the United States" While this definition has historically been applied to Indian pueblos (e.g., United States v. Sandoval, 231 U.S. 28, 47-48 (1913) and United States v. Chavez, 290 U.S. 357, 364 (1913)), such definition has been extended to other areas of Indian occupancy after a review of evidence relating to the following criteria used to determine the existence of a "dependent Indian community," to wit: "the nature of the area in question, the relationship of the inhabitants of the area to Indian Tribes and to the federal government, and the established practice of government agencies toward the area" (e.g., Bureau of Indian Affairs). United States v. Martine, 442 F.2d 1022, 1023 (10th Cir. 1971); also, State v. Cutnose, 532 P.2d 896, 902 (N. Mex. 1974). However, the courts have stressed that "the mere presence of a group of Indians in a particular area would undoubtedly not suffice" to establish a dependent Indian community. United States v. Martine, supra, at 1024, and State v. Cutnose, supra, at 898. One Alaska court determined that the term "all dependent Indian communities" in 18 U.S.C. sec. 1151 "does not apply to Metlakatla because Metlakatla is not dependent as a community and any benefits available to the residents as Indians are the same as those available to any Indian in Alaska, including Indians living in apartment houses in Ketchikan." United States v. Booth, supra, 17 Alaska at 569-570 and 161 F. Supp. at 273. To

advance the argument that the Village of Tyonek is still Indian country because it is a dependent Indian community might appear to be somewhat expedient in light of previous judicial determinations that the Village was in Indian country by virtue of the reservation status of the area withdrawn for the Tyonek Natives. A corollary jurisdictional problem which would also have to be addressed would be to define or describe the exact territorial boundaries of the "dependent Indian community" if in fact the Village is such a community.

Finally, in direct response to the specific question set forth in your opinion request, and on the basis of our foregoing opinion, we conclude that although the Tyonek Village Council acted under color of Rule No. 4 by requesting the non-Native to leave the Village, such action would not be supported by the courts because Rule No. 4 is no longer applicable to non-Natives and any action pursuant thereto would be without lawful authority.

James R. Hochershead
James R. Hochershead



CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

Phone (907) 424-3447 Fax (907) 424-3430

March 7, 1992

Position Paper

SB 433

Cordova District Fishermen United commends the Subsistence Task Force for crafting a reasonable and equitable bill to address the issue of subsistence. CDFU supports SB 443 and urges the Senate Resources Committee to accept the bill in its present form and avoid making substantive changes to its content or intent.

CDFU endorses the proposal to prioritize communities based on population and traditional dependency on subsistence to determine access to subsistence resources. This plan will ensure that Alaskans who rely on indigenous fish and game as primary food sources will have priority over less dependent communities for subsistence harvesting. The proposal also provides clear guidelines defining subsistence user groups which will facilitate and simplify the management of fish and game resources for subsistence based on sustained yield.

CDFU supports the definition of "customary trade" as defined in SB 443. This definition clearly states that subsistence foods may not be sold in commercial channels and will clarify the current vagueness surrounding what constitutes customary trade.

It is CDFU's position that SB 443 adequately addresses the taking of fish and game for subsistence and provides a fair and objective system to determine access to and use of subsistence resources. We urge your support of SB 443 as it is presently written.

ANCHORAGE TRIBES OF TLINGIT AND HAIDA INDIANS OF ALASKA (ATTHIA)
670 W. FIREWEED LANE, SUITE 106, ANCHORAGE, ALASKA 99503-2578
TELEPHONE: 907/278-4154

*file
subsistence
bill
SB 443 (73)*

received
3-21-92

March 17, 1992

Honorable Lloyd Jones
Alaska State Senate
Chairman, Senate Resources
Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Jones:

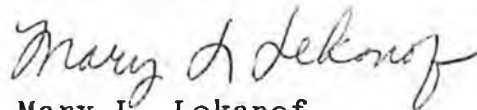
The Anchorage Tribes of Tlingit Haida Indians of Alaska during a Subsistence Committee meeting held on March 16, 1992, adopted the following motion:

"Ron Mallott/Ruth Willard motion that we direct letter to Senate Resources Committee and request that they withhold any determination on SB 443 pending outcome of AFN Subsistence Summit to be held March 23-24, 1992 carried.

Therefore, this is a formal request on behalf of our organization that your committee place the bill in pending until March 25, 1992.

Thank you for consideration of our respectful request.

Sincerely,



Mary L. Lekanof
President

cc: Following Alaska State Senate Committees
Judiciary
Finance
Rules

92-013

CERENE J. PAUL
847 Faultline Ave.
North Pole, Ak. 99705

SENATE RESOURCES COMMITTEE

HOUSE BILL 552

HB-552 is the same as previous Legislation in that it still discriminates on the basis of a person's residence. Urban/Rural was found unconstitutional by the Court. Under the new proposed section, Sec. 16.05.268 par. (f) HB-552 substitutes numbers of human population per community and requires a Rural residency to qualify and disqualifies you if you reside in an Urban area where human population is 7,000 or greater. Par. (g) states, the Boards shall jointly consider the relative importance of subsistence etc. The Boards of Fish & Game can not solve this enormous problem.

I oppose HB-552 in it's present form, it does not allow for equal access or an equal opportunity. Prior to the subsistence law in 1978 it seemed that all Alaskan's were happy with the existing conditions, today none are!

Let me state that I utterly oppose any and all of the numerous proposals to amend the State Constitution for subsistence and to mandate State discrimination for the Minority and against the Majority of Alaska Residents!

Several hundred years ago Patrick Henry said, "Give Me Liberty Or Give Me Death," I say give all Alaskan's equal treatment under the law.

All Community Legislatures

Subject: Remove the 1986 law on subsistence from Alaska state law.

Why: The Federal Government through action by its federal agencies have implemented regulations which exclude Ketchikan, Juneau, Fairbanks and Anchorage explicitly from participating in harvest of renewable resources, as well as Seward, Valdez, Talkeetna, Tok, Big Delta and other communities throughout Alaska. As stated in the summary on Federal Regulations even Sitka once it has reached certain size will be restricted. These communities are considered urban in nature and therefore banned from use of renewable resources for Subsistence purposes on federal land.

I recently appealed a decision by the Wrangell St. Elias Park Superintendent to the National Park Service Director, Alaska Division, on denying my rights as a United States Citizen, to hunt in the Wrangell St. Elias Park, an area I had hunted (12) years ago, prior to the establishment of the park. I was denied access because my residency (Anchorage) is WEST of the Lake Louise Road. I was not only denied my rights to hunt but have been denied the right to participate with residents EAST of the Lake Louise Road to harvest any resources designated subsistence resources for their use from the park. I cannot assist them in picking berries from the park, packing moose from the park nor assist them in bringing any subsistence harvest from the core park to their table!

I have appealed this decision to the highest level with the park service and am now a plaintiff on the McDowell II case with the Federal Government.

Although the committee formed by Governor Hickel on subsistence has honorable intentions their efforts will be to no avail. All "ground" has been plowed to the farthest horizons on subsistence. The governors board cannot pass on the problems inherent with the 1986 state subsistence law or the 1980 federal law on subsistence to the citizenry boards of fish and game. This was done by our state legislatures and our congressional people in the past and it has failed dismally. Let seasons and bag limits prevail. Let means and methods, if reasonable, prevail. Residents of Alaska whether rural or urban are not going to accept being restricted from the harvest of fish and game for their dinner table because of residency, nor should they. The Alaska Supreme Court struck down the residence requirement in McDowell I. Unfortunately the State of Alaska has not decided to challenge the decision by Judge Cutler to retain the remainder of the 1968 state law therefore the 1986 Subsistence law continues to fumble along harming all Alaskans.

Where do you draw the boundaries? Ten miles out of town? Fifty miles out of town? One thousand miles out of town? Five miles up or down the river? Fifty miles up or down the river or five hundred miles up or down the river? What town? What river?

These boundaries cannot be defined without excluding your neighbor, fishing and hunting friends and residents throughout Alaska. This is an insult! Income cannot be used because what thoughtful Alaskan would take the chance of turning the fish and game harvest into a welfare program!

The cost to implement this folly has been staggering! Since 1978 and earlier Alaskan residents have spent \$1,000,000.00 fighting to keep their rights, (I know, I keep the books) to harvest fish and game for their own personal use. Asking an unnamed federal employee who would be able to estimate the cost factor by all government agencies, state and federal, over the past fourteen years, his remark was, and I quote, We've out spent you two hundred to one! \$200,000,000.00 and the critter hasn't flown yet! For two hundred million we could have dismantled the fence around the barley project and put a buffalo in everyone's backyard!

In 1972 The Alaska Native Claims Settlement Act was passed. In that contract the native community received forty four million acres. The primary purpose for these acres was subsistence. All persons who hunt or fish who read the papers must be aware that these are private properties owned by the natives, to be respected as private property. Notices are continually placed in the paper notifying outdoor users of the boundaries of these properties. Subsistence laws, state or federal do not apply to these acres! These acres were very strategically selected to maximize fishing and hunting opportunities especially adjacent to waterways. Ninety eight percent of the villages are at sea level which gives a tremendous advantage to the local resident for harvesting fish and game. Eighty five percent of the subsistence harvest (federal figures) comes from three resources, namely, sea mammals (natives have exclusive use, 1972 Sea Mammal Act), waterfowl, (natives have a special spring season) and fisheries.

Public Law 92-203, 92nd Congress, H.R. 10367, December 18, 1971, Declaration of Policy, Section 2, paragraph (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". In addition to the forty four million acres, all Alaska residents have participated in this contract with five hundred million dollars from our resource base in accelerated payments (former Governor Hammonds plan, 1975) to the native people.

This is the real history of Alaska for the past 20 years. Every Alaskan has participated in paying a just contract for our native neighbors.

By following Governor Hickel's lead on navigable water, Alaska can and will retain management of our waterways. Quoting from a proposed resolution before the Alaska Outdoor Council, "Under our Alaska Statehood Compact Agreement with the United States Government Alaska received title to 103 million acres of land, all marine coastlines and all navigable waters of Alaska. Under our Compact Agreement the United States Government transferred all management rights of fish, woods, waters, wildlife and all common property and replenishable natural resources to the State of Alaska. The United States Supreme Court under the Gulkana decision reconfirmed the State of Alaska owns all title and management rights to navigable waters and resources including fisheries and sub-surface resources and extraction rights.

The State of Alaska owns the management rights to all waters in the state of Alaska under the navigable waters pursuant to the Statehood Compact Agreement under Alaska Public Waters Law pass by the Alaska Legislators and under the United States Supreme Court decision, State of Mississippi versus Philip's Petroleum where the court ruled if tidal water floods an area even two inches once a year the management rights and land title rights shall be transferred to the state."

The governor is to be commended for his aggressive action on the waters of Alaska for the benefit and well being for all Alaskans no matter what their residency or age. Alaskans have proven many times over their ability to manage and increase fish and other renewable resources.

Its time for the Legislatures from the above mentioned communities as well as all communities prohibited from subsistence use to abide by our constitution and bring an end to this insulting behavior by the federal government. All Alaska's children, young and older adults deserve better from their elected officials, they expect and deserve to be treated equally.



Warren E. Olson
5961 Orth Circle
Anchorage, Alaska
99516

346 1811

Past member of State of Alaska Citizens Advisory Commission on Federal Lands, appointed by the Alaska Legislatures.

P.1

JOHNSON-LIEBER, INC.
1225 E. International Airport Rd
Suite #210
Anchorage, AK 99518-1410



TEL: (907) 562-2665 FAX: (907) 561-5132

TO: Senator Lloyd Jones DATE: 3/6/92
Senate Resources Committee FAX 465-2864
JUNEAU

FROM: Tim Stevens

PAGES: (Including this page) 2

MESSAGE: (If Any) PLEASE DELIVER ASAP!
CONCERNS SATURDAY'S TELECONFERENCE
ON SUBSTANCE.

SENATOR JONES'S OFFICE NUMBER

465-3743

MAR 06 '92 10:37 JOHNSON-LIEBER-

THANK YOU.

Tim Stevens

12830 Huffman Circle
Anchorage, AK 99518
March 6, 1992

Mr. Lloyd Jones
CHAIRMAN SENATE RESOURCES COMMITTEE
P.O. Box 5
Juneau, AK 99811

Dear Sir:

Please, I beg you, do not even consider a constitutional amendment on the subsistence issue. This would in no way regain state management of our fish and game resources. If I am correct in my thinking, the opposite effect would take place. It would lock in federal judicial oversight if we comply with ANILCA on the subsistence issues.

Sincerely,



Tim Stevens
(907) 345-3804

BEN R. MILAM
HC 02, BOX 7403 G
PALMER, ALASKA 99645

March 6, 1992

Honorable Senator Lloyd Jones
Senate Resources Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

Reference SB 443/HB552 "Subsistence"

Dear Senator Jones:

I understand that the "Subsistence Bill" is now before your committee. I urge you to reject this bill in total because it does not address the problem.

First and foremost it does not grant equal access for all Alaskans. Second it does not address the problem of proper resource management based on biological reasons. Third it incorporates a price tag of some \$600,000 per year without any means of placing that burden on those who will benefit.

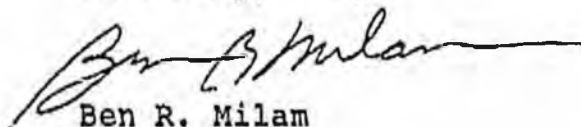
We are all Alaskans regardless of race, creed or color and that is the principles that the United States and Alaska were founded upon. This is a principle we cannot negotiate.

Our fish and game are one of the most important resources we own. Without them some people will go hungry and others will suffer financially without this strong tourist attraction. We must manage this resource without compromise. If we had a sound game management policy which managed game on a maximum sustained yield basis, we would not have the problem of allocation we face today.

Hopefully we are all beginning to realize that our state income is dwindling as oil production slows. In the past sportsmen have borne the total cost of fish and wildlife management. We cannot be expected to bare the cost of a program which is inherently detrimental to the majority of Alaskans and the resource itself. Any bill you pass must pass the cost on to those who benefit.

Again, please do not pass this bill in it's current form and DO NOT even consider a constitutional amendment. If you want to do something positive, urge the Governor to enter a lawsuit against the federal government to remove the rural preference.

Sincerely,



Ben R. Milam

FACSIMILE TRANSMITTAL COVER SHEET

TO: Senate Resources Committee

PHONE:

FAX: 562-4376

NUMBER OF PAGES: 2

FROM: BEN R. MILAM

PHONE: 274-7232

FAX: (907) 274-9524

COMMENTS:

Please pass this information to the Senate Resources Committee as testimony to hearings conducted Saturday, March 7, 1992 on subsistence

March 6, 1992

Sen Resource Comm.

Sen Lloyd Jones

Dear Sir,

As a resident of Alaska for 39 years I am not in favor of HB 552 and HB 443 Subsistence. Even though it is better than what we have now I think we should keep in agreement with our state Constitution.

This bill will create more rules and regulations and a new bureaucracy to monitor it and make more paperwork.

It will also create a special class of citizens. I think we should sue the federal government to make ANILCA honor our state Constitution -

Equal Rights to Fish and Game Stocks for Everyone - and everything else they haven't done yet after 33 years. We got along for years without subsistence regulations and I don't think we need them now.

I think we can regulate subsistence through seasons and bag limits.

Sincerely,

Paul L. Newcome

P.O. Box 70941

Ft. H., AK 99707.



UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's
Marketing Association
Alaska Longline Fisherman's
Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnotters Association
Concerned Area 'M' Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional
Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound
Aquaculture Association
Prince William Sound Seiners Association
Seafood Producers Cooperative
Southeast Alaska Seiners
Southern Southeast Regional
Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association
Area K Seiners Association

March 26, 1992

The Honorable Rick Halford
Member, Senate Resources Committee
State of Alaska
Post Office Box V
Juneau, Alaska 99811


Dear Senator Halford:

The United Fishermen of Alaska's Board of Directors voted, at its annual meeting held February 7-13 in Juneau, to support the legislation that was the result of the Governor's Subsistence Advisory Council recommendations. We would like to advise you that we strongly support Senate Bill 443.

The continued support of these measures by the United Fishermen of Alaska is dependent upon a review of any amendments that may be made by the legislature.

The United Fishermen of Alaska supports this legislation in the present form. We simply believe that it equitably deals with all the user groups of Alaska's fish and game resources.

Very truly yours,


Greg Seider
Executive Director

GS:phi



UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

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Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association
Area K Seiners Association

March 26, 1992

The Honorable Lloyd Jones
Chairman, Senate Resources Committee
State of Alaska
Post Office Box V
Juneau, Alaska 99811

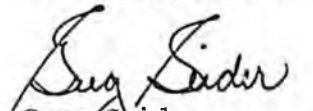
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Very truly yours,


Greg Seider
Executive Director

GS:phl

Sec. 16.05.940. DEFINITIONS. In AS 16.05 - AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "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;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish, but does not include processing workers on floating fish processing vessels who do not operate fishing gear or engage in activities related to navigation or operation of the vessel; in this paragraph "operate fishing gear" means to deploy or remove gear from state water, remove fish from gear during an open fishing season or period, or possess a gill net containing fish during an open fishing period;

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "department" means the Department of Fish and Game unless specifically provided otherwise;

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "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 acceptable to the boards of fisheries and game;

(10) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(11) "fish derby" means a contest in which prizes are awarded for catching fish;

(12) "fishery" means a specific administrative area in which a specific fishery resource is **commercially** taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, gear type, or fishery resource; in this paragraph "gear" and "type of gear" have the meanings given in AS 16.43.990;

(13) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(14) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, "fish" does not include shellfish, as defined in AS 16.40.199;

(15) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit;

(16) "fur dealing" means engaging in the business of buying, selling, or trading in animal skin, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(17) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 - AS 16.40;

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

(19) "hunting" means the taking of game under AS 16.05 - AS 16.40 and the regulations adopted under those chapters;

(20) "nonresident" means a person who is not a resident of the state;

(21) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(22) "operator" means the individual by law made responsible for the operation of the vessel;

(23) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(24) "person with physical disabilities" means a person who presents to the

department either written proof that the person receives at least 70 percent disability compensation from a government agency for a physical disability or an affidavit signed by a physician licensed to practice medicine in the state stating that the person is at least 70 percent physically disabled;

(25) "resident" means a person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a 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 paragraph, 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 paragraph; 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 paragraph;

(26) "rural area" means a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area;

(27) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 - AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(28) "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;

(29) "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;

(30) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game;

(31) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, 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 this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

(32) "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:

(33) "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;

(34) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(35) "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, but does not include aircraft.