

HB

406

File 1

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 5, 1998

SUBJECT: Draft CSHB 406(RES); version P (Work Order No. 20-LS1573\P)
TO: Representative Scott Ogan
FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the draft of CSHB 406(RES) that you requested.

This version (version P) contains the following changes to version H:

- ✓ one, three new paragraphs are added to the Findings section (Sec. 1(a) of the bill);
- ✓ two, a new subsection is added to Sec. 16.16.010 relating to allocation of resources and preferences in time of shortage (Sec. 2 of the bill);
- ✓ three, Sec. 16.16.020(b) is rewritten to require concurrence of the Department of Fish and Game with a finding of shortage by the Board of Fisheries or the Board of Game and to make other changes (Sec. 2 of the bill);
- ✓ four, Sec. 16.16.020(c) is rewritten to substitute regional fish and game board for local fish and game advisory committee and to delete the requirements for use of a certain number of species and for sharing of resources in order to qualify for preference for personal and family use for sustenance (Sec. 2 of the bill);
- ✓ five, Sec. 16.16.020(d) is rewritten to substitute regional fish and game board for local fish and game advisory committee (Sec. 2 of the bill);
- ✓ six, Sec. 16.16.020(e) and (f) from the prior version are combined into a new (c) to reflect the elimination of the role of the local advisory committees in the process for determining eligibility for the preference for fish and game dependent uses (Sec. 2 of the bill);
- ✓ seven, a definition of "preference" is added to Sec. 16.16.095 (Sec. 2 of the bill);
- ✓ eight, the definition of "shortage" is rewritten in Sec. 16.16.095 (Sec. 2 of the bill);

Representative Scott Ogan

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✓ nine, a reference to the sustained yield principle is added to Sec. 16.05.245(b)(2) (Sec. 5 of the bill);

✓ ten, Sec. 16.05.260(e) is rewritten to eliminate the requirement that the governor appoint members of the regional fish and game boards from lists of persons submitted by the local fish and game advisory committees (Sec. 12 of the bill);

✓ eleven, Sec. 16.05.260(h) and (i) are rewritten and (j) is deleted to reflect the elimination of deference to the local fish and game advisory committees and to eliminate delegation of authority from the commissioner to the regional boards (Sec. 12 of the bill);

✓ twelve, Sec. 32 of the bill is amended to add AS 16.05.940(7) and (27) (definition of "customary and traditional" and "rural area") to the list of provisions repealed;

✓ thirteen, Secs. 37 - 40 are added to the bill to provide for an advisory vote on a preference for use of fish and game for personal and family use for sustenance and amendment of the Alaska National Interest Lands Conservation Act; for repeal of the provisions of the bill, and for the determination of the effective date of the bill; and

fourteen, in two places (Sec. 1(b)(2) and Sec. 13) the term regional fish and game management board was used and in both places the word "management" is deleted.

If I may be of further assistance, please advise.

GU:jdr

98-134.jdr

Enclosure

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
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March 2, 1998

The Honorable Scott Ogan, Co-Chair
House Resources Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Representative Ogan:

We understand that at the House Resources Committee hearing on Saturday, February 28, the question of the Governor's position on HB 406 - An act relating to fish and game was raised.

We are writing today to make it clear that the administration cannot support CS HB 406 (Res) for several reasons. First and foremost, it does not address the important goals stated by Governor Knowles when he appointed the Task Force on Subsistence last summer: 1) to ensure effective state authority over fish and game management on all lands and waters of Alaska; and 2) to recognize the paramount importance of the subsistence way of life to Alaskans. The bill does not fix what is broken, and it introduces several new problems that make it unacceptable to the administration.

The administration has serious concerns about several essential elements of the bill, among them the following:

- The bill does nothing to stop the federal takeover of fish and game management. Its definition of who will qualify for "sustenance" would exclude many who would qualify as "rural" residents under ANILCA. Because the two are inconsistent, the bill would require that ANILCA's rural resident priority be significantly amended. But, as Senator Stevens said in his recent speech to the legislature, any more amendments to ANILCA are very unlikely.

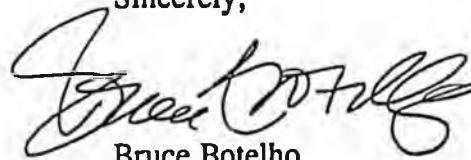
- An income-based program would be inconsistent with ANILCA. It would be an administrative, fish and game management, and enforcement nightmare.
- The bill introduces a set of burdensome government requirements and administrative steps to get a permit to hunt and fish for sustenance (a person is allowed to fish and hunt only if he or she earned or took in a certain amount of income, took a certain number of species, ate a certain amount of wild foods, and shared wild food with a certain number of others). This is big government at its worst.
- The bill would establish an individual eligibility system based on need, not a system that recognizes the traditional patterns of community cooperation and sharing that are the hallmarks of Alaska's subsistence economies.
- HB 406 would limit subsistence taking of fish and game to people on welfare or with annual family incomes of less than \$8,200 and require them to reveal personal financial and lifestyle details to a local advisory council in order to qualify.
- The bill would diminish the power of the Boards of Fish and Game and, at the same time, would add to their duties. It would do this by transferring their power to newly created regional boards and local advisory committees and, at the same time, by creating an extensive new, quasi-judicial governmental structure to handle the applications for a sustenance priority. The final administrative decision for each contested application would be made by the statewide boards, who are already overburdened with their rule-making duties.
- The bill allows a "regional area preference" that, by requiring that fish and game be eaten in the region where they are taken, effectively establishes a preference for residents who live in that region over residents who live outside of it. This would require amendment of the Alaska Constitution. The Alaska Supreme Court has said that "people who live in a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant." Thus, the "regional area preference" would require an amendment to Article VIII's common use and other "equal access" clauses.
- The bill says that sustenance is a "fundamental right" under the Alaska Constitution. However, our courts have called subsistence only a "highly important interest" - one that does not deserve the same constitutional protection as, say, freedom of speech or freedom of religion. If sustenance is established as a "fundamental right," any attempt by the legislature or the boards to distinguish between residents who are and who are not qualified to participate in the priority will require a higher level of scrutiny by the courts and will have to pass more rigorous tests to satisfy our equal protection clauses.

The Honorable Scott Ogan, Co-Chair
House Resources Committee

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As you are aware, the basic elements included in the proposal submitted by the Task Force on Subsistence are critical to Governor Knowles and to this administration. Ensuring effective state authority over fish and game management on all lands and waters of Alaska is one of our two main goals. HB 406 will not do this, and for that reason we cannot support the legislation in its current form.

Sincerely,



Bruce Botelho
Attorney General



Frank Rue, Commissioner
Alaska Department of Fish and Game

cc: Members, House Resources Committee
The Honorable Gail Phillips, Speaker, House of Representatives
Pat Pourchot, Legislative Director, Office of the Governor
Geron Bruce, Legislative Liaison, Department of Fish and Game
Chrystal Smith, Legislative Liaison, Department of Law
Steve White, Assistant Attorney General
Mary Pete, Director, Subsistence Division, Department of Fish and Game

CS FOR HB 406

An Act Relating to fish and Game

Summary Points

2/27/98

1. Establishes that the ability to take fish and game for personal and family use for sustenance is a fundamental right under the Constitution of the State of Alaska.
2. Establishes that the harvest of fish and game for personal and family use for sustenance by residents is the highest and best use of fish and game.
3. Authorizes the Boards of Fisheries and Game to establish fish and game dependent use areas where dependence on fish and game for personal and family use for sustenance is the principal characteristic of the economy and way of life of the area.
4. Authorizes the Board of Fisheries or Board of Game, after determining that a shortage exists, to establish a preference for fish and game dependent uses.
5. In times of shortage, the Boards may require that the flesh or meat of fish and game must be consumed within the region where the fish or game was taken.
6. Defines a dependent fish and game user as one who:
 - possesses a \$5 resident hunting, trapping and sport fishing license.
 - is dependent on fish and game for personal and family use for sustenance or has no alternative means of sustenance or has decided to adopt a fish and game dependent life style.
 - has consumed a variety of species of fish and game as decided by the Boards
 - has shared fish and game with a minimum number of households as established by the Boards
7. Provides for Local Advisory Committee participation in the individual eligibility for a preference within their area.
8. Establishes 5 Regional Boards consisting of 9 members appointed by the Governor and confirmed by the legislature.
9. Requires regulation proposal to go through Local Advisory Committees and newly established Regional Boards.
10. The Regional Boards are required to give deference to Local Advisory Committee recommendations and the Statewide Boards of Fisheries and Game are required to give deference to recommendations of the Regional Boards. Several

criteria are established to guide when and how recommendations of the Advisory Committee's and Regional Boards can be overturned or rejected.

11. Provides for non-commercial bartering .
12. Provides a two year transitional period.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

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February 27, 1998

rene

The Honorable ~~Jean~~ Nicholia
Alaska House of Representatives
State Capitol, Room 409
Juneau, AK 99701-1182

Re: CS HB 406 (Resources)

Dear Representative Nicholia:

You have asked several questions about CS HB 406 (Resources), a bill dealing with subsistence. Your questions, and our responses, are set out below.

1. Does this legislation comply with Title VIII of ANILCA and if not, why?

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), nonwasteful subsistence uses of fish wildlife are the priority, consumptive uses of those resources on the federal public lands of Alaska. 16 U.S.C. § 3112. When it is necessary to restrict harvest of those resources, subsistence uses have a preference over other uses, like sport hunting and commercial fishing. 16 U.S.C. § 3114.

ANILCA defines "subsistence uses" as uses by rural Alaska residents. 16 U.S.C. § 3113. In its present form, ANILCA defines "rural Alaska resident" as "a resident of a rural community or rural area." A "rural community or area" is defined as "a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses. Pub.L. No 105-83 (1997).¹

¹ The ANILCA definitions will be repealed on December 1, 1998, if by that date the state has not adopted laws that provide for the subsistence definition, preference, and participation specified in that law. Pub.L. No. 105-83 (1997). In that event, ANILCA will not
(continued...)

In contrast to ANILCA, CS HB 406 does not define eligibility for the "sustenance" priority in terms of the characteristics of communities or areas. Instead, the bill sets out individual criteria for that eligibility. Under those criteria, a person must: (1) possess a hunting, fishing, or trapping license which is only available to persons who have received public assistance or who have lower income; (2) depend on fish and game for sustenance or lack an alternative means of sustenance; (3) have consumed within the past 12 months a certain number of species of fish and game; and (4) have shared or received fish and game from other households. All of the individual criteria must be met before a resident will be entitled to enjoy the "sustenance" priority. Proposed AS 16.16.020(c), section 2 of CS HB 406.

Under ANILCA, the state is entitled to manage subsistence hunting and fishing on federal public lands if it adopts laws "which are consistent with, and which provide for the definition, preference, and participation specified in . . ." that federal law. 16 U.S.C. § 3115(d), emphasis added. The question, then, is whether the two sets of criteria for participating in subsistence/sustenance -- the rural residency criteria of ANILCA and the individual criteria of CS HB 406 -- are "consistent."

The question can best be answered by examining the judicial treatment of an earlier "consistency" dispute. In 1988, the Ninth Circuit Court of Appeals compared the state's definition of "rural," which looked at whether traditional uses were a principal characteristic of an area, with a definition of rural that the court could derive from ANILCA.² The court concluded that the state's definition was not consistent with the common understanding of "rural," i.e., areas of sparse population. Its conclusion was based on a comparison of the geographic areas that would qualify under each. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 316-318 (9th Cir. 1988) The court noted that the Kenai Peninsula would qualify under its interpretation of "rural," but that it did not qualify under the state's definition. Because the state's definition would exclude practically all areas that would be commonly thought of as rural, the court concluded that the definition was not consistent with ANILCA. *Id.*

We believe that a court would follow a similar approach to determine if the individual criteria of CS HB 406 are consistent

¹ (...continued)
have a statutory definition of "rural."

² At that time, ANILCA had no statutory definition of "rural."

with ANILCA's definition. A court could not compare geographic areas because CS HB 406 does not use a person's place of residence as a qualifier. Instead, a court would likely compare the two groups who would qualify. If the membership of the group qualifying under the rural residency criteria differed significantly from the membership of the group qualifying under the individual characteristics criteria, it is likely that a court would find them inconsistent.

It is probable that the makeup of the two groups would be different. Under ANILCA, residents of all rural communities and areas qualify. Under the individual criteria of CS HB 406 some urban residents would qualify, and some rural residents would not qualify. Although not certain, it is likely that the number of sustenance users qualified by CS HB 406 would be fewer than the number qualified by ANILCA. Because of this probable difference in group makeup and size, we believe that a court would conclude that the bill does not "provide for the . . . participation specified in . . ." ANILCA (16 U.S.C. § 3115(d)). Thus, the two would be found inconsistent, and the state would not be entitled to manage subsistence on federal public lands in Alaska.

2. Does this legislation raise constitutional issues and if so, what are they?

CS HB 406 has a "regional area preference." Under section 2, "In a time of shortage of fish or game resources, the appropriate board may adopt a regional preference among beneficial uses of fish and game by requiring that the flesh or meat of fish and game be consumed within the region where the fish or game was taken."

Representative Ogan said that this is a key element of the bill. He believes that it is constitutional because it is a "preference among beneficial uses."³

Presumably, the "beneficial use" contemplated by the bill is the consumption of subsistence fish and game. To date, the Alaska Supreme Court has not recognized consumption as a "use" under the Alaska Constitution. The only recognized uses are commercial, sport (recreational), subsistence, and personal use. That is not to say, however, that the Court would not accept

³ Article VIII, section 4, of the Alaska Constitution allows "preferences among beneficial uses." the Alaska Supreme Court has held that because those preferences do not restrict admission to a resource user group, they are permissible under that clause and the other "equal access" clauses. *Gilbert v. Department of Fish & Game*, 803 P.2d 391 (Alaska 1990).

consumption as a beneficial use.

A constitutional problem arises because "consumption" must be in a particular geographic place, specifically the region where the fish and game are harvested. If the Boards adopted such a regional preference, it would significantly restrict the opportunity of residents living outside of a region to harvest subsistence resources in the region. For example, a person living outside a region who shot a subsistence moose would have to either: (1) remain in the region until the person or the person's family consumed the moose; or (2) give the moose away to non-family persons who do live in the region. The first option is impractical. Few persons would find it reasonable to set up a temporary household for weeks or months in a different region just to consume fish and game harvested there. The second option is contrary to the purpose of HB 406. If the harvester had to give the fish and game away to non-family members, the activity would no longer be "the harvest of fish and game for personal and family use for sustenance." CS HB 406, § 1.

Essentially, the "regional area preference" provision establishes a preference for subsistence harvest based on one's place of residence. Although it does not, on its face, exclude harvest by persons outside of a region, in its practical application, the only persons who could consume the fish and game in the region are those who live there. They would have a significant advantage, if not a monopoly, to those resources because of their closer proximity. Indeed, Representative Ogan said the purpose for the amendment is to make sure that, in times of shortage, persons are given a preference for harvesting fish and game in their own regions.

Since *McDowell*, the Alaska Supreme Court has said that, under the present Article VIII "equal access" clauses of the Alaska Constitution -- the clauses guaranteeing common use, prohibiting exclusive rights of fisheries, and requiring uniform application of natural resource laws -- the right to harvest subsistence resources cannot be based upon the location of a person's residence. Most recently, the Court, when discussing *McDowell*, said, "We both quoted and stressed language holding that people who reside near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant. . . . Just as eligibility to participate in all subsistence hunting and fishing cannot be made dependent on whether one lives in an urban or rural area, eligibility to participate in Tier II subsistence hunting and fishing cannot be based on how close one lives to a given fish or game population." *State v. Kenaitze*, 894 P.2d 632, 638 (Alaska 1995). Under that principle, the Court struck down the Tier II proximity criterion. *Id.*

The Honorable Jean Nicholia
Alaska House of Representatives
Re: CS HB 406 (Resources)

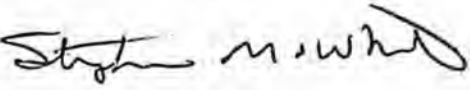
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The intended purpose and the practical effect of the "regional area preference" is to give certain residents a "higher claim" to subsistence resources because they live closer to them. For that reason, it is unlikely that the preference would survive a legal challenge under the present "equal access clauses." For the preference to be constitutional, Article VIII would have to be amended to allow a priority for subsistence hunting and fishing that is based upon a person's place of residence.

Please contact me if I can assist you further.

Sincerely yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Stephen M. White
Assistant Attorney General

SMW:lmt:pch

J:\WHITE\NICHOLIA.WPD

LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

February 26, 1998

SUBJECT: CSHB 406(RES); Consistency with ANILCA (CSHB 406(RES))

TO: Representative Irene Nicholia
Attn: Paula Terrel

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether CSHB 406(RES), version H, if enacted, would satisfy the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) for resumption of state management of subsistence uses of fish and game on federal public lands.

The short answer is no.

Under 16 U.S.C. 3115, as amended by P.L. 105-83, sec. 316(e)(6), the State of Alaska "may immediately assume management for the taking of fish and wildlife on the public lands for subsistence uses" if the Secretary of the Interior and the Secretary of Agriculture certify that the state has "enacted and implemented laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in [16 U.S.C. 3113, 3114, and 3115]".

CSHB 406(RES) does not provide for either the definition, preference, or participation necessary to satisfy the current requirements of Title VIII of ANILCA.

DEFINITION. ANILCA defines "subsistence uses" as the customary and traditional uses by rural Alaska residents of wild renewable resources for certain specified purposes.

CSHB 406(RES) provides for the use of fish and game for personal and family use for sustenance (fish and game dependent uses). Such uses are available to all Alaska residents without regard to whether they reside in rural areas or urban areas. Even in times of shortage, use of fish and game for fish and game dependent uses is not limited to rural residents.

Representative Irene Nicholia
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ANILCA provides that subsistence uses of fish and game include customary trade. CSHB 406(RES) does not authorize customary trade of fish and game taken for fish and game dependent uses.

PREFERENCE FOR SUBSISTENCE USES. ANILCA provides that subsistence uses shall be accorded a priority over the taking of fish and game for other purposes. ANILCA also provides that, when necessary to protect fish and game populations or to protect continued subsistence uses of fish and game, access to the fish or game by subsistence users be limited in accordance with the subsistence user's customary and direct dependence on the fish or game population as a mainstay of livelihood, local residency, and the availability of alternative resources.

CSHB 406(RES) does not accord a preference for fish and game dependent uses of fish and game over all other uses of fish and game. In the event of shortage of fish or game, such that there is not sufficient fish or game to reasonably provide for the sustenance needs of persons who are dependent on fish and game for personal and family use for sustenance, then the Board of Fisheries or the Board of Game, as appropriate, may reserve a portion of the resource for fish and game dependent uses of fish and game and establish a preference to provide a reasonable opportunity to satisfy the need for fish and game dependent uses. Under CSHB 406(RES) the establishment of a preference for fish and game dependent uses is discretionary with the boards and would apply only in a situation that is considered to be a Tier II situation under ANILCA. The criteria for determining who may benefit from the establishment of a preference for fish and game dependent uses is tied to the person's financial or economic status and the person's recent dependence upon and use of fish and game for personal and family use for sustenance. Unlike ANILCA, eligibility for fish and game dependent uses is not tied to rural residency, customary dependency on fish and game, or proximity of residence to the resource.

LOCAL AND REGIONAL PARTICIPATION. ANILCA provides for the establishment of at least six subsistence resource regions. Each region is to have a regional advisory council of ten members. Four of the members of the council are to be residents of the region who have been nominated by tribal councils in the region. The remaining six members are to be nominated by local governments and local advisory committees in the region. Three of the remaining six members are to be subsistence users who reside in the region and the last three members are to be sport or commercial users who may reside in any subsistence resource region in the state. ANILCA also provides that there should be as many local advisory committees as the Secretary of the Interior and the Secretary of Agriculture determine necessary to assist the regional advisory councils in performing their duties.

CSHB 406(RES) provides that a maximum of five fish and game management regions be established in the state. Each region is to have a regional fish and game board consisting of nine members. Each of the members of the regional boards is to be appointed by the governor, subject to confirmation by the legislature, from lists of persons submitted by the

Representative Irene Nicholia

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local fish and game advisory committees. The members of the regional boards are not required to be from specific areas of the state or region or to be members of particular user groups. CSHB 406(RES) provides that there be a maximum of nine local fish and game advisory committees in each region.

There are also many additional details regarding local and regional participation that are addressed by ANILCA and CSHB 406(RES). In some matters the two pieces of legislation agree, in other matters they take different approaches, and in still other matters one or the other pieces of legislation is silent on.

In conclusion, there are such differences between what CSHB 406(RES) does in regard to fish and game dependent uses of fish and game and the requirements imposed under ANILCA as prerequisite for resumption of state management of subsistence uses of fish and game on federal public lands, that CSHB 406(RES) does not provide a basis on which the state may resume management of fish and game on federal public lands. Either CSHB 406(RES) or ANILCA, or both, would have to be changed before HB 406 could provide a basis on which the State of Alaska could resume management of fish and game on federal public land in Alaska.

If I may be of further assistance, please advise.

GU:glc

98-107.glc

HOUSE BILL – 406

QUICK REFERENCE *** SECTION BY SECTION

1. FINDINGS AND INTENT
2. ***INSTRUCTS DEPARTMENT AND BOARDS TO IMPLIMENT PREFERENCE FOR SUSTENANCE.***

SETS OUT CRITERIA ESTABLISHING ***REGIONS OF PREFERENCE*** AND ***BASIC CRITERIA FOR PEOPLE WHO APPLY FOR SUCH USE.***

ESTABLISHES APPEAL PROCESS FOR THOSE DENIED A PREFERENCE.

GIVES LOCAL ADVISORY AND REGIONAL BOARDS ***GREATER WEIGHT IN THEIR DECISIONS.***

ESTABLISHES LIMITS ON ***COMMERCIAL ACTIVITY.***

DEFINES: ***PRINCIPAL CHARACTERISTIC, REASONABLE OPPORTUNITY, SHORTAGE, and SUSTAINED YIELD***
3. CHANGES NAME IN DEPARTMENT FROM SUBSISTENCE TO FISH AND GAME DEPENDENT USE.
4. SAME AS ABOVE.
5. ***ESTABLISHES FILTERING PROCESS FOR REGULATIONS UP THROUGH LOCAL ADVISORY COMMITTEES – REGIONAL BOARDS – ON TO STATE BOARDS.***
6. CHANGES TERMINOLOGY IN EXISTING STATUTE TO BE CONSISTENT WITH PERSONAL AND FAMILY SUSTENANCE.
7. CHANGES STATUTE NUMBER AND REFERENCE FOR CONSISTENCY.
8. CHANGES TERMINOLOGY FOR CONSISTENCY.
9. CHANGES STATUTE NUMBER AND REFERENCE FOR CONSISTENCY.
10. CHANGES TERMINOLOGY FOR CONSISTENCY.
11. CHANGES TERMINOLOGY FOR CONSISTENCY.

12. ***SETS OUT LOCAL ADVISORY DUTIES*** AND STRUCTURE AND GIVES THEM MORE ABILITY TO DETERMINE WHOM IN THEIR AREA IS DEPENDENT OF FISH AND GAME.
13. DELEGATION OF AUTHORITY TO REGIONAL BOARDS AS WELL AS COMMISSIONER WITH FINAL DECISION GOING TO GOVERNOR.
14. CHANGING OF TERMINOLOGY.
15. CHANGING OF TERMINOLOGY.
16. ***CHANGES CONCEPT OF BARTER*** AND ESTABLISHES THE NON-COMMERCIAL ASPECTS OF PERSONAL AND FAMILY USE FOR SUSTENANCE.
17. CHANGE OF TERMINOLOGY
18. CHANGE OF TERMINOLOGY
19. ***DEFINES FISH AND GAME DEPENDENT USES.***
20. ***ESTABLISHES PERSONAL AND FAMILY USE FOR SUSTENANCE AS A USER GROUP.***
21. CHANGES TERMINOLOGY IN EXISTING STATUTE TO CONFORM WITH BILL. (SUCH AS SUBSITENCE TO SUSTENANCE)
- 22.
- 23.
- 24.
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- 26.
- 27.
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- 30.
- 31.



32. REPEALERS
33. REPEALER
34. *TRANSITION* LANGUAGE TO ALLOW NEW PROCESS TO BE PUT IN PLACE WITH AS FEW DISRUPTIONS AS POSSIBLE TO EXISTING PROCESS.
35. NOMINATION OF REGIONAL FISH AND GAME MEMBERS.
36. REVISOR'S INSTRUCTIONS.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 27, 1992

WALTER J. HICKEL, GOVERNOR

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The Honorable Lyman F. Hoffman
Senate Bush Caucus Chair
P.O. Box V
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The Honorable Georgianna Lincoln
House Bush Caucus Chair
P.O. Box V
Juneau, Alaska 99811

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 Owsichuk 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. 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 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

The Honorable Lyman F. Hoffman
The Honorable Georgianna Lincoln

March 27, 1992
Page 12

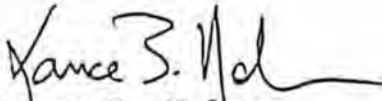
ANILCA. 16 U.S.C. Sec. 3114(2). The language of the new legislation is not intended to represent a change from existing law, or from ANILCA, but is intended to more clearly state how "local residency" will be measured. If the Tier II provision of the subsistence legislation did not contain a "local residency/proximity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

was given to ANIC on July 29, rather than July 31 as determined by the Board.

This issue has been waived because it was raised first in the reply brief. Alaska R.App.P. 212(c)(3) (The reply brief "may raise no contentions not previously raised in either the appellant's or appellee's briefs."); *Conam Alaska v. Bell Lavalin, Inc.*, 842 P.2d 148, 158 (Alaska 1992). If Sumner intended to argue that the Board's finding was clearly erroneous, or not supported by substantial evidence, he should have done so in his points on appeal, or at least in his opening brief.

D. *There Is No Basis for Awarding a Penalty*

[9] Sumner observes that the Board did not determine whether the controversy was made in bad faith. He contends that this determination should have been made because he believes that bad faith warrants the imposition of a penalty regardless of the promptness of payment.

Sumner cites *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352, 358 (Alaska 1992), for support. *Harp* is inapposite. *Harp* dealt with an allegedly good faith controversy as a means of avoiding a penalty for a delayed payment. The instant case involves no delay; rather, Sumner alleges bad faith as a means of imposing a penalty. The controversy was timely. It was a simple letter to the examining doctor requesting clarification. It did not delay Sumner's receipt of PPI beyond the allotted time.

Sumner provides no other legal basis for imposition of a penalty. Thus, his claim fails.

III. CONCLUSION

The Board reasonably, and in our view correctly, interpreted and applied AS 23.30.155(b) and (e) to the timeliness of PPI payments under section 190. The issue regarding the Board's decision that notice was given to ANIC on July 31 has been waived. All other grounds for reversal argued by

Sumner are unpersuasive. Thus, the judgment of the superior court is AFFIRMED.



STATE of Alaska and Carl L. Roeler, in his official capacity as Commissioner of Fish and Game, Appellants,

v.

KENAITZE INDIAN TRIBE, Ninilchik Traditional Council, Knik Tribal Council, and the Native Village of Eklutna, Appellees.

No. S-6162.

Supreme Court of Alaska.

May 9, 1995.

Rehearing Denied June 2, 1995.

Indian tribe brought action challenging constitutionality of subsistence hunting and fishing statute. The Superior Court, Third Judicial District, Anchorage, Dana Fabe, J., ruled that portions of statute were unconstitutional, and appeal was taken. The Supreme Court, Matthews, J., held that: (1) provision of subsistence hunting and fishing statute using proximity of domicile of "Tier II" subsistence permit applicant to fish or game population which applicant wished to harvest as basis for applicant's eligibility violated equal access clauses of Alaska Constitution; (2) unconstitutional provision was severable from remainder of statute; and (3) provision of subsistence hunting and fishing statute requiring creation of areas in which permits for subsistence hunting and fishing could not be granted did not violate equal access clauses.

Reversed and remanded.

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Thus, the judgment is AFFIRMED.

1. Constitutional Law ⇨328

Fish ⇨9

Game ⇨4

Provision of subsistence hunting and fishing statute using proximity of domicile of "Tier II" subsistence permit applicant to fish or game population which applicant wished to harvest as basis for applicant's eligibility violated equal access clauses of Alaska Constitution. Const. Art. 8, §§ 3, 15, 17; AS 16.05.258(b)(4)(B)(ii).

2. Statutes ⇨64(2)

Unconstitutional provision of subsistence hunting and fishing statute, using proximity of domicile of "Tier II" subsistence permit applicant to fish and game population which applicant wished to harvest as basis for applicant's eligibility, was severable from remainder of statute. Const. Art. 8, §§ 3, 15, 17; AS 01.10.030, 16.05.258(b)(4)(B)(ii).

1. Constitutional Law ⇨328

Fish ⇨9

Game ⇨4

Provision of subsistence hunting and fishing statute requiring creation of areas in which permits for subsistence hunting and fishing could not be granted did not violate equal access clauses of Alaska Constitution. Const. Art. 8, §§ 3, 15, 17; AS 16.05.258(c).

Stephen M. White, Asst. Atty. Gen., Juneau; T. Henry Wilson, Asst. Atty. Gen., Anchorage, Bruce M. Botelho, Atty. Gen., Juneau, for appellants.

Carol H. Daniel, Alaska Legal Services Corp., Eric Smith, Anchorage, William E. Caldwell, Alaska Legal Services Corp., Fairbanks, for appellees.

Before MOORE, C.J., and RABINOWITZ, MATTHEWS, COMPTON and EASTAUGH, JJ.

1. Ch. 151, § 5, SLA 1978; *Madison v. Alaska Dep't of Fish & Game*, 696 P.2d 168, 174 n. 12 (Alaska 1985).

2. AS 16.05.258(b)(4), set forth at note 18 *infra*.

OPINION

MATTHEWS, Justice.

The issues in this case are whether the Alaska Constitution is violated by a statute which (1) requires the creation of areas in which permits for subsistence hunting and fishing may not be granted, and (2) grants priority hunting and fishing rights to a preferred class of subsistence users based on where they reside.

I. BACKGROUND

Since 1978, subsistence hunting and fishing has had statutory priority over sport and commercial hunting and fishing.¹ In practice, when a fish or game population is insufficient to supply all consumptive uses consistent with the sustained yield principle, non-subsistence uses must be restricted; when a population is sufficient only to supply subsistence uses, nonsubsistence uses must be eliminated.²

From the outset, the statute establishing the subsistence priority created two tiers of subsistence users.³ The first tier includes all subsistence users.⁴ The second tier is more restricted. Tier II status becomes important when a fish or game population is inadequate to satisfy all subsistence needs. In such cases Tier I users' harvest opportunities must be curtailed or eliminated so that Tier II users can harvest the population.⁵

Under the current statutory formulation the Boards of Fisheries and Game define Tier II subsistence users based on:

- (i) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;
- (ii) the proximity of the domicile of the subsistence user to the stock or population; and

3. Ch. 151, § 4, SLA 1978.

4. AS 16.05.258(b)(3), set forth at note 18 *infra*.

5. AS 16.05.258(b)(4), set forth at note 18 *infra*.

of L. Rosier, in Commissioner Appellants,

IBE, Ninihchik Tribal Council of Eklutna,

Alaska.

June 2, 1995.

petition challenging the hunting and fishing statute. The Court, Third Circuit, Dana Fabe, J., was divided. The Supreme Court held that: (1) the hunting and fishing statute using proximity of domicile of "Tier II" permit applicant to fish or game population which applicant wished to harvest as basis for applicant's eligibility violated Alaska Constitution; and (2) the hunting and fishing statute requiring creation of areas in which permits for subsistence hunting and fishing could not be granted did not violate equal access clauses of Alaska Constitution.

ALASKA COURT REPORTERS ASSOCIATION

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

AS 16.05.258(b)(4)(B).

In 1986 the subsistence statute was amended to define subsistence hunting and fishing as activities which can be undertaken "only by a resident domiciled in a rural area of the state."⁶ The term "subsistence uses" was also defined as requiring residency in a rural area.⁷ A rural area, in turn, was defined as "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."⁸ Subsistence activities were limited to rural areas.⁹

In *McDowell v. State*, 785 P.2d 1 (Alaska 1989), we held that the 1986 statute was unconstitutional insofar as it disqualified as subsistence users residents of areas classified as nonrural. Following *McDowell*, all Alaskans became eligible to participate in subsistence hunting and fishing. *State v. Morry*, 836 P.2d 358, 368 (Alaska 1992).

In 1992 the legislature revised the subsistence statute.¹⁰ As revised, the statute continues to grant subsistence a priority over other consumptive uses and continues to provide for two tiers of subsistence users.¹¹ However, the new statute also requires the Boards to identify nonsubsistence areas—areas where no subsistence priority exists.¹² The definition of a nonsubsistence area under the 1992 revision, "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 communi-

ty," is essentially the negative of the definition of "rural area" which is still defined as "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."¹³ The nonsubsistence provisions of the 1992 revisions to AS 16.05.258 expire on October 1, 1995, and the 1986 version again becomes law.¹⁴

Pursuant to the 1992 revisions, the Boards established the "Anchorage/MatSu/Kenai nonsubsistence area" encompassing most of the Kenai Peninsula, all of the Municipality of Anchorage, and much of the Matanuska Susitna Borough. In addition, the Boards established nonsubsistence areas in regions surrounding Fairbanks, Ketchikan, Juneau, and Valdez. 5 AAC 99.015.

11. PROCEEDINGS BELOW

The Kenaitze Indian Tribe filed suit in 1991, seeking a judicial declaration (1) that it was entitled to operate a communal set net in the Kenai River and (2) that the State was not managing the salmon stocks in Upper Cook Inlet in accordance with the subsistence priority as required by law. When the Boards established the Anchorage/MatSu/Kenai nonsubsistence area, Kenaitze amended its complaint to state claims that the nonsubsistence area violated its members' state constitutional rights under the equal access clauses of article VIII, sections 3, 15, and 17, and the equal rights and opportunities clause of article I, section 1 of the Alaska Constitution. Further, Kenaitze claimed that the Boards' creation of the An-

chorage/MatSu/Kenai nonsubsistence areas, that are customarily and traditionally used for subsistence in each rural area identified by the boards.

6. Ch. 52, §§ 9, 11, SLA 1978; AS 16.05.940(28)-(29) (1986); *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

7. Ch. 52, § 10, SLA 1978; AS 16.05.940(30) (1986).

8. Ch. 52, § 11, SLA 1978; AS 16.05.940(25) (1986).

9. Ch. 52, § 6, SLA 1978; AS 16.05.258(a) (1986) provided:

The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and popula-

10. Ch. 1, SSSLA (Second Special Session Law Amended) 1992.

11. AS 16.05.258(b)(4)(B) set forth at note 11 *infra*.

12. AS 16.05.258(c) set forth at note 18 *infra*.

13. AS 16.05.940(27).

14. Ch. 1, §§ 3, 12, SSSLA 1992.

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orage/MatSu/Kensi nonsubsistence area
was not in compliance with the 1992 statute
because the Boards had exceeded their au-
thority and acted arbitrarily. The Ninilchik
Traditional Council, the Native Village of
Eklutna, and the Knik Tribal Council inter-
vened and filed similar claims.¹⁵

The State and Kenaitze filed cross-motions
for partial summary judgment on their con-
stitutional claims. The superior court grant-
ed the motion of Kenaitze and denied that of
the State. The court entered a final judg-
ment declaring the nonsubsistence area pro-
vision of the 1992 act unconstitutional in vio-
lation of article VIII, sections 3, 15, and 17 of
the Alaska Constitution and therefore void,
and severed AS 16.05.258(c) from the remain-
der of the 1992 act. The other claims of
Kenaitze were declared moot. The State
now appeals.

Briefly stated, the rationale of the superior
court was as follows. Residents of nonsub-
sistence areas and residents of subsistence
areas are similarly situated classes. The for-
mer are treated differently than the latter
because "only residents outside of nonsubsis-
tence areas . . . are afforded convenient local
subsistence access to fish and game re-
sources." Moreover, when fish and game
populations are insufficient to satisfy all sub-
sistence needs and the Tier II preference is
invoked, "residents of nonsubsistence areas
will inevitably suffer compared to other sub-
sistence users," because the section which
determines who may become a Tier II hunter
or fisherman "requires consideration of 'the
proximity of the domicile of the subsistence
user to the stock or population.' AS
16.05.258(b)(4)(B)(ii)." This differential
treatment may be justified by the need to
allocate fish and wildlife resources "given the
key social and economic roles that subsis-
tence, sport, and commercial fishing and
hunting play in the state, as well as the
mandate of article VIII, section 4 of the
Alaska Constitution that replenishable re-
source utilization be 'subject to preferences
among beneficial uses.'" However, based on

15. We will hereafter refer to all the appellees as
"Kenaitze."

16. Our order stated: "To the extent that 'tier
two' subsistence users are permitted to take fish

language in *Gilbert v. State*, 803 P.2d 391,
399 (Alaska 1990), an allocation must restrict
competing uses to the least possible extent
consistent with the purpose of the allocation.
Alaska Statute 16.05.258(c) fails to meet this
requirement as it bars subsistence in a par-
ticular area without requiring consideration
of resource availability: "To create areas
where subsistence activities are flatly prohib-
ited, without consideration of whether the
resources in the area could support some
kind of balance between subsistence, sport
and commercial hunting and fishing, does not
further the state's expressed purpose to 'allo-
cate' resources among user groups." The
superior court concluded as follows:

Stepping back to view the statute in
light of its history, it becomes apparent
that the criteria in AS 16.05.258(c) for de-
termining nonsubsistence areas effectively
re-establish the rural/urban residency re-
quirement struck down in *McDowell*. The
statutory language defining "rural areas"
in the 1986 statute is repeated in the defi-
nition of "nonsubsistence areas" under the
1992 statute. Compare AS 16.05.940(25)
(1986) with AS 16.05.258(c) (1992). The
only significant change has been to do
away with the requirement that only rural
residents may become members of the
subsistence user class, although subsis-
tence use is still allowed only in rural
areas. The statute, by selectively prohibi-
ting local subsistence activities and confer-
ring "tier two" advantages based on the
proximity of one's domicile to available
subsistence resources, is plainly discrimi-
natory against residents of nonsubsistence
areas. Such a substantially residency-
based classification scheme, under *McDo-
well*, violates the equal access clauses of
the Alaska Constitution.

Because of the importance of the role that
the Tier II domicile factor assumed in the
rationale of the superior court, we ordered
that the parties brief the constitutionality of
this factor along with the other issues in the
case.¹⁶

and game for subsistence use based on the 'prox-
imity of the domicile of the subsistence user to
the stock or population.' AS
16.05.258(b)(4)(B)(ii), is tier two unconstitutional

ALASKA JUDICIAL

III. DISCUSSION

A. Relevant Constitutional and Statutory Provisions

The equal access clauses of the Alaska Constitution are article VIII, sections 3, 15,

under *McDowell v. State*, 785 P.2d 1 (Alaska 1989):"

17. Section 3 of article VIII provides:

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

Section 4 of article VIII provides:

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.

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 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.

18. AS 16.05.258 provides:

(a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required under this subsection after receipt of the commissioner's recommendations.

(b) The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) of this section can be harvested consistent with sustained yield. If a portion of a stock or population can be harvested consistent with sustained yield, the board shall determine the amount of the harvestable portion that is reasonably necessary for subsistence uses and

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

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

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

and 17; the sustained yield clause is contained in article VIII, section 4.¹⁷ Alaska Statute 16.05.258 is the current subsistence statute.^{18,19} Section 1 of chapter 1, SSSLA

(C) may adopt regulations to differentiate among uses;

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

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

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

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

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses; and

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

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

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

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

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

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

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area 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. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

19. See note on page 637.

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STATE v. KENAITZE INDIAN TRIBE

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1992 contains the legislative findings, purpose and intent with respect to the 1992 subsistence revisions.²⁰

- (1) the social and economic structure;
- (2) the stability of the economy;
- (3) the extent and the 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 or community;
- (5) the cost and availability of goods and services to those domiciled in the area or community;
- (6) the variety of fish and game species used by those domiciled in the area or community;
- (7) the seasonal cycle of economic activity;
- (8) the percentage of those domiciled in the area or community 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 or community;
- (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 or community hunt and fish;
- (12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;
- (13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.

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

(e) Takings and uses of fish and game authorized under this section are subject to regulations regarding open and closed areas, seasons, methods and means, marking and identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(f) For purposes of this section, "reasonable opportunity" means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.

19. AS 16.05.940, also relevant, provides in part:

(7) "customary and traditional" means the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of the fish or game;

(24) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska resi-

dents 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;

(27) "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;

(30) "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;

(31) "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;

(32) "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[]

20. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

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

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

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

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B. *Is the "Proximity of the Domicile" Factor Unconstitutional?*

[1] We turn first to the question of whether linking eligibility for Tier II subsistence status to "proximity of the domicile of the subsistence user" to the target fish or game population violates article VIII, sections 3, 15, and 17 of the Alaska Constitution. This question is governed by our decision in *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

At issue in *McDowell* was whether provisions in the 1986 subsistence statute which barred all nonrural Alaska residents from eligibility as first or second tier subsistence users violated the article VIII equal access clauses. *Id.* at 1. We held that the rural preference was a special privilege explicitly barred by the first sentence of section 15 and implicitly barred by the common use and equal application clauses, sections 3 and 17. *Id.* at 6, 9. We concluded "that the requirement contained in the 1986 subsistence statute, that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution." *Id.* at 9.

Concerning sections 3, 15, and 17 of article VIII, we observed that while they have varied ramifications they share one meaning: "exclusive or special privileges to take fish and wildlife are prohibited." *Id.* at 6. We noted that these clauses afford protection against the creation of a "closed class" of fish and game users. *Id.* at 6-7. We observed that although the state was empowered to make decisions concerning which among such diverse groups as commercial, sport and subsistence users would have a preferred right

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

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

(b) It is the purpose of this Act

(1) to develop and maintain healthy fish stocks and game populations through manage-

to harvest a certain species, that authority "does not imply a power to limit admission to a user group." *Id.* at 8. We explained that the constitution does not bar "all methods of exclusion where exclusion is required for species protection reasons." *Id.* at 9. While we had no occasion to state what exclusionary criteria might be permissible in such circumstances, the opinion makes it clear that residence-based criteria are not permissible. We both quoted and stressed language holding that people who reside near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant:

Where the necessity for the preservation of the wild game and fish exists in certain territories of the state, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; *but the privilege of taking and using same must be extended to the people of the state outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation.*

Id. at 12 (quoting *Lewis v. State*, 110 Ark. 204, 161 S.W. 154, 155-56 (1913)) (emphasis added by this court in *McDowell*).

Our holding in *McDowell* is controlling here. The requirements of the equal access clauses apply to both tiers of subsistence users. Just as eligibility to participate in all subsistence hunting and fishing cannot be made dependent on whether one lives in an urban or rural area, eligibility to participate in Tier II subsistence hunting and fishing cannot be based on how close one lives to a given fish or game population.²¹

ment based on the sustained yield principle; and

(2) to provide for a preference for subsistence uses over other consumptive uses of fish and game resources.

(c) It is the intent of the legislature that

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

(2) this Act not result in significant reallocations of fish and game in Alaska.

21. Section 3 of article VIII is particularly strong in requiring that proximity to the resource be a neutral factor. It reserves "to the people for

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We conclude that AS 16.05.258(b)(4)(B)(ii), which uses the proximity of the domicile of the Tier II subsistence permit applicant to the fish or game population which the applicant wishes to harvest as a basis for the applicant's eligibility, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution.

[2] The question which flows from this conclusion is whether the entire subsistence statute should be declared unconstitutional or whether AS 16.05.258(b)(4)(B)(ii) may be severed from the rest of the statute.

A general severability clause is contained in AS 01.10.030:

Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language: "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby."

In *Lynden Transport, Inc. v. State*, 532 P.2d 700, 712-13 (Alaska 1975), we indicated that this clause reverses the common law presumption against severability and creates a slight presumption in favor of severability:

A provision will not be deemed severable "unless it appears both that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand, in case others included in the act and held bad should fall."

Id. at 713 (quoting *Dorchy v. Kansas*, 264 U.S. 286, 290, 44 S.Ct. 323, 324, 68 L.Ed. 686 (1924)). "The key question is whether the portion remaining, once the offending portion of the statute is severed, is independent and complete in itself so that it may be presumed that the legislature would have enacted the valid parts without the invalid part." *Sonnenman v. Hickel*, 836 P.2d 936, 941 (Alaska 1992).

common use" wild fish and game "whenever occurring."

22. See note 20 *supra*.

Deleting subpart (ii) from AS 16.05.258(b)(4)(B) results in a subsection which requires the creation of a Tier II class of subsistence users based on dependence on the target fish or game population and the ability of the individual subsistence user to obtain food if subsistence use of the particular population were restricted or eliminated. The subsection as thus redacted is logically complete and capable of being given legal meaning.

Whether the legislature would have intended the subsection as redacted to stand had it known that the proximity of the domicile clause would be held unconstitutional is a question which cannot be answered with complete confidence. However, given the importance of subsistence as reflected in the legislative findings prefacing the 1992 act,²² periods in which individuals needfully dependent on subsistence are deprived of an opportunity to harvest fish or game are to be avoided. A holding that subsection (B)(ii) is not severable could result in such a period. Given this, and the statutory presumption in favor of severability, we conclude that (B)(ii) is severable.

C. Is AS 16.05.258(c) Unconstitutional?

[3] Alaska Statute 16.05.258(c) requires the Boards to "identify by regulation" non-subsistence areas.²³ In these areas, the subsistence priority over sport and commercial uses does not apply, and the statute states that "[t]he boards may not permit subsistence hunting or fishing." However, personal use fishing²⁴ and sport hunting are allowed. As the methods of conducting these pursuits are similar to their subsistence counterparts, the critical difference in non-subsistence areas is the absence of the subsistence priority. When this is appreciated, the superior court's conclusion that section 258(c) authorizes the creation of "areas where subsistence activities are flatly prohibited, without consideration of whether the resources in the area could support some kind of balance between subsistence, sport,

23. AS 16.05.258(c) set forth at note 18 *supra*.

24. See note 18 *supra* for a statutory definition.

cies, that authority to limit admission to

We explained that "all methods of harvest are required for special use areas." *Id.* at 9. While we do not think that what exclusionary language is permissible in such circumstances it is clear that residents whose subsistence is not permissible. The language held in *Id.* near a fish or game area is a higher claim than the residents whose subsistence is not permissible.

the preservation of the subsistence interest which exists in certain areas of that territory may be regulated for the purpose of game and fish management. *Id.* at 10. The purpose of regulation is to provide for the taking and use of fish and game in those areas of the territory upon which the subsistence interest is held by those who have a subsistence interest in that territory embraced in

State, 110 Ark. 1913)) (emphasis added) (Cowell).

It is controlling to the equal access of subsistence users to participate in all activities which cannot be done by one who lives in an area and who is unable to participate in hunting and fishing activities. *Id.* at 10. ²¹

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significant reallocation of resources in Alaska.

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While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species in the same area must also be allowed, would be to go far beyond the purpose of the section.

628 P.2d at 904.

The fact that residents of nonsubsistence areas must travel in order to utilize subsistence permits is not a limitation to their admission to a subsistence user group.³¹ Further, just as the fact that a certain species is made available for sport fishing in a given area does not mean that the same species must be made available for commercial fishing in the same area, the fact that a certain species is made available for sport or commercial use in a given area does not mean that the constitution commands that the same species be made available in the same area for priority subsistence use.

The legislature has mandated that the Boards, in determining which areas are to be nonsubsistence areas, make decisions allocating fish and game resources among competing users. Such decisions are constitutionally required under article VIII, section 4 of the Alaska Constitution.³² "The state may, indeed must, make allocation decisions between sport, commercial, and subsistence

users." *McDowell v. State*, 786 P.2d 1, 8 (Alaska 1989). Allocation decisions entail a complex mixture of biological, historical, and socio-economic factors.³³ These factors are "often competing." *Tongass Sport Fishing Ass'n*, 866 P.2d at 1319.

In reviewing allocation decisions made by the Board, a deferential standard of review is employed. Board decisions are upheld so long as they are not unreasonable or arbitrary and proper procedures have been followed. *Id.* (Board's decision favorable to commercial trollers concerning allocation of king salmon in Southeast Alaska not "unreasonable or arbitrary"); *Gilbert v. State, Dep't of Fish & Game*, 803 P.2d 391, 399 (Alaska 1990) (Board's decision allocating sockeye salmon between commercial fishing interests in two areas on the Alaska Peninsula not arbitrary or unreasonable); *Meier v. State, Bd. of Fisheries*, 739 P.2d 172, 174-175 (Alaska 1987) (Board's decision allocating sockeye salmon between commercial setnetters and driftnetters in Bristol Bay "reasonable and not arbitrary."). We have not subjected allocation decisions to the more rigorous least restrictive alternative test employed in cases where entry into a user class is restricted. Compare *McDowell*, 785 P.2d at 10; *Ovsi- chek*, 763 P.2d at 498 n. 17; and *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256, 1266 (Alaska 1988), with *Tongass*, 866 P.2d at 1319; *Gilbert*, 803 P.2d at 399; and *Meier*, 739 P.2d at 175.³⁴ Allocation

31. In *State v. Hebert*, 803 P.2d 863 (Alaska 1990), we upheld against a claim of article VIII violation a system which frankly was designed to favor local fishermen. *Id.* at 864. Under this system, "super-exclusive" districts were imposed in two Bering Sea sac roe herring fisheries. Fishermen who fished in one super-exclusive district could not fish for herring in any other district, super-exclusive or otherwise. *Id.* Fishermen who fished in any other district could not participate in either super-exclusive district. *Id.* While this system inconvenienced and limited the fishing options both of fishermen residing adjacent to each super-exclusive district and those in more distant locations, we held that the equal access clauses were not violated. *Id.* at 866. Both groups had an equal opportunity to fish in all districts except the super-exclusive districts, or in one of the super-exclusive districts but no other district. *Id.*

32. See note 17 *supra*.

33. See, e.g., AS 16.05 251(e); *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314 (Alaska 1994); *Gilbert v. State, Dep't of Fish & Game*, 803 P.2d 391 (Alaska 1990); *Meier v. State, Bd. of Fisheries*, 739 P.2d 172 (Alaska 1987).

34. While we stated in *Gilbert* that "to satisfy the uniform application clause of article VIII, state fish and game regulations creating nonuniform classifications must" have a legitimate and important purpose and "[t]he means used to further the important state purpose must be carefully drawn and designed for 'the least possible infringement on article VIII's open access values.'" *Gilbert* 803 P.2d at 399, we did not use this test in *Gilbert*. We went on to state that allocation "decisions are within the power of the Board, so long as they are not arbitrary and unreasonable and are consistent with and reasonably necessary to the conservation and development of Alaska fishery resources." *id.* (quot-

decisions are so complex and multi-faceted that they are not amenable to analysis under such a test.

In this case, the court did not reach the question of whether the joint Boards acted unreasonably or arbitrarily in creating the Anchorage/MatSu/Kenai nonsubsistence area. Instead, the court ruled that the statute was invalid on its face using a least restrictive alternative test. Given the proximity of the domicile Tier II requirement, use of this test was not error, for that requirement erected a bar to admission to a user class. However, with this requirement stricken from the statute, this test no longer applies.

Alaska Statute 16.05.258(c), as it stands without the domicile proximity requirement, contains no characteristics implicating the equal access clauses of article VIII. It bars no Alaskan from participating in any fish or game user class. As these clauses formed the basis for the superior court's decision and no alternative grounds for upholding the court's decision have been argued, the decision must be reversed.

IV. CONCLUSION

The Tier II proximity of the domicile factor violates sections 3, 15, and 17 of article VIII of the Alaska Constitution, because it bars Alaska residents from participating in certain subsistence activities based on where they live. The statutory section mandating the creation of nonsubsistence areas does not violate these sections. The judgment of the superior court is REVERSED and this case is REMANDED for further proceedings consistent with this opinion.



ing *McDowell*, 785 P.2d at 10; *Kenai Peninsula*, 628 P.2d at 903), and reviewed the allocation

ESTATE OF Adam ARROWOOD, By and Through Joyce LOEB, personal representative, Terry Arrowwood and Alice Arrowwood, Appellants,

v.

STATE of Alaska, Appellee.

No. S-5667.

Supreme Court of Alaska.

May 12, 1996.

Negligence action was brought against state to recover for injuries sustained in accident occurring on icy highway. The Superior Court, Third Judicial District, Anchorage, Peter A. Michalski, J., entered judgment in favor of state, and appeal was taken. The Supreme Court, Rabinowitz, J., held that: (1) state's refusal to close highway due to icy conditions was planning-level decision that fell within ambit of discretionary function exception to Alaska Tort Claims Act; (2) evidence pertaining to road maintenance budget reductions was irrelevant; (3) plaintiffs' experts could not rely on transcript of recorded interview with alleged eyewitness to road conditions on date of accident; and (4) lay opinion testimony of operator of snowplow business regarding general reasonableness of state's maintenance efforts was irrelevant and inadmissible.

Affirmed.

1. Appeal and Error \S 863, 934(1)

When reviewing Superior Court's grant of summary judgment, state Supreme Court determines whether genuine issue of material fact exists and whether moving party is entitled to judgment as matter of law; in doing so, Court draws all reasonable factual inferences from proffered evidence in favor of nonmoving party. Rules Civ.Proc., Rule 56(c).

decision in question under this standard.

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MEMORANDUM

June 15, 1992

SUBJECT: Constitutionality of the Governor's proposed subsistence bill under the open access provisions of the Alaska Constitution

TO: Representative Ramona Barnes

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether the Governor's proposed subsistence bill is consistent with the open access provisions of the Alaska Constitution. At this time a copy of the Governor's proposed subsistence bill is not available. It is my understanding that the bill will be substantially the same as SB 443/HB 552 (17th Legislature), but with three or four minor technical changes that do not affect the substance of the bill.

For purposes of responding to your request, this memorandum answers your question in the context of SB 443/HB 552. If the legislation actually introduced by the Governor varies significantly from SB 443/HB 552, then I can reconsider your question in the context of the new legislation when it becomes available.

SHORT ANSWER

One, SB 443/HB 552 provides for the establishment of dozens of subsistence use areas. The mandatory minimum eligibility standards for subsistence hunting and fishing proposed by SB 443/HB 552 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 a history of recent and extensive 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/HB 552, 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.

DISCUSSION

This memorandum addresses the constitutional issues raised by SB 443/HB 552.^{1/} SB 443/HB 552 relates primarily 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 for limiting the activities of those user groups to certain areas of the state. The bill provides that persons with a recent 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 or for 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 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, 6 (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 may engage in subsistence use of fish and game provided that the person satisfies the prescribed eligibility criteria.

ELIGIBILITY CRITERIA FOR SUBSISTENCE

SB 443/HB 552 proposes seven fundamental considerations for determining who is eligible to engage in subsistence hunting and fishing. SB 443/HB 552, 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 seven fundamental considerations. Though the boards jointly develop the actual eligibility criteria, four of the fundamental considerations in SB 443/HB 552 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 area, or the processing of that fish or game, with a mandatory minimum of 30 days in that period;

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.

(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/HB 552, 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, and 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 limit 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 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

^{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/HB 552, 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.

^{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
(continued...)

subsistence hunting and fishing. Each subsistence use area becomes an exclusive use area open for subsistence 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 guide's 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/HB 552 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 recent and substantial use requirement of SB 443/HB 552 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

2/ (...continued)

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.

invalidity. McDowell, 785 P.2d at 7. Likewise, the ability of an otherwise qualified person to establish a history of recent and extensive 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 the equal protection analysis applied under the uniform application section requires the following procedure. First, the three mandatory standards must have a legitimate purpose. The purposes of SB 443/HB 552 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/HB 552, 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 history of recent and extensive use. The remaining dozens of subsistence use areas are closed to this individual.^{8/}

In my opinion, there is a substantial and unnecessary risk that the three mandatory standards contained in SB 443/HB 552 are an impermissible infringement on open

^{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 state-wide 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/HB 552, Sec. 2, Sec. 16.05.268(i)], it is generally contemplated that the vast majority of users will qualify for only one area.

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 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^{9/} (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 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/}

^{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.

^{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
(continued...)

The access and allocation 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/HB 552 would be avoided and SB 443/HB 552 would better withstand challenges under article VIII of the Alaska Constitution. SB 443/HB 552 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.

COMMUNITY BASED PRESUMPTIONS

Though the criteria for establishing eligibility to engage in subsistence activities are relatively uniform, SB 443/HB 552 provides that the proof necessary satisfy the criteria varies significantly depending on where a person lives.

A person who resides in a subsistence use area in a category 1 area^{11/} is presumed to satisfy all eligibility criteria to take fish and game for subsistence use in that subsistence use area without having to establish more than the person's place of residence. The person can engage in subsistence activities in the subsistence use area in which he/she resides until it is proven by clear and convincing evidence that the person is not qualified to engage in subsistence. SB 443/HB 552, Sec. 2, Sec. 16.05.268(h)(1); page 6, lines 17 - 22.

A person who resides in a subsistence use area in a category 2 area^{12/} is presumed to satisfy all eligibility criteria to take fish and game for subsistence use in that subsistence use area and need only sign a document asserting that the person does indeed qualify. SB 443/HB 552, Sec. 2, Sec. 16.05.268(h)(2); page 6, lines 23 - 29.

^{10/}(...continued)

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 they did not limit admission to a user group; 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/HB 552, Sec. 2, Sec. 16.05.268(f)(1); page 5, lines 9 - 11.

^{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/HB 552, Sec. 2, Sec. 16.05.268(f)(2); page 5, lines 12 - 15.

The person may engage in subsistence activities in that subsistence use area until it is proven by a preponderance of the evidence that the person is not qualified to engage in subsistence activities in that area.^{13/}

A person who resides in a category 3 area^{14/}, or who wants to engage in subsistence activities outside of the subsistence use area in which the person resides, must apply for certification for the desired subsistence use area from the commissioner of fish and game. The person may engage in subsistence activities in that subsistence use area only after the person has convinced the commissioner of fish and game that the person satisfies the eligibility criteria adopted by the joint boards for that area. SB 443/HB 552, Sec. 2, Sec. 16.05.268(h)(3), page 6, line 30 through page 7, line 2.

Under SB 443/HB 552, 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 his/her 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 the McDowell court proposed as being "less invasive of Article VIII open access

^{13/} If it is proven that the resident of a category 2 area is not eligible to engage in subsistence activities in the area in which the person resides and that the person was aware of the lack of eligibility at the time the person signed the document, 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/HB 552, Sec. 2, Sec. 16.05.268(f)(3); page 5, lines 16 - 21.

Representative Ramona Barnes
June 15, 1992
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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, dated February 21, 1992,^{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, 1266 (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/HB 552.

A challenge to the category 1, 2, and 3 areas classification system 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.

If I may be of further assistance, please advise.

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^{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.

MEMORANDUM

TO: Territorial Sportsmen, Inc.
FROM: Gregory F. Cook
RE: DRAFT ANILCA & Alaska State law amendments
DATE: December 7, 1997

This memo responds to your request for counsel on the following three questions:

- 1) Does the proposed amendment to ANILCA § 807 insulate the State of Alaska from federal court oversight of State fish and wildlife management regulatory actions?

Answering this question involves a two-part legal analysis. First, we look at the meaning of the "arbitrary and capricious" standard of review specified in the amendment. This is a matter of federal common law. Federal law is quite distinct from State common law in Alaska that interprets the same words. Second, we look at the measure of deference accorded decisions of a federal agency to determine the effect of granting a state agency "the same deference" as a "comparable federal agency."

- 2) Can the chances of federal court intervention in State management within the framework of ANILCA and ongoing federal oversight be reduced?
- 3) What is the import of the "deference" standard contained in Governor Knowles' proposed AS 16.05.261(h), (i)?

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THE PROPOSED AMENDMENT TO ANILCA § 807 AND THE ISSUE OF
CONTINUING FEDERAL OVERSIGHT

QUESTION PRESENTED: Does the proposed amendment to ANILCA § 807 insulate the State of Alaska from federal court oversight of State fish and wildlife regulatory actions?

SHORT ANSWER: The proposed amendment to ANILCA § 807 provides no more than a thin sheet of protection from the cold reality of Federal Court oversight of State fish and wildlife management and penetrating Federal judicial scrutiny.

I. INTRODUCTION

The Governor's Task Force on Subsistence (1997) has recommended amending ANILCA § 807 to add two new sentences:

"Agency actions may be declared invalid by the court only if they are arbitrary, capricious, or an abuse of discretion.¹ When reviewing any action of a State agency, the District Court shall give the decision of the State agency the same deference it would give the same decisions of a comparable federal agency."²

These two sentences shall be analyzed separately. First, we focus on the standard for judicial review, i.e., the meaning of "arbitrary, capricious, or an abuse of discretion." Next, we examine the likely effect of the proposed amendment's second sentence according parity of deference to the decisions of State and federal agencies.

¹ The "arbitrary and capricious" standard of review is extremely common; it is prescribed by the federal APA, 5 U.S.C. § 706(2)(a).

² Implicit in this provision is the hypothesis that without this clause, a federal court would automatically grant greater deference to a federal agency than to a State agency.

1. The "arbitrary and capricious" standard of review

Analysis of the "arbitrary and capricious" standard of review in the context of ANILCA is a matter of federal common law. As with any matter of common law, the meaning of "arbitrary and capricious" is constantly evolving. There are few, if any, "bright line" distinctions or definitions. Interpretation of this standard is always subject to the discretion of an individual judge, albeit subject to appellate review.

The standards used to guide federal judicial review of agency decisions at the trial court level occupy a spectrum³. At one end of the spectrum is total unreviewability. At the other end of the spectrum is *de novo* review, where the court independently performs the fact-finding task, much like an agency's regulatory hearing⁴.

The most common type of judicial review, including "arbitrary and capricious" review, is in the middle of the spectrum.

The middle ground of judicial review of agency actions has been variously stated by legislative bodies. Examples include: "clearly erroneous," "clear error of judgment," "substantial evidence," "arbitrary and capricious," and "abuse of discretion." Each of these different statutory formulations of the standard for judicial review of agency action has been laboriously explicated by judges in many thousands of cases.

There is considerable cynicism among many legal commentators about judicial sophistry in interpreting and applying the different middle ground standards of judicial review. It is nonetheless useful to be familiar with some of the judicial definitions of the "arbitrary and capricious" standard of review.

The following statement by the U.S. Supreme Court is currently the preeminent explanation of "arbitrary and capricious" review.

...an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Manufacturers Assn. v State Farm Mutual Automobile

³ In the federal system, trial level is the District Court.

⁴ The Supreme Court first drew the distinction between reviewable and unreviewable agency actions in the famous case of Marbury v Madison, 5 U.S. (1 Cranch) 137, 170 (1803).

Ins. Co., 463 U.S. 29, 103 S.Ct. 2856, 2866-2867 (1983); see also Arkansas v Oklahoma, 503 U.S. 91, 113 (1992).

In seeking to understand the "arbitrary and capricious" standard of review, it would be a mistake to fail to consider the huge importance of how an agency formally justifies its regulatory decisions when the agency produces written findings. The statement below, is illustrative:

A federal agency's rule is arbitrary and capricious and may be set aside by a court if the agency relies on improper facts, ignores important arguments or evidence, fails to articulate a reasoned basis for the rule, or produces an explanation that is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Natural Resources Defense Council, Inc., v E.P.A., 822 F.2d 104 (D.C. Cir. 1987).⁵

These judicial descriptions of the "arbitrary and capricious" standard should provide a good, general understanding of the term.

As a practical matter, under the "arbitrary and capricious" test, it is a relatively simple matter for a reviewing court, if it is so inclined, to overturn agency action.

Likewise, if a court wants to uphold an agency's action, it is just as simple for the court to review the agency's decision, summarize the administrative record, perhaps note that the court would not necessarily have reached the same conclusion as the agency, then pontifically opine that the court must nonetheless refrain from substituting its judgment for that of the agency.

Each of these two approaches is common in judicial review of agency actions under the "arbitrary and capricious" standard.

In a nutshell, Federal District Court judges have tremendous discretion when they review the decisions of administrative agencies under the "arbitrary and capricious" standard.

The foremost commentator in the field of federal administrative law (K.C. Davis) has written a summary of the law of this middle ground of judicial review that may be more reliable than the many complexities that are constantly repeated in federal judicial

⁵ In the 9th Circuit, it has been held that a Court of Appeals must uphold the findings of fact of an administrative agency if the agency's findings are supported by "substantial evidence" (a low threshold). As to questions of law, appellate review is plenary. SEE: Potato Sales Co., Inc., v Dept. of Agriculture, 92 F.3d 800 (9th Cir. 1996).

opinions that try to explicate "arbitrary and capricious" review:

Courts usually substitute judgment on the kind of questions of law that are within their special competence, but on other questions they limit themselves to deciding reasonableness; they do not clarify the meaning of reasonableness but retain full discretion in each case to stretch it in either direction.

Davis, Administrative Law Treatise, (2d ed. 1984) Vol. 5, § 29:1, p. 332.

In other words, according to Professor Davis, under the "arbitrary and capricious" standard of review, what a federal District Court judge is really deciding is whether or not the agency has convinced the judge that its rule is "reasonable," as well as whether or not the agency properly followed the statute the agency was seeking to implement. It is hard to imagine a more flexible standard of judicial review. SEE: Id., § 29:7 p. 359.

According to Professor Davis, all the judicial and statutory verbiage purporting to refine the foregoing summary of the middle ground of judicial review is useless embroidery, tantamount to what Shakespeare wrote in King John, IV, ii:

To be possess'd with double pomp,
To guard a title that was rich before,
To gild refined gold, to paint the lily,
To throw a perfume on the violet,
To smooth the ice, or add another hue
Unto the rainbow, or with taper light
To seek the beauteous eye of heaven to garnish,
Is wasteful and ridiculous excess.

Professor Davis adds that:

The most prominent example of such useless embroidery is the confused law about the comparison of the "arbitrary and capricious" standard with the "substantial evidence" standard...

Davis, Administrative Law Treatise, (2d ed. 1984) Vol. 5, § 29:1, p. 334; SEE ALSO Id., § 29:7.

- a. The "substantial evidence" standard compared to the "arbitrary and capricious" standard

What is "substantial evidence?"

Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

N.L.R.B. v Columbian E. & S. Co., 306 U.S. 292, 300 (1939).

Addressing the distinction between the "arbitrary and capricious" and "substantial evidence" standards, Professor Davis has asked, rhetorically:

What, then, is the difference between the two standards, or are they the same? The surprising answer: The courts do not know!

The scope of review may vary from one case to another and it may vary with the mood of the writer of the opinion.⁶

Davis, Administrative Law Treatise, (2d ed. 1984) Vol. 5, § 29:1, p. 335.

Does the "arbitrary and capricious" standard differ from the "substantial evidence" standard? Professor Davis advises us that:

The best response to this question might be that quibbling about it should be avoided because, whatever the technical answer, courts will go on substituting judgment on the kind of questions of law that are within their special competence and using a reasonableness test on other questions.

⁶ SEE, for example: Office of Communication of the United Church of Christ v F.C.C., 707 F.2d 1413, 1422-1426 (D.C.Cir. 1983):

Over the years, these phrases "arbitrary," "capricious," and "abuse of discretion," as well as the judicial precedent interpreting them have developed a deceptively talismanic quality--the mere mechanistic incantation of the terms is presumed to evoke the appropriate judicial mind-set.

Or Pacific Legal Foundation v Dept. Transportation, 593 F.2d 1338, 1343, n 35 (D.C.Cir. 1971), cert. denied, 444 U.S. 830(1971):

...we agree with the emerging consensus of the Courts of Appeals that the distinction between the arbitrary and capricious standard and substantial evidence review is largely semantic...

Davis, Administrative Law Treatise, (2d ed. 1984) Vol. 5, § 29:7 p. 356.

For this reason, we will not examine any of the other expressions used to describe the middle ground of judicial review--"clearly erroneous," "clear error of judgment," or "abuse of discretion."

Instead, we emphasize that in the context of federal common law, the mind-set of the judge before whom a case is heard is probably of far more importance than the particular verbal formula recited in a statute purporting to prescribe the standard of judicial review of agency action, unless the statute specifies the extreme of "de novo" review. Whether a statute specifies "arbitrary and capricious," "substantial evidence," "clearly erroneous," etc., is probably of far more importance to legislators than to judges.

7 "The law is, then, all at one time, that the one test requires more than the other, that the other requires more than the one, and that the difference between the two tests is largely semantic! If lawmakers had a malevolent purpose of preventing clarity (as they surely do not), could they accomplish that purpose more effectively?

The answer is yes, for they have made the difficulties still greater. ...

If differences in the three standards exist, the least exacting review is "arbitrary or capricious," the middle one is "substantial evidence," and the most exacting is "clear error of judgment."

Davis, Administrative Law Treatise, (2d ed. 1984) Vol. 5, § 29:7 p. 359.

- b. The "arbitrary and capricious" standard of review allows courts to exercise a tremendous level of discretion in reviewing agency action.

The federal APA embodies the basic presumption that agency action is subject to judicial review. SEE: Abbott Laboratories v Gardner, 387 U.S. 136, 140 (1967); Citizens to Preserve Overton Park v Volpe, 401 U.S. 402 (1971).⁸

The proposal of the Governor's Task Force on Subsistence (1997) to amend ANILCA § 807 ensures that the State's decisions implementing the ANILCA subsistence priority will be reviewable. Existing ANILCA § 807 guarantees the right of "aggrieved persons" to challenge any failure to adequately provide for the subsistence priority. (16 U.S.C. § 3117.) (This includes agency inaction.)

Despite all the different verbal formulae that have been brought to bear on the problem, it is generally accepted that judicial review under the "arbitrary and capricious" standard can be just about as searching, or as deferential, as the judge who hears the case wishes the standard to be. There is enough slack in the "arbitrary and capricious" yardstick to accommodate whatever level of rigor a particular judge wishes to bring to the process of review.

Federal judges often write that it is only in the fields of statutory construction, or analysis of legislative history, that courts enjoy "special competence." Consequently, when judicial review is in either of those fields of unique judicial expertise, a court need give no deference to an agency's decision.

In Alaska, however, perhaps one should modify the standard analysis of judicial review by noting that most "true Alaskans" consider themselves to be experts in the fields of wildlife and fisheries management. It is possible that federal judges in Alaska share this common public feeling of special skill. As a consequence, searching judicial inquiries in cases involving Alaskan fish and wildlife should not be presumed to be outside the "special competence" of federal judges in Alaska.

In Alaska, it seems reasonable to predict that where fisheries or wildlife management disputes are concerned, substitution of a court's judgment (federal or state) for that of an agency should

⁸ Under federal administrative law principles, agency inaction, on the other hand, is presumptively unreviewable, but the presumption may be rebutted. Heckler v Chaney, 470 U.S. 821, 833 (1985). BUT COMPARE Sierra Club v Hodel, 848 F.2d 1068 (10th Cir. 1988), and Adams v Richardson, 480 F.2d 1159 (D.C. Cir. en banc 1973).

never come as a surprise.

A judicious approach to the jurisprudence of administrative law will recognize that the scope of judicial review of agency decisions occupies a continuum.

At one end of the continuum lies the field of statutory interpretation, which courts consistently declare to be within their "special competence" and wherein courts consequently do not defer to agency decisions.

Courts are most prone to substitute their judgment for that of an agency when the question in front of the court is one of analyzing a statute or legislative history. SEE, e.g., Watt v Alaska, 101 S.Ct. 1673 (1983); Kenaitze Indian Tribe v Alaska, 860 F.2d 312, 313 (9th Cir. 1988), cert denied, 491 U.S. 905 (1989).⁹

At the other end of the continuum of the scope of judicial review, yet not separated from the first end by a "bright line," lies judicial review of agency findings of fact and policy. It is fair to say that courts are generally less willing to substitute their judgment for that of an agency in these domains, especially where the question involves agency expertise or basic policy.

In conclusion, one could say that in general, statutory standards like "arbitrary and capricious" that purport to limit judicial review of agency decisions are like the outfield fences at the minor league Milwaukee Brewers' ballpark when the team was owned by Bill Veeck: the fences can move in and out from day to day.

⁹ Chevron v N.R.D.C., 467 U.S. 837 (1984), indicated a doctrinal shift by the U.S. Supreme Court in the field of federal administrative common law, and held that reviewing courts must affirm any reasonable interpretation of ambiguous language in an agency-administered statute. Nonetheless, tremendous judicial discretion continues, due in part to the malleability of administrative law doctrines, the large and ideologically diverse federal judiciary, and the inherent limits of appellate review for ensuring consistency.

c. Senator Stevens' version of amended § 807

Senator Stevens has made several changes to Governor Knowles' Subsistence Task Force's (1997) proposals. The following section of this memo discusses Senator Stevens' addition to the Task Force's proposed amendment to ANILCA § 807, adding the clause "or otherwise not in accordance with law" to the formula of "arbitrary and capricious."¹⁰

Mr. Bill Horn has written that Senator Stevens' modification "substantially weakens decisionmaking authority of State agencies." I respectfully disagree for the following reasons.

There is enormous judicial discretion in the application of the "arbitrary and capricious" standard of review under federal administrative common law. It is my opinion that the marginal change caused by the additional language inserted by Senator Stevens would be of minimal effect, not "substantial."

The federal APA specifically allows a reviewing court to declare agency action invalid if it is "otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

As a hypothetical, let us consider how a reviewing court would be likely to act in the absence of Senator Stevens' "otherwise not in accordance with law" language. Would a Federal District Judge be likely to refuse to void agency action that was in excess of the agency's statutory jurisdiction, without substantial observance of procedures required by law, or contrary to constitutional rights? I doubt it very much.¹¹

Can any of us reasonably conceive of a statute that forbids a court to void agency action that is "not in accordance with law?"

It is nonetheless true that Senator Stevens' modification of proposed ANILCA § 807 specifically widens the enumerated grounds on which a court could void fish and wildlife regulations adopted by the State under authority of ANILCA. However, for the foregoing

¹⁰ These clauses, recited seriatim by judges and lawyers ever since the federal APA was adopted in 1946, have acquired a mantra-like, incantatory effect by virtue of their long-standing linkage in § 706 of the federal APA. It is possible that they have grown intellectually inseparable for federal judges whose entire career experience with administrative law has involved using these clauses almost interchangeably.

¹¹ SEE ALSO: U.S. v Alexander, 938 F.2d 942, 947 n. 9 (9th Cir. 1991): "Where Congress has meant to preclude us from passing upon the validity of a statute, it has said so explicitly." (citations and quotations omitted.)

reasons, I believe that Senator Stevens' addition is more of a cosmetic change than a substantive one.

d. Current 9th Circuit law on the scope of review

We next look briefly at current practice in the 9th Circuit Court of Appeals interpreting and applying the "arbitrary and capricious" standard.

It is the current judicial cant to write that the function of a reviewing court is merely to determine whether an agency has considered all the relevant factors and articulated a rational connection between the facts found and the choice made. e.g., Washington Crab Producers, Inc., v Mosbacher, 924 F.2d 1438, 1441 (9th Cir. 1990).

In the context of fact-finding, courts typically state that they cannot substitute their judgment for that of the agency. e.g., Alliance Against IFQ's v Brown, 84 F.3d 343, 345, 350 (9th Cir. 1996); cert denied 117 S.Ct. 1467; Alaska Factory Trawler Assn. v Baldrige, 831 F.2d 1456, 1460 (9th Cir. 1987).

Nonetheless, courts can substitute their judgment for that of an agency in the context of fact-finding via the rubric of stating that the agency has failed to articulate a rational connection between the facts and the agency's decision.

Bicycle Trails Council of Marin v Babbitt, 82 F.3d 1445 (9th Cir. 1996), ("BTCM") is an instructive case to study for purposes of seeking to understand the current state of judicial review of agency actions in the 9th Circuit. The facts involved National Park Service regulations governing the use of bicycles around the Golden Gate Bridge Recreation Area.

The portions of the decision in BTCM excerpted below deal first with judicial review of an agency's interpretation of its own statute, then with judicial review of the agency's findings of facts.¹²

¹² Federal courts recognize a distinction between "interpretive" rules and "substantive" rules.

1) "An interpretive rule expresses the agency's view of what another rule, regulation, or statute means...the scope of judicial review is broad because the interpretation of statutory language does not involve the agency's discretion." Pacific Gas & Electric Co. v FPC, 506 F.2d 33, 37, n. 14 (D.C. Cir. 1974).

2) A "substantive" rule (also known as a "legislative" rule) has been defined as one which "establishes a standard of conduct which has the force of law...A general statement of policy, on the other hand, does not establish a 'binding norm.' It is not finally determinative of the issues or rights to which it is addressed. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what
(continued...)

In BTCM, the 9th Circuit¹³ wrote that the United States Supreme Court has established a two-step process for reviewing an agency's construction of the statute it administers.

First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines that Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction of the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. Chevron U.S.A. v N.R.D.C., 467 U.S. 837, 842-843 (1984).

Bicycle Trails Council of Marin v Babbitt, 82 F.3d 1445, 1452 (9th Cir. 1996).

Step one in this analysis requires a court to use traditional tools of statutory construction. If Congress had an intention on the precise question at issue, that intent is the law and it must be given effect. Id., citing Chevron at 843, n. 9.

If an agency decision represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, then, at least in theory, courts should not disturb the agency's choice "unless it appears from the statute or its legislative history that the accommodation is not one that Congress

¹²(...continued)

the agency seeks to establish as policy. A policy statement announces the agency's tentative intentions for the future." Pacific Gas & Electric Co. v FPC, 506 F.2d 33, 38 (D.C. Cir. 1974).

The scope of review for "substantive" or "legislative" rules is narrower and more deferential than for "interpretive" rules. (SEE generally: Batterton v Francis, 432 U.S. 416, 425 (1977).)

¹³ A recent case from the District of Alaska dealing with an agency's statutory interpretation is Oregon Portland Cement Co. v U.S. Dept. Interior, 590 F. Supp. 52 (D. Alaska 1984). There, the court wrote that a court is obliged to accept the administrative construction of a statute only insofar as it is reasonable...and consistent with the intent of Congress in adopting the statute. Where a statutory mandate is detailed and specific, the amount of deference due an agency decision is "tempered," and deference is less appropriate. Id. at 56.

would have sanctioned." Chevron, 467 U.S. at 845.¹⁴

Bicycle Trails Council of Marin v Babbitt, 82 F.3d 1445, 1454 (9th Cir. 1996).

At Step two, the court need not conclude that the agency construction of the statute was the only one it permissibly could have adopted to uphold the agency's construction, or even the reading of the statute that the court would have chosen if the question had come up first in a judicial proceeding. Id. at 843 n 10.

Bicycle Trails Council of Marin v Babbitt, 82 F.3d 1445, 1454 (9th Cir. 1996).

Taken literally, this method translates to judicial deference to an experienced agency's interpretation of the statute it is charged with administering.

Regarding the application of the "arbitrary and capricious" standard to agency findings of fact and policy decisions, the 9th Circuit relied on the current U.S. Supreme Court guideline (Motor Vehicle Manufacturers Assn. v State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983)), and its own precedents.

An agency decision can be found "arbitrary and capricious" where the agency "entirely failed to consider an important aspect of the problem." Bicycle Trails Council of Marin v Babbitt, 82 F.3d 1445, 1460 (9th Cir. 1996), citing Motor Vehicle Manufacturers Assn. v State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983).

In order for an agency decision to be upheld under the arbitrary and capricious standard, a court must find that evidence before the agency provided a rational basis for its decision. Northwest Motorcycle Assn., 18 F.3d 1468, 1471 (9th Cir. 1994), cited in Bicycle Trails Council of Marin v Babbitt, 82 F.3d 1445, 1462 (9th Cir. 1996). After considering the relevant data, the [agency] must articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. Id.

Bicycle Trails Council of Marin v Babbitt, 82 F.3d 1445, 1462 (9th Cir. 1996).

Translated into plainer English, this method of judicial review of

¹⁴ SEE ALSO: Wilderness Public Rights Fund v Kleppe, 608 F.2d 1250, 1253 (9th Cir. 1979), cert denied, 446 U.S. 982 (1980), noting that allocation of a limited use between competing user groups is well within the area of administrative discretion granted to the NPS.

fact-finding and policy-making gives courts broad discretion to determine whether or not the agency's explanation of its action is "satisfactory."

The NPS decision-making process in BTCM was upheld, but why? The court noted, in dictum, that its decision to uphold the NPS regulation was partly because the regulation adoption process took years to complete, it was exceedingly detailed and documented, it included public participation and comments from the major user groups, workshops were held, a detailed, written staff analysis and summary of all public comments was created, the court was able to review the agency's responses in writing to the public comments, and the underlying authorizing statute granted NPS authority to allocate between user groups, rather than mandating a priority.¹⁵

Articulating "a satisfactory explanation" is perhaps the area in which the State of Alaska's Boards of Fisheries and Game will find it the most difficult to comply with the demands of federal administrative law. The Board of Game and Board of Fisheries, along with their support staff within ADF&G, have little experience crafting the kind of detailed, post-decisional documents commonly required by federal courts.

An agency's explanation of its action must be sufficient to permit effective judicial review. S.E.C. v Chenery Corp., 332 U.S. 194, 196-197 (1947). Although Alaska's Board of Game and Board of Fisheries have developed real expertise at the level of notice and comment public hearings, the Boards and their staff are much less adept when it comes to tailoring a post-decisional document that will satisfy federal judicial review.

Several common law maxims typically guide federal courts when they look at an agency's post-decisional document and judge whether or not it offers a "satisfactory explanation" for the agency's action.

The reviewing court should not attempt to make up for deficiencies in the agency's decision. Motor Vehicle Manufacturers Assn. v State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983). A court "may not supply a reasoned basis for the agency's action that the agency itself has not given." Id. However, a court can uphold an agency decision "of less than ideal clarity if the agency's path may reasonably be discerned." Id., cited in Northwest Motorcycle Assn., 18 F.3d 1468, 1478 (9th Cir. 1994).

When acting under ANILCA, the Boards will need to create an

¹⁵ Such a ponderous process of agency decision-making may not always be appropriate to the time-driven exigencies of fisheries and wildlife management in Alaska. It is, at a minimum, the polar opposite of management by Emergency Order. (AS 16.05.060.)

adequate administrative record prior to their decisions. The Boards will also need to create post-decisional documents articulating their findings in a way sufficient to justify to a reviewing court the Boards' decisions.¹⁶

¹⁶ It is beyond the scope of this memo to address the increased paperwork or bureaucracy needed to meet these demands.

2. What is the likely effect of amending ANILCA § 807 to require that federal courts give the State the "same deference" they would accord a comparable federal agency?

What is "deference?" It is a judicial term of art that is so vague and amorphous it does not even appear in Black's Law Dictionary.¹⁷ This memo will not attempt to define "deference" comprehensively or for multiple purposes. For the limited purposes of this memo, we interpret "deference" this way:

When a reviewing court accords some level of acceptance to a decision (or interpretation) offered by an agency that is greater than the intrinsic merits of the agency's decision (or interpretation) itself.

To answer the original question regarding the proposed amendment to ANILCA § 807, it is first necessary to try to understand the purpose of the proposed amendment to ANILCA.¹⁸

My research indicates that it is likely that the impetus for this provision derives from two federal court cases: Kenaitze Indian Tribe v Alaska, 860 F.2d 312 (9th Cir. 1988), cert. denied, 491 U.S. 905 (1989), and U.S. v Alexander, 938 F.2d 942 (9th Cir. 1991).

These two cases are discussed separately, below. Concluding thoughts on this issue are presented immediately afterwards.

¹⁷ Webster defines "deference" as: respect and esteem due a superior or elder. Webster's Ninth New Collegiate Dictionary. (1984).

¹⁸ To the best of my knowledge, there is not yet anything that would qualify as legislative history for this proposed amendment. Whatever legislative history is eventually created may be of pivotal importance in the interpretation of this provision.

a. Kenaitze

Kenaitze Indian Tribe v Alaska, 860 F.2d 312 (9th Cir. 1988), cert. denied, 491 U.S. 905 (1989) involved a suit by an Indian tribe seeking to compel the State of Alaska to promulgate regulations defining the term "rural."

Kenaitze is important to this memo insofar as the decision concerns the measure of deference which a reviewing court must pay to a federal agency interpretation of a statute the agency is charged with administering. By outlining that quantum of deference, it should be possible to better understand what advantage--if any--this proposed amendment to ANILCA § 807 may be likely to confer on decisions by the State of Alaska implementing ANILCA.

In Kenaitze, neither the State's definition of "rural," nor the federal agency's definition of "rural", was given any deference by the 9th Circuit Court of Appeals.

In Kenaitze, the State claimed that it "stood in the shoes" of the federal government, by virtue of which the State's interpretation of ANILCA was entitled to the same measure of deference as if the Alaska Board of Game or Board of Fisheries was a comparable federal agency.

The 9th Circuit roundly rejected this argument and wrote:

Deference to a federal agency's interpretation of a statute is based in part on the expertise it possesses in implementing federal policy in the general subject area. (citation omitted) While Alaska has a long history of managing wilderness areas, it lacks the expertise in implementing federal laws and policies and the nationwide perspective characteristic of a federal agency. Federal agencies are also entitled to deference because their activities are subject to continuous congressional supervision by virtue of Congress' powers of advice and consent, appropriation, and oversight. Such direct and continuous congressional supervision is absent when state authorities are doing the regulating.

Most fundamentally, unlike a federal agency, the state is delegated no authority under ANILCA. ...As a separate sovereign, the state is at all times free to refuse to regulate; Congress could not compel it to do so. ...Deference is not appropriate.

Kenaitze, 860 F.2d 312, 316 (9th Cir. 1988).

To recapitulate, the State definition of "rural" received no deference from the Kenaitze court because the State suffered from four handicaps. The federal court wrote that 1) the State had no expertise in implementing federal laws and policies, 2) the State lacked the nationwide perspective of a federal agency, 3) the State

was not subject to continuing Congressional supervision, and 4) the State is delegated no authority under ANILCA; the State's role is to supplant the federal regulatory scheme rather than to implement it. Id.

The action of the Assistant Secretary of the Interior, purporting to certify the State's compliance with ANILCA, had no legal effect because it was not an exercise of the Secretary of Interior's statutory authority. Kenaitze, at 315.

The federal statutory interpretation fared no better than the State's. Once a state regulatory scheme is in place, the Secretary merely monitors State implementation. (ANILCA § 806.) The court, after considering the Secretary's views, announced that it had given them "due consideration." Kenaitze, n. 6, p. 315. In effect, the federal view received no deference.

Consequently, the court interpreted the meaning of the statutory term "rural" independently (de novo review), paying no heed to either the State of Alaska definition or the federal agency's imprecations that the state definition met the federal law.

b. U.S. v Alexander

U.S. v Alexander, 938 F.2d 942 (9th Cir. 1991) involved two Alaska Natives (Haida Indians) who harvested and attempted to sell herring roe on kelp that had been taken in violation of Alaska State laws. The case was in federal court since it was a federal criminal prosecution under the Lacey Act. (16 U.S.C. § 3372(a)(2)(A).) To sustain a conviction under the Lacey Act, it was necessary to prove the validity of the two, underlying state regulations.

Alexander is important to this memo because it involves the measure of deference which a reviewing court paid to a state agency interpretation of a statute in circumstances where the U.S. Attorney had brought a major criminal prosecution based on a state regulatory interpretation of a federal statute.

In Alexander, the 9th Circuit wrote that in interpreting the meaning of a phrase that appears in a federal statute, a federal court owes no deference to an interpretation by a state regulatory agency. U.S. v Alexander, 938 F.2d 942, 946 n. 6 (9th Cir. 1991), citing Kenaitze Indian Tribe v Alaska, 860 F.2d 312, 315-316 (9th Cir. 1988).¹⁹

c. Conclusion

At least two, distinct situations exist in which the State might claim it is entitled to deference under proposed ANILCA § 807. Those situations are 1) interpretation of ANILCA, and 2) applying federal law to specific facts. Each situation is discussed separately.

¹⁹ The court concluded that to the extent Alaska law may prohibit cash sales of subsistence-caught fish or wildlife, and the case sales are a part of "customary trade" (which the court defined with sweeping latitude), Alaska's regulations conflicted with ANILCA. Alexander at 946.

U.S. v Skinna, 931 F.2d 530 (9th Cir. 1990), involved a Tlingit who took \$274,000.00 worth of herring roe on kelp in violation of Alaska law and sought to avoid criminal penalties under the guise of the subsistence protections of ANILCA's "customary trade" exemption. Because Skinna failed to raise his defense at trial, and failed to introduce any evidence to show trade of that magnitude was "customary," and waited until his appeal to test his theory of defense, he failed.

i. State Interpretation of Federal Law

It is one, plausible construction of the proposed amendment to ANILCA § 807 that it would strip away the four handicaps to judicial deference to state interpretations of federal laws.

I believe it is equally plausible to foresee that the 9th Circuit may yet find new reasons not to defer to Alaska's ANILCA management decisions. I do not believe courts will be quick to embrace the proposed amendment's principle of vicarious deference.

Deference to a federal agency's interpretation of a statute is based in part on the expertise an agency possesses in implementing federal policy in the general subject area. Aluminum Co. of America v Central Lincoln People's Util. Dist., 467 U.S. 380, 389-90 (1984).²⁰

The Alaska Board of Game and Board of Fisheries patently lack experience implementing federal laws and policies. It is within a court's discretion to decide if USFWS--the comparable federal agency--has created a sufficient track record of ANILCA implementation to be worthy of vicarious judicial deference.

It is important to note that in Kenaitze, the 9th Circuit wrote that deference to an administrative agency's construction of a statute is appropriate only where the agency is entrusted with the administration of the statute. Kenaitze Indian Tribe v Alaska, 860 F.2d 312, 313, (9th Cir. 1988), cert denied, 491 U.S. 905 (1989); citing Chevron U.S.A. v NRDC 467 U.S. 837, 844 (1984); Blum v Bacon, 457 U.S. 132, 141 (1982), and 860 F.2d at 315-316.

Under the 9th Circuit's reasoning announced in Kenaitze, Alaska will at no time be entrusted with the administration of ANILCA. Despite the proposed amendment to ANILCA § 807's directive of vicarious judicial deference, the State will still lack the attributes of an agency that merits federal judicial deference. Alaska will remain "a separate sovereign." Kenaitze, at p. 316.

Nor would USFWS, the "comparable federal agency," likely be entitled to deference, either. In Kenaitze, the federal agency's definition of "rural" was given no deference by the reviewing court. This was because the federal agency was not "charged with administering" ANILCA; it was merely charged with overseeing the State's implementation of the program. (ANILCA § 806.)

ii. State Application of Federal Law to Facts

²⁰ Even where "agency expertise" is involved, the standard for judicial review still involves an immense amount of discretion on behalf of the reviewing court.

In reviewing an agency's application of law to facts, where the question to be decided involves matters within the particular expertise of the agency, the agency's conclusions are supposedly reviewed under the reasonableness or reasonable basis standard. Monex International, Ltd. v Commodity Futures Trading Commn., 83 F.3d 1130, 1133 (9th Cir, 1996), citing Morris v Commodity Futures Trading Commn., 980 F.2d 1289, 1293 (9th Cir. 1992).

Nonetheless, "judicial deference is not necessarily warranted where courts have experience in the area and are fully competent to decide the issue." Morris v Commodity Futures Trading Commn., 980 F.2d 1289, 1293 (9th Cir. 1992) (noting that deference is not required in reviewing common law or constitutional law).

The term "deference" is so imprecise that it does not tie the hands of a Judge. No specific measure of deference to the State of Alaska is specified by proposed ANILCA § 807.

As a practical matter, unless a judge expressly states he is giving "no deference" to a State regulatory action, I believe it would be hopelessly difficult to seek appellate review of a Federal District court's action overturning a State of Alaska regulation on the grounds that the court failed to give the State's decision sufficient deference.

The guidelines for judicial deference to agency discretion are so fuzzy that it would be a delusion to look for a "bright line" test with which to compare a state agency's decision before and after the proposed change to ANILCA § 807.²¹

"Different judges often impose inconsistent limits on the same agency. The involvement of a particular judge with any particular agency is far too episodic to permit the judge to obtain a broad perspective on the agency's many initiatives and its methods of allocating its scarce resources to accomplish its goals."

Davis, Pierce. Administrative Law Treatise, § 17.4, p. 115 (3rd ed. 1994).

Even with the proposed amendment to ANILCA § 807 and its grant of conceptual parity to the State of Alaska for purposes of deference, neither the Board of Game nor the Board of Fisheries will qualify as "an agency entrusted with administration of the statute [ANILCA]."

²¹ e.g., Arkansas v Oklahoma, 503 U.S. 91 (1992). (EPA is entitled to discretion to enforce its own regulations and those regulations are entitled to the appropriate level of deference.)

The amendment to § 807 does not alter the status of USFWS, which is the "comparable federal agency." USFWS would once again be charged with oversight of the State's implementation, not "administration."

Only two of the four grounds relied on by the court in Kenaitze inhere in the nature of a state agency. Just like a state agency, a federal agency may also lack experience in implementing the federal law or policy that is before a reviewing court as a result of agency action or inaction. And, as is the case with a state agency, a "comparable federal agency" may not actually be charged with administering a particular federal statute.

In other words, if the "comparable federal agency" or a state lacked expertise in implementing the specific federal law or policies under scrutiny, or was not actually charged with direct administration of a statute, it would be a simple matter for a reviewing court to note that defect, and then declare for the record that it was treating the state agency's decision "with the same deference it would give the same decision of a comparable federal agency." This would dictate application of a minimally deferential standard of review.

The judicial branch is generally reluctant to accept legislative constraints on judicial discretion.²² Perhaps this is an inherent problem in a government organized under principles of the separation of powers, with coordinate branches.

In my opinion, the impact of the provision in proposed ANILCA § 807 according the State of Alaska "the same deference" as a "comparable federal agency" allows the federal district court to be deferential to a decision by the Board of Game or Board of Fisheries if, in its discretion, the federal court chooses to do so, but it is unlikely that the principle of vicarious deference would be enforceable through appellate review.

²² c.f. Yakus v United States, 321 U.S.414, 429 (1944) (investing an emergency court with exclusive jurisdiction to consider certain regulations); Adamo Wrecking Co. v United States, 434 U.S. 275, 277 (1978) (statute expressly precluding judicial review of certain regulations).

THE POSSIBILITY OF REDUCING FEDERAL INTERVENTION

II. QUESTION PRESENTED: Can the chances of federal court intervention in State management within the framework of ANILCA and ongoing federal oversight be reduced?

SHORT ANSWER: Yes, within limits.

As long as ANILCA generously provides for judicial review in federal court (ANILCA § 807), periodic legal challenges are a certainty. Inherent in the American judicial process is broad discretion on the part of a reviewing judge.

The first issue addressed in this memo was the standard of review that federal courts will bring to bear in their review of federal oversight of the State of Alaska's implementation of ANILCA. We have strongly suggested that the "arbitrary and capricious" standard allows a reviewing federal court immense discretion to void State of Alaska actions that do not meet a particular judge's perception of "reasonableness."

We have also strongly suggested that for reasons that inhere in the separation and balance of powers of the three coordinate branches of government in a republican system, it is no easy matter for the legislative branch to shackle the judicial branch. With that caveat in mind, perhaps the State could be given greater authority by changing ANILCA § 807 to alternative language:

The decision in Kenaitze Indian Tribe v Alaska, 860 F.2d 312 (9th Cir. 1988) is expressly rejected, and reviewing courts are directed to give substantial deference to state agency interpretations of ANILCA, and to state agency findings of fact, and to state agency decisions involving complex issues that require agency expertise, applying to judicial review under this section the Alaska case of Kelly v Zamarello, 486 P.2d 906 (Alaska 1971). No injunctive relief shall be available in federal court.²³

We express no opinion in this memo on the political feasibility of the foregoing changes, nor do we address the normative issues raised by the alternative language set out above.

One of the principal issues discussed in this memo has been the measure of deference which a court should pay to State of Alaska

²³ It would be helpful, also, to revise proposed AS 16.05.261 to allow the Boards to reject Regional Council recommendations that are "not in the broad public interest."

interpretations of ANILCA. We have suggested that the proposed language of the Governor's Subsistence Task Force (1997) may be inadequate to effectively require federal courts to defer to State interpretations of ANILCA.

If Congress truly wishes to legislatively overrule the effect of Kenaitze and Alexander, that intent must appear explicitly and unambiguously in the legislative history or in the statute itself.

If the complex of State Constitutional and statutory changes, plus federal statutory changes becomes law, and if as a result of those changes, the State regains management authority for fish and wildlife on federal public lands in Alaska, then the "comparable federal agency" will once again merely be charged with monitoring the State's implementation, as was the case at the time of Kenaitze. (ANILCA § 806.) It is thus at least conceptually possible that the language proposed in the (1997) Task Force's package of amendments may be of no effect at all.

In fairness, it is also possible that a reviewing court could interpret the proposed amendment to require judicial deference to State of Alaska interpretations of Congressional intent, where the intent of the statute is ambiguous.

My best guess, which is all anyone can do at this point, is this: courts quite properly consider themselves to be more adept at interpreting statutes than administrative agencies. Courts defer to agencies' interpretations of statutes only when the court finds the agency interpretation to be reasonably close to what the court itself would have said independently of the agency's interpretation.

Neither the Board of Fisheries nor the Board of Game will ever be possessed of the essential characteristics that comprise the rationale for the policy of judicial deference to agency decisions. SEE: Kenaitze, 860 F.2d 312, 316 (9th Cir. 1988), and cases cited therein.

Consequently, I believe it is unlikely (though not impossible) that the proposed statutory language in the second sentence of ANILCA § 807 will be of much practical effect in inducing federal courts to defer to interpretations of federal law (ANILCA) by the State of Alaska.

The State will need to devote substantial additional resources to its administrative procedures. In particular, as a preventive measure, the Boards will need to receive more and firmer legal counsel during their deliberations in order to comply with ANILCA. Additionally, the Boards will need additional staff assistance crafting post-decisional documents that can pass muster under the scrutiny of a federal judge.

A federal Court of Appeals will generally uphold an administrative agency's decision if, but only if, the court can discern a reasoned path from the facts and considerations before the agency to the decision reached. United Distribution Companies v FERC, 88 F.3d 1105 (D.C. Cir. 1996); cert denied, 117 S.Ct. 1723.

For example, under principles of federal administrative law, an agency's view of what is in the public's interest may change, either with or without a change in circumstances, but a federal agency changing its course must supply a reasoned analysis of why it is doing so. Motor Vehicle Manufacturers Assn. v State Farm Mutual Insurance Co., 463 U.S. 29, 57 (1983); SEE ALSO Northwest Motorcycle Assn. v U.S.D.A., 18 F.3d 1468, 1480 (9th Cir. 1994) (upholding an agency's change of policy based on a rational and principled reason.)

Another example of the more rigorous judicial review common under principles of federal administrative law involves predictive models. Under federal law, an agency may use a predictive model, PROVIDED it explains the assumptions and methodologies used in preparing the model. If the model is challenged, the agency must provide a full analytical defense. Eagle-Picher Industries, Inc. v EPA, 759 F.2d 905, 921-922 (D.C. Cir. 1985). Given the frequency with which scientific models are used in fisheries and wildlife management regulatory actions, this principle provides an abundant storehouse of federal court challenges to state regulatory actions.

Under federal common law, when specialists express conflicting views, an agency must have the discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, the court might find contrary views more persuasive. Southwest Center for Biological Diversity v Glickman, 932 F. Supp. 1189 (D.Ariz. 1996); affirmed, 100 F.3d 1443.

In the usual Alaska state law situation, findings of fact are required even in the absence of a statutory duty. Mobil Oil Corp. v Local Boundary Commission, 518 P.2d 92, 97 n. 11 (Alaska 1974), cited with approval in Faulk v Board of Equalization, 934 P.2d 750, 751 (Alaska 1997). However, in certain cases, the issues are such that, based on the record, detailed findings are not necessary for the court to understand the agency's reasoning process. Fields v Kodiak City Council, 628 P.2d 927, 932 (Alaska 1981), cited with approval in Faulk v Board of Equalization, 934 P.2d 750, 751 (Alaska 1997).

This court has consistently stressed the importance of decisional documents when asked to review action taken by an administrative body. Trustees for Alaska v State, 795 P.2d 805, 809 (Alaska 1990); Alaska Survival v State, 723 P.2d 1281, 1287 (Alaska 1986) (decisional document should disclose that the agency has taken a hard look at factors, and engaged in reasoned decision making); Ship Creek Hydraulic Syndicate

v State, 685 P.2d 715, 717-718 (Alaska 1984) ("...if a statute requires reasoned decisions, and the legislature has not expressly or by implication limited judicial authority to decide how to review administrative actions, courts may and should require agencies to explain their decisions.")

HALO v Anchorage, 927 P.2d 728, 744-745 (Alaska 1996), (C.J. Compton, dissenting).

Despite this general rule, Alaska courts generally exempt the Board of Fisheries and Board of Game from any requirement of producing a written document containing Finding of Facts and Conclusions of Law to support each regulation adopted. The Alaska Supreme Court has nonetheless written that "it is vital that the agency clearly voice the grounds upon which the regulation was based in its discussions of the regulation or in a document articulating its decision." Alaska Fish Spotters Assn v ADF&G, 838 P.2d 798, 801 (Alaska 1992).

It is fair to say that federal courts are generally more demanding than State of Alaska courts when it comes to requiring an agency to make written findings clearly articulating all of the evidence heard and the reasons for an agency's final decision.²⁴

²⁴ In Alaska, the challenger of an administrative regulation has the burden of proving its invalidity. State v Cosio, 858 P.2d 621, 624 (Alaska 1993).

Under Alaska law, State courts often show substantial deference to Board of Fisheries, and Board of Game decisions. e.g., Stepovak-Shumaqin Set Net Assn. v Board of Fisheries, 886 P.2d 632 637 (Alaska 1994). SEE ALSO: Kelso v Rvbachek, 912 P.2d 536 (Alaska 1996) (DEC regulations).

Under Alaska law, judicial deference to the expertise of the Boards is appropriate in light of the complexity of the subject matter, the Boards' long-standing track record of responsible exercise of its regulatory authority, and the need for the Boards to hear and consider complex biological staff reports, public testimony, and other information when making regulatory decisions. State v Tanana Valley Sportsmen's Association, 583 P.2d 854, 859 (Alaska 1978).

The Boards were given extremely broad statutory authority to make conservation and allocation decisions partly because of the perceived impossibility of the legislative or judicial branches finding the time to do so.

Courts are ill-equipped, and do not have the resources, to serve as the forum for complex, highly dynamic, wildlife and fishery management decisions that are based on months of testimony assessed by agency members with many years of expertise in the field. Formulation of fishery management policies and implementation of conservation and development goals are properly left to the Board process. If a regulation appears reasonable,
(continued...)

The Boards will need to adopt regulations that will guide their discretion in applying the sustained yield principle. Such regulations may be extremely difficult to craft. It is very unlikely that a reviewing federal court will defer to State action premised on an unarticulated concept of "sustained yield," applied in an *ad hoc* manner. SEE: Kwethluk IRA Council v State of Alaska, 740 F. Supp. 765 (D. Alaska 1990).

In conclusion, there is nothing reasonably plausible the State can do to guarantee itself immunity from federal court challenges to State management within the framework of ANILCA.

²⁴(...continued) .

then a court is not to substitute its judgment for a Board's. SEE: Meier v State, 739 P.2d 172, 174-75 (Alaska 1987).

In Alaska, a reviewing court applies the "reasonable basis" test when reviewing administrative decisions involving complex issues that require agency expertise. Kelly v Zamarello, 486 P.2d 906, 917 (Alaska 1971); Ellis v State 944 P.2d 491, 493 (Alaska 1997). Under the reasonable basis test, the court gives deference to the agency determination "so long as it is reasonable, supported by the evidence in the record as a whole, and there is no abuse of discretion." Kodiak Western Alaska Airlines, Inc., v Bob Harris Flying Service, Inc., 592 P.2d 1200, 1203 n. 7 (Alaska 1979).

Alaska courts exercise "independent judgment" when determining whether an agency complied with procedural requirements. Moore v State, 553 P.2d 8, 33 (Alaska 1976).

The test of the validity of a Board of Game or Board of Fisheries regulation should generally be simple and deferential: was the regulation adopted in accordance with APA [Administrative Procedure Act] procedures; is the regulation within the discretion vested in the agency by the legislature; is the regulation consistent with the statute and reasonably necessary to its purpose; is the regulation reasonable and not arbitrary.

State v Morry, 836 P. 2d 358, 362, fn.3, (Alaska 1992), citing Kelly v Zamarello, 486 P.2d 906, 910-911 (Alaska 1971).

THE CONFUSING REQUIREMENT OF "DEFERENCE"

IN PROPOSED AS 16.05.261(h), AND (i)

III. QUESTION PRESENTED: What is the import of the "deference" standard contained in Governor Knowles' proposed AS 16.05.261(h), (i)?

SHORT ANSWER: The proposed Regional Subsistence Councils are given very significant advisory authority. The Boards retain final, regulatory authority. The Boards' need for staff support is likely to increase in order to cope with the demand for creating post-decisional documents.

A. Summary Description of the Proposed Statutory Framework

Governor Knowles' Subsistence Task Force (1997) has proposed a change to Alaska's Local Fish and Game Advisory Committee system. The Task Force proposes a new statute to create six "Alaska Regional Subsistence Councils." (proposed AS 16.05.261.)

Under the Governor's proposal, each Regional Subsistence Council is to have ten members. All members are appointed by the Governor. Four members must be selected from nominees submitted by tribal councils in the region; the remaining six members are selected from nominees submitted by local governments and local advisory committees.

The primary task of the proposed Regional Councils overlaps with and duplicates the existing task of Local Advisory Committees. The Regional Councils are to review, evaluate, and make recommendations to the Boards on regulations relating to subsistence, sport, personal use, and commercial fishing and hunting. Other tasks are also assigned to the Regional Councils, including identifying and evaluating subsistence needs and recommending a management strategy to accommodate the identified subsistence needs.

B. Proposed AS 16.05.261(h)

This proposed statute is quite convoluted. It is necessary to analyze it one sentence at a time. The analysis below will follow that approach.

The Regional Subsistence Councils will be a new creature, to my knowledge unprecedented in Alaska law. The Councils will be quasi-regulatory agencies. Since the Regional Councils will not possess actual regulatory authority, they will be less powerful than the Boards.

The authority of the Regional Councils will somewhat diminish the independent authority of the two, regulatory Boards. It seems likely that the cumulative recommendations from six, separate Regional Councils will very substantially add to the two Boards' workload. Yet, as shown below, although the Regional Councils will have vastly more authority than a Local Advisory Committee, the two Boards will retain their regulatory authority.

1. The first sentence of proposed AS 16.05.261(h) provides:

(h) The appropriate board shall consider the reports and recommendations of the regional subsistence councils and shall give deference to their subsistence recommendations.

First, it is appropriate to list the "subsistence recommendations" to which the Board of Fisheries and Board of Game must defer. Regional Councils have authority to make five distinct categories of recommendations. The Councils' recommendations may involve:

- 1) any existing or proposed regulation, policy, or management plan, or any other matter directly relating to the subsistence use of fish and wildlife within its region.
(AS 16.05.261(d)(3).)

- 2) permits provided in AS 16.05.330(d) and .405(g). (These statutes refer to other parts of the Task Force's package of amendments. They involve subsistence permits for areas, villages, communities, groups, or individuals.)²⁵

²⁵ Without an amendment to the Alaska Constitution, place-of-residence-oriented permits would be ultra vires.

The Alaska Constitution, Article VIII, § 3, "is particularly strong in requiring that proximity to the resource be a neutral factor. It reserves 'to the people for common use' wild fish and game '[w]herever occurring.'" (Emphasis in original. State v Kenaitze, 894 P.2d 632, 642 n. 21 (Alaska 1995).

Under existing Alaska law, people who reside near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant:

Where the necessity for the preservation of the wild game and fish exists in certain territories of the state, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the state outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation.

(continued...)

(AS 16.05.261(d)(5).)

3) strategies for the management of fish and wildlife populations within the region to accommodate the fish and wildlife uses and needs identified by the Regional Councils in an annual report to be submitted to the Secretary of Interior and Secretary of Agriculture.²⁶

(AS 16.05.261(d)(6)(C).)

4) policies, standards, guidelines, and regulations to implement the foregoing subsistence management strategies.

(AS 16.05.261(d)(6)(D).)

5) inter-regional proposals and issues.

(AS 16.05.261(g).)

Under proposed AS 16.05.261(h), the Boards are required to "give deference" to all five types of recommendations. No specific level of deference is specified in the statute.

Unless a unanimous recommendation of a Regional Council is involved, the Boards would not be any more obligated to follow a Regional Council's recommendation than they are currently obligated to follow an Advisory Committee's recommendation.²⁷

²⁵(...continued)

Kenaitze, supra, at 638, citing McDowell, 785 P.2d 1, at 12 (Alaska 1989) (quoting Lewis v. State, 110 Ark. 204, 161 S.W. 154, 155-56 (1913)) (emphasis added by the court in McDowell).

²⁶ Given the parlous state of ADF&G's budget, one cannot help wondering where sufficient funds will come from for the staff time necessary to create these reports.

²⁷ AS 16.05.260 requires the Boards to state their reasons for not following the recommendations of an Advisory Committee. This is the functional equivalent of the last sentence of proposed AS 16.05.261(h).

2. The second sentence of proposed AS 16.05.261(h) provides:

If the [Regional] council recommendation is unanimous, there is a presumption in favor of adoption by the board.

The negative implication of this provision is that whenever a recommendation of a Regional Council is less than unanimous, there is no presumption in favor of adoption by the appropriate Board.

When a Regional Council makes a unanimous recommendation, and the appropriate Board wishes to make a contrary decision, the Board will need to create a "written statement of the factual basis and reasons for its decision" (proposed AS 16.05.261(h).)

Thus, it seems appropriate to presume that a reviewing court would hesitate to overturn a Board decision that was contrary to a non-unanimous recommendation of a Regional Council.

3. The third sentence of proposed AS 16.05.261(h) provides five, alternative reasons on which the Board may rely to reject a Regional Council's recommendation:

...the board may decide not to adopt any recommendation which it determines violates the sustained yield principle, is not supported by substantial evidence, is detrimental to subsistence uses, involves an unresolved statewide or inter-regional subsistence management issue, or is contrary to an overriding statewide fish or wildlife management interest.

Use of the disjunctive "or" makes each one of these five reasons sufficient in itself for a Board to reject a Regional Council recommendation.²⁸ Each reason will be examined briefly below.

The first reason does very little to affect the Boards' discretion. It would be unconstitutional for one of the Boards to approve an action in violation of the sustained yield principle. (Alaska Const., Art. VIII, § 2.)

Perhaps this first reason for which the Board may reject a Regional Council's recommendation is less significant for mentioning the sustained yield principle, and is more significant for what it omits? For example, if a Regional Council recommendation violated principles of equal protection, or due process, would the Boards be precluded from rejecting the recommendation?

²⁸ This litany of reasons is not necessarily an exclusive list of the reasons for which the Board can reject a Regional Council's recommendation.

It is curious that proposed AS 16.05.261(h) does not include a provision allowing the Boards to reject a Regional Council recommendation that is not "otherwise not in accordance with law or that is contrary to the broad public interest."

Even permitting the Board to reject a Regional Council recommendation if it violates the sustained yield principle may be merely a chimerical grant of authority.

In Kwethluk IRA Council v State of Alaska, 740 F. Supp. 765 (D.Alaska 1990), a group of Native Alaskans sought a TRO and preliminary injunction under authority of ANILCA (16 U.S.C. § 3117). The plaintiffs sought an emergency caribou hunt. The Alaska Board of Game had previously denied their request. The Board had reasoned that creating the hunt would violate the sustained yield principle. (SEE: AS 16.05.258(b).)

Federal District Court Judge Holland reversed the Board of Game's decision and granted the Natives the relief they had requested. Kwethluk, 740 F.Supp. 765, 767 (D. Alaska 1990).

The Board of Game's rejection of the Kwethluk petition for an emergency caribou hunt had been premised on a Board policy decision that the Kilbuck caribou herd should be allowed to continue to grow before any hunting was reinstated. (All hunting on the Kwethluk caribou herd had been suspended since 1985.)

The District Court Judge in Kwethluk found it significant that there is no State statutory or regulatory definition for "sustained yield" in the context of wildlife management. Kwethluk, at 766; SEE ALSO: G. Cook, "The Sustained Yield Principle of Article VIII, § 4," Colloquy on the Natural Resources Article of the Alaska Constitution (WAFI: 1991).

The court concludes that the term "sustained yield" is potentially broad enough to include authority in the game board to restrict even subsistence hunting in order to rebuild a damaged game population. However, the board does not have absolute discretion in this area. There must be a balance of minimum adverse impact upon rural residents who depend upon subsistence use of resources and recognized scientific principles of game management. 16 U.S.C. § 3112(1) and (2).

The board having put in place neither a game management plan for the Kilbuck herd nor an articulated and evenly applicable definition of sustained yield, the board and, in its turn, this court have no meaningful standard against which to measure plaintiff's application for a subsistence hunt. The game board appears to have acted not on the basis of a formulate policy, but rather in ad hoc fashion, as though it had unfettered discretion to decide what meaning it would attribute to the sustained yield issue in any particular case.

Kwethluk IRA Council v State of Alaska, 740 F.Supp. 765, 766-767 (D.Alaska 1990).

It does the State little good for ANILCA to statutorily grant the State the right to reject recommendations on the basis of violation of the sustained yield principle unless the State can first articulate a definition of "sustained yield" for wildlife and fishery management²⁹ and show that it applies that elusive definition fairly enough and consistently enough to satisfy a reviewing court.

Until the State adequately defines "sustained yield" in the context of wildlife and fisheries management, it is unlikely that any reviewing federal court will defer to State action premised on an unarticulated concept of "sustained yield," applied in an ad hoc manner.

Regarding the second of the five alternative reasons, we have discussed, supra, the vagueness of the "substantial evidence" standard.

The final three alternative reasons are also quite broad. It would be a mistake, however, to assume that mere recitation by either Board of one of these reasons will suffice to insulate from judicial scrutiny either Board's rejection of a Regional Council's recommendation. The Boards' post-decisional documents will need to comprehensively address the issues presented and must clearly articulate a rational decision.

4. The fourth sentence of proposed AS 16.05.261(h) provides:

The (fourth) final sentence of proposed AS 16.05.261(h) states what the Boards must do in the event they reject a Regional Council recommendation:

If a recommendation is not adopted by the board, the board shall provide a written statement of the factual basis and reasons for its decision and shall remand the recommendation to the regional subsistence council for further consideration.

This requirement will apply to all recommendations of Regional Councils, regardless of whether or not the recommendation is unanimous.

In addition to this post-decisional document, the necessities of judicial review will require that the Board create an adequate

²⁹ c.f. AS 38.04.910(11).

administrative record at the time of its deliberations that demonstrates it has given careful consideration to the Regional Council's recommendation, and considered all of the supporting factual material adduced by the Regional Councils.

- C. Conclusion: the impact of the "deference" standard contained in Governor Knowles' proposed AS 16.05.261(h) will primarily be to increase public participation in the fish and game regulatory process and increase ADF&G's workload (providing the Councils with staff support and providing the Boards with staff support).

It seems beyond doubt that the new Regional Council system will allow for increased public participation in the fish and game regulatory process. Whether or not this will be qualitatively superior to the current system, or be cost-effective, is impossible to predict.

Similarly, it is not possible at this time to predict whether the administrative burdens of adequately responding to recommendations from six, separate Regional Councils will eventually overwhelm the Boards with an excess of work that requires fundamental changes to Alaska's system of regulatory Boards.

Under Governor Knowles' proposed AS 16.05.261(h), the Boards are obligated to "consider" the reports and recommendations of the Regional Subsistence Councils. No deference is required for the Councils' reports. Only recommendations are accorded deference.

In my opinion, it is primarily when a Regional Council's recommendations are unanimous that a Board will need to show a meaningful measure of "deference" to a Regional Council recommendation. In those instances, the Board will have to create a defensible administrative record during its deliberations. Afterwards, the Board and staff will need to carefully craft a written decisional document that rationally explains the Board's actions in a manner that will meet federal judicial approval.

The statewide Boards retain full regulatory authority. The reasons enumerated in the third sentence of proposed AS 16.05.261(h) and which will suffice for a Board to reject a Regional Council recommendation are very similar to the reasons which the two Boards presently adduce when they reject a recommendation of a Local Advisory Committee.

The main impact of the "deference" requirement appears to be that

it can serve as a subject of litigation.³⁰ In order to pre-empt most legal challenges, the Boards will need to spend a great deal of time crafting post-decisional documents explaining their actions.

The Boards' post-decisional documents must be drafted with the knowledge that they may be subjected to judicial review under the broad rubric of "arbitrary and capricious" review, which, as a practical matter, generally will mean the broad concept of "reasonableness."

D. The deference requirement of proposed AS 16.05.261(I)

This short provision provides:

(I) A regional subsistence council shall give deference to proposals from local governments, tribal councils, and local advisory committees, which identify local subsistence needs and uses, the methods, means, seasons, and other issues related to local subsistence management.³¹

At the outset, we reiterate the vagueness of the concept of "deference." We note, additionally, that when the word "deference" stands alone, unmodified by adjectives, it generally denotes a relatively low level of deference is necessary for compliance.

As a practical matter, it is hard to imagine this provision being provocative of litigation. The principal parties comprising Regional Councils will be the same parties to whom this proposed statute accords deference.

Members of the general public who are unaffiliated with the foregoing entities, and representatives of government agencies, will not be entitled to deference before the Regional Councils.

My opinion is that AS 16.05.261(I) is a toothless and insignificant provision.

³⁰ It is beyond the scope of this memo to assess how, in light of the presence on the Regional Councils of tribal nominees, the deference requirement may affect the issue of tribal sovereignty in Alaska.

³¹ It is beyond the scope of this memo to consider the impact on tribal sovereignty in Alaska of this proposal. It should suffice to note that it involves governmental recognition of some role for tribal governments in the fish and game regulatory process.

PLAIN ENGLISH SUMMARY

1. FEDERAL JUDICIAL REVIEW OF THE DECISIONS OF ADMINISTRATIVE AGENCIES INVOLVES IMMENSE DISCRETION ON THE PART OF THE INDIVIDUAL REVIEWING JUDGE.³²
2. THE SCOPE OF JUDICIAL REVIEW OF THE ACTIONS OF FEDERAL AGENCIES IS SO BROAD, AND THE MEASURE OF JUDICIAL DISCRETION IN REVIEWING THOSE DECISIONS IS SO GREAT, THAT IT IS OF LITTLE IMPORTANCE (AND ALSO PROBABLY UNENFORCEABLE) FOR ANILCA § 807 TO DECLARE THAT STATE AND FEDERAL AGENCY DECISIONS SHALL BE GIVEN EQUAL DEFERENCE. IT IS LIKELY THAT COURTS WILL CONTINUE TO ACCORD WHATEVER MEASURE OF DEFERENCE THE JUDGES, IN THEIR RESPECTIVE WISDOM, DEEM APPROPRIATE.
3. REGARDLESS OF THE STATUTORY STANDARD OF REVIEW, AN AGENCY MAY SEEK TO DISGUISE AN ACTION THAT IS BASED ON IMPROPER MOTIVES. THE AGENCY CAN 1) RELY ON PLAUSIBLE REASONS THAT DIFFER FROM ITS ACTUAL, UNSTATED MOTIVES; 2) DISTORT ITS FACT FINDING PROCESS TO ACHIEVE RESULTS IN ACCORD WITH ITS UNSTATED, REAL MOTIVES; OR 3) ENGAGE IN SELECTIVE INSPECTION, INVESTIGATION, AND ENFORCEMENT.³³
4. WHEN THE SCOPE AND EFFECT OF A STATUTORY LIMIT ON JUDICIAL REVIEW IS AMBIGUOUS, COURTS TYPICALLY STRAIN TO NARROWLY INTERPRET THE LIMIT ON THE SCOPE OF REVIEW.³⁴ THE PROPOSED AMENDMENT TO ANILCA § 807 DOES NOT APPEAR TO SET UP ANY GENUINE BARRIER TO PENETRATING FEDERAL COURT REVIEW OF STATE AGENCY ACTIONS IMPLEMENTING ANILCA.

³² The foremost treatise on administrative law notes that judicial review can, in itself, be a source of excessive discretion.

"...to the extent that administrative law doctrines have the effect of conferring on reviewing courts discretion to resolve identical cases in different ways, the problem of discretion is simply transferred from agency heads to judges."

K.C. Davis, Pierce. Administrative Law Treatise, § 17.3, p. 106 (3rd ed. 1994).

³³ SEE: Davis, Pierce. Administrative Law Treatise, §17.2, p. 105 (3rd ed. 1994).

³⁴ SEE: Adamo Wrecking Co. v United States, 434 U.S. 275 (1978); Bowen v Michigan Academy of Family Physicians, 476 U.S. 667 (1986).



P.O. Box 20761, Juneau, Alaska 99802

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July 18, 1997

Governor Knowles' Subsistence Task Force
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles and the Subsistence Task Force:

These are the official comments of the Territorial Sportsmen Board of Directors concerning the proposed draft Subsistence Proposal.

Territorial Sportsmen, Incorporated is a Juneau based sportsmen/conservation organization dedicated to the principles of good conservation, wise use and equal treatment under our Constitution. We have always defended our Constitutional rights and strongly support state management of our fish and game resources. Our organization has existed for over 50 years and has a total membership of about 2,000.

First, we want to express our support for the development of a comprehensive solution to the existing subsistence crisis. We agree with the basic goal of the task force to return effective fish and wildlife management to the state. We also recognize the importance of subsistence in the lifestyles of many Alaskans and support providing a carefully crafted preference for true subsistence uses when taken for personal or family consumption..

The Territorial Sportsmen have always opposed amending the equal protection and common use provisions of our Constitution for any purpose. We have always opposed Constitutional amendments and laws which divide Alaskans along ethnic or other grounds which tend to pit Alaskans against each other. From our perspective, any modifications of our Constitution must be balanced with major concessions from Congress to remove federal oversight and preemption authorities and return effective management to the state.

This proposed package is patterned after Lt. Governor Ulmer's proposal with some major improvements. There are, however, some issues which must be addressed before the Territorial Sportsmen could actively support a Constitutional amendment coupled with statutory changes in both ANILCA and state statutes.

We have reviewed the Subsistence Proposal crafted by the Subsistence Task Force and have the following comments:

FEDERAL COURT OVERSIGHT

As we stated in our comments to Lt. Governor Ulmer; we cannot endorse any proposal which provides federal court oversight over all lands in Alaska. We reluctantly agree that federal court oversight of federal lands in Alaska is inevitable and that the basic subsistence priority thrust in ANILCA may not be radically changed for federal lands. In view of this, we recommend that all subsistence suits emanating from Alaska federal lands be required to be filed in the federal court system within Alaska.

It is our belief that Congress did not intend to preempt state management on state and private lands and waters and that is, from our standpoint, a bottom line position. We are adamant that the balance struck in ANILCA be maintained at all cost. Any compromise package must remove any federal court oversight over any private and state lands and waters.

STATE JURISDICTION

It is imperative from the standpoint of our organization that it be made abundantly clear that ANILCA did not intend to provide authority for federal preemption of state management on state and private lands and waters. As we mentioned to Lt. Governor Ulme the definition of "public lands" in ANILCA must be clarified to exclude any state or private lands and waters, including navigable waters.

In addition, we support the language in Senator Murkwoski's and Congressman Young's proposal which said:

"Federal authority to enforce this priority shall not extend to and shall not affect the regulation of taking fish and wildlife or other wild, renewable resources on State or private lands, waters, including but not limited to any reserved waters, or interests therein. Federal jurisdictional interests and authorities, including but not limited to navigational servitudes, do not constitute public lands for the purposes of this Title."

CONSTITUTIONAL AMENDMENT LINKAGE

If a Constitutional amendment must be considered then this proposal does not have adequate linkage language tied to the amendment. It is our opinion that any Constitutional amendment must be tied specifically to amendments to ANILCA. If the ANILCA amendments are not adopted or if adopted and later amended by Congress then the Constitutional amendment must be declared null and void.

RURAL QUALIFICATIONS

If it is the collective decision of our elected officials to craft a subsistence use solution using "rural" community qualifications rather than individual qualifications, then we recommend several modifications. It is not acceptable to assume that all communities residing outside existing non-subsistence areas be initially classified as "rural." We recognize that this is the direction taken by the federal subsistence regulators and some of the past Boards of Fisheries and Game but it is the source of much contention and social unrest in Alaska. If we are going to fix the subsistence conflicts then it is critical that we all bite the bullet and narrow the subsistence qualifications to the "true" subsistence users. Communities like Kodiak, Cordova, Sitka, Petersburg, Nome and Bethel should not qualify as rural subsistence communities. It is imperative that the final package clearly identify which communities are classed as "rural."

We recommend that the legislature either list each community that initially qualifies and eliminate those that the preponderance of the economy is other than subsistence related, or establish a reasonable base from which to start, such as communities with a population under 1,000. It is recognized that the Boards of Fisheries and Game will be empowered to review these rural designations and restrict or add to the list under criteria established by the legislature. The political realities are that the proposal as drafted will limit the Boards to only deleting communities from subsistence use under the definition of rural. Clear legislative standards must be provided.

From the standpoint of our membership, this proposal can only lead to further restrictions for the residents of Juneau. As we mentioned to Lt. Governor Ulmer, everyone in southeast Alaska has a priority over residents of Juneau and Ketchikan. If king salmon, cohos, chum salmon, pink salmon, steelhead, halibut, ling cod and other species are declared as Customary and Traditional subsistence resources, then the priority use in this region will be extended to everyone except those living in Juneau and Ketchikan. We truly question whether our neighbors in Petersburg or Sitka have a greater need or dependency on the resources of our region than those living in Juneau. It also doesn't take much imagination to see the potential for increasing social strife--unfortunately spearheaded by a proposed Constitutional amendment to sections designed to guarantee equality.

DEFINITION OF "RURAL"

The criteria utilized to-date for determining "rural" eligibility are too vague. The proposed package improves on the definition of "rural" but we also propose that it be amended to say:

"rural community or area" is a community or area substantially dependent on fish and game for direct personal or family nutritional and other subsistence needs.

We also recommend that "substantial" be defined as follows:

"substantially dependent" means a community which at least 50% of the economy is dependent on subsistence resources.

In our opinion, this truly reflects where "true" subsistence needs exist and should be given a preference.

REGIONAL SUBSISTENCE COUNCILS

The proposed regulatory structure including the re-establishment of Regional Subsistence Councils appears to be a duplication or overlap of responsibilities with the existing advisory committees. The already overloaded Boards of Fisheries and Game are going to have their calendars extended even further than they are today. The regulatory process will, in our opinion, be almost unworkable due to the complexity of the system and inherent problems with bureaucratic processes.

We do recognize the improvements made in this proposal from what exists with the current federal regional council and regulatory board processes. Some of the changes will certainly assist the state Boards in their deliberations. We are concerned, however, that the changes are not substantial enough to make the resulting structure workable.

This can be addressed in any legislative session, but possible changes to the existing advisory committee system should be considered to help streamline the regulatory process and simplify the public input process.

With this type of concession to the federal law we strongly recommend language which says that regional councils will only exist if the federal government pays for them.

SUBSISTENCE PRIORITY

This proposal changes the existing state law providing a "preference" for subsistence to mirror the federal law which provides a "priority." We support the existing state law which recognizes a "preference" for subsistence uses. From the standpoint of our Board of Directors, a preference means additional benefits or special opportunities whereas a "priority" implies a higher degree of protection and an absolute guarantee.

CONCLUSION

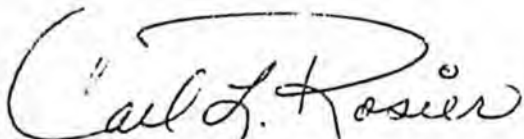
In conclusion, the Territorial Sportsmen Board of Directors have and will continue to participate in the negotiations regarding state management of our fish and wildlife resources. There are some major areas of the proposed subsistence solution which must be addressed before we recommend to our members that it be supported. We do support the efforts of our political leaders to bring about a permanent solution to this growing crisis. We are not, however, willing to accept a package, including a

Constitutional Amendment unless certain amendments and legal guarantees are included in the package.

The Territorial Sportsmen also recommend that any solution which is presented in final form to the public clearly spell out whether an individual or community is "in or out" as far as qualifying for the subsistence priority. To pass a vague package of amendments to the Constitution, state statutes and ANILCA without clearly identify qualifications for the public would be irresponsible. It is not satisfactory for us to leave it up to future politically appointed Boards or the federal court system to decide eligibility. History has shown the unpredictability of this issue and the public deserves a clear picture so that they can cast an enlightened vote.

Thank you for the opportunity to comment on this proposed subsistence package. We certainly applaud you and the working group for taking on the task of attempting to craft a long term solution to the subsistence issue.

Sincerely,

A handwritten signature in cursive script that reads "Carl L. Rosier". The signature is written in dark ink and is positioned above the typed name.

Board of Directors, Territorial Sportsmen
Carl L. Rosier, Vice President

**Alaska Communities
and 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Akhiok | 101 | \$42,500 | 93.5% | 2.4% | 18.8% | 50.9% |
| Akiachak | 560 | \$23,750 | 95.0% | 13.0% | 12.7% | 54.5% |
| Akiak | 327 | \$13,571 | 97.2% | 33.9% | 16.0% | 60.2% |
| Akutan | 420 | \$27,813 | 13.6% | 16.6% | 0.4% | 7.4% |
| Alakanuk | 651 | \$17,708 | 95.8% | 29.4% | 26.8% | 61.5% |
| Alatna | 32 | \$6,030 | 93.5% | 83.0% | 100.0% | 100.0% |
| Alcan | 16 | \$53,338 | 0.0% | 0.0% | 0.0% | 33.3% |
| Aleknagik | 226 | \$21,875 | 83.2% | 28.8% | 14.3% | 62.2% |
| Alexander Creek | 38 | \$8,166 | 25.0% | 38.0% | 0.0% | 100.0% |
| Allakaket | 182 | \$11,477 | 94.1% | 46.9% | 69.4% | 78.4% |
| Ambler | 333 | \$22,500 | 89.7% | 31.1% | 39.3% | 66.3% |
| Anaktuvuk Pass | 301 | \$37,292 | 84.9% | 16.1% | 23.6% | 45.5% |
| Anchor Point | 1,157 | \$42,847 | 3.7% | 0.7% | 17.5% | 53.0% |
| Anchorage | 254,849 | \$43,946 | 6.4% | 7.0% | 7.0% | 26.7% |
| Anderson | 565 | \$53,413 | 3.7% | 3.7% | 11.5% | 22.2% |
| Andreafsky | 469 | \$28,958 | 84.4% | 26.0% | 18.6% | 43.8% |
| Angoon | 616 | \$32,083 | 82.3% | 21.9% | 35.1% | 54.1% |
| Aniak | 578 | \$32,841 | 70.7% | 16.4% | 9.7% | 32.2% |
| Anvik | 83 | \$10,694 | 91.5% | 45.0% | 13.6% | 60.4% |
| Arctic Village | 121 | \$9,661 | 93.8% | 31.5% | 12.5% | 52.5% |
| Atka | 111 | \$40,625 | 91.8% | 16.2% | 25.7% | 44.7% |
| Atmautluak | 292 | \$15,833 | 96.9% | 47.6% | 25.3% | 55.3% |
| Atkasuk | 235 | \$56,352 | 93.1% | 15.2% | 29.7% | 45.1% |
| Barrow | 4,380 | \$56,688 | 63.9% | 7.5% | 11.5% | 30.4% |
| Beaver | 118 | \$20,313 | 95.1% | 32.2% | 22.6% | 63.6% |
| Bethel | 5,277 | \$42,232 | 63.9% | 12.2% | 9.0% | 36.6% |
| Bettles | 32 | \$38,333 | 22.2% | 7.1% | 0.0% | 0.0% |
| Big Delta | 508 | \$32,813 | 4.0% | 23.2% | 1.6% | 54.0% |
| Big Lake | 2,243 | \$36,583 | 3.7% | 11.3% | 12.9% | 43.8% |
| Birch Creek | 37 | \$5,032 | 90.5% | 92.6% | 0.0% | 48.0% |
| Brevig Mission | 265 | \$15,000 | 92.4% | 24.7% | 35.3% | 54.6% |
| Buckland | 412 | \$18,906 | 95.0% | 32.8% | 12.2% | 59.4% |
| Butte | 2,538 | \$41,471 | 3.6% | 7.7% | 10.4% | 35.5% |
| Cantwell | 144 | \$44,000 | 22.4% | 10.3% | 34.6% | 57.6% |
| Central | 57 | \$28,036 | 1.9% | 13.7% | 19.0% | 64.6% |
| Chalkyitsik | 87 | \$12,750 | 92.2% | 67.3% | 31.3% | 81.0% |
| Chase | 53 | \$61,359 | 0.0% | 0.0% | 0.0% | 0.0% |
| Chefornak | 405 | \$20,278 | 97.5% | 35.4% | 6.2% | 66.8% |
| Chenega Bay | 91 | \$22,083 | 69.1% | 26.6% | 14.3% | 41.9% |
| Chevak | 721 | \$17,222 | 93.0% | 27.0% | 17.8% | 53.5% |
| Chickaloon | 205 | \$32,083 | 6.2% | 31.2% | 26.7% | 38.2% |
| Chignik | 125 | \$36,875 | 45.2% | 0.0% | 4.2% | 38.2% |
| Chignik Lagoon | 74 | \$56,250 | 56.6% | 6.4% | 20.0% | 84.0% |
| Chignik Lake | 127 | \$19,167 | 91.7% | 42.0% | 15.2% | 68.2% |
| Chiniak | 74 | \$44,375 | 5.8% | 20.2% | 5.1% | 28.8% |
| Chistochina | 55 | \$24,167 | 61.7% | 17.7% | 52.0% | 72.1% |
| Chitina | 84 | \$13,125 | 46.9% | 40.9% | 33.3% | 64.7% |

**Alaska Communities
and 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Chuathbaluk | 115 | \$13,750 | 89.7% | 47.4% | 8.6% | 47.5% |
| Circle | 83 | \$17,083 | 86.3% | 10.9% | 36.7% | 62.7% |
| Circle Hot Springs | 32 | \$6,250 | 0.0% | 74.1% | 33.3% | 54.5% |
| Clam Gulch | 100 | \$60,233 | 12.7% | 0.0% | 0.0% | 61.3% |
| Clark's Point | 66 | \$17,083 | 88.3% | 16.1% | 18.5% | 42.1% |
| Coffman Cove | 246 | \$44,063 | 7.0% | 4.7% | 14.7% | 29.8% |
| Cohoe | 598 | \$33,550 | 1.8% | 15.9% | 14.0% | 49.5% |
| Cold Bay | 120 | \$45,625 | 5.4% | 0.0% | 0.0% | 15.9% |
| College | 11,663 | \$43,329 | 8.4% | 9.6% | 7.8% | 32.3% |
| Cooper Landing | 271 | \$42,250 | 1.2% | 3.6% | 0.0% | 53.8% |
| Copper Center | 536 | \$34,643 | 34.5% | 12.9% | 0.0% | 53.8% |
| Copperville | 196 | \$47,188 | 26.4% | 9.8% | 26.6% | 51.8% |
| Cordova | 2,467 | \$46,304 | 11.2% | 4.7% | 3.1% | 23.8% |
| Covenant Life | 54 | \$23,571 | 0.0% | 20.0% | 100.0% | 100.0% |
| Craig | 2,043 | \$47,250 | 22.9% | 3.9% | 8.4% | 25.9% |
| Crooked Creek | 138 | \$16,250 | 90.6% | 28.7% | 27.3% | 64.7% |
| Crown Point | 88 | \$43,864 | 4.8% | 0.0% | 0.0% | 38.0% |
| Cube Cove | 137 | \$51,280 | 5.8% | 5.7% | 0.0% | 21.4% |
| Deadhorse | 24 | \$102,264 | 11.5% | 0.0% | 0.0% | 0.0% |
| Deering | 158 | \$15,208 | 94.3% | 21.6% | 6.7% | 41.7% |
| Delta Junction | 855 | \$31,250 | 4.4% | 8.4% | 8.6% | 35.4% |
| Dillingham | 2,252 | \$44,083 | 55.8% | 9.5% | 6.7% | 37.7% |
| Diomedea | 174 | \$14,375 | 93.8% | 63.0% | 0.0% | 60.4% |
| Dot Lake | 80 | \$38,333 | 54.3% | 3.2% | 13.6% | 47.2% |
| Dry Creek | 110 | \$40,625 | 0.0% | 12.8% | 0.0% | 13.7% |
| Eagle | 165 | \$12,500 | 3.0% | 43.4% | 32.5% | 52.5% |
| Eagle Village | 34 | \$11,875 | 80.0% | 17.1% | 93.1% | 93.8% |
| Edna Bay | 70 | \$12,250 | 0.0% | 63.7% | 25.0% | 67.2% |
| Eek | 277 | \$21,000 | 95.7% | 28.6% | 23.9% | 63.4% |
| Egegik | 127 | \$20,625 | 70.5% | 34.1% | 24.3% | 69.6% |
| Eielson AFB | 4,203 | \$25,924 | 0.9% | 2.8% | 13.0% | 18.2% |
| Eklutna | 425 | \$66,946 | 12.6% | 8.0% | 3.5% | 29.1% |
| Ekwok | 124 | \$10,833 | 87.0% | 52.0% | 23.5% | 73.1% |
| Elfin Cove | 54 | \$43,125 | 1.8% | 7.1% | 0.0% | 28.2% |
| Elim | 301 | \$16,250 | 91.7% | 25.1% | 36.1% | 66.2% |
| Emmonak | 820 | \$25,625 | 92.1% | 20.9% | 34.6% | 62.0% |
| Ester | 236 | \$44,688 | 4.8% | 12.8% | 11.5% | 33.0% |
| Evansville | 20 | \$29,167 | 57.6% | 36.1% | 16.0% | 16.0% |
| Eyak | 166 | \$150,001 | 7.6% | 0.0% | 4.3% | 22.1% |
| Fairbanks | 31,850 | \$32,033 | 9.2% | 10.3% | 11.6% | 29.6% |
| False Pass | 64 | \$21,667 | 76.5% | 17.9% | 0.0% | 53.1% |
| Ferry | 69 | \$25,625 | 12.5% | 15.5% | 39.1% | 65.0% |
| Fort Greely | 740 | \$25,801 | 1.0% | 6.3% | 14.4% | 21.7% |
| Fort Yukon | 575 | \$17,969 | 85.0% | 32.1% | 27.4% | 55.4% |
| Fox | 321 | \$28,250 | 7.3% | 9.2% | 18.0% | 47.8% |
| Fox River | 435 | \$93,848 | 0.0% | 9.1% | 0.0% | 45.7% |
| Fritz Creek | 1,972 | \$45,143 | 3.4% | 3.4% | 6.1% | 38.5% |

**Alaska Communities
and 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Gakona | 23 | \$32,500 | 0.0% | 60.0% | 0.0% | 25.0% |
| Galena | 543 | \$28,611 | 45.3% | 18.2% | 9.2% | 24.7% |
| Gambell | 653 | \$15,938 | 96.2% | 46.4% | 16.8% | 71.1% |
| Game Creek | 67 | \$12,500 | 0.0% | 59.6% | 0.0% | 13.8% |
| Glennallen | 513 | \$30,833 | 6.7% | 8.0% | 4.4% | 30.7% |
| Golovin | 152 | \$16,146 | 92.9% | 8.3% | 15.3% | 44.4% |
| Goodnews Bay | 263 | \$13,523 | 95.9% | 41.8% | 3.1% | 56.6% |
| Grayling | 186 | \$21,641 | 93.3% | 12.6% | 29.6% | 57.5% |
| Gulkana | 95 | \$38,750 | 59.2% | 20.3% | 27.3% | 59.5% |
| Gustavus | 346 | \$41,538 | 3.9% | 3.6% | 4.6% | 26.2% |
| Haines | 1,429 | \$38,542 | 18.1% | 4.9% | 5.4% | 30.9% |
| Halibut Cove | 78 | \$68,760 | 3.8% | 0.0% | 0.0% | 0.0% |
| Happy Valley | 391 | \$16,250 | 6.1% | 32.8% | 25.6% | 68.6% |
| Harding Lake | 29 | \$52,126 | 0.0% | 0.0% | 0.0% | 76.0% |
| Healy | 603 | \$56,313 | 1.4% | 3.8% | 3.9% | 39.4% |
| Healy Lake | 60 | \$5,841 | 85.1% | 70.8% | 33.3% | 85.7% |
| Hobart Bay | 107 | \$52,377 | 6.4% | 1.0% | 0.0% | 10.9% |
| Hollis | 175 | \$31,250 | 2.7% | 15.2% | 8.3% | 44.3% |
| Holy Cross | 260 | \$13,750 | 93.5% | 48.8% | 38.6% | 72.3% |
| Homer | 4,126 | \$36,652 | 3.6% | 5.0% | 7.9% | 35.6% |
| Hoonah | 906 | \$36,442 | 67.2% | 3.8% | 14.9% | 35.4% |
| Hooper Bay | 1,012 | \$18,125 | 96.0% | 43.5% | 41.7% | 66.3% |
| Hope | 152 | \$17,250 | 3.1% | 33.5% | 38.4% | 50.8% |
| Houston | 994 | \$32,344 | 3.6% | 9.7% | 15.4% | 52.0% |
| Hughes | 69 | \$15,833 | 92.6% | 16.6% | 15.4% | 53.2% |
| Huslia | 245 | \$13,333 | 90.8% | 43.7% | 38.5% | 67.5% |
| Hydaburg | 425 | \$20,139 | 89.1% | 26.3% | 21.8% | 60.5% |
| Hyder | 151 | \$23,750 | 1.0% | 14.4% | 22.7% | 47.4% |
| Igiugig | 46 | \$41,250 | 78.8% | 0.0% | 0.0% | 38.5% |
| Iliamna | 103 | \$41,250 | 66.0% | 12.1% | 0.0% | 42.1% |
| Ivanof Bay | 27 | \$21,500 | 94.3% | 18.4% | 0.0% | 45.8% |
| Jakolof Bay | 35 | \$21,875 | 0.0% | 0.0% | 0.0% | 32.0% |
| Juneau | 30,396 | \$47,924 | 12.9% | 5.5% | 4.8% | 25.0% |
| Kachemak | 398 | \$55,000 | 3.0% | 7.3% | 4.0% | 32.0% |
| Kake | 767 | \$35,875 | 73.4% | 7.0% | 10.9% | 46.8% |
| Kaktovik | 222 | \$46,250 | 84.4% | 20.6% | 30.7% | 50.0% |
| Kalifornsky | 335 | \$52,354 | 4.2% | 12.2% | 25.6% | 47.8% |
| Kaltag | 245 | \$15,500 | 92.5% | 41.4% | 24.1% | 52.9% |
| Karluk | 48 | \$31,250 | 91.5% | 3.6% | 9.1% | 40.0% |
| Kasaan | 42 | \$46,667 | 53.7% | 0.0% | 64.5% | 73.8% |
| Kasigluk | 514 | \$26,563 | 95.3% | 20.4% | 34.8% | 66.3% |
| Kasilof | 539 | \$51,439 | 2.9% | 2.5% | 18.4% | 40.8% |
| Kenai | 6,971 | \$42,889 | 8.5% | 7.3% | 12.1% | 38.2% |
| Kenny Lake | 500 | \$21,786 | 9.7% | 24.8% | 22.9% | 50.7% |
| Ketchikan | 8,552 | \$41,931 | 15.7% | 5.5% | 8.6% | 31.2% |
| Kiana | 415 | \$28,125 | 93.5% | 24.5% | 27.4% | 62.1% |
| King Cove | 773 | \$53,631 | 39.2% | 10.0% | 1.8% | 24.0% |

Alaska Communities
and 1990 U.S. Census Data

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| King Salmon | 478 | \$54,072 | 15.5% | 3.0% | 5.8% | 16.2% |
| Kipnuk | 567 | \$4,999 | 97.4% | 76.6% | 12.9% | 78.7% |
| Kivalina | 357 | \$28,036 | 97.5% | 32.2% | 55.6% | 71.4% |
| Klawock | 704 | \$39,583 | 54.3% | 8.4% | 17.3% | 48.4% |
| Klukwan | 160 | \$36,042 | 86.8% | 3.5% | 60.4% | 76.1% |
| Knik | 443 | \$26,250 | 11.4% | 6.5% | 24.8% | 54.2% |
| Kobuk | 89 | \$20,625 | 89.9% | 34.7% | 35.0% | 66.7% |
| Kodiak | 6,749 | \$46,050 | 12.7% | 6.2% | 4.4% | 23.0% |
| Kodiak Station | 1,638 | \$34,196 | 1.7% | 7.0% | 6.3% | 12.1% |
| Kokhanok | 168 | \$14,286 | 90.1% | 53.4% | 7.7% | 65.4% |
| Koliganek | 194 | \$18,125 | 96.1% | 35.6% | 11.1% | 72.4% |
| Kongiganak | 349 | \$33,250 | 97.3% | 30.3% | 16.3% | 60.0% |
| Kotlik | 543 | \$20,417 | 97.0% | 17.7% | 36.6% | 65.2% |
| Kotzebue | 3,232 | \$42,367 | 75.1% | 12.7% | 13.1% | 41.2% |
| Koyuk | 272 | \$18,750 | 94.8% | 30.0% | 37.3% | 64.6% |
| Koyukuk | 126 | \$13,929 | 97.6% | 39.2% | 27.0% | 62.0% |
| Kupreanof | 24 | \$55,447 | 0.0% | 0.0% | 0.0% | 0.0% |
| Kwethluk | 672 | \$16,000 | 96.4% | 38.7% | 11.8% | 72.0% |
| Kwigillingok | 333 | \$14,500 | 95.0% | 43.1% | 9.2% | 58.6% |
| Lake Minchumina | 45 | \$75,222 | 18.8% | 0.0% | 0.0% | 48.3% |
| Larsen Bay | 120 | \$39,750 | 84.4% | 3.1% | 40.0% | 67.6% |
| Lazy Mountain | 1,043 | \$36,250 | 4.3% | 11.7% | 21.3% | 53.9% |
| Levelock | 115 | \$12,159 | 82.9% | 25.8% | 20.9% | 57.5% |
| Lignite | 122 | \$38,125 | 0.0% | 1.9% | 15.2% | 43.5% |
| Lime Village | 47 | \$9,257 | 95.2% | 63.8% | 13.6% | 36.7% |
| Lower Kalskag | 278 | \$10,357 | 98.3% | 61.2% | 37.9% | 77.5% |
| Lutak | 52 | \$70,485 | 17.8% | 0.0% | 0.0% | 48.4% |
| Manley Hot Springs | 90 | \$31,250 | 14.6% | 30.0% | 12.5% | 32.3% |
| Manokotak | 387 | \$20,500 | 95.6% | 28.6% | 16.1% | 58.1% |
| Marshall | 318 | \$28,750 | 92.7% | 16.9% | 19.0% | 55.5% |
| McCarthy | 28 | \$23,750 | 4.0% | 0.0% | 100.0% | 100.0% |
| McGrath | 456 | \$36,250 | 47.0% | 10.5% | 9.9% | 36.3% |
| McKinley Park | 196 | \$40,313 | 2.9% | 4.0% | 13.4% | 40.8% |
| Meadow Lakes | 4,693 | \$33,106 | 2.9% | 12.5% | 13.3% | 44.1% |
| Mekoryuk | 192 | \$14,792 | 99.4% | 31.5% | 16.7% | 59.1% |
| Mendeltna | 72 | \$18,750 | 5.4% | 5.7% | 0.0% | 60.0% |
| Mentasta Lake | 122 | \$11,250 | 72.9% | 44.1% | 18.8% | 81.9% |
| Mellakatia | 1,595 | \$38,370 | 82.4% | 9.8% | 12.8% | 49.2% |
| Meyers Chuck | 28 | \$16,250 | 10.8% | 33.3% | 0.0% | 54.2% |
| Minto | 244 | \$17,656 | 97.2% | 35.0% | 60.3% | 81.6% |
| Moose Creek | 683 | \$25,326 | 2.5% | 9.4% | 10.5% | 32.7% |
| Moose Pass | 116 | \$22,083 | 11.1% | 0.0% | 25.8% | 25.8% |
| Mosquito Lake | 92 | \$28,750 | 1.3% | 38.8% | 7.3% | 32.1% |
| Mountain Village | 738 | \$26,750 | 91.1% | 25.3% | 36.7% | 68.0% |
| Naknek | 640 | \$50,907 | 41.0% | 1.7% | 3.9% | 36.0% |
| Nanwalek | 177 | \$46,563 | 91.1% | 11.0% | 46.4% | 66.7% |
| Napakiaik | 354 | \$18,125 | 94.3% | 36.2% | 33.3% | 61.3% |

**Alaska Communities
and 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Napaskiak | 399 | \$18,750 | 94.8% | 34.3% | 22.7% | 63.4% |
| Naukati Bay | 136 | \$43,333 | 1.1% | 4.8% | 9.1% | 26.8% |
| Nelson Lagoon | 90 | \$44,583 | 80.7% | 26.0% | 0.0% | 80.8% |
| Nenana | 440 | \$27,292 | 47.8% | 10.4% | 17.5% | 52.8% |
| New Stuyahok | 452 | \$12,083 | 95.9% | 51.0% | 17.7% | 74.9% |
| Newhalen | 177 | \$26,250 | 94.4% | 22.4% | 5.5% | 46.9% |
| Newtok | 269 | \$14,844 | 93.2% | 50.2% | 25.9% | 68.2% |
| Nightmute | 217 | \$17,813 | 95.4% | 62.0% | 26.9% | 68.6% |
| Nikiski | 3,023 | \$44,242 | 6.1% | 7.0% | 14.5% | 42.2% |
| Nikolaevsk | 474 | \$19,688 | 1.3% | 46.1% | 0.0% | 52.5% |
| Nikolai | 108 | \$11,250 | 89.0% | 44.5% | 35.5% | 73.0% |
| Nikolski | 43 | \$13,750 | 82.9% | 0.0% | 0.0% | 53.3% |
| Ninilchik | 655 | \$31,518 | 19.5% | 9.6% | 24.4% | 59.7% |
| Noatak | 401 | \$36,458 | 96.7% | 17.1% | 45.1% | 75.1% |
| Nome | 3,656 | \$45,812 | 52.1% | 9.9% | 11.0% | 36.0% |
| Nondalton | 221 | \$21,750 | 89.3% | 20.3% | 42.6% | 70.0% |
| Noorvik | 631 | \$32,969 | 93.8% | 16.6% | 17.5% | 60.7% |
| North Pole | 1,631 | \$32,937 | 5.4% | 5.0% | 10.2% | 26.9% |
| Northway | 119 | \$39,375 | 64.2% | 11.9% | 26.0% | 54.9% |
| Northway Junction | 114 | \$41,875 | 70.5% | 10.0% | 35.8% | 73.9% |
| Northway Village | 110 | \$13,333 | 94.7% | 47.0% | 51.3% | 72.1% |
| Nuiqsut | 435 | \$32,188 | 92.7% | 13.3% | 33.1% | 48.2% |
| Nulato | 365 | \$17,143 | 96.9% | 35.9% | 25.7% | 66.7% |
| Nunapitchuk | 489 | \$17,083 | 97.1% | 40.0% | 12.3% | 60.8% |
| Old Harbor | 301 | \$16,875 | 88.7% | 31.5% | 39.1% | 75.9% |
| Oscarville | 59 | \$26,250 | 91.2% | 27.2% | 0.0% | 56.0% |
| Ouzinkie | 245 | \$48,393 | 85.2% | 10.2% | 18.9% | 51.9% |
| Palmer | 4,167 | \$34,940 | 7.7% | 6.2% | 16.7% | 53.9% |
| Paxson | 34 | \$31,250 | 0.0% | 3.4% | 0.0% | 30.0% |
| Pedro Bay | 37 | \$38,125 | 90.5% | 2.9% | 0.0% | 34.8% |
| Pelican | 187 | \$27,083 | 29.3% | 13.6% | 3.4% | 17.2% |
| Perryville | 107 | \$25,000 | 94.4% | 25.4% | 13.6% | 72.9% |
| Petersburg | 3,432 | \$49,318 | 10.4% | 4.1% | 4.2% | 28.8% |
| Pilot Point | 115 | \$38,750 | 84.9% | 12.9% | 0.0% | 55.3% |
| Pilot Station | 547 | \$16,000 | 95.0% | 51.3% | 35.1% | 62.9% |
| Pitka's Point | 154 | \$17,813 | 95.6% | 28.2% | 5.1% | 57.0% |
| Platinum | 41 | \$23,056 | 92.2% | 35.8% | 8.0% | 54.0% |
| Pleasant Valley | 552 | \$49,464 | 4.7% | 0.0% | 4.5% | 24.2% |
| Point Baker | 57 | \$12,083 | 0.0% | 0.0% | 0.0% | 73.0% |
| Point Hope | 749 | \$47,788 | 91.9% | 9.2% | 23.4% | 52.0% |
| Point Lay | 207 | \$49,583 | 81.3% | 3.3% | 11.5% | 22.7% |
| Polk Inlet | 36 | \$50,446 | 13.3% | 4.4% | 24.4% | 36.3% |
| Port Alexander | 94 | \$20,625 | 2.5% | 18.2% | 11.5% | 31.3% |
| Port Alice | 19 | \$28,750 | 6.7% | 8.3% | 0.0% | 42.9% |
| Port Alsworth | 67 | \$36,250 | 1.8% | 0.0% | 10.5% | 54.1% |
| Port Clarence | 24 | \$12,264 | 0.0% | 0.0% | 0.0% | 0.0% |
| Port Graham | 186 | \$33,750 | 90.4% | 2.1% | 38.8% | 62.4% |

**Alaska Communities
and 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Port Heiden | 116 | \$35,000 | 72.3% | 24.3% | 22.0% | 45.8% |
| Port Lions | 239 | \$40,938 | 67.6% | 5.3% | 14.1% | 41.8% |
| Port Protection | 58 | \$10,000 | 1.6% | 45.6% | 75.0% | 95.3% |
| Portage Creek | 14 | \$5,360 | 60.0% | 100.0% | 0.0% | 100.0% |
| Primrose | 62 | \$46,563 | 0.0% | 0.0% | 0.0% | 35.2% |
| Prudhoe Bay | 47 | \$39,673 | 8.5% | 0.0% | 0.0% | 0.0% |
| Quinhagak | 567 | \$17,500 | 93.8% | 37.2% | 5.9% | 60.6% |
| Rampart | 54 | \$15,000 | 94.1% | 36.2% | 78.8% | 87.5% |
| Red Devil | 49 | \$25,000 | 50.9% | 30.7% | 14.3% | 63.6% |
| Ridgeway | 2,364 | \$48,967 | 4.6% | 6.1% | 6.3% | 30.6% |
| Rowan Bay | 9 | \$58,295 | 6.8% | 0.0% | 9.8% | 22.4% |
| Ruby | 217 | \$15,000 | 74.1% | 24.4% | 12.8% | 52.9% |
| Russian Mission | 295 | \$21,667 | 94.7% | 45.0% | 21.0% | 61.1% |
| Saint George | 184 | \$25,250 | 94.9% | 41.9% | 14.9% | 52.9% |
| Saint Mary's | 504 | \$28,542 | 83.0% | 17.3% | 19.2% | 44.3% |
| Saint Michael | 341 | \$23,194 | 91.2% | 20.9% | 22.9% | 60.6% |
| Saint Paul | 764 | \$39,922 | 66.1% | 7.1% | 10.8% | 32.6% |
| Salamatof | 1,134 | \$38,203 | 10.4% | 9.8% | 14.6% | 64.9% |
| Salcha | 373 | \$35,909 | 4.2% | 8.0% | 14.5% | 36.9% |
| Sand Point | 870 | \$42,083 | 49.3% | 12.5% | 2.9% | 32.1% |
| Savoonga | 622 | \$11,339 | 95.2% | 50.9% | 14.7% | 72.2% |
| Saxman | 381 | \$30,481 | 77.0% | 5.7% | 25.5% | 51.6% |
| Scammon Bay | 459 | \$15,179 | 96.5% | 40.7% | 18.4% | 60.1% |
| Selawik | 696 | \$21,833 | 95.5% | 23.1% | 31.3% | 67.2% |
| Seldovia | 285 | \$27,500 | 15.2% | 16.2% | 11.8% | 50.3% |
| Seward | 2,999 | \$37,049 | 15.2% | 10.7% | 9.2% | 44.9% |
| Shageluk | 145 | \$16,250 | 95.0% | 34.8% | 22.9% | 67.5% |
| Shaktolik | 226 | \$18,438 | 94.4% | 22.8% | 31.9% | 54.4% |
| Sheldon Point | 177 | \$16,250 | 92.7% | 56.2% | 13.0% | 41.2% |
| Shishmaref | 542 | \$15,625 | 94.5% | 27.3% | 18.0% | 65.1% |
| Shungnak | 252 | \$29,583 | 94.6% | 5.7% | 14.0% | 64.9% |
| Sitka | 8,733 | \$43,337 | 20.9% | 4.8% | 6.7% | 26.7% |
| Skagway | 816 | \$37,500 | 5.5% | 4.2% | 10.6% | 27.5% |
| Skwentna | 77 | \$17,692 | 1.2% | 24.2% | 0.0% | 66.7% |
| Slana | 58 | \$25,417 | 6.3% | 19.0% | 44.4% | 62.5% |
| Sleetmute | 102 | \$10,000 | 86.8% | 62.6% | 12.9% | 67.5% |
| Soldotna | 4,092 | \$38,004 | 4.5% | 5.7% | 8.7% | 33.0% |
| South Naknek | 149 | \$23,750 | 79.4% | 26.3% | 27.5% | 58.0% |
| Stebbins | 513 | \$23,333 | 94.8% | 32.3% | 39.2% | 64.0% |
| Sterling | 5,705 | \$51,145 | 2.1% | 7.6% | 7.4% | 38.9% |
| Stevens Village | 99 | \$10,000 | 91.2% | 73.9% | 43.3% | 72.6% |
| Stony River | 42 | \$5,156 | 88.2% | 100.0% | 26.7% | 64.5% |
| Sutton | 431 | \$23,393 | 5.8% | 38.1% | 17.2% | 47.6% |
| Takotna | 63 | \$18,750 | 44.7% | 14.2% | 0.0% | 36.0% |
| Talkeetna | 347 | \$11,991 | 1.6% | 34.3% | 10.1% | 26.1% |
| Tanacross | 85 | \$14,750 | 94.3% | 23.8% | 35.4% | 59.7% |
| Tanana | 299 | \$17,000 | 78.3% | 24.1% | 21.8% | 53.9% |

**Alaska Communities
and 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Tatitlek | 99 | \$27,188 | 86.6% | 19.8% | 0.0% | 75.8% |
| Tazlina | 297 | \$45,625 | 23.1% | 22.0% | 13.2% | 36.4% |
| Telida | 5 | \$43,750 | 90.9% | 0.0% | 0.0% | 0.0% |
| Teller | 265 | \$20,000 | 86.8% | 32.1% | 3.3% | 38.9% |
| Tenakee Springs | 116 | \$18,125 | 9.6% | 10.8% | 20.0% | 74.0% |
| Tetlin | 68 | \$15,750 | 95.4% | 29.6% | 25.0% | 58.5% |
| Thorne Bay | 625 | \$39,688 | 1.2% | 5.2% | 18.6% | 38.4% |
| Togiak | 762 | \$15,000 | 87.3% | 46.3% | 23.1% | 72.9% |
| Tok | 1,216 | \$30,341 | 12.5% | 8.7% | 20.3% | 44.4% |
| Toksook Bay | 496 | \$21,875 | 95.5% | 39.2% | 25.5% | 59.1% |
| Tonsina | 46 | \$16,250 | 18.4% | 0.0% | 0.0% | 66.7% |
| Trapper Creek | 306 | \$31,071 | 6.1% | 16.2% | 30.3% | 60.2% |
| Tuluksak | 385 | \$20,446 | 95.5% | 51.2% | 2.5% | 56.9% |
| Tuntutuliak | 351 | \$14,444 | 96.7% | 46.0% | 6.4% | 59.5% |
| Tununak | 330 | \$18,750 | 96.2% | 26.3% | 14.0% | 50.0% |
| Twin Hills | 59 | \$11,667 | 92.4% | 50.0% | 25.0% | 72.7% |
| Two Rivers | 623 | \$53,518 | 7.3% | 4.0% | 10.5% | 32.2% |
| Tyonek | 151 | \$11,591 | 92.2% | 37.1% | 37.7% | 64.5% |
| Ugashik | 5 | \$37,500 | 85.7% | 0.0% | 80.0% | 83.3% |
| Unalakleet | 803 | \$34,531 | 81.8% | 11.6% | 19.2% | 46.0% |
| Unalaska | 4,251 | \$56,215 | 8.4% | 15.3% | 1.0% | 7.8% |
| Upper Kalskag | 198 | \$16,250 | 84.9% | 39.6% | 25.5% | 68.5% |
| Valdez | 4,486 | \$68,570 | 5.9% | 5.1% | 8.8% | 26.0% |
| Venetie | 241 | \$14,688 | 94.0% | 47.2% | 37.5% | 69.8% |
| Wainwright | 550 | \$33,333 | 94.3% | 4.1% | 10.2% | 40.4% |
| Wales | 162 | \$15,000 | 88.8% | 35.2% | 19.3% | 53.5% |
| Wasilla | 4,917 | \$37,619 | 5.3% | 10.8% | 11.1% | 36.6% |
| Whale Pass | 79 | \$49,583 | 2.7% | 14.0% | 35.7% | 59.1% |
| White Mountain | 193 | \$15,893 | 87.8% | 38.3% | 36.4% | 67.3% |
| Whitestone Logging Camp | 189 | \$45,625 | 3.7% | 7.6% | 9.7% | 23.8% |
| Whittier | 289 | \$33,636 | 12.3% | 13.0% | 8.0% | 37.0% |
| Willow | 408 | \$34,773 | 1.1% | 14.7% | 0.0% | 48.3% |
| Wiseman | 24 | \$4,999 | 15.2% | 100.0% | 0.0% | 50.0% |
| Womens Bay | 662 | \$44,861 | 10.5% | 3.2% | 6.5% | 26.2% |
| Wrangell | 2,543 | \$37,538 | 20.0% | 6.0% | 9.0% | 34.1% |
| Yakutat | 833 | \$36,875 | 55.1% | 10.5% | 11.8% | 33.7% |

* % Unemployment =

Percent of persons age 16+ actively seeking employment, calculated from unemployment compensation claims

** % Adults Not Working =

Percent of persons age 16+ actively seeking employment and those not actively seeking employment ("discouraged workers", in school, retired, disabled, or at home raising children, for example)

**Alaska Communities, by Percent of Population Below Poverty Level in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Eyak | 166 | \$150,001 | 7.6% | 0.0% | 4.3% | 22.1% |
| Deadhorse | 24 | \$102,264 | 11.5% | 0.0% | 0.0% | 0.0% |
| Lake Minchumina | 45 | \$75,222 | 18.8% | 0.0% | 0.0% | 48.3% |
| Lutak | 52 | \$70,485 | 17.8% | 0.0% | 0.0% | 48.4% |
| Halibut Cove | 78 | \$68,760 | 3.8% | 0.0% | 0.0% | 0.0% |
| Chase | 53 | \$61,359 | 0.0% | 0.0% | 0.0% | 0.0% |
| Clam Gulch | 100 | \$60,233 | 12.7% | 0.0% | 0.0% | 61.3% |
| Rowan Bay | 9 | \$58,295 | 6.8% | 0.0% | 9.8% | 22.4% |
| Kupreanof | 24 | \$55,447 | 0.0% | 0.0% | 0.0% | 0.0% |
| Alcan | 16 | \$53,338 | 0.0% | 0.0% | 0.0% | 33.3% |
| Harding Lake | 29 | \$52,126 | 0.0% | 0.0% | 0.0% | 76.0% |
| Pleasant Valley | 552 | \$49,464 | 4.7% | 0.0% | 4.5% | 24.2% |
| Kasaan | 42 | \$46,667 | 53.7% | 0.0% | 64.5% | 73.8% |
| Primrose | 62 | \$46,563 | 0.0% | 0.0% | 0.0% | 35.2% |
| Cold Bay | 120 | \$45,625 | 5.4% | 0.0% | 0.0% | 15.9% |
| Crown Point | 88 | \$43,864 | 4.8% | 0.0% | 0.0% | 38.0% |
| Telida | 5 | \$43,750 | 90.9% | 0.0% | 0.0% | 0.0% |
| Igiugig | 46 | \$41,250 | 78.8% | 0.0% | 0.0% | 38.5% |
| Prudhoe Bay | 47 | \$39,673 | 8.5% | 0.0% | 0.0% | 0.0% |
| Ugashik | 5 | \$37,500 | 85.7% | 0.0% | 80.0% | 83.3% |
| Chignik | 125 | \$36,875 | 45.2% | 0.0% | 4.2% | 38.2% |
| Port Alsworth | 67 | \$36,250 | 1.8% | 0.0% | 10.5% | 54.1% |
| McCarthy | 28 | \$23,750 | 4.0% | 0.0% | 100.0% | 100.0% |
| Moose Pass | 116 | \$22,083 | 11.1% | 0.0% | 25.8% | 25.8% |
| Jakolof Bay | 35 | \$21,875 | 0.0% | 0.0% | 0.0% | 32.0% |
| Tonsina | 46 | \$16,250 | 18.4% | 0.0% | 0.0% | 66.7% |
| Nikolski | 43 | \$13,750 | 82.9% | 0.0% | 0.0% | 53.3% |
| Port Clarence | 24 | \$12,264 | 0.0% | 0.0% | 0.0% | 0.0% |
| Point Baker | 57 | \$12,083 | 0.0% | 0.0% | 0.0% | 73.0% |
| Anchor Point | 1,157 | \$42,847 | 3.7% | 0.7% | 17.5% | 53.0% |
| Hobart Bay | 107 | \$52,377 | 6.4% | 1.0% | 0.0% | 10.9% |
| Naknek | 640 | \$50,907 | 41.0% | 1.7% | 3.9% | 36.0% |
| Lignite | 122 | \$38,125 | 0.0% | 1.9% | 15.2% | 43.5% |
| Port Graham | 186 | \$33,750 | 90.4% | 2.1% | 38.8% | 62.4% |
| Akhiok | 101 | \$42,500 | 93.5% | 2.4% | 18.8% | 50.9% |
| Kasilof | 539 | \$51,439 | 2.9% | 2.5% | 18.4% | 40.8% |
| Eielson AFB | 4,203 | \$25,924 | 0.9% | 2.8% | 13.0% | 18.2% |
| King Salmon | 478 | \$54,072 | 15.5% | 3.0% | 5.8% | 16.2% |
| Larsen Bay | 120 | \$39,750 | 84.4% | 3.1% | 40.0% | 67.6% |
| Womens Bay | 662 | \$44,861 | 10.5% | 3.2% | 6.5% | 26.2% |
| Dot Lake | 80 | \$38,333 | 54.3% | 3.2% | 13.6% | 47.2% |
| Point Lay | 207 | \$49,583 | 81.3% | 3.3% | 11.5% | 22.7% |
| Fritz Creek | 1,972 | \$45,143 | 3.4% | 3.4% | 6.1% | 38.5% |
| Paxson | 34 | \$31,250 | 0.0% | 3.4% | 0.0% | 30.0% |
| Klukwan | 160 | \$36,042 | 86.8% | 3.5% | 60.4% | 76.1% |
| Cooper Landing | 271 | \$42,250 | 1.2% | 3.6% | 0.0% | 53.8% |
| Gustavus | 346 | \$41,538 | 3.9% | 3.6% | 4.6% | 26.2% |

**Alaska Communities, by Percent of Population Below Poverty Level in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Karluk | 48 | \$31,250 | 91.5% | 3.6% | 9.1% | 40.0% |
| Anderson | 565 | \$53,413 | 3.7% | 3.7% | 11.5% | 22.2% |
| Healy | 603 | \$56,313 | 1.4% | 3.8% | 3.9% | 39.4% |
| Hoonah | 906 | \$36,442 | 67.2% | 3.8% | 14.9% | 35.4% |
| Craig | 2,043 | \$47,250 | 22.9% | 3.9% | 8.4% | 25.9% |
| Two Rivers | 623 | \$53,518 | 7.3% | 4.0% | 10.5% | 32.2% |
| McKinley Park | 196 | \$40,313 | 2.9% | 4.0% | 13.4% | 40.8% |
| Petersburg | 3,432 | \$49,318 | 10.4% | 4.1% | 4.2% | 28.8% |
| Wainwright | 550 | \$33,333 | 94.3% | 4.1% | 10.2% | 40.4% |
| Skagway | 816 | \$37,500 | 5.5% | 4.2% | 10.6% | 27.5% |
| Polk Inlet | 36 | \$50,446 | 13.3% | 4.4% | 24.4% | 36.3% |
| Cordova | 2,467 | \$46,304 | 11.2% | 4.7% | 3.1% | 23.8% |
| Coffman Cove | 246 | \$44,063 | 7.0% | 4.7% | 14.7% | 29.8% |
| Sitka | 8,733 | \$43,337 | 20.9% | 4.8% | 6.7% | 26.7% |
| Naukati Bay | 136 | \$43,333 | 1.1% | 4.8% | 9.1% | 26.8% |
| Haines | 1,429 | \$38,542 | 18.1% | 4.9% | 5.4% | 30.9% |
| Homer | 4,126 | \$36,652 | 3.6% | 5.0% | 7.9% | 35.6% |
| North Pole | 1,631 | \$32,937 | 5.4% | 5.0% | 10.2% | 26.9% |
| Valdez | 4,486 | \$68,570 | 5.9% | 5.1% | 8.8% | 26.0% |
| Thorne Bay | 625 | \$39,688 | 1.2% | 5.2% | 18.6% | 38.4% |
| Port Lions | 239 | \$40,938 | 67.6% | 5.3% | 14.1% | 41.8% |
| Juneau | 30,396 | \$47,924 | 12.9% | 5.5% | 4.8% | 25.0% |
| Ketchikan | 8,552 | \$41,931 | 15.7% | 5.5% | 8.6% | 31.2% |
| Cube Cove | 137 | \$51,280 | 5.8% | 5.7% | 0.0% | 21.4% |
| Soldotna | 4,092 | \$38,004 | 4.5% | 5.7% | 8.7% | 33.0% |
| Saxman | 381 | \$30,481 | 77.0% | 5.7% | 25.5% | 51.6% |
| Shungnak | 252 | \$29,583 | 94.6% | 5.7% | 14.0% | 64.9% |
| Mendeltna | 72 | \$18,750 | 5.4% | 5.7% | 0.0% | 60.0% |
| Wrangell | 2,543 | \$37,538 | 20.0% | 6.0% | 9.0% | 34.1% |
| Ridgeway | 2,364 | \$48,967 | 4.6% | 6.1% | 6.3% | 30.6% |
| Kodiak | 6,749 | \$46,050 | 12.7% | 6.2% | 4.4% | 23.0% |
| Palmer | 4,167 | \$34,940 | 7.7% | 6.2% | 16.7% | 53.9% |
| Fort Greely | 740 | \$25,801 | 1.0% | 6.3% | 14.4% | 21.7% |
| Chignik Lagocn | 74 | \$56,250 | 56.6% | 6.4% | 20.0% | 84.0% |
| Knik | 443 | \$26,250 | 11.4% | 6.5% | 24.8% | 54.2% |
| Nikiski | 3,023 | \$44,242 | 6.1% | 7.0% | 14.5% | 42.2% |
| Anchorage | 254,849 | \$43,946 | 6.4% | 7.0% | 7.0% | 26.7% |
| Kake | 767 | \$35,875 | 73.4% | 7.0% | 10.9% | 46.8% |
| Kodiak Station | 1,638 | \$34,196 | 1.7% | 7.0% | 6.3% | 12.1% |
| Elfin Cove | 54 | \$43,125 | 1.8% | 7.1% | 0.0% | 28.2% |
| Saint Paul | 764 | \$39,922 | 66.1% | 7.1% | 10.8% | 32.6% |
| Bettles | 32 | \$38,333 | 22.2% | 7.1% | 0.0% | 0.0% |
| Kachemak | 398 | \$55,000 | 3.0% | 7.3% | 4.0% | 32.0% |
| Kenai | 6,971 | \$42,889 | 8.5% | 7.3% | 12.1% | 38.2% |
| Barrow | 4,380 | \$56,688 | 63.9% | 7.5% | 11.5% | 30.4% |
| Sterling | 5,705 | \$51,145 | 2.1% | 7.6% | 7.4% | 38.9% |
| Whitestone Logging Camp | 189 | \$45,625 | 3.7% | 7.6% | 9.7% | 23.8% |

**Alaska Communities, by Percent of Population Below Poverty Level in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Butte | 2,538 | \$41,471 | 3.6% | 7.7% | 10.4% | 35.5% |
| Eklutna | 425 | \$66,946 | 12.6% | 8.0% | 3.5% | 29.1% |
| Salcha | 373 | \$35,909 | 4.2% | 8.0% | 14.5% | 36.9% |
| Glennallen | 513 | \$30,833 | 6.7% | 8.0% | 4.4% | 30.7% |
| Port Alice | 19 | \$28,750 | 6.7% | 8.3% | 0.0% | 42.9% |
| Golovin | 152 | \$16,146 | 92.9% | 8.3% | 15.3% | 44.4% |
| Klawock | 704 | \$39,583 | 54.3% | 8.4% | 17.3% | 48.4% |
| Delta Junction | 855 | \$31,250 | 4.4% | 8.4% | 8.6% | 35.4% |
| Tok | 1,216 | \$30,341 | 12.5% | 8.7% | 20.3% | 44.4% |
| Fox River | 435 | \$93,848 | 0.0% | 9.1% | 0.0% | 45.7% |
| Point Hope | 749 | \$47,788 | 91.9% | 9.2% | 23.4% | 52.0% |
| Fox | 321 | \$28,250 | 7.3% | 9.2% | 18.0% | 47.8% |
| Moose Creek | 683 | \$25,326 | 2.5% | 9.4% | 10.5% | 32.7% |
| Dillingham | 2,252 | \$44,083 | 55.8% | 9.5% | 6.7% | 37.7% |
| College | 11,663 | \$43,329 | 8.4% | 9.6% | 7.8% | 32.3% |
| Ninilchik | 655 | \$31,518 | 19.5% | 9.6% | 24.4% | 59.7% |
| Houston | 994 | \$32,344 | 3.6% | 9.7% | 15.4% | 52.0% |
| Copperville | 196 | \$47,188 | 26.4% | 9.8% | 26.6% | 51.8% |
| Metlakatla | 1,595 | \$38,370 | 82.4% | 9.8% | 12.8% | 49.2% |
| Salamatof | 1,134 | \$38,203 | 10.4% | 9.8% | 14.6% | 64.9% |
| Nome | 3,656 | \$45,812 | 52.1% | 9.9% | 11.0% | 36.0% |
| King Cove | 773 | \$53,631 | 39.2% | 10.0% | 1.8% | 24.0% |
| Northway Junction | 114 | \$41,875 | 70.5% | 10.0% | 36.8% | 73.9% |
| Ouzinkie | 246 | \$48,393 | 85.2% | 10.2% | 18.9% | 51.9% |
| Cantwell | 144 | \$44,000 | 22.4% | 10.3% | 34.6% | 57.6% |
| Fairbanks | 31,850 | \$32,033 | 9.2% | 10.3% | 11.6% | 29.6% |
| Nenana | 440 | \$27,292 | 47.8% | 10.4% | 17.5% | 52.8% |
| Yakutat | 833 | \$36,875 | 55.1% | 10.5% | 11.8% | 33.7% |
| McGrath | 456 | \$36,250 | 47.0% | 10.5% | 9.9% | 36.3% |
| Seward | 2,999 | \$37,049 | 15.2% | 10.7% | 9.2% | 44.9% |
| Wasilla | 4,917 | \$37,619 | 5.3% | 10.8% | 11.1% | 36.6% |
| Tenakee Springs | 116 | \$18,125 | 9.6% | 10.8% | 20.0% | 74.0% |
| Circle | 83 | \$17,083 | 86.3% | 10.9% | 36.7% | 62.7% |
| Nanwalek | 177 | \$46,563 | 91.1% | 11.0% | 46.4% | 66.7% |
| Big Lake | 2,243 | \$36,583 | 3.7% | 11.3% | 12.9% | 43.8% |
| Unalakleet | 803 | \$34,531 | 81.8% | 11.6% | 19.2% | 46.0% |
| Lazy Mountain | 1,043 | \$36,250 | 4.3% | 11.7% | 21.3% | 53.9% |
| Northway | 119 | \$39,375 | 64.2% | 11.9% | 26.0% | 54.9% |
| Iliamna | 103 | \$41,250 | 66.0% | 12.1% | 0.0% | 42.1% |
| Kalifornsky | 335 | \$52,354 | 4.2% | 12.2% | 25.6% | 47.8% |
| Bethel | 5,277 | \$42,232 | 63.9% | 12.2% | 9.0% | 36.6% |
| Sand Point | 870 | \$42,083 | 49.3% | 12.5% | 2.9% | 32.1% |
| Meadow Lakes | 4,693 | \$33,106 | 2.9% | 12.5% | 13.3% | 44.1% |
| Grayling | 186 | \$21,641 | 93.3% | 12.6% | 29.6% | 57.5% |
| Kotzebue | 3,232 | \$42,367 | 75.1% | 12.7% | 13.1% | 41.2% |
| Ester | 236 | \$44,688 | 4.8% | 12.8% | 11.5% | 33.0% |
| Dry Creek | 110 | \$40,625 | 0.0% | 12.8% | 0.0% | 13.7% |

**Alaska Communities, by Percent of Population Below Poverty Level in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Pilot Point | 115 | \$38,750 | 84.9% | 12.9% | 0.0% | 55.3% |
| Copper Center | 536 | \$34,643 | 34.5% | 12.9% | 0.0% | 53.8% |
| Whittier | 289 | \$33,636 | 12.3% | 13.0% | 8.0% | 37.0% |
| Akiachak | 560 | \$23,750 | 95.0% | 13.0% | 12.7% | 54.5% |
| Nuiqsut | 435 | \$32,188 | 92.7% | 13.3% | 33.1% | 48.2% |
| Pelican | 187 | \$27,083 | 29.3% | 13.6% | 3.4% | 17.2% |
| Central | 57 | \$28,036 | 1.9% | 13.7% | 19.0% | 64.6% |
| Whale Pass | 79 | \$49,583 | 2.7% | 14.0% | 35.7% | 59.1% |
| Takotna | 63 | \$18,750 | 44.7% | 14.2% | 0.0% | 36.0% |
| Hyder | 151 | \$23,750 | 1.0% | 14.4% | 22.7% | 47.4% |
| Willow | 408 | \$34,773 | 1.1% | 14.7% | 0.0% | 48.3% |
| Atkasuk | 235 | \$56,352 | 93.1% | 15.2% | 29.7% | 45.1% |
| Hollis | 175 | \$31,250 | 2.7% | 15.2% | 8.3% | 44.3% |
| Unalaska | 4,251 | \$56,215 | 8.4% | 15.3% | 1.0% | 7.8% |
| Ferry | 69 | \$25,625 | 12.5% | 15.5% | 39.1% | 65.0% |
| Cohoe | 598 | \$33,550 | 1.8% | 15.9% | 14.0% | 49.5% |
| Anaktuvuk Pass | 301 | \$37,292 | 84.9% | 16.1% | 23.6% | 45.5% |
| Clark's Point | 66 | \$17,083 | 88.3% | 16.1% | 18.5% | 42.1% |
| Atka | 111 | \$40,625 | 91.8% | 16.2% | 25.7% | 44.7% |
| Trapper Creek | 306 | \$31,071 | 6.1% | 16.2% | 30.3% | 60.2% |
| Seldovia | 285 | \$27,500 | 15.2% | 16.2% | 11.8% | 50.3% |
| Aniak | 578 | \$32,641 | 70.7% | 16.4% | 9.7% | 32.2% |
| Noorvik | 631 | \$32,969 | 93.8% | 16.6% | 17.5% | 60.7% |
| Akutan | 420 | \$27,813 | 13.6% | 16.6% | 0.4% | 7.4% |
| Hughes | 69 | \$15,833 | 92.6% | 16.6% | 15.4% | 53.2% |
| Marshall | 318 | \$28,750 | 92.7% | 16.9% | 19.0% | 55.5% |
| Noatak | 401 | \$36,458 | 96.7% | 17.1% | 45.1% | 75.1% |
| Eagle Village | 34 | \$11,875 | 80.0% | 17.1% | 93.1% | 93.8% |
| Saint Mary's | 504 | \$28,542 | 83.0% | 17.3% | 19.2% | 44.3% |
| Chistochina | 55 | \$24,167 | 61.7% | 17.7% | 52.0% | 72.1% |
| Kotlik | 543 | \$20,417 | 97.0% | 17.7% | 36.6% | 65.2% |
| False Pass | 64 | \$21,667 | 76.5% | 17.9% | 0.0% | 53.1% |
| Galena | 543 | \$28,611 | 45.3% | 18.2% | 9.2% | 24.7% |
| Port Alexander | 94 | \$20,625 | 2.5% | 18.2% | 11.5% | 31.3% |
| Ivanof Bay | 27 | \$21,500 | 94.3% | 18.4% | 0.0% | 45.8% |
| Slana | 58 | \$25,417 | 6.3% | 19.0% | 44.4% | 62.5% |
| Tatitlek | 99 | \$27,188 | 86.6% | 19.8% | 0.0% | 75.8% |
| Covenant Life | 54 | \$23,571 | 0.0% | 20.0% | 100.0% | 100.0% |
| Chiniak | 74 | \$44,375 | 5.8% | 20.2% | 5.1% | 28.8% |
| Gulkana | 95 | \$38,750 | 59.2% | 20.3% | 27.3% | 59.5% |
| Nondalton | 221 | \$21,750 | 89.3% | 20.3% | 42.6% | 70.0% |
| Kasigluk | 514 | \$26,563 | 95.3% | 20.4% | 34.8% | 66.3% |
| Kaktovik | 222 | \$46,250 | 84.4% | 20.6% | 30.7% | 50.0% |
| Emmonak | 10 | \$25,625 | 92.1% | 20.9% | 34.6% | 62.0% |
| Saint Michael | 341 | \$23,194 | 91.2% | 20.9% | 22.9% | 60.6% |
| Deering | 158 | \$15,208 | 94.3% | 21.6% | 6.7% | 41.7% |
| Pedro Bay | 37 | \$38,125 | 90.5% | 21.9% | 0.0% | 34.8% |

**Alaska Communities, by Percent of Population Below Poverty Level in Ascending Order
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| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Angoon | 616 | \$32,083 | 82.3% | 21.9% | 35.1% | 54.1% |
| Tazlina | 297 | \$45,625 | 23.1% | 22.0% | 13.2% | 36.4% |
| Newhalen | 177 | \$26,250 | 94.4% | 22.4% | 5.5% | 46.9% |
| Shaktolik | 226 | \$8,438 | 94.4% | 22.8% | 31.9% | 54.4% |
| Selawik | 696 | \$21,833 | 95.5% | 23.1% | 31.3% | 67.2% |
| Big Delta | 508 | \$32,813 | 4.0% | 23.2% | 1.6% | 54.0% |
| Tanacross | 85 | \$14,750 | 94.3% | 23.8% | 35.4% | 59.7% |
| Tanana | 299 | \$17,000 | 78.3% | 24.1% | 21.8% | 53.9% |
| Skwentna | 77 | \$17,692 | 1.2% | 24.2% | 0.0% | 66.7% |
| Port Heiden | 116 | \$35,000 | 72.3% | 24.3% | 22.0% | 45.8% |
| Ruby | 217 | \$15,000 | 74.1% | 24.4% | 12.8% | 52.9% |
| Kiana | 415 | \$28,125 | 93.5% | 24.5% | 27.4% | 62.1% |
| Brevig Mission | 265 | \$15,000 | 92.4% | 24.7% | 35.3% | 54.6% |
| Kenny Lake | 500 | \$21,786 | 9.7% | 24.8% | 22.9% | 50.7% |
| Elim | 301 | \$16,250 | 91.7% | 25.1% | 36.1% | 66.2% |
| Mountain Village | 738 | \$26,750 | 91.1% | 25.3% | 36.7% | 68.0% |
| Perryville | 107 | \$25,000 | 94.4% | 25.4% | 13.6% | 72.9% |
| Levelock | 115 | \$12,159 | 82.9% | 25.8% | 20.9% | 57.5% |
| Nelson Lagoon | 90 | \$44,583 | 80.7% | 26.0% | 0.0% | 80.8% |
| Andreafsky | 469 | \$28,958 | 84.4% | 26.0% | 18.6% | 43.8% |
| South Naknek | 149 | \$23,750 | 79.4% | 26.3% | 27.5% | 58.0% |
| Hydaburg | 425 | \$20,139 | 89.1% | 26.3% | 21.8% | 60.5% |
| Tununak | 330 | \$18,750 | 96.2% | 26.3% | 14.0% | 50.0% |
| Chenega Bay | 91 | \$22,083 | 69.1% | 26.6% | 14.3% | 41.9% |
| Chevak | 721 | \$17,222 | 93.0% | 27.0% | 17.8% | 53.5% |
| Oscarville | 59 | \$26,250 | 91.2% | 27.2% | 0.0% | 56.0% |
| Shishmaref | 542 | \$15,625 | 94.5% | 27.3% | 18.0% | 65.1% |
| Pitka's Point | 154 | \$17,813 | 95.6% | 28.2% | 5.1% | 57.0% |
| Eek | 277 | \$21,000 | 95.7% | 28.6% | 23.9% | 63.4% |
| Manokotak | 387 | \$20,500 | 95.6% | 28.6% | 16.1% | 58.1% |
| Crooked Creek | 138 | \$16,250 | 90.6% | 28.7% | 27.3% | 64.7% |
| Aleknagik | 226 | \$21,875 | 83.2% | 28.8% | 14.3% | 62.2% |
| Alakanuk | 651 | \$17,708 | 95.8% | 29.4% | 26.8% | 61.5% |
| Tetlin | 68 | \$15,750 | 95.4% | 29.6% | 25.0% | 58.5% |
| Manley Hot Springs | 90 | \$31,250 | 14.6% | 30.0% | 12.5% | 32.3% |
| Koyuk | 272 | \$18,750 | 94.8% | 30.0% | 37.3% | 64.6% |
| Kongiganak | 349 | \$33,250 | 97.3% | 30.3% | 16.3% | 60.0% |
| Red Devil | 49 | \$25,000 | 50.9% | 30.7% | 14.3% | 63.6% |
| Ambler | 333 | \$22,500 | 89.7% | 31.1% | 39.3% | 66.3% |
| Chickaloon | 205 | \$32,083 | 6.2% | 31.2% | 26.7% | 38.2% |
| Old Harbor | 301 | \$16,875 | 88.7% | 31.5% | 39.1% | 75.9% |
| Mekoryuk | 192 | \$14,792 | 99.4% | 31.5% | 16.7% | 59.1% |
| Arctic Village | 121 | \$9,661 | 93.8% | 31.5% | 12.5% | 52.5% |
| Teller | 265 | \$20,000 | 86.8% | 32.1% | 3.3% | 38.9% |
| Fort Yukon | 575 | \$17,969 | 85.0% | 32.1% | 27.4% | 55.4% |
| Kivalina | 357 | \$28,036 | 97.5% | 32.2% | 55.6% | 71.4% |
| Beaver | 118 | \$20,313 | 95.1% | 32.2% | 22.6% | 63.6% |

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| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Stebbins | 513 | \$23,333 | 94.8% | 32.3% | 39.2% | 64.0% |
| Buckland | 412 | \$18,906 | 95.0% | 32.8% | 12.2% | 59.4% |
| Happy Valley | 391 | \$16,250 | 6.1% | 32.8% | 25.6% | 68.6% |
| Meyers Chuck | 28 | \$16,250 | 10.8% | 33.3% | 0.0% | 54.2% |
| Hope | 152 | \$17,250 | 3.1% | 33.5% | 38.4% | 50.8% |
| Akiak | 327 | \$13,571 | 97.2% | 33.9% | 16.0% | 60.2% |
| Egegik | 127 | \$20,625 | 70.5% | 34.1% | 24.3% | 69.6% |
| Napaskiak | 399 | \$18,750 | 94.8% | 34.3% | 22.7% | 63.4% |
| Talkeetna | 347 | \$11,991 | 1.6% | 34.3% | 10.1% | 26.1% |
| Kobuk | 89 | \$20,625 | 89.9% | 34.7% | 35.0% | 66.7% |
| Shageluk | 145 | \$16,250 | 95.0% | 34.8% | 22.9% | 67.5% |
| Minto | 244 | \$17,656 | 97.2% | 35.0% | 60.3% | 81.6% |
| Wales | 162 | \$15,000 | 88.8% | 35.2% | 19.3% | 53.5% |
| Chefornak | 405 | \$20,278 | 97.5% | 35.4% | 6.2% | 66.8% |
| Koliganek | 194 | \$18,125 | 96.1% | 35.6% | 11.1% | 72.4% |
| Platinum | 41 | \$23,056 | 92.2% | 35.8% | 8.0% | 54.0% |
| Nulato | 365 | \$17,143 | 96.9% | 35.9% | 25.7% | 66.7% |
| Evansville | 20 | \$29,167 | 57.6% | 36.1% | 16.0% | 16.0% |
| Napakiak | 354 | \$18,125 | 94.3% | 36.2% | 33.3% | 61.3% |
| Rampart | 54 | \$15,000 | 94.1% | 36.2% | 78.8% | 87.5% |
| Tyonek | 151 | \$11,591 | 92.2% | 37.1% | 37.7% | 64.5% |
| Quinhagak | 567 | \$17,500 | 93.8% | 37.2% | 5.9% | 60.6% |
| Alexander Creek | 38 | \$8,166 | 25.0% | 38.0% | 0.0% | 100.0% |
| Sutton | 431 | \$23,393 | 5.8% | 38.1% | 17.2% | 47.6% |
| White Mountain | 193 | \$15,893 | 87.8% | 38.3% | 36.4% | 67.3% |
| Kwethluk | 672 | \$16,000 | 96.4% | 38.7% | 11.8% | 72.0% |
| Mosquito Lake | 92 | \$28,750 | 1.3% | 38.8% | 7.3% | 32.1% |
| Toksook Bay | 496 | \$21,875 | 95.5% | 39.2% | 25.5% | 59.1% |
| Koyukuk | 126 | \$13,929 | 97.6% | 39.2% | 27.0% | 62.0% |
| Upper Kalskag | 198 | \$16,250 | 84.9% | 39.6% | 25.5% | 68.5% |
| Nunapitchuk | 489 | \$17,083 | 97.1% | 40.0% | 12.3% | 60.8% |
| Scammon Bay | 459 | \$15,179 | 96.5% | 40.7% | 18.4% | 60.1% |
| Chitina | 84 | \$13,125 | 46.9% | 40.9% | 33.3% | 64.7% |
| Kaltag | 245 | \$15,500 | 92.5% | 41.4% | 24.1% | 52.9% |
| Goodnews Bay | 263 | \$13,523 | 95.9% | 41.8% | 3.1% | 56.6% |
| Saint George | 184 | \$25,250 | 94.9% | 41.9% | 14.9% | 52.9% |
| Chignik Lake | 127 | \$19,167 | 91.7% | 42.0% | 15.2% | 68.2% |
| Kwigillingok | 333 | \$14,500 | 95.0% | 43.1% | 9.2% | 58.6% |
| Eagle | 165 | \$12,500 | 3.0% | 43.4% | 32.5% | 52.5% |
| Hooper Bay | 1,012 | \$18,125 | 96.0% | 43.5% | 41.7% | 66.3% |
| Huslia | 245 | \$13,333 | 90.8% | 43.7% | 38.5% | 67.5% |
| Mentasta Lake | 122 | \$11,250 | 72.9% | 44.1% | 18.8% | 81.9% |
| Nikolai | 108 | \$11,250 | 89.0% | 44.5% | 35.5% | 73.0% |
| Russian Mission | 295 | \$21,667 | 94.7% | 45.0% | 21.0% | 61.1% |
| Anvik | 83 | \$10,694 | 91.5% | 45.0% | 13.6% | 60.4% |
| Port Protection | 58 | \$10,000 | 1.6% | 45.6% | 75.0% | 95.3% |
| Tuntutuliak | 351 | \$14,444 | 96.7% | 46.0% | 6.4% | 59.5% |

**Alaska Communities, by Percent of Population Below Poverty Level in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Nikolaevsk | 474 | \$19,688 | 1.3% | 46.1% | 0.0% | 52.5% |
| Togiak | 762 | \$15,000 | 87.3% | 46.3% | 23.1% | 72.9% |
| Gambell | 653 | \$15,938 | 96.2% | 46.4% | 16.8% | 71.1% |
| Allakaket | 182 | \$11,477 | 94.1% | 46.9% | 69.4% | 78.4% |
| Northway Village | 110 | \$13,333 | 94.7% | 47.0% | 51.3% | 72.1% |
| Venetie | 241 | \$14,688 | 94.0% | 47.2% | 37.5% | 69.8% |
| Chuathbaluk | 115 | \$13,750 | 89.7% | 47.4% | 8.6% | 47.5% |
| Atmautluak | 292 | \$15,833 | 96.9% | 47.6% | 25.3% | 55.3% |
| Holy Cross | 260 | \$13,750 | 93.5% | 48.8% | 38.6% | 72.3% |
| Twin Hills | 59 | \$11,667 | 92.4% | 50.0% | 25.0% | 72.7% |
| Newtok | 269 | \$14,844 | 93.2% | 50.2% | 25.9% | 68.2% |
| Savoonga | 622 | \$11,339 | 95.2% | 50.9% | 14.7% | 72.2% |
| New Stuyahok | 452 | \$12,083 | 95.9% | 51.0% | 17.7% | 74.9% |
| Tuluksak | 385 | \$20,446 | 95.5% | 51.2% | 2.5% | 56.9% |
| Pilot Station | 547 | \$16,000 | 95.0% | 51.3% | 35.1% | 62.9% |
| Ekwok | 124 | \$10,833 | 87.0% | 52.0% | 23.5% | 73.1% |
| Kokhanok | 168 | \$14,286 | 90.1% | 53.4% | 7.7% | 65.4% |
| Sheldon Point | 177 | \$16,250 | 92.7% | 56.2% | 13.0% | 41.2% |
| Game Creek | 67 | \$12,500 | 0.0% | 59.6% | 0.0% | 13.8% |
| Gakona | 23 | \$32,500 | 0.0% | 60.0% | 0.0% | 25.0% |
| Lower Kalskag | 278 | \$10,357 | 98.3% | 61.2% | 37.9% | 77.5% |
| Nightmute | 217 | \$17,813 | 95.4% | 62.0% | 26.9% | 68.6% |
| Sleetmute | 102 | \$10,000 | 86.8% | 62.6% | 12.9% | 67.5% |
| Diomedea | 174 | \$14,375 | 93.8% | 63.0% | 0.0% | 60.4% |
| Edna Bay | 70 | \$12,250 | 0.0% | 63.7% | 25.0% | 67.2% |
| Lime Village | 47 | \$9,257 | 95.2% | 63.8% | 13.6% | 36.7% |
| Chalkyitsik | 87 | \$12,750 | 92.2% | 67.3% | 31.3% | 81.0% |
| Healy Lake | 60 | \$5,841 | 85.1% | 70.8% | 33.3% | 85.7% |
| Stevens Village | 99 | \$10,000 | 91.2% | 73.9% | 43.3% | 72.6% |
| Circle Hot Springs | 32 | \$6,250 | 0.0% | 74.1% | 33.3% | 54.5% |
| Kipnuk | 567 | \$4,999 | 97.4% | 76.6% | 12.9% | 78.7% |
| Alatna | 32 | \$6,030 | 93.5% | 83.0% | 100.0% | 100.0% |
| Birch Creek | 37 | \$5,032 | 90.5% | 92.6% | 0.0% | 48.0% |
| Portage Creek | 14 | \$5,360 | 60.0% | 100.0% | 0.0% | 100.0% |
| Stony River | 42 | \$5,156 | 88.2% | 100.0% | 26.7% | 64.5% |
| Wiseman | 24 | \$4,999 | 15.2% | 100.0% | 0.0% | 50.0% |

* % Unemployment =

Percent of persons age 16+ actively seeking employment, calculated from unemployment compensation claims

** % Adults Not Working =

Percent of persons age 16+ actively seeking employment and those not actively seeking employment ("discouraged workers", in school, retired, disabled, or at home raising children, for example)

**Alaska Communities, by Percent Unemployment in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Deadhorse | 24 | \$102,264 | 11.5% | 0.0% | 0.0% | 0.0% |
| Fox River | 435 | \$93,848 | 0.0% | 9.1% | 0.0% | 45.7% |
| Lake Minchumina | 45 | \$75,222 | 18.8% | 0.0% | 0.0% | 48.3% |
| Lutak | 52 | \$70,485 | 17.8% | 0.0% | 0.0% | 48.4% |
| Halibut Cove | 78 | \$68,760 | 3.8% | 0.0% | 0.0% | 0.0% |
| Chase | 53 | \$61,359 | 0.0% | 0.0% | 0.0% | 0.0% |
| Clam Gulch | 100 | \$60,233 | 12.7% | 0.0% | 0.0% | 61.3% |
| Kupreanof | 24 | \$55,447 | 0.0% | 0.0% | 0.0% | 0.0% |
| Alcan | 16 | \$53,338 | 0.0% | 0.0% | 0.0% | 33.3% |
| Hobart Bay | 107 | \$52,377 | 6.4% | 1.0% | 0.0% | 10.9% |
| Harding Lake | 29 | \$52,126 | 0.0% | 0.0% | 0.0% | 76.0% |
| Cube Cove | 137 | \$51,280 | 5.8% | 5.7% | 0.0% | 21.4% |
| Primrose | 62 | \$46,563 | 0.0% | 0.0% | 0.0% | 35.2% |
| Cold Bay | 120 | \$45,625 | 5.4% | 0.0% | 0.0% | 15.9% |
| Nelson Lagoon | 90 | \$44,583 | 80.7% | 26.0% | 0.0% | 80.8% |
| Crown Point | 88 | \$43,864 | 4.8% | 0.0% | 0.0% | 38.0% |
| Telida | 5 | \$43,750 | 90.9% | 0.0% | 0.0% | 0.0% |
| Elfin Cove | 54 | \$43,125 | 1.8% | 7.1% | 0.0% | 28.2% |
| Cooper Landing | 271 | \$42,250 | 1.2% | 3.6% | 0.0% | 53.8% |
| Igiugig | 46 | \$41,250 | 78.8% | 0.0% | 0.0% | 38.5% |
| Iliamna | 103 | \$41,250 | 66.0% | 12.1% | 0.0% | 42.1% |
| Dry Creek | 110 | \$40,625 | 0.0% | 12.8% | 0.0% | 13.7% |
| Prudhoe Bay | 47 | \$39,673 | 8.5% | 0.0% | 0.0% | 0.0% |
| Pilot Point | 115 | \$38,750 | 84.9% | 12.9% | 0.0% | 55.3% |
| Betties | 32 | \$38,333 | 22.2% | 7.1% | 0.0% | 0.0% |
| Pedro Bay | 37 | \$38,125 | 90.5% | 21.9% | 0.0% | 34.8% |
| Willow | 408 | \$34,773 | 1.1% | 14.7% | 0.0% | 48.3% |
| Copper Center | 536 | \$34,643 | 34.5% | 12.9% | 0.0% | 53.8% |
| Gakona | 23 | \$32,500 | 0.0% | 60.0% | 0.0% | 25.0% |
| Paxson | 34 | \$31,250 | 0.0% | 3.4% | 0.0% | 30.0% |
| Port Alice | 19 | \$28,750 | 6.7% | 8.3% | 0.0% | 42.9% |
| Tatitlek | 99 | \$27,188 | 86.6% | 19.8% | 0.0% | 75.8% |
| Oscarville | 59 | \$26,250 | 91.2% | 27.2% | 0.0% | 56.0% |
| Jakolof Bay | 35 | \$21,875 | 0.0% | 0.0% | 0.0% | 32.0% |
| False Pass | 64 | \$21,667 | 76.5% | 17.9% | 0.0% | 53.1% |
| Ivanof Bay | 27 | \$21,500 | 94.3% | 18.4% | 0.0% | 45.8% |
| Nikolaevsk | 474 | \$19,688 | 1.3% | 46.1% | 0.0% | 52.5% |
| Mendeltna | 72 | \$18,750 | 5.4% | 5.7% | 0.0% | 60.0% |
| Takotna | 63 | \$18,750 | 44.7% | 14.2% | 0.0% | 36.0% |
| Skwentna | 77 | \$17,692 | 1.2% | 24.2% | 0.0% | 66.7% |
| Tonsina | 46 | \$16,250 | 18.4% | 0.0% | 0.0% | 66.7% |
| Meyers Chuck | 28 | \$16,250 | 10.8% | 33.3% | 0.0% | 54.2% |
| Diomedes | 174 | \$14,375 | 93.8% | 63.0% | 0.0% | 60.4% |
| Nikolski | 43 | \$13,750 | 82.9% | 0.0% | 0.0% | 53.3% |
| Game Creek | 67 | \$12,500 | 0.0% | 59.6% | 0.0% | 13.8% |
| Port Clarence | 24 | \$12,264 | 0.0% | 0.0% | 0.0% | 0.0% |
| Point Baker | 57 | \$12,083 | 0.0% | 0.0% | 0.0% | 73.0% |

**Alaska Communities, by Percent Unemployment in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Alexander Creek | 38 | \$8,166 | 25.0% | 38.0% | 0.0% | 100.0% |
| Portage Creek | 14 | \$5,360 | 60.0% | 100.0% | 0.0% | 100.0% |
| Birch Creek | 37 | \$5,032 | 90.5% | 92.6% | 0.0% | 48.0% |
| Wiseman | 24 | \$4,999 | 15.2% | 100.0% | 0.0% | 50.0% |
| Akutan | 420 | \$27,813 | 13.6% | 16.6% | 0.4% | 7.4% |
| Unalaska | 4,251 | \$56,215 | 8.4% | 15.3% | 1.0% | 7.8% |
| Big Delta | 508 | \$32,813 | 4.0% | 23.2% | 1.6% | 54.0% |
| King Cove | 773 | \$53,631 | 39.2% | 10.0% | 1.8% | 24.0% |
| Tuluksak | 385 | \$20,446 | 95.5% | 51.2% | 2.5% | 56.9% |
| Sand Point | 870 | \$42,083 | 49.3% | 12.5% | 2.9% | 32.1% |
| Cordova | 2,467 | \$46,304 | 11.2% | 4.7% | 3.1% | 23.8% |
| Goodnews Bay | 263 | \$13,523 | 95.9% | 41.8% | 3.1% | 56.6% |
| Teller | 265 | \$20,000 | 86.8% | 32.1% | 3.3% | 38.9% |
| Pelican | 187 | \$27,083 | 29.3% | 13.6% | 3.4% | 17.2% |
| Eklutna | 425 | \$66,946 | 12.6% | 8.0% | 3.5% | 29.1% |
| Healy | 603 | \$56,313 | 1.4% | 3.8% | 3.9% | 39.4% |
| Naknek | 640 | \$50,907 | 41.0% | 1.7% | 3.9% | 36.0% |
| Kachemak | 398 | \$55,000 | 3.0% | 7.3% | 4.0% | 32.0% |
| Petersburg | 3,432 | \$49,318 | 10.4% | 4.1% | 4.2% | 28.8% |
| Chignik | 125 | \$36,875 | 45.2% | 0.0% | 4.2% | 38.2% |
| Eyak | 166 | \$150,001 | 7.6% | 0.0% | 4.3% | 22.1% |
| Kodiak | 6,749 | \$46,050 | 12.7% | 6.2% | 4.4% | 23.0% |
| Glennallen | 513 | \$30,833 | 6.7% | 8.0% | 4.4% | 30.7% |
| Pleasant Valley | 552 | \$49,464 | 4.7% | 0.0% | 4.5% | 24.2% |
| Gustavus | 346 | \$41,538 | 3.9% | 3.6% | 4.6% | 26.2% |
| Juneau | 30,396 | \$47,924 | 12.9% | 5.5% | 4.8% | 25.0% |
| Chiniak | 74 | \$44,375 | 5.8% | 20.2% | 5.1% | 28.8% |
| Pitka's Point | 154 | \$17,813 | 95.6% | 28.2% | 5.1% | 57.0% |
| Haines | 1,429 | \$38,542 | 18.1% | 4.9% | 5.4% | 30.9% |
| Newhalen | 177 | \$26,250 | 94.4% | 22.4% | 5.5% | 46.9% |
| King Salmon | 478 | \$54,072 | 15.5% | 3.0% | 5.8% | 16.2% |
| Quinhagak | 567 | \$17,500 | 93.8% | 37.2% | 5.9% | 60.6% |
| Fritz Creek | 1,972 | \$45,143 | 3.4% | 3.4% | 6.1% | 38.5% |
| Chefornak | 405 | \$20,278 | 97.5% | 35.4% | 6.2% | 66.8% |
| Ridgeway | 2,364 | \$48,967 | 4.6% | 6.1% | 6.3% | 30.6% |
| Kodiak Station | 1,638 | \$34,196 | 1.7% | 7.0% | 6.3% | 12.1% |
| Tuntutuliak | 351 | \$14,444 | 96.7% | 46.0% | 6.4% | 59.5% |
| Womens Bay | 662 | \$44,861 | 10.5% | 3.2% | 6.5% | 26.2% |
| Dillingham | 2,252 | \$44,083 | 55.8% | 9.5% | 6.7% | 37.7% |
| Sitka | 8,733 | \$43,337 | 20.9% | 4.8% | 6.7% | 26.7% |
| Deering | 158 | \$15,208 | 94.3% | 21.6% | 6.7% | 41.7% |
| Anchorage | 254,849 | \$43,946 | 6.4% | 7.0% | 7.0% | 26.7% |
| Mosquito Lake | 92 | \$28,750 | 1.3% | 38.8% | 7.3% | 32.1% |
| Sterling | 5,705 | \$51,145 | 2.1% | 7.6% | 7.4% | 38.9% |
| Kokhanok | 168 | \$14,286 | 90.1% | 53.4% | 7.7% | 65.4% |
| College | 11,663 | \$43,329 | 8.4% | 9.6% | 7.8% | 32.3% |
| Homer | 4,126 | \$36,652 | 3.6% | 5.0% | 7.9% | 35.6% |

**Alaska Communities, by Percent Unemployment in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Whittier | 289 | \$33,636 | 12.3% | 13.0% | 8.0% | 37.0% |
| Platinum | 41 | \$23,056 | 92.2% | 35.8% | 8.0% | 54.0% |
| Hollis | 175 | \$31,250 | 2.7% | 15.2% | 8.3% | 44.3% |
| Craig | 2,043 | \$47,250 | 22.9% | 3.9% | 8.4% | 25.9% |
| Ketchikan | 8,552 | \$41,931 | 15.7% | 5.5% | 8.6% | 31.2% |
| Delta Junction | 855 | \$31,250 | 4.4% | 8.4% | 8.6% | 35.4% |
| Chuathbaluk | 115 | \$13,750 | 89.7% | 47.4% | 8.6% | 47.5% |
| Soldotna | 4,092 | \$38,004 | 4.5% | 5.7% | 8.7% | 33.0% |
| Valdez | 4,486 | \$68,570 | 5.9% | 5.1% | 8.8% | 26.0% |
| Bethel | 5,277 | \$42,232 | 63.9% | 12.2% | 9.0% | 36.6% |
| Wrangell | 2,543 | \$37,538 | 20.0% | 6.0% | 9.0% | 34.1% |
| Naukati Bay | 136 | \$43,333 | 1.1% | 4.8% | 9.1% | 26.8% |
| Karluk | 48 | \$31,250 | 91.5% | 3.6% | 9.1% | 40.0% |
| Seward | 2,999 | \$37,049 | 15.2% | 10.7% | 9.2% | 44.9% |
| Galena | 543 | \$28,611 | 45.3% | 18.2% | 9.2% | 24.7% |
| Kwigillingok | 333 | \$14,500 | 95.0% | 43.1% | 9.2% | 58.6% |
| Whitestone Logging Camp | 189 | \$45,625 | 3.7% | 7.6% | 9.7% | 23.8% |
| Aniak | 578 | \$32,841 | 70.7% | 16.4% | 9.7% | 32.2% |
| Rowan Bay | 9 | \$58,295 | 6.8% | 0.0% | 9.8% | 22.4% |
| McGrath | 456 | \$36,250 | 47.0% | 10.5% | 9.9% | 36.3% |
| Talkeetna | 347 | \$11,991 | 1.6% | 34.3% | 10.1% | 26.1% |
| Wainwright | 550 | \$33,333 | 94.3% | 4.1% | 10.2% | 40.4% |
| North Pole | 1,631 | \$32,937 | 5.4% | 5.0% | 10.2% | 26.9% |
| Butte | 2,538 | \$41,471 | 3.6% | 7.7% | 10.4% | 35.5% |
| Two Rivers | 623 | \$53,518 | 7.3% | 4.0% | 10.5% | 32.2% |
| Port Alsworth | 67 | \$36,250 | 1.8% | 0.0% | 10.5% | 54.1% |
| Moose Creek | 683 | \$25,326 | 2.5% | 9.4% | 10.5% | 32.7% |
| Skagway | 816 | \$37,500 | 5.5% | 4.2% | 10.6% | 27.5% |
| Saint Paul | 764 | \$39,922 | 66.1% | 7.1% | 10.8% | 32.6% |
| Kake | 767 | \$35,875 | 73.4% | 7.0% | 10.9% | 46.8% |
| Nome | 3,656 | \$45,812 | 52.1% | 9.9% | 11.0% | 36.0% |
| Wasilla | 4,917 | \$37,619 | 5.3% | 10.8% | 11.1% | 36.6% |
| Koliganek | 194 | \$18,125 | 96.1% | 35.6% | 11.1% | 72.4% |
| Barrow | 4,380 | \$56,688 | 63.9% | 7.5% | 11.5% | 30.4% |
| Anderson | 565 | \$53,413 | 3.7% | 3.7% | 11.5% | 22.2% |
| Point Lay | 207 | \$49,583 | 81.3% | 3.3% | 11.5% | 22.7% |
| Ester | 236 | \$44,688 | 4.8% | 12.8% | 11.5% | 33.0% |
| Port Alexander | 94 | \$20,625 | 2.5% | 18.2% | 11.5% | 31.3% |
| Fairbanks | 31,850 | \$32,033 | 9.2% | 10.3% | 11.6% | 29.6% |
| Yakutat | 833 | \$36,875 | 55.1% | 10.5% | 11.8% | 33.7% |
| Seldovia | 285 | \$27,500 | 15.2% | 16.2% | 11.8% | 50.3% |
| Kwethluk | 672 | \$16,000 | 96.4% | 38.7% | 11.8% | 72.0% |
| Kenai | 6,971 | \$42,889 | 8.5% | 7.3% | 12.1% | 38.2% |
| Buckland | 412 | \$18,906 | 95.0% | 32.8% | 12.2% | 59.4% |
| Nunapitchuk | 489 | \$17,383 | 97.1% | 40.0% | 12.3% | 60.8% |
| Manley Hot Springs | 90 | \$31,250 | 14.6% | 30.0% | 12.5% | 32.3% |
| Arctic Village | 121 | \$9,661 | 93.8% | 31.5% | 12.5% | 52.5% |

**Alaska Communities, by Percent Unemployment in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|---------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Akiachak | 560 | \$23,750 | 95.0% | 13.0% | 12.7% | 54.5% |
| Metlakatla | 1,595 | \$38,370 | 82.4% | 9.8% | 12.8% | 49.2% |
| Ruby | 217 | \$15,000 | 74.1% | 24.4% | 12.8% | 52.9% |
| Big Lake | 2,243 | \$36,583 | 3.7% | 11.3% | 12.9% | 43.8% |
| Sleetmute | 102 | \$10,000 | 86.8% | 62.6% | 12.9% | 67.5% |
| Kipnuk | 567 | \$4,999 | 97.4% | 76.6% | 12.9% | 78.7% |
| Eielson AFB | 4,203 | \$25,924 | 0.9% | 2.8% | 13.0% | 18.2% |
| Sheldon Point | 177 | \$16,250 | 92.7% | 56.2% | 13.0% | 41.2% |
| Kotzebue | 3,232 | \$42,367 | 75.1% | 12.7% | 13.1% | 41.2% |
| Tazlina | 297 | \$45,625 | 23.1% | 22.0% | 13.2% | 36.4% |
| Meadow Lakes | 4,693 | \$33,106 | 2.9% | 12.5% | 13.3% | 44.1% |
| McKinley Park | 196 | \$40,313 | 2.9% | 4.0% | 13.4% | 40.8% |
| Dot Lake | 80 | \$38,333 | 54.3% | 3.2% | 13.6% | 47.2% |
| Perryville | 107 | \$25,000 | 94.4% | 25.4% | 13.6% | 72.9% |
| Anvik | 83 | \$10,694 | 91.5% | 45.0% | 13.6% | 60.4% |
| Lime Village | 47 | \$9,257 | 95.2% | 63.8% | 13.6% | 36.7% |
| Cohoe | 598 | \$33,550 | 1.8% | 15.9% | 14.0% | 49.5% |
| Shungnak | 252 | \$29,583 | 94.6% | 5.7% | 14.0% | 64.9% |
| Tununak | 330 | \$18,750 | 96.2% | 26.3% | 14.0% | 50.0% |
| Port Lions | 239 | \$40,938 | 67.6% | 5.3% | 14.1% | 41.8% |
| Red Devil | 49 | \$25,000 | 50.9% | 30.7% | 14.3% | 63.6% |
| Chenega Bay | 91 | \$22,083 | 69.1% | 26.6% | 14.3% | 41.9% |
| Aleknagik | 226 | \$21,875 | 83.2% | 28.8% | 14.3% | 62.2% |
| Fort Greely | 740 | \$25,801 | 1.0% | 6.3% | 14.4% | 21.7% |
| Nikiski | 3,023 | \$44,242 | 6.1% | 7.0% | 14.5% | 42.2% |
| Salcha | 373 | \$35,909 | 4.2% | 8.0% | 14.5% | 36.9% |
| Salamatof | 1,134 | \$38,203 | 10.4% | 9.8% | 14.6% | 64.9% |
| Coffman Cove | 246 | \$44,063 | 7.0% | 4.7% | 14.7% | 29.8% |
| Savoonga | 622 | \$11,339 | 95.2% | 50.9% | 14.7% | 72.2% |
| Hoonah | 906 | \$36,442 | 67.2% | 3.8% | 14.9% | 35.4% |
| Saint George | 184 | \$25,250 | 94.9% | 41.9% | 14.9% | 52.9% |
| Lignite | 122 | \$38,125 | 0.0% | 1.9% | 15.2% | 43.5% |
| Chignik Lake | 127 | \$19,167 | 91.7% | 42.0% | 15.2% | 68.2% |
| Golovin | 152 | \$16,146 | 92.9% | 8.3% | 15.3% | 44.4% |
| Houston | 994 | \$32,344 | 3.6% | 9.7% | 15.4% | 52.0% |
| Hughes | 69 | \$15,833 | 92.6% | 16.6% | 15.4% | 53.2% |
| Evansville | 20 | \$29,167 | 57.6% | 36.1% | 16.0% | 16.0% |
| Akiak | 327 | \$13,571 | 97.2% | 33.9% | 16.0% | 60.2% |
| Manokotak | 387 | \$20,500 | 95.6% | 28.6% | 16.1% | 58.1% |
| Kongiganak | 349 | \$33,250 | 97.3% | 30.3% | 16.3% | 60.0% |
| Palmer | 4,167 | \$34,940 | 7.7% | 6.2% | 16.7% | 53.9% |
| Mekoryuk | 192 | \$14,792 | 99.4% | 31.5% | 16.7% | 59.1% |
| Gambell | 653 | \$15,938 | 96.2% | 46.4% | 16.8% | 71.1% |
| Sutton | 431 | \$23,393 | 5.8% | 38.1% | 17.2% | 47.6% |
| Klawock | 704 | \$39,583 | 54.3% | 8.4% | 17.3% | 48.4% |
| Anchor Point | 1,157 | \$42,847 | 3.7% | 0.7% | 17.5% | 53.0% |
| Noorvik | 631 | \$32,969 | 93.8% | 16.6% | 17.5% | 60.7% |

**Alaska Communities, by Percent Unemployment in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Nenana | 440 | \$27,292 | 47.8% | 10.4% | 17.5% | 52.8% |
| New Stuyahok | 452 | \$12,083 | 95.9% | 51.0% | 17.7% | 74.9% |
| Chevak | 721 | \$17,222 | 93.0% | 27.0% | 17.8% | 53.5% |
| Fox | 321 | \$28,250 | 7.3% | 9.2% | 18.0% | 47.8% |
| Shishmaref | 542 | \$15,625 | 94.5% | 27.3% | 18.0% | 65.1% |
| Kasilof | 539 | \$51,439 | 2.9% | 2.5% | 18.4% | 40.8% |
| Scammon Bay | 459 | \$15,179 | 96.5% | 40.7% | 18.4% | 60.1% |
| Clark's Point | 66 | \$17,083 | 88.3% | 16.1% | 18.5% | 42.1% |
| Thorne Bay | 625 | \$39,688 | 1.2% | 5.2% | 18.6% | 38.4% |
| Andreafsky | 469 | \$28,958 | 84.4% | 26.0% | 18.6% | 43.8% |
| Akhiok | 101 | \$42,500 | 93.5% | 2.4% | 18.8% | 50.9% |
| Mentasta Lake | 122 | \$11,250 | 72.9% | 44.1% | 18.8% | 81.9% |
| Ouzinkie | 246 | \$48,393 | 85.2% | 10.2% | 18.9% | 51.9% |
| Marshall | 318 | \$28,750 | 92.7% | 16.9% | 19.0% | 55.5% |
| Central | 57 | \$28,036 | 1.9% | 13.7% | 19.0% | 64.6% |
| Unalakleet | 803 | \$34,531 | 81.8% | 11.6% | 19.2% | 46.0% |
| Saint Mary's | 504 | \$28,542 | 83.0% | 17.3% | 19.2% | 44.3% |
| Wales | 162 | \$15,000 | 88.8% | 35.2% | 19.3% | 53.5% |
| Chignik Lagoon | 74 | \$56,250 | 56.6% | 6.4% | 20.0% | 84.0% |
| Tenakee Springs | 116 | \$18,125 | 9.6% | 10.8% | 20.0% | 74.0% |
| Tok | 1,216 | \$30,341 | 12.5% | 8.7% | 20.3% | 44.4% |
| Levelock | 115 | \$12,159 | 82.9% | 25.8% | 20.9% | 57.5% |
| Russian Mission | 295 | \$21,667 | 94.7% | 45.0% | 21.0% | 61.1% |
| Lazy Mountain | 1,043 | \$36,250 | 4.3% | 11.7% | 21.3% | 53.9% |
| Hydaburg | 425 | \$20,139 | 89.1% | 26.3% | 21.8% | 60.5% |
| Tanana | 299 | \$17,000 | 78.3% | 24.1% | 21.8% | 53.9% |
| Port Heiden | 116 | \$35,000 | 72.3% | 24.3% | 22.0% | 45.8% |
| Beaver | 118 | \$20,313 | 95.1% | 32.2% | 22.6% | 63.6% |
| Hyder | 151 | \$23,750 | 1.0% | 14.4% | 22.7% | 47.4% |
| Napaskiak | 399 | \$18,750 | 94.8% | 34.3% | 22.7% | 63.4% |
| Saint Michael | 341 | \$23,194 | 91.2% | 20.9% | 22.9% | 60.6% |
| Kenny Lake | 500 | \$21,786 | 9.7% | 24.8% | 22.9% | 50.7% |
| Shageluk | 145 | \$16,250 | 95.0% | 34.8% | 22.9% | 67.5% |
| Togiak | 762 | \$15,000 | 87.3% | 46.3% | 23.1% | 72.9% |
| Point Hope | 749 | \$47,788 | 91.9% | 9.2% | 23.4% | 52.0% |
| Ekwok | 124 | \$10,833 | 87.0% | 52.0% | 23.5% | 73.1% |
| Anaktuvuk Pass | 301 | \$37,292 | 84.9% | 16.1% | 23.6% | 45.5% |
| Eek | 277 | \$21,000 | 95.7% | 28.6% | 23.9% | 63.4% |
| Kaltag | 245 | \$15,500 | 92.5% | 41.4% | 24.1% | 52.9% |
| Egegik | 127 | \$20,625 | 70.5% | 34.1% | 24.3% | 69.6% |
| Polk Inlet | 36 | \$50,446 | 13.3% | 4.4% | 24.4% | 36.3% |
| Ninilchik | 655 | \$31,518 | 19.5% | 9.6% | 24.4% | 59.7% |
| Knik | 443 | \$26,250 | 11.4% | 6.5% | 24.8% | 54.2% |
| Tetlin | 68 | \$15,750 | 95.4% | 29.6% | 25.0% | 58.5% |
| Edna Bay | 70 | \$12,250 | 0.0% | 63.7% | 25.0% | 67.2% |
| Twin Hills | 50 | \$11,667 | 92.4% | 50.0% | 25.0% | 72.7% |
| Atmautluak | 292 | \$15,833 | 96.9% | 47.6% | 25.3% | 55.3% |

**Alaska Communities, by Percent Unemployment in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Saxman | 381 | \$30,481 | 77.0% | 5.7% | 25.5% | 51.6% |
| Toksook Bay | 496 | \$21,875 | 95.5% | 39.2% | 25.5% | 59.1% |
| Upper Kalskag | 198 | \$16,250 | 84.9% | 39.6% | 25.5% | 68.5% |
| Kalifornsky | 335 | \$52,354 | 4.2% | 12.2% | 25.6% | 47.8% |
| Happy Valley | 391 | \$16,250 | 6.1% | 32.8% | 25.6% | 68.6% |
| Atka | 111 | \$40,625 | 91.8% | 16.2% | 25.7% | 44.7% |
| Nulato | 365 | \$17,143 | 96.9% | 35.9% | 25.7% | 66.7% |
| Moose Pass | 116 | \$22,083 | 11.1% | 0.0% | 25.8% | 25.8% |
| Newtok | 269 | \$14,844 | 93.2% | 50.2% | 25.9% | 68.2% |
| Northway | 119 | \$39,375 | 64.2% | 11.9% | 26.0% | 54.9% |
| Copperville | 196 | \$47,188 | 26.4% | 9.8% | 26.6% | 51.8% |
| Chickaloon | 205 | \$32,083 | 6.2% | 31.2% | 26.7% | 38.2% |
| Stony River | 42 | \$5,156 | 88.2% | 100.0% | 26.7% | 64.5% |
| Alakanuk | 651 | \$17,708 | 95.8% | 29.4% | 26.8% | 61.5% |
| Nightmute | 217 | \$17,813 | 95.4% | 62.0% | 26.9% | 68.6% |
| Koyukuk | 126 | \$13,929 | 97.6% | 39.2% | 27.0% | 62.0% |
| Gulkana | 95 | \$38,750 | 59.2% | 20.3% | 27.3% | 59.5% |
| Crooked Creek | 138 | \$16,250 | 90.6% | 28.7% | 27.3% | 64.7% |
| Kiana | 415 | \$28,125 | 93.5% | 24.5% | 27.4% | 62.1% |
| Fort Yukon | 575 | \$17,969 | 85.0% | 32.1% | 27.4% | 55.4% |
| South Naknek | 149 | \$23,750 | 79.4% | 26.3% | 27.5% | 58.0% |
| Grayling | 186 | \$21,641 | 93.3% | 12.6% | 29.6% | 57.5% |
| Atkasuk | 235 | \$56,352 | 93.1% | 15.2% | 29.7% | 45.1% |
| Trapper Creek | 306 | \$31,071 | 6.1% | 16.2% | 30.3% | 60.2% |
| Kaktovik | 222 | \$46,250 | 84.4% | 20.6% | 30.7% | 50.0% |
| Selawik | 696 | \$21,833 | 95.5% | 23.1% | 31.3% | 67.2% |
| Chalkyitsik | 87 | \$12,750 | 92.2% | 67.3% | 31.3% | 81.0% |
| Shaktoolik | 226 | \$18,438 | 94.4% | 22.8% | 31.9% | 54.4% |
| Eagle | 165 | \$12,500 | 3.0% | 43.4% | 32.5% | 52.5% |
| Nuiqsut | 435 | \$32,188 | 92.7% | 13.3% | 33.1% | 48.2% |
| Napakiaik | 354 | \$18,125 | 94.3% | 36.2% | 33.3% | 61.3% |
| Chitina | 84 | \$13,125 | 46.9% | 40.9% | 33.3% | 64.7% |
| Circle Hot Springs | 32 | \$6,250 | 0.0% | 74.1% | 33.3% | 54.5% |
| Healy Lake | 60 | \$5,841 | 85.1% | 70.8% | 33.3% | 85.7% |
| Cantwell | 144 | \$44,000 | 22.4% | 10.3% | 34.6% | 57.6% |
| Emmonak | 820 | \$25,625 | 92.1% | 20.9% | 34.6% | 62.0% |
| Kasigluk | 514 | \$26,563 | 95.3% | 20.4% | 34.8% | 66.3% |
| Kobuk | 89 | \$20,625 | 89.9% | 34.7% | 35.0% | 66.7% |
| Angoon | 616 | \$32,083 | 82.3% | 21.9% | 35.1% | 54.1% |
| Pilot Station | 547 | \$16,000 | 95.0% | 51.3% | 35.1% | 62.9% |
| Brevig Mission | 265 | \$15,000 | 92.4% | 24.7% | 35.3% | 54.6% |
| Tanacross | 85 | \$14,750 | 94.3% | 23.8% | 35.4% | 59.7% |
| Nikolai | 108 | \$11,250 | 89.0% | 44.5% | 35.5% | 73.0% |
| Whale Pass | 79 | \$49,583 | 2.7% | 14.0% | 35.7% | 59.1% |
| Elim | 301 | \$16,250 | 91.7% | 25.1% | 36.1% | 66.2% |
| White Mountain | 193 | \$15,893 | 87.8% | 38.3% | 36.4% | 67.3% |
| Kotlik | 543 | \$20,417 | 97.0% | 17.7% | 36.6% | 65.2% |

**Alaska Communities, by Percent Unemployment in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Mountain Village | 738 | \$26,750 | 91.1% | 25.3% | 36.7% | 68.0% |
| Circle | 83 | \$17,083 | 86.3% | 10.9% | 36.7% | 62.7% |
| Northway Junction | 114 | \$41,875 | 70.5% | 10.0% | 36.8% | 73.9% |
| Koyuk | 272 | \$18,750 | 94.8% | 30.0% | 37.3% | 64.6% |
| Venetie | 241 | \$14,688 | 94.0% | 47.2% | 37.5% | 69.8% |
| Tyonek | 151 | \$11,591 | 92.2% | 37.1% | 37.7% | 64.5% |
| Lower Kalskag | 278 | \$10,357 | 98.3% | 61.2% | 37.9% | 77.5% |
| Hope | 152 | \$17,250 | 3.1% | 33.5% | 38.4% | 50.8% |
| Huslia | 245 | \$13,333 | 90.8% | 43.7% | 38.5% | 67.5% |
| Holy Cross | 260 | \$13,750 | 93.5% | 48.8% | 38.6% | 72.3% |
| Port Graham | 186 | \$33,750 | 90.4% | 2.1% | 38.8% | 62.4% |
| Ferry | 69 | \$25,625 | 12.5% | 15.5% | 39.1% | 65.0% |
| Old Harbor | 301 | \$16,875 | 88.7% | 31.5% | 39.1% | 75.9% |
| Stebbins | 513 | \$23,333 | 94.8% | 32.3% | 39.2% | 64.0% |
| Ambler | 333 | \$22,500 | 89.7% | 31.1% | 39.3% | 66.3% |
| Larsen Bay | 120 | \$39,750 | 84.4% | 3.1% | 40.0% | 67.6% |
| Hooper Bay | 1,012 | \$18,125 | 96.0% | 43.5% | 41.7% | 66.3% |
| Nondalton | 221 | \$21,750 | 89.3% | 20.3% | 42.6% | 70.0% |
| Stevens Village | 99 | \$10,000 | 91.2% | 73.9% | 43.3% | 72.6% |
| Slana | 58 | \$25,417 | 6.3% | 19.0% | 44.4% | 62.5% |
| Noatak | 401 | \$36,458 | 96.7% | 17.1% | 45.1% | 75.1% |
| Nanwalek | 177 | \$46,563 | 91.1% | 11.0% | 46.4% | 66.7% |
| Northway Village | 110 | \$13,333 | 94.7% | 47.0% | 51.3% | 72.1% |
| Chistochina | 55 | \$24,167 | 61.7% | 17.7% | 52.0% | 72.1% |
| Kivalina | 357 | \$28,036 | 97.5% | 32.2% | 55.6% | 71.4% |
| Minto | 244 | \$17,656 | 97.2% | 35.0% | 60.3% | 81.6% |
| Klukwan | 160 | \$36,042 | 86.8% | 3.5% | 60.4% | 76.1% |
| Kasaan | 42 | \$46,667 | 53.7% | 0.0% | 64.5% | 73.8% |
| Allakaket | 182 | \$11,477 | 94.1% | 46.9% | 69.4% | 78.4% |
| Port Protection | 58 | \$10,000 | 1.6% | 45.6% | 75.0% | 95.3% |
| Rampart | 54 | \$15,000 | 94.1% | 36.2% | 78.8% | 87.5% |
| Ugashik | 5 | \$37,500 | 85.7% | 0.0% | 80.0% | 83.3% |
| Eagle Village | 34 | \$11,875 | 80.0% | 17.1% | 93.1% | 93.8% |
| McCarthy | 28 | \$23,750 | 4.0% | 0.0% | 100.0% | 100.0% |
| Covenant Life | 54 | \$23,571 | 0.0% | 20.0% | 100.0% | 100.0% |
| Alatna | 32 | \$6,030 | 93.5% | 83.0% | 100.0% | 100.0% |

* % Unemployment =

Percent of persons age 16+ actively seeking employment, calculated from unemployment compensation claims

** % Adults Not Working =

Percent of persons age 16+ actively seeking employment and those not actively seeking employment ("discouraged workers", in school, retired, disabled, or at home raising children, for example)

**Alaska Communities, by Percent Adults Not Working in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Deadhorse | 24 | \$102,264 | 11.5% | 0.0% | 0.0% | 0.0% |
| Halibut Cove | 78 | \$68,760 | 3.8% | 0.0% | 0.0% | 0.0% |
| Chase | 53 | \$61,359 | 0.0% | 0.0% | 0.0% | 0.0% |
| Kupreanof | 24 | \$55,447 | 0.0% | 0.0% | 0.0% | 0.0% |
| Telida | 5 | \$43,750 | 90.9% | 0.0% | 0.0% | 0.0% |
| Prudhoe Bay | 47 | \$39,673 | 8.5% | 0.0% | 0.0% | 0.0% |
| Bettles | 32 | \$38,333 | 22.2% | 7.1% | 0.0% | 0.0% |
| Port Clarence | 24 | \$12,264 | 0.0% | 0.0% | 0.0% | 0.0% |
| Akutan | 420 | \$27,813 | 13.6% | 16.6% | 0.4% | 7.4% |
| Unalaska | 4,251 | \$56,215 | 8.4% | 15.3% | 1.0% | 7.8% |
| Hobart Bay | 107 | \$52,377 | 6.4% | 1.0% | 0.0% | 10.9% |
| Kodiak Station | 1,638 | \$34,196 | 1.7% | 7.0% | 6.3% | 12.1% |
| Dry Creek | 110 | \$40,625 | 0.0% | 12.8% | 0.0% | 13.7% |
| Game Creek | 67 | \$12,500 | 0.0% | 59.6% | 0.0% | 13.8% |
| Cold Bay | 120 | \$45,625 | 5.4% | 0.0% | 0.0% | 15.9% |
| Evansville | 20 | \$29,167 | 57.6% | 36.1% | 16.0% | 16.0% |
| King Salmon | 478 | \$54,072 | 15.5% | 3.0% | 5.8% | 16.2% |
| Pelican | 187 | \$27,083 | 29.3% | 13.6% | 3.4% | 17.2% |
| Eielson AFB | 4,203 | \$25,924 | 0.9% | 2.8% | 13.0% | 18.2% |
| Cube Cove | 137 | \$51,280 | 5.8% | 5.7% | 0.0% | 21.4% |
| Fort Greely | 740 | \$25,801 | 1.0% | 6.3% | 14.4% | 21.7% |
| Eyak | 166 | \$150,001 | 7.6% | 0.0% | 4.3% | 22.1% |
| Anderson | 565 | \$53,413 | 3.7% | 3.7% | 11.5% | 22.2% |
| Rowan Bay | 9 | \$58,295 | 6.8% | 0.0% | 9.8% | 22.4% |
| Point Lay | 207 | \$49,583 | 81.3% | 3.3% | 11.5% | 22.7% |
| Kodiak | 6,749 | \$46,050 | 12.7% | 6.2% | 4.4% | 23.0% |
| Cordova | 2,467 | \$46,304 | 11.2% | 4.7% | 3.1% | 23.8% |
| Whitestone Logging Camp | 189 | \$45,625 | 3.7% | 7.6% | 9.7% | 23.8% |
| King Cove | 773 | \$53,631 | 39.2% | 10.0% | 1.8% | 24.0% |
| Pleasant Valley | 552 | \$49,464 | 4.7% | 0.0% | 4.5% | 24.2% |
| Galena | 543 | \$28,611 | 45.3% | 18.2% | 9.2% | 24.7% |
| Gakona | 23 | \$32,500 | 0.0% | 60.0% | 0.0% | 25.0% |
| Juneau | 30,396 | \$47,924 | 12.9% | 5.5% | 4.8% | 25.0% |
| Moose Pass | 116 | \$22,083 | 11.1% | 0.0% | 25.8% | 25.8% |
| Craig | 2,043 | \$47,250 | 22.9% | 3.9% | 8.4% | 25.9% |
| Valdez | 4,486 | \$68,570 | 5.9% | 5.1% | 8.8% | 26.0% |
| Talkeetna | 347 | \$11,991 | 1.6% | 34.3% | 10.1% | 26.1% |
| Gustavus | 346 | \$41,538 | 3.9% | 3.6% | 4.6% | 26.2% |
| Womens Bay | 662 | \$44,861 | 10.5% | 3.2% | 6.5% | 26.2% |
| Sitka | 8,733 | \$43,337 | 20.9% | 4.8% | 6.7% | 26.7% |
| Anchorage | 254,849 | \$43,946 | 6.4% | 7.0% | 7.0% | 26.7% |
| Naukati Bay | 136 | \$43,333 | 1.1% | 4.8% | 9.1% | 26.8% |
| North Pole | 1,631 | \$32,937 | 5.4% | 5.0% | 10.2% | 26.9% |
| Skagway | 816 | \$37,500 | 5.5% | 4.2% | 10.6% | 27.5% |
| Elfin Cove | 54 | \$43,125 | 1.8% | 7.1% | 0.0% | 28.2% |
| Petersburg | 3,432 | \$49,318 | 10.4% | 4.1% | 4.2% | 28.8% |
| Chiniak | 74 | \$44,375 | 5.8% | 20.2% | 5.1% | 28.8% |

**Alaska Communities, by Percent Adults Not Working in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Eklutna | 425 | \$66,946 | 12.6% | 8.0% | 3.5% | 29.1% |
| Fairbanks | 31,850 | \$32,033 | 9.2% | 10.3% | 11.6% | 29.6% |
| Coffman Cove | 246 | \$44,063 | 7.0% | 4.7% | 14.7% | 29.8% |
| Paxson | 34 | \$31,250 | 0.0% | 3.4% | 0.0% | 30.0% |
| Barrow | 4,380 | \$56,688 | 63.9% | 7.5% | 11.5% | 30.4% |
| Ridgeway | 2,364 | \$48,967 | 4.6% | 6.1% | 6.3% | 30.6% |
| Glennallen | 513 | \$30,833 | 6.7% | 8.0% | 4.4% | 30.7% |
| Haines | 1,429 | \$38,542 | 18.1% | 4.9% | 5.4% | 30.9% |
| Ketchikan | 8,552 | \$41,931 | 15.7% | 5.5% | 8.6% | 31.2% |
| Port Alexander | 94 | \$20,625 | 2.5% | 18.2% | 11.5% | 31.3% |
| Jakolof Bay | 35 | \$21,875 | 0.0% | 0.0% | 0.0% | 32.0% |
| Kachemak | 398 | \$55,000 | 3.0% | 7.3% | 4.0% | 32.0% |
| Sand Point | 870 | \$42,083 | 49.3% | 12.5% | 2.9% | 32.1% |
| Mosquito Lake | 92 | \$28,750 | 1.3% | 38.8% | 7.3% | 32.1% |
| Aniak | 578 | \$32,841 | 70.7% | 16.4% | 9.7% | 32.2% |
| Two Rivers | 623 | \$53,518 | 7.3% | 4.0% | 10.5% | 32.2% |
| College | 11,663 | \$43,329 | 8.4% | 9.6% | 7.8% | 32.3% |
| Manley Hot Springs | 90 | \$31,250 | 14.6% | 30.0% | 12.5% | 32.3% |
| Saint Paul | 764 | \$39,922 | 66.1% | 7.1% | 10.8% | 32.6% |
| Moose Creek | 683 | \$25,326 | 2.5% | 9.4% | 10.5% | 32.7% |
| Soldotna | 4,092 | \$38,004 | 4.5% | 5.7% | 8.7% | 33.0% |
| Ester | 236 | \$44,688 | 4.8% | 12.8% | 11.5% | 33.0% |
| Alcan | 16 | \$53,338 | 0.0% | 0.0% | 0.0% | 33.3% |
| Yakutat | 833 | \$36,875 | 55.1% | 10.5% | 11.8% | 33.7% |
| Wrangell | 2,543 | \$37,538 | 20.0% | 6.0% | 9.0% | 34.1% |
| Pedro Bay | 37 | \$38,125 | 90.5% | 21.9% | 0.0% | 34.8% |
| Primrose | 62 | \$46,563 | 0.0% | 0.0% | 0.0% | 35.2% |
| Delta Junction | 855 | \$31,250 | 4.4% | 8.4% | 8.6% | 35.4% |
| Hoonah | 906 | \$36,442 | 67.2% | 3.8% | 14.9% | 35.4% |
| Butte | 2,538 | \$41,471 | 3.6% | 7.7% | 10.4% | 35.5% |
| Homer | 4,126 | \$36,652 | 3.6% | 5.0% | 7.9% | 35.6% |
| Takotna | 63 | \$18,750 | 44.7% | 14.2% | 0.0% | 36.0% |
| Naknek | 640 | \$50,907 | 41.0% | 1.7% | 3.9% | 36.0% |
| Nome | 3,656 | \$45,812 | 52.1% | 9.9% | 11.0% | 36.0% |
| McGrath | 456 | \$36,250 | 47.0% | 10.5% | 9.9% | 36.3% |
| Polk Inlet | 36 | \$50,446 | 13.3% | 4.4% | 24.4% | 36.3% |
| Tazlina | 297 | \$45,625 | 23.1% | 22.0% | 13.2% | 36.4% |
| Bethel | 5,277 | \$42,232 | 63.9% | 12.2% | 9.0% | 36.6% |
| Wasilla | 4,917 | \$37,619 | 5.3% | 10.8% | 11.1% | 36.6% |
| Lime Village | 47 | \$9,257 | 95.2% | 63.8% | 13.6% | 36.7% |
| Saicha | 373 | \$35,903 | 4.2% | 8.0% | 14.5% | 36.9% |
| Whittier | 289 | \$33,636 | 12.3% | 13.0% | 8.0% | 37.0% |
| Dillingham | 2,252 | \$44,083 | 55.8% | 9.5% | 6.7% | 37.7% |
| Crown Point | 88 | \$43,864 | 4.8% | 0.0% | 0.0% | 38.0% |
| Chignik | 125 | \$36,875 | 45.2% | 0.0% | 4.2% | 38.2% |
| Kenai | 6,971 | \$42,889 | 8.5% | 7.3% | 12.1% | 38.2% |
| Chickaloon | 205 | \$32,083 | 6.2% | 31.2% | 26.7% | 38.2% |

**Alaska Communities, by Percent Adults Not Working in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Thorne Bay | 625 | \$39,688 | 1.2% | 5.2% | 18.6% | 38.4% |
| Igiugig | 46 | \$41,250 | 78.8% | 0.0% | 0.0% | 38.5% |
| Fritz Creek | 1,972 | \$45,143 | 3.4% | 3.4% | 6.1% | 38.5% |
| Teller | 265 | \$20,000 | 86.8% | 32.1% | 3.3% | 38.9% |
| Sterling | 5,705 | \$51,145 | 2.1% | 7.6% | 7.4% | 38.9% |
| Healy | 603 | \$56,313 | 1.4% | 3.8% | 3.9% | 39.4% |
| Karluk | 48 | \$31,250 | 91.5% | 3.6% | 9.1% | 40.0% |
| Wainwright | 550 | \$33,333 | 94.3% | 4.1% | 10.2% | 40.4% |
| McKinley Park | 196 | \$40,313 | 2.9% | 4.0% | 13.4% | 40.8% |
| Kasilof | 539 | \$51,439 | 2.9% | 2.5% | 18.4% | 40.8% |
| Sheldon Point | 177 | \$16,250 | 92.7% | 56.2% | 13.0% | 41.2% |
| Kotzebue | 3,232 | \$42,367 | 75.1% | 12.7% | 13.1% | 41.2% |
| Deering | 158 | \$15,208 | 94.3% | 21.6% | 6.7% | 41.7% |
| Port Lions | 239 | \$40,938 | 67.6% | 5.3% | 14.1% | 41.8% |
| Chenega Bay | 91 | \$22,083 | 69.1% | 26.6% | 14.3% | 41.9% |
| Iliamna | 103 | \$41,250 | 66.0% | 12.1% | 0.0% | 42.1% |
| Clark's Point | 66 | \$17,083 | 88.3% | 16.1% | 18.5% | 42.1% |
| Nikiski | 3,023 | \$44,242 | 6.1% | 7.0% | 14.5% | 42.2% |
| Port Alice | 19 | \$28,750 | 6.7% | 8.3% | 0.0% | 42.9% |
| Lignite | 122 | \$38,125 | 0.0% | 1.9% | 15.2% | 43.5% |
| Big Lake | 2,243 | \$36,583 | 3.7% | 11.3% | 12.9% | 43.8% |
| Andreafsky | 469 | \$28,958 | 84.4% | 26.0% | 18.6% | 43.8% |
| Meadow Lakes | 4,693 | \$33,106 | 2.9% | 12.5% | 13.3% | 44.1% |
| Hollis | 175 | \$31,250 | 2.7% | 15.2% | 8.3% | 44.3% |
| Saint Mary's | 504 | \$28,542 | 83.0% | 17.3% | 19.2% | 44.3% |
| Golovin | 152 | \$16,146 | 92.9% | 8.3% | 15.3% | 44.4% |
| Tok | 1,216 | \$30,341 | 12.5% | 8.7% | 20.3% | 44.4% |
| Atka | 111 | \$40,625 | 91.8% | 16.2% | 25.7% | 44.7% |
| Seward | 2,999 | \$37,049 | 15.2% | 10.7% | 9.2% | 44.9% |
| Atkasuk | 235 | \$56,352 | 93.1% | 15.2% | 29.7% | 45.1% |
| Anaktuvuk Pass | 301 | \$37,292 | 84.9% | 16.1% | 23.6% | 45.5% |
| Fox River | 435 | \$93,848 | 0.0% | 9.1% | 0.0% | 45.7% |
| Ivanof Bay | 27 | \$21,500 | 94.3% | 18.4% | 0.0% | 45.8% |
| Port Heiden | 116 | \$35,000 | 72.3% | 24.3% | 22.0% | 45.8% |
| Unalakleet | 803 | \$34,531 | 81.8% | 11.6% | 19.2% | 46.0% |
| Kake | 767 | \$35,875 | 73.4% | 7.0% | 10.9% | 46.8% |
| Newhalen | 177 | \$26,250 | 94.4% | 22.4% | 5.5% | 46.9% |
| Dot Lake | 80 | \$38,333 | 54.3% | 3.2% | 13.6% | 47.2% |
| Hyder | 151 | \$23,750 | 1.0% | 14.4% | 22.7% | 47.4% |
| Chuathbaluk | 115 | \$13,750 | 89.7% | 47.4% | 8.6% | 47.5% |
| Sutton | 431 | \$23,393 | 5.8% | 38.1% | 17.2% | 47.6% |
| Fox | 321 | \$28,250 | 7.3% | 9.2% | 18.0% | 47.8% |
| Kalifonsky | 335 | \$52,354 | 4.2% | 12.2% | 25.6% | 47.8% |
| Birch Creek | 37 | \$5,032 | 90.5% | 92.6% | 0.0% | 48.0% |
| Nuiqsut | 435 | \$32,188 | 92.7% | 13.3% | 33.1% | 48.2% |
| Lake Minchumina | 45 | \$75,222 | 18.8% | 0.0% | 0.0% | 48.3% |
| Willow | 408 | \$34,773 | 1.1% | 14.7% | 0.0% | 48.3% |

**Alaska Communities, by Percent Adults Not Working in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Lutak | 52 | \$70,485 | 17.8% | 0.0% | 0.0% | 48.4% |
| Klawock | 704 | \$39,583 | 54.3% | 8.4% | 17.3% | 48.4% |
| Metlakatla | 1,595 | \$38,370 | 82.4% | 9.8% | 12.8% | 49.2% |
| Cohoe | 598 | \$33,550 | 1.8% | 15.9% | 14.0% | 49.5% |
| Wiseman | 24 | \$4,999 | 15.2% | 100.0% | 0.0% | 50.0% |
| Tununak | 330 | \$18,750 | 96.2% | 26.3% | 14.0% | 50.0% |
| Kaktovik | 222 | \$46,250 | 84.4% | 20.6% | 30.7% | 50.0% |
| Seldovia | 285 | \$27,500 | 15.2% | 16.2% | 11.8% | 50.3% |
| Kenny Lake | 500 | \$21,786 | 9.7% | 24.8% | 22.9% | 50.7% |
| Hope | 152 | \$17,250 | 3.1% | 33.5% | 38.4% | 50.8% |
| Akhiok | 101 | \$42,500 | 93.5% | 2.4% | 18.8% | 50.9% |
| Saxman | 381 | \$30,481 | 77.0% | 5.7% | 25.5% | 51.6% |
| Copperville | 196 | \$47,188 | 26.4% | 9.8% | 26.6% | 51.8% |
| Ouzinkie | 246 | \$48,393 | 85.2% | 10.2% | 18.9% | 51.9% |
| Houston | 954 | \$32,344 | 3.6% | 9.7% | 15.4% | 52.0% |
| Point Hope | 749 | \$47,788 | 91.9% | 9.2% | 23.4% | 52.0% |
| Nikolai | 474 | \$19,688 | 1.3% | 46.1% | 0.0% | 52.5% |
| Arctic Village | 121 | \$9,661 | 93.8% | 31.5% | 12.5% | 52.5% |
| Eagle | 165 | \$12,500 | 3.0% | 43.4% | 32.5% | 52.5% |
| Nenana | 440 | \$27,292 | 47.8% | 10.4% | 17.5% | 52.8% |
| Ruby | 217 | \$15,000 | 74.1% | 24.4% | 12.8% | 52.9% |
| Saint George | 184 | \$25,250 | 94.9% | 41.9% | 14.9% | 52.9% |
| Kaltag | 245 | \$15,500 | 92.5% | 41.4% | 24.1% | 52.9% |
| Anchor Point | 1,157 | \$42,847 | 3.7% | 0.7% | 17.5% | 53.0% |
| False Pass | 64 | \$21,667 | 76.5% | 17.9% | 0.0% | 53.1% |
| Hughes | 69 | \$15,833 | 92.6% | 16.6% | 15.4% | 53.2% |
| Nikolski | 43 | \$13,750 | 82.9% | 0.0% | 0.0% | 53.3% |
| Chevak | 721 | \$17,222 | 93.0% | 27.0% | 17.8% | 53.5% |
| Wales | 162 | \$15,000 | 88.8% | 35.2% | 19.3% | 53.5% |
| Cooper Landing | 271 | \$42,250 | 1.2% | 3.6% | 0.0% | 53.8% |
| Copper Center | 536 | \$34,643 | 34.5% | 12.9% | 0.0% | 53.8% |
| Palmer | 4,167 | \$34,940 | 7.7% | 6.2% | 16.7% | 53.9% |
| Lazy Mountain | 1,043 | \$36,250 | 4.3% | 11.7% | 21.3% | 53.9% |
| Tanana | 299 | \$17,000 | 78.3% | 24.1% | 21.8% | 53.9% |
| Big Delta | 508 | \$32,813 | 4.0% | 23.2% | 1.6% | 54.0% |
| Platinum | 41 | \$23,056 | 92.2% | 35.8% | 8.0% | 54.0% |
| Port Alsworth | 67 | \$36,250 | 1.8% | 0.0% | 10.5% | 54.1% |
| Angoon | 616 | \$32,083 | 82.3% | 21.9% | 35.1% | 54.1% |
| Meyers Chuck | 28 | \$16,250 | 10.8% | 33.3% | 0.0% | 54.2% |
| Knik | 443 | \$26,250 | 11.4% | 6.5% | 24.8% | 54.2% |
| Shaktoolik | 226 | \$18,438 | 94.4% | 22.8% | 31.9% | 54.4% |
| Akiachak | 560 | \$23,750 | 95.0% | 13.0% | 12.7% | 54.5% |
| Circle Hot Springs | 32 | \$6,250 | 0.0% | 74.1% | 33.3% | 54.5% |
| Brevig Mission | 265 | \$15,000 | 92.4% | 24.7% | 35.3% | 54.6% |
| Northway | 119 | \$39,375 | 64.2% | 11.9% | 26.0% | 54.9% |
| Pilot Point | 115 | \$38,750 | 84.9% | 12.9% | 0.0% | 55.3% |
| Atmautluak | 292 | \$15,833 | 96.9% | 47.6% | 25.3% | 55.3% |

**Alaska Communities, by Percent Adults Not Working in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|-----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment** | % Adults Not Working** |
| Fort Yukon | 575 | \$17,969 | 85.0% | 32.1% | 27.4% | 55.4% |
| Marshall | 318 | \$28,750 | 92.7% | 16.9% | 19.0% | 55.5% |
| Oscarville | 59 | \$26,250 | 91.2% | 27.2% | 0.0% | 56.0% |
| Goodnews Bay | 263 | \$13,523 | 95.9% | 41.8% | 3.1% | 56.6% |
| Tuluksak | 385 | \$20,446 | 95.5% | 51.2% | 2.5% | 56.9% |
| Pitka's Point | 154 | \$17,813 | 95.6% | 28.2% | 5.1% | 57.0% |
| Levelock | 115 | \$12,159 | 82.9% | 25.8% | 20.9% | 57.5% |
| Grayling | 186 | \$21,641 | 93.3% | 12.6% | 29.6% | 57.5% |
| Cantwell | 144 | \$44,000 | 22.4% | 10.3% | 34.6% | 57.6% |
| South Naknek | 149 | \$23,750 | 79.4% | 26.3% | 27.5% | 58.0% |
| Manokotak | 387 | \$20,500 | 95.6% | 28.6% | 16.1% | 58.1% |
| Tetlin | 68 | \$15,750 | 95.4% | 29.6% | 25.0% | 58.5% |
| Kwigillingok | 333 | \$14,500 | 95.0% | 43.1% | 9.2% | 58.6% |
| Mekoryuk | 192 | \$14,792 | 99.4% | 31.5% | 16.7% | 59.1% |
| Toksook Bay | 496 | \$21,875 | 95.5% | 39.2% | 25.5% | 59.1% |
| Whale Pass | 79 | \$49,583 | 2.7% | 14.0% | 35.7% | 59.1% |
| Buckland | 412 | \$18,906 | 95.0% | 32.8% | 12.2% | 59.4% |
| Tuntutuliak | 351 | \$14,444 | 96.7% | 46.0% | 6.4% | 59.5% |
| Gulkana | 95 | \$38,750 | 59.2% | 20.3% | 27.3% | 59.5% |
| Ninilchik | 655 | \$31,518 | 19.5% | 9.6% | 24.4% | 59.7% |
| Tanacross | 85 | \$14,750 | 94.3% | 23.8% | 35.4% | 59.7% |
| Mendeltna | 72 | \$18,750 | 5.4% | 5.7% | 0.0% | 60.0% |
| Kongiganak | 349 | \$33,250 | 97.3% | 30.3% | 16.3% | 60.0% |
| Scammon Bay | 459 | \$15,179 | 96.5% | 40.7% | 18.4% | 60.1% |
| Akiak | 327 | \$13,571 | 97.2% | 33.9% | 16.0% | 60.2% |
| Trapper Creek | 306 | \$31,071 | 6.1% | 16.2% | 30.3% | 60.2% |
| Diomedea | 174 | \$14,375 | 93.8% | 63.0% | 0.0% | 60.4% |
| Anvik | 85 | \$10,694 | 91.5% | 45.0% | 13.6% | 60.4% |
| Hydaburg | 425 | \$20,139 | 89.1% | 26.3% | 21.8% | 60.5% |
| Quinhagak | 567 | \$17,500 | 93.8% | 37.2% | 5.9% | 60.6% |
| Saint Michael | 341 | \$23,194 | 91.2% | 20.9% | 22.9% | 60.6% |
| Noorvik | 631 | \$32,969 | 93.8% | 16.6% | 17.5% | 60.7% |
| Nunapitchuk | 489 | \$17,083 | 97.1% | 40.0% | 12.3% | 60.8% |
| Russian Mission | 295 | \$21,667 | 94.7% | 45.0% | 21.0% | 61.1% |
| Clam Gulch | 100 | \$60,233 | 12.7% | 0.0% | 0.0% | 61.3% |
| Napakiak | 354 | \$18,125 | 94.3% | 36.2% | 33.3% | 61.3% |
| Alakanuk | 651 | \$17,708 | 95.8% | 29.4% | 26.8% | 61.5% |
| Koyukuk | 126 | \$13,929 | 97.6% | 39.2% | 27.0% | 62.0% |
| Emmonak | 820 | \$25,625 | 92.1% | 20.9% | 34.6% | 62.0% |
| Kiana | 415 | \$28,125 | 93.5% | 24.5% | 27.4% | 62.1% |
| Aleknagik | 226 | \$21,875 | 83.2% | 28.8% | 14.3% | 62.2% |
| Port Graham | 186 | \$33,750 | 90.4% | 2.1% | 38.8% | 62.4% |
| Slana | 58 | \$25,417 | 6.3% | 19.0% | 44.4% | 62.5% |
| Circle | 83 | \$17,083 | 86.3% | 10.9% | 36.7% | 62.7% |
| Pilot Station | 547 | \$16,000 | 95.0% | 51.3% | 35.1% | 62.9% |
| Napaskiak | 399 | \$18,750 | 94.8% | 34.3% | 22.7% | 63.4% |
| Eek | 277 | \$21,000 | 95.7% | 28.6% | 23.9% | 63.4% |

**Alaska Communities, by Percent Adults Not Working in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Red Devil | 49 | \$25,000 | 50.9% | 30.7% | 14.3% | 63.6% |
| Beaver | 118 | \$20,313 | 95.1% | 32.2% | 22.6% | 63.6% |
| Stebbins | 513 | \$23,333 | 94.8% | 32.3% | 39.2% | 64.0% |
| Stony River | 42 | \$5,156 | 88.2% | 100.0% | 26.7% | 64.5% |
| Tyonek | 151 | \$11,591 | 92.2% | 37.1% | 37.7% | 64.5% |
| Central | 57 | \$28,036 | 1.9% | 13.7% | 19.0% | 64.6% |
| Koyuk | 272 | \$18,750 | 94.8% | 30.0% | 37.3% | 64.6% |
| Crooked Creek | 138 | \$16,250 | 90.6% | 28.7% | 27.3% | 64.7% |
| Chitina | 84 | \$13,125 | 46.9% | 40.9% | 33.3% | 64.7% |
| Shungnak | 252 | \$29,583 | 94.6% | 5.7% | 14.0% | 64.9% |
| Salamatof | 1,134 | \$38,203 | 10.4% | 9.8% | 14.6% | 64.9% |
| Ferry | 69 | \$25,625 | 12.5% | 15.5% | 39.1% | 65.0% |
| Shishmaref | 542 | \$15,625 | 94.5% | 27.3% | 18.0% | 65.1% |
| Kotlik | 543 | \$20,417 | 97.0% | 17.7% | 36.6% | 65.2% |
| Kokhanok | 168 | \$14,286 | 90.1% | 53.4% | 7.7% | 65.4% |
| Elim | 301 | \$16,250 | 91.7% | 25.1% | 36.1% | 66.2% |
| Kasigluk | 514 | \$26,563 | 95.3% | 20.4% | 34.8% | 66.3% |
| Ambler | 333 | \$22,500 | 89.7% | 31.1% | 39.3% | 66.3% |
| Hooper Bay | 1,012 | \$18,125 | 96.0% | 43.5% | 41.7% | 66.3% |
| Skwentna | 77 | \$17,692 | 1.2% | 24.2% | 0.0% | 66.7% |
| Tonsina | 46 | \$16,250 | 18.4% | 0.0% | 0.0% | 66.7% |
| Nulato | 365 | \$17,143 | 96.9% | 35.9% | 25.7% | 66.7% |
| Kobuk | 89 | \$20,625 | 89.9% | 34.7% | 35.0% | 66.7% |
| Nanwalek | 177 | \$46,563 | 91.1% | 11.0% | 46.4% | 66.7% |
| Chefornak | 405 | \$20,278 | 97.5% | 35.4% | 6.2% | 66.8% |
| Edna Bay | 70 | \$12,250 | 0.0% | 63.7% | 25.0% | 67.2% |
| Selawik | 696 | \$21,833 | 95.5% | 23.1% | 31.3% | 67.2% |
| White Mountain | 193 | \$15,893 | 87.8% | 38.3% | 36.4% | 67.3% |
| Sleetmute | 102 | \$10,000 | 86.8% | 62.6% | 12.9% | 67.5% |
| Shageluk | 145 | \$16,250 | 95.0% | 34.8% | 22.9% | 67.5% |
| Huslia | 245 | \$13,333 | 90.8% | 43.7% | 38.5% | 67.5% |
| Larsen Bay | 120 | \$39,750 | 84.4% | 3.1% | 40.0% | 67.6% |
| Mountain Village | 738 | \$26,750 | 91.1% | 25.3% | 36.7% | 68.0% |
| Chignik Lake | 127 | \$19,167 | 91.7% | 42.0% | 15.2% | 68.2% |
| Newtok | 269 | \$14,844 | 93.2% | 50.2% | 25.9% | 68.2% |
| Upper Kalskag | 198 | \$16,250 | 84.9% | 39.6% | 25.5% | 68.5% |
| Happy Valley | 391 | \$16,250 | 6.1% | 32.8% | 25.6% | 68.6% |
| Nightmute | 217 | \$17,813 | 95.4% | 62.0% | 26.9% | 68.6% |
| Egegik | 127 | \$20,625 | 70.5% | 34.1% | 24.3% | 69.6% |
| Venetie | 241 | \$14,688 | 94.0% | 47.2% | 37.5% | 69.8% |
| Nondalton | 221 | \$21,750 | 89.3% | 20.3% | 42.6% | 70.0% |
| Gambell | 653 | \$15,938 | 96.2% | 46.4% | 16.8% | 71.1% |
| Kivalina | 357 | \$28,036 | 97.5% | 32.2% | 55.6% | 71.4% |
| Kwethluk | 672 | \$16,000 | 96.4% | 38.7% | 11.8% | 72.0% |
| Northway Village | 110 | \$13,333 | 94.7% | 47.0% | 51.3% | 72.1% |
| Chistochina | 55 | \$24,167 | 61.7% | 17.7% | 52.0% | 72.1% |
| Savoonga | 622 | \$11,339 | 95.2% | 50.9% | 14.7% | 72.2% |

**Alaska Communities, by Percent Adults Not Working in Ascending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Holy Cross | 260 | \$13,750 | 93.5% | 48.8% | 38.6% | 72.3% |
| Koliganek | 194 | \$18,125 | 96.1% | 35.6% | 11.1% | 72.4% |
| Stevens Village | 99 | \$10,000 | 91.2% | 73.9% | 43.3% | 72.6% |
| Twin Hills | 59 | \$11,667 | 92.4% | 50.0% | 25.0% | 72.7% |
| Perryville | 107 | \$25,000 | 94.4% | 25.4% | 13.6% | 72.9% |
| Togiak | 762 | \$15,000 | 87.3% | 46.3% | 23.1% | 72.9% |
| Point Baker | 57 | \$12,083 | 0.0% | 0.0% | 0.0% | 73.0% |
| Nikolai | 108 | \$11,250 | 89.0% | 44.5% | 35.5% | 73.0% |
| Ekwok | 124 | \$10,833 | 87.0% | 52.0% | 23.5% | 73.1% |
| Kasaan | 42 | \$46,667 | 53.7% | 0.0% | 64.5% | 73.8% |
| Northway Junction | 114 | \$41,875 | 70.5% | 10.0% | 36.8% | 73.9% |
| Tenakee Springs | 116 | \$18,125 | 9.6% | 10.8% | 20.0% | 74.0% |
| New Stuyahok | 452 | \$12,083 | 95.9% | 51.0% | 17.7% | 74.9% |
| Noatak | 401 | \$36,458 | 96.7% | 17.1% | 45.1% | 75.1% |
| Tatitlek | 99 | \$27,188 | 86.6% | 19.8% | 0.0% | 75.8% |
| Old Harbor | 301 | \$16,875 | 88.7% | 31.5% | 39.1% | 75.9% |
| Harding Lake | 29 | \$52,126 | 0.0% | 0.0% | 0.0% | 76.0% |
| Klukwan | 160 | \$36,042 | 86.8% | 3.5% | 60.4% | 76.1% |
| Lower Kalskag | 278 | \$10,357 | 98.3% | 61.2% | 37.9% | 77.5% |
| Ikroavik | 182 | \$11,477 | 94.1% | 46.9% | 69.4% | 78.4% |
| Umanuk | 567 | \$4,999 | 97.4% | 76.6% | 12.9% | 78.7% |
| Nelson Lagoon | 90 | \$44,583 | 80.7% | 26.0% | 0.0% | 80.8% |
| Chalkyitsik | 87 | \$12,750 | 92.2% | 67.3% | 31.3% | 81.0% |
| Minto | 244 | \$17,656 | 97.2% | 35.0% | 60.3% | 81.6% |
| Mentasta Lake | 122 | \$11,250 | 72.9% | 44.1% | 18.8% | 81.9% |
| Ugashik | 5 | \$37,500 | 85.7% | 0.0% | 80.0% | 83.3% |
| Chignik Lagoon | 74 | \$56,250 | 56.6% | 6.4% | 20.0% | 84.0% |
| Healy Lake | 60 | \$5,841 | 85.1% | 70.8% | 33.3% | 85.7% |
| Rampart | 54 | \$15,000 | 94.1% | 36.2% | 78.8% | 87.5% |
| Eagle Village | 34 | \$11,875 | 80.0% | 17.1% | 93.1% | 93.8% |
| Port Protection | 58 | \$10,000 | 1.6% | 45.6% | 75.0% | 95.3% |
| Alexander Creek | 38 | \$8,166 | 25.0% | 38.0% | 0.0% | 100.0% |
| Portage Creek | 14 | \$5,350 | 60.0% | 100.0% | 0.0% | 100.0% |
| McCarthy | 28 | \$23,750 | 4.0% | 0.0% | 100.0% | 100.0% |
| Covenant Life | 54 | \$23,571 | 0.0% | 20.0% | 100.0% | 100.0% |
| Alatna | 32 | \$6,030 | 93.5% | 83.0% | 100.0% | 100.0% |

* % Unemployment =

Percent of persons age 16+ actively seeking employment, calculated from unemployment compensation claims

** % Adults Not Working =

Percent of persons age 16+ actively seeking employment and those not actively seeking employment ("discouraged workers", in school, retired, disabled, or at home raising children, for example)

Alaska Communities, by 1997 Population In Descending Order

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|----------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Anchorage | 254,849 | 226,338 | 14,569 | 211,769 | 6.4% |
| Fairbanks | 31,850 | 30,843 | 2,830 | 28,013 | 9.2% |
| Juneau | 30,396 | 26,751 | 3,462 | 23,289 | 12.9% |
| College | 11,663 | 11,249 | 950 | 10,299 | 8.4% |
| Sitka | 8,733 | 8,588 | 1,797 | 6,791 | 20.9% |
| Ketchikan | 8,552 | 8,263 | 1,296 | 6,967 | 15.7% |
| Kenai | 6,971 | 6,327 | 535 | 5,792 | 8.5% |
| Kodiak | 6,749 | 6,365 | 811 | 5,554 | 12.7% |
| Sterling | 5,705 | 3,802 | 79 | 3,723 | 2.1% |
| Bethel | 5,277 | 4,674 | 2,986 | 1,688 | 63.9% |
| Wasilla | 4,917 | 4,028 | 212 | 3,816 | 5.3% |
| Meadow Lakes | 4,693 | 2,374 | 69 | 2,305 | 2.9% |
| Valdez | 4,486 | 4,068 | 239 | 3,829 | 5.9% |
| Barrow | 4,380 | 3,469 | 2,217 | 1,252 | 63.9% |
| Unalaska | 4,251 | 3,089 | 259 | 2,830 | 8.4% |
| Eielson AFB | 4,203 | 5,251 | 48 | 5,203 | 0.9% |
| Palmer | 4,167 | 2,866 | 220 | 2,646 | 7.7% |
| Homer | 4,126 | 3,660 | 130 | 3,530 | 3.6% |
| Soldotna | 4,092 | 3,482 | 158 | 3,324 | 4.5% |
| Nome | 3,656 | 3,500 | 1,824 | 1,676 | 52.1% |
| Petersburg | 3,432 | 3,207 | 334 | 2,873 | 10.4% |
| Kotzebue | 3,232 | 2,751 | 2,067 | 684 | 75.1% |
| Nikiski | 3,023 | 2,743 | 168 | 2,575 | 6.1% |
| Seward | 2,999 | 2,699 | 410 | 2,289 | 15.2% |
| Wrangell | 2,543 | 2,479 | 496 | 1,983 | 20.0% |
| Butte | 2,538 | 2,039 | 73 | 1,966 | 3.6% |
| Cordova | 2,467 | 2,110 | 237 | 1,873 | 11.2% |
| Ridgeway | 2,364 | 2,018 | 93 | 1,925 | 4.6% |
| Dillingham | 2,252 | 2,017 | 1,125 | 892 | 55.8% |
| Big Lake | 2,243 | 1,477 | 54 | 1,423 | 3.7% |
| Craig | 2,043 | 1,260 | 288 | 972 | 22.9% |
| Fritz Creek | 1,972 | 1,426 | 48 | 1,378 | 3.4% |
| Kodiak Station | 1,638 | 2,025 | 34 | 1,991 | 1.7% |
| North Pole | 1,631 | 1,456 | 78 | 1,378 | 5.4% |
| Metlakatla | 1,595 | 1,464 | 1,206 | 258 | 82.4% |
| Haines | 1,429 | 1,238 | 224 | 1,014 | 18.1% |
| Tok | 1,216 | 935 | 117 | 818 | 12.5% |
| Anchor Point | 1,157 | 866 | 32 | 834 | 3.7% |
| Salamatof | 1,134 | 999 | 104 | 895 | 10.4% |
| Lazy Mountain | 1,043 | 838 | 36 | 802 | 4.3% |
| Hooper Bay | 1,012 | 845 | 811 | 34 | 96.0% |
| Houston | 994 | 697 | 25 | 672 | 3.6% |
| Hoonah | 906 | 795 | 534 | 261 | 67.2% |
| Sand Point | 870 | 878 | 433 | 445 | 49.3% |
| Delta Junction | 855 | 652 | 29 | 623 | 4.4% |
| Yakutat | 833 | 534 | 294 | 240 | 55.1% |
| Emmonak | 820 | 642 | 591 | 51 | 92.1% |
| Skagway | 816 | 692 | 38 | 654 | 5.5% |

Alaska Communities, by 1997 Population in Descending Order

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Unalakleet | 803 | 714 | 584 | 130 | 81.8% |
| King Cove | 773 | 451 | 177 | 274 | 39.2% |
| Kake | 767 | 700 | 514 | 186 | 73.4% |
| Saint Paul | 764 | 763 | 504 | 259 | 66.1% |
| Togiak | 762 | 613 | 535 | 78 | 87.3% |
| Point Hope | 749 | 639 | 587 | 52 | 91.9% |
| Fort Greely | 740 | 1,299 | 11 | 1,136 | 1.0% |
| Mountain Village | 738 | 674 | 614 | 60 | 91.1% |
| Chevak | 721 | 598 | 556 | 42 | 93.0% |
| Klawock | 704 | 722 | 392 | 330 | 54.3% |
| Selawik | 696 | 596 | 569 | 27 | 95.5% |
| Moose Creek | 683 | 610 | 15 | 595 | 2.5% |
| Kwethluk | 672 | 558 | 538 | 20 | 96.4% |
| Womens Bay | 662 | 620 | 65 | 555 | 10.5% |
| Ninilchik | 655 | 456 | 89 | 367 | 19.5% |
| Gambell | 653 | 525 | 505 | 20 | 96.2% |
| Alakanuk | 651 | 544 | 521 | 23 | 95.8% |
| Naknek | 640 | 575 | 236 | 339 | 41.0% |
| Noorvik | 631 | 531 | 498 | 33 | 93.8% |
| Thorne Bay | 625 | 569 | 7 | 562 | 1.2% |
| Two Rivers | 623 | 453 | 33 | 420 | 7.3% |
| Savoonga | 622 | 519 | 494 | 25 | 95.2% |
| Angoon | 616 | 638 | 525 | 113 | 82.3% |
| Healy | 603 | 487 | 7 | 480 | 1.4% |
| Cohoe | 598 | 508 | 9 | 499 | 1.8% |
| Aniak | 578 | 540 | 382 | 158 | 70.7% |
| Fort Yukon | 575 | 580 | 493 | 87 | 85.0% |
| Quinhagak | 567 | 501 | 470 | 31 | 93.8% |
| Kipnuk | 567 | 470 | 458 | 12 | 97.4% |
| Anderson | 565 | 628 | 23 | 605 | 3.7% |
| Akiachak | 560 | 481 | 457 | 24 | 95.0% |
| Pleasant Valley | 552 | 401 | 19 | 382 | 4.7% |
| Wainwright | 550 | 492 | 454 | 28 | 94.3% |
| Pilot Station | 547 | 463 | 440 | 23 | 95.0% |
| Kotlik | 543 | 461 | 447 | 14 | 97.0% |
| Galena | 543 | 833 | 377 | 456 | 45.3% |
| Shishmaref | 542 | 456 | 431 | 25 | 94.5% |
| Kasilof | 539 | 383 | 11 | 372 | 2.9% |
| Copper Center | 536 | 449 | 155 | 294 | 34.5% |
| Kasigluk | 514 | 425 | 405 | 20 | 95.3% |
| Stebbins | 513 | 400 | 379 | 21 | 94.8% |
| Glennallen | 513 | 451 | 30 | 421 | 6.7% |
| Big Delta | 508 | 400 | 16 | 384 | 4.0% |
| Saint Mary's | 504 | 441 | 366 | 75 | 83.0% |
| Kenny Lake | 500 | 423 | 41 | 382 | 9.7% |
| Toksook Bay | 496 | 420 | 401 | 19 | 95.5% |
| Nunapituk | 489 | 378 | 367 | 11 | 97.1% |
| King Salmon | 478 | 696 | 108 | 588 | 15.5% |

Alaska Communities, by 1997 Population in Descending Order

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|-----------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Nikolaevsk | 474 | 371 | 5 | 366 | 1.3% |
| Andreafsky | 469 | 410 | 346 | 62 | 84.4% |
| Scammon Bay | 459 | 343 | 331 | 12 | 96.5% |
| McGrath | 456 | 528 | 248 | 280 | 47.0% |
| New Stuyahok | 452 | 391 | 375 | 16 | 95.9% |
| Knik | 443 | 272 | 31 | 241 | 11.4% |
| Nenana | 440 | 393 | 188 | 205 | 47.8% |
| Nuiqsut | 435 | 354 | 328 | 26 | 92.7% |
| Fox River | 435 | 382 | 0 | 382 | 0.0% |
| Sutton | 431 | 308 | 18 | 290 | 5.8% |
| Hydaburg | 425 | 384 | 342 | 42 | 89.1% |
| Eklutna | 425 | 381 | 48 | 333 | 12.6% |
| Akutan | 420 | 589 | 80 | 509 | 13.6% |
| Kiana | 415 | 385 | 360 | 25 | 93.5% |
| Buckland | 412 | 318 | 302 | 16 | 95.0% |
| Willow | 408 | 285 | 3 | 282 | 1.1% |
| Cheformak | 405 | 320 | 312 | 8 | 97.5% |
| Noatak | 401 | 333 | 322 | 11 | 96.7% |
| Napaskiak | 399 | 328 | 311 | 17 | 94.8% |
| Kachemak | 398 | 365 | 11 | 354 | 3.0% |
| Happy Valley | 391 | 309 | 19 | 290 | 6.1% |
| Marokctak | 387 | 385 | 368 | 17 | 95.6% |
| Tuluksak | 385 | 358 | 342 | 16 | 95.5% |
| Saxman | 381 | 369 | 284 | 85 | 77.0% |
| Salcha | 373 | 354 | 15 | 339 | 4.2% |
| Nulato | 365 | 359 | 348 | 11 | 96.9% |
| Kivalina | 357 | 317 | 309 | 8 | 97.5% |
| Napakiak | 354 | 318 | 300 | 18 | 94.3% |
| Tuntutuliak | 351 | 300 | 290 | 10 | 96.7% |
| Kongiganak | 349 | 294 | 286 | 8 | 97.3% |
| Talkeetna | 347 | 250 | 4 | 246 | 1.6% |
| Gustavus | 346 | 258 | 10 | 248 | 3.9% |
| Saint Michael | 341 | 295 | 269 | 26 | 91.2% |
| Kalifornsky | 335 | 285 | 12 | 273 | 4.2% |
| Arbiter | 333 | 311 | 279 | 32 | 89.7% |
| Kwigillingok | 333 | 278 | 264 | 14 | 95.0% |
| Tununak | 330 | 316 | 304 | 12 | 96.2% |
| Akiak | 327 | 285 | 277 | 8 | 97.2% |
| Fox | 321 | 275 | 20 | 255 | 7.3% |
| Marshall | 318 | 273 | 253 | 20 | 92.7% |
| Trapper Creek | 306 | 296 | 18 | 278 | 6.1% |
| Old Harbor | 301 | 284 | 252 | 32 | 88.7% |
| Elim | 301 | 264 | 242 | 22 | 91.7% |
| Anaktuvuk Pass | 301 | 259 | 220 | 39 | 84.9% |
| Tanana | 299 | 345 | 270 | 75 | 78.3% |
| Tazlina | 297 | 247 | 57 | 190 | 23.1% |
| Russian Mission | 295 | 246 | 233 | 13 | 94.7% |
| Atmautluak | 292 | 258 | 250 | 8 | 96.9% |

Alaska Communities, by 1997 Population in Descending Order

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|-------------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Whittier | 289 | 243 | 30 | 213 | 12.3% |
| Seldovia | 285 | 316 | 48 | 268 | 15.2% |
| Lower Kalskag | 278 | 291 | 286 | 5 | 98.3% |
| Eek | 277 | 254 | 243 | 11 | 95.7% |
| Koyuk | 272 | 231 | 219 | 12 | 94.8% |
| Cooper Landing | 271 | 243 | 3 | 240 | 1.2% |
| Newtok | 269 | 207 | 193 | 14 | 93.2% |
| Brevig Mission | 265 | 198 | 183 | 15 | 92.4% |
| Teller | 265 | 151 | 131 | 20 | 86.8% |
| Goodnews Bay | 263 | 241 | 231 | 10 | 95.9% |
| Holy Cross | 260 | 277 | 259 | 18 | 93.5% |
| Shungnak | 252 | 223 | 211 | 12 | 94.6% |
| Ouzinkie | 246 | 209 | 178 | 31 | 85.2% |
| Coffman Cove | 246 | 186 | 13 | 173 | 7.0% |
| Kaltag | 245 | 240 | 222 | 18 | 92.5% |
| Huslia | 245 | 207 | 188 | 19 | 90.8% |
| Minto | 244 | 218 | 212 | 6 | 97.2% |
| Venetie | 241 | 182 | 171 | 11 | 94.0% |
| Port Lions | 239 | 222 | 150 | 72 | 67.6% |
| Ester | 236 | 147 | 7 | 140 | 4.8% |
| Atkasuk | 235 | 216 | 201 | 15 | 93.1% |
| Shaktolik | 226 | 178 | 168 | 10 | 94.4% |
| Aleknagik | 226 | 185 | 154 | 31 | 83.2% |
| Kaktovik | 222 | 224 | 189 | 35 | 84.4% |
| Nondalton | 221 | 178 | 159 | 19 | 89.3% |
| Nightmute | 217 | 153 | 146 | 7 | 95.4% |
| Ruby | 217 | 170 | 126 | 44 | 74.1% |
| Point Lay | 207 | 139 | 113 | 26 | 81.3% |
| Chickaloon | 205 | 145 | 9 | 136 | 6.2% |
| Upper Kalskag | 198 | 172 | 146 | 26 | 84.9% |
| Copperville | 196 | 163 | 43 | 120 | 26.4% |
| McKinley Park | 196 | 171 | 5 | 166 | 2.9% |
| Koliganek | 194 | 181 | 174 | 7 | 96.1% |
| White Mountain | 193 | 180 | 158 | 22 | 87.8% |
| Mekoryuk | 192 | 177 | 176 | 1 | 99.4% |
| Whitestone Logging Camp | 189 | 164 | 6 | 158 | 3.7% |
| Pelican | 187 | 222 | 65 | 157 | 29.3% |
| Grayling | 186 | 208 | 194 | 14 | 93.3% |
| Port Graham | 186 | 166 | 150 | 16 | 90.4% |
| Saint George | 184 | 138 | 131 | 7 | 94.9% |
| Allakaket | 182 | 170 | 160 | 10 | 94.1% |
| Newhalen | 177 | 160 | 151 | 9 | 94.4% |
| Nanwalek | 177 | 158 | 144 | 14 | 91.1% |
| Sheldon Point | 177 | 109 | 101 | 8 | 92.7% |
| Hollis | 175 | 111 | 3 | 108 | 2.7% |
| Diomedes | 174 | 178 | 167 | 11 | 93.8% |
| Kokhanok | 168 | 152 | 137 | 15 | 90.1% |
| Eyak | 166 | 172 | 13 | 159 | 7.6% |

Alaska Communities, by 1997 Population in Descending Order

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|-------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Eagle | 165 | 168 | 5 | 163 | 3.0% |
| Wales | 162 | 161 | 143 | 18 | 88.8% |
| Klukwan | 160 | 129 | 112 | 17 | 86.8% |
| Deering | 158 | 157 | 148 | 9 | 94.3% |
| Pitka's Point | 154 | 135 | 129 | 6 | 95.6% |
| Golovin | 152 | 127 | 118 | 9 | 92.9% |
| Hope | 152 | 161 | 5 | 156 | 3.1% |
| Tyonek | 151 | 154 | 142 | 12 | 92.2% |
| Hyder | 151 | 99 | 1 | 98 | 1.0% |
| South Naknek | 149 | 136 | 108 | 28 | 79.4% |
| Shageluk | 145 | 139 | 132 | 7 | 95.0% |
| Cantwell | 144 | 147 | 33 | 114 | 22.4% |
| Crooked Creek | 138 | 106 | 96 | 10 | 90.6% |
| Cube Cove | 137 | 156 | 9 | 147 | 5.8% |
| Naukati Bay | 136 | 93 | 1 | 92 | 1.1% |
| Chignik Lake | 127 | 133 | 122 | 11 | 91.7% |
| Egegik | 127 | 122 | 86 | 36 | 70.5% |
| Koyukuk | 126 | 126 | 123 | 3 | 97.6% |
| Chignik | 125 | 188 | 85 | 103 | 45.2% |
| Ekwok | 124 | 77 | 67 | 10 | 87.0% |
| Mentasta Lake | 122 | 96 | 70 | 26 | 72.9% |
| Lignite | 122 | 99 | 0 | 99 | 0.0% |
| Arctic Village | 121 | 96 | 90 | 6 | 93.8% |
| Larsen Bay | 120 | 147 | 124 | 23 | 84.4% |
| Cold Bay | 120 | 148 | 8 | 140 | 5.4% |
| Northway | 119 | 123 | 79 | 44 | 64.2% |
| Beaver | 118 | 103 | 98 | 5 | 95.1% |
| Port Heiden | 116 | 119 | 86 | 33 | 72.3% |
| Moose Pass | 116 | 81 | 9 | 72 | 11.1% |
| Tenakee Springs | 116 | 94 | 9 | 85 | 9.6% |
| Chuathbaluk | 115 | 97 | 87 | 10 | 89.7% |
| Levelock | 115 | 105 | 87 | 18 | 82.9% |
| Pilot Point | 115 | 53 | 45 | 8 | 84.9% |
| Northway Junction | 114 | 88 | 62 | 26 | 70.5% |
| Atka | 111 | 73 | 67 | 6 | 91.8% |
| Northway Village | 110 | 113 | 107 | 6 | 94.7% |
| Dry Creek | 110 | 106 | 0 | 106 | 0.0% |
| Nikolai | 108 | 109 | 97 | 12 | 89.0% |
| Perryville | 107 | 108 | 102 | 6 | 94.4% |
| Hobart Bay | 107 | 187 | 12 | 175 | 6.4% |
| Iliamna | 103 | 94 | 62 | 32 | 66.0% |
| Sleetmute | 102 | 106 | 92 | 14 | 86.8% |
| Akhiok | 101 | 77 | 72 | 5 | 93.5% |
| Clam Gulch | 100 | 79 | 10 | 69 | 12.7% |
| Tatitlek | 99 | 119 | 103 | 16 | 86.6% |
| Stevens Village | 99 | 102 | 93 | 9 | 91.2% |
| Gulkana | 95 | 103 | 61 | 42 | 59.2% |
| Port Alexander | 94 | 119 | 3 | 116 | 2.5% |

Alaska Communities, by 1997 Population in Descending Order

| Community | 1997 Pop. | 1990 U.S. Census | | | % Native |
|--------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | |
| Mosquito Lake | 92 | 80 | 1 | 79 | 1.3% |
| Chenega Bay | 91 | 94 | 65 | 29 | 69.1% |
| Nelson Lagoon | 90 | 83 | 67 | 16 | 80.7% |
| Manley Hot Springs | 90 | 96 | 14 | 82 | 14.6% |
| Kobuk | 89 | 69 | 62 | 7 | 89.9% |
| Crown Point | 88 | 62 | 3 | 59 | 4.8% |
| Chalkyitsik | 87 | 90 | 83 | 7 | 92.2% |
| Tanacross | 85 | 106 | 100 | 6 | 94.3% |
| Chitina | 84 | 49 | 23 | 26 | 46.9% |
| Anvik | 83 | 82 | 75 | 7 | 91.5% |
| Circle | 83 | 73 | 63 | 10 | 86.3% |
| Dot Lake | 80 | 70 | 38 | 32 | 54.3% |
| Whale Pass | 79 | 75 | 2 | 73 | 2.7% |
| Halibut Cove | 78 | 78 | 3 | 75 | 3.8% |
| Skwentna | 77 | 85 | 1 | 84 | 1.2% |
| Chignik Lagoon | 74 | 53 | 30 | 23 | 56.6% |
| Chiniak | 74 | 69 | 4 | 65 | 5.8% |
| Mendeltna | 72 | 37 | 2 | 35 | 5.4% |
| Edna Bay | 70 | 86 | 0 | 86 | 0.0% |
| Hughes | 69 | 54 | 50 | 4 | 92.6% |
| Ferry | 69 | 56 | 7 | 49 | 12.5% |
| Tetlin | 68 | 87 | 83 | 4 | 95.4% |
| Port Alsworth | 67 | 55 | 1 | 54 | 1.8% |
| Game Creek | 67 | 61 | 0 | 61 | 0.0% |
| Clark's Point | 66 | 60 | 53 | 7 | 88.3% |
| False Pass | 64 | 68 | 52 | 16 | 76.5% |
| Takotna | 63 | 38 | 17 | 21 | 44.7% |
| Primrose | 62 | 63 | 0 | 63 | 0.0% |
| Healy Lake | 60 | 47 | 40 | 7 | 85.1% |
| Twin Hills | 59 | 66 | 61 | 5 | 92.4% |
| Oscarville | 59 | 57 | 52 | 5 | 91.2% |
| Slana | 58 | 63 | 4 | 59 | 6.3% |
| Port Protection | 58 | 62 | 1 | 61 | 1.6% |
| Central | 57 | 52 | 1 | 51 | 1.9% |
| Point Baker | 57 | 39 | 0 | 39 | 0.0% |
| Chistochina | 55 | 60 | 37 | 23 | 61.7% |
| Rampart | 54 | 68 | 64 | 4 | 94.1% |
| Elfin Cove | 54 | 57 | 1 | 56 | 1.8% |
| Covenant Life | 54 | 47 | 0 | 47 | 0.0% |
| Chase | 53 | 38 | 0 | 38 | 0.0% |
| Lutak | 52 | 45 | 8 | 37 | 17.8% |
| Red Devil | 49 | 53 | 27 | 26 | 50.9% |
| Karluk | 48 | 71 | 65 | 6 | 91.5% |
| Lime Village | 47 | 42 | 40 | 2 | 95.2% |
| Prudhoe Bay | 47 | 47 | 4 | 43 | 8.5% |
| Igiugig | 46 | 33 | 26 | 7 | 78.8% |
| Tonsina | 46 | 38 | 7 | 31 | 18.4% |
| Lake Minchumina | 45 | 32 | 6 | 26 | 18.8% |

Alaska Communities, by 1997 Population in Descending Order

| Community | 1997 Pop. | 1990 U.S. Census | | | % Native |
|--------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | |
| Nikolski | 43 | 35 | 29 | 6 | 82.9% |
| Stony River | 42 | 51 | 45 | 6 | 88.2% |
| Kasaan | 42 | 54 | 29 | 25 | 53.7% |
| Platinum | 41 | 64 | 59 | 5 | 92.2% |
| Alexander Creek | 38 | 40 | 10 | 30 | 25.0% |
| Birch Creek | 37 | 42 | 38 | 4 | 90.5% |
| Pedro Bay | 37 | 42 | 38 | 4 | 90.5% |
| Polk Inlet | 36 | 135 | 18 | 117 | 13.3% |
| Jakolof Bay | 35 | 28 | 0 | 28 | 0.0% |
| Eagle Village | 34 | 35 | 28 | 7 | 80.0% |
| Paxson | 34 | 30 | 0 | 30 | 0.0% |
| Alatna | 32 | 31 | 29 | 2 | 93.5% |
| Bettles | 32 | 36 | 8 | 28 | 22.2% |
| Circle Hot Springs | 32 | 29 | 0 | 29 | 0.0% |
| Harding Lake | 29 | 27 | 0 | 27 | 0.0% |
| Meyers Chuck | 28 | 37 | 4 | 33 | 10.8% |
| McCarthy | 28 | 25 | 1 | 24 | 4.0% |
| Ivanof Bay | 27 | 35 | 33 | 2 | 94.3% |
| Wiseman | 24 | 33 | 5 | 28 | 15.2% |
| Deadhorse | 24 | 26 | 3 | 23 | 11.5% |
| Kupreanof | 24 | 23 | 0 | 23 | 0.0% |
| Port Clarence | 24 | 26 | 0 | 26 | 0.0% |
| Gakona | 23 | 25 | 0 | 25 | 0.0% |
| Evansville | 20 | 33 | 19 | 14 | 57.6% |
| Port Alice | 19 | 30 | 2 | 28 | 6.7% |
| Alcan | 16 | 27 | 0 | 27 | 0.0% |
| Portage Creek | 14 | 5 | 3 | 2 | 60.0% |
| Rowan Bay | 9 | 133 | 9 | 124 | 6.8% |
| Telida | 5 | 11 | 10 | 1 | 90.9% |
| Ugashik | 5 | 7 | 6 | 1 | 85.7% |
| Napaimute | 3 | 3 | 3 | 0 | 100.0% |
| Ekuk | 2 | 3 | 2 | 1 | 33.3% |

**Alaska Communities, by Population of Natives in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Anchorage | 254,849 | 226,338 | 14,569 | 211,769 | 6.4% |
| Juneau | 30,396 | 26,751 | 3,462 | 23,289 | 12.9% |
| Bethel | 5,277 | 4,674 | 2,986 | 1,688 | 63.9% |
| Fairbanks | 31,850 | 30,843 | 2,830 | 28,013 | 9.2% |
| Barrow | 4,380 | 3,469 | 2,217 | 1,252 | 63.9% |
| Kotzebue | 3,232 | 2,751 | 2,067 | 684 | 75.1% |
| Nome | 3,656 | 3,500 | 1,824 | 1,676 | 52.1% |
| Sitka | 8,733 | 8,588 | 1,797 | 6,791 | 20.9% |
| Ketchikan | 8,552 | 8,263 | 1,296 | 6,967 | 15.7% |
| Metlakatla | 1,595 | 1,464 | 1,206 | 258 | 82.4% |
| Dillingham | 2,252 | 2,017 | 1,125 | 892 | 55.8% |
| College | 11,663 | 11,249 | 950 | 10,299 | 8.4% |
| Hooper Bay | 1,012 | 845 | 811 | 34 | 96.0% |
| Kodiak | 6,749 | 6,365 | 811 | 5,554 | 12.7% |
| Mountain Village | 738 | 674 | 614 | 60 | 91.1% |
| Emmonak | 820 | 642 | 591 | 51 | 92.1% |
| Point Hope | 749 | 639 | 587 | 52 | 91.9% |
| Unalakleet | 803 | 714 | 584 | 130 | 81.8% |
| Selawik | 696 | 596 | 569 | 27 | 95.5% |
| Chevak | 721 | 598 | 556 | 42 | 93.0% |
| Kwethluk | 672 | 558 | 538 | 20 | 96.4% |
| Kenai | 6,971 | 6,327 | 535 | 5,792 | 8.5% |
| Togiak | 762 | 613 | 535 | 78 | 87.3% |
| Hoonah | 906 | 795 | 534 | 261 | 67.1% |
| Angoon | 616 | 638 | 525 | 113 | 82.3% |
| Alakanuk | 651 | 544 | 521 | 23 | 95.8% |
| Kake | 767 | 700 | 514 | 186 | 73.4% |
| Gambell | 653 | 525 | 505 | 20 | 96.2% |
| Saint Paul | 764 | 763 | 504 | 259 | 66.1% |
| Noorvik | 631 | 531 | 498 | 33 | 93.8% |
| Wrangell | 2,543 | 2,479 | 496 | 1,983 | 20.0% |
| Savoonga | 622 | 519 | 494 | 25 | 95.2% |
| Fort Yukon | 575 | 580 | 493 | 87 | 85.0% |
| Quinhagak | 567 | 501 | 470 | 31 | 93.8% |
| Wainwright | 550 | 492 | 464 | 28 | 94.3% |
| Kipnuk | 567 | 470 | 458 | 12 | 97.4% |
| Akiachak | 560 | 481 | 457 | 24 | 95.0% |
| Kotlik | 543 | 461 | 447 | 14 | 97.0% |
| Pilot Station | 547 | 463 | 440 | 23 | 95.0% |
| Sand Point | 870 | 878 | 433 | 445 | 49.3% |
| Shishmaref | 542 | 456 | 431 | 25 | 94.5% |
| Seward | 2,999 | 2,699 | 410 | 2,289 | 15.2% |
| Kasigiuk | 514 | 425 | 405 | 20 | 95.3% |
| Toksook Bay | 496 | 420 | 401 | 19 | 95.5% |
| Klawock | 704 | 722 | 392 | 330 | 54.3% |
| Aniak | 578 | 540 | 382 | 158 | 70.7% |
| Stebbins | 513 | 400 | 379 | 21 | 94.8% |
| Galena | 543 | 833 | 377 | 456 | 45.3% |

**Alaska Communities, by Population of Natives in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|-----------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| New Stuyahok | 452 | 391 | 375 | 16 | 95.9% |
| Manokotak | 387 | 385 | 368 | 17 | 95.6% |
| Nunapitchuk | 489 | 378 | 367 | 11 | 97.1% |
| Saint Mary's | 504 | 441 | 366 | 75 | 83.0% |
| Kiana | 415 | 385 | 360 | 25 | 93.5% |
| Nulato | 365 | 359 | 348 | 11 | 96.9% |
| Andreafsky | 469 | 410 | 346 | 62 | 84.4% |
| Hydaburg | 425 | 384 | 342 | 42 | 89.1% |
| Tuluksak | 385 | 358 | 342 | 16 | 95.5% |
| Petersburg | 3,432 | 3,207 | 334 | 2,873 | 10.4% |
| Scammon Bay | 459 | 343 | 331 | 12 | 96.5% |
| Nuiqsut | 435 | 354 | 328 | 26 | 92.7% |
| Noatak | 401 | 333 | 322 | 11 | 96.7% |
| Chefornak | 405 | 320 | 312 | 8 | 97.5% |
| Napaskiak | 399 | 328 | 311 | 17 | 94.8% |
| Kivalina | 357 | 317 | 309 | 8 | 97.5% |
| Tununak | 330 | 316 | 304 | 12 | 96.2% |
| Buckland | 412 | 318 | 302 | 16 | 95.0% |
| Napakiak | 354 | 318 | 300 | 18 | 94.3% |
| Yakutat | 833 | 534 | 294 | 240 | 55.1% |
| Tuntutuliak | 351 | 300 | 290 | 10 | 96.7% |
| Craig | 2,043 | 1,260 | 288 | 972 | 22.9% |
| Kongiganak | 349 | 294 | 286 | 8 | 97.3% |
| Lower Kalskag | 278 | 291 | 286 | 5 | 98.3% |
| Saxman | 381 | 369 | 284 | 85 | 77.0% |
| Ambler | 333 | 311 | 279 | 32 | 89.7% |
| Akiak | 327 | 285 | 277 | 8 | 97.2% |
| Tanana | 299 | 345 | 270 | 75 | 78.3% |
| Saint Michael | 341 | 295 | 269 | 26 | 91.2% |
| Kwigillingok | 333 | 278 | 264 | 14 | 95.0% |
| Holy Cross | 260 | 277 | 259 | 18 | 93.5% |
| Unalaska | 4,251 | 3,089 | 259 | 2,830 | 8.4% |
| Marshall | 318 | 273 | 253 | 20 | 92.7% |
| Old Harbor | 301 | 284 | 252 | 32 | 88.7% |
| Atmautluak | 292 | 258 | 250 | 8 | 96.9% |
| McGrath | 456 | 528 | 248 | 280 | 47.0% |
| Eek | 277 | 254 | 243 | 11 | 95.7% |
| Elim | 301 | 264 | 242 | 22 | 91.7% |
| Valdez | 4,486 | 4,068 | 239 | 3,829 | 5.9% |
| Cordova | 2,467 | 2,110 | 237 | 1,873 | 11.2% |
| Naknek | 640 | 575 | 236 | 339 | 41.0% |
| Russian Mission | 295 | 246 | 233 | 13 | 94.7% |
| Goodnews Bay | 263 | 241 | 231 | 10 | 95.9% |
| Haines | 1,429 | 1,238 | 224 | 1,014 | 18.1% |
| Kaltag | 245 | 240 | 222 | 18 | 92.5% |
| Anaktuvuk Pass | 301 | 259 | 220 | 39 | 84.9% |
| Palmer | 4,167 | 2,866 | 220 | 2,646 | 7.7% |
| Koyuk | 272 | 231 | 219 | 12 | 94.8% |

**Alaska Communities, by Population of Natives in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|----------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Minto | 244 | 218 | 212 | 6 | 97.2% |
| Wasilla | 4,917 | 4,028 | 212 | 3,816 | 5.3% |
| Shungnak | 252 | 223 | 211 | 12 | 94.6% |
| Atkasuk | 235 | 216 | 201 | 15 | 93.1% |
| Grayling | 186 | 208 | 194 | 14 | 93.3% |
| Newtok | 269 | 207 | 193 | 14 | 93.2% |
| Kaktovik | 222 | 224 | 189 | 35 | 84.4% |
| Huslia | 245 | 207 | 188 | 19 | 90.8% |
| Nenana | 440 | 393 | 188 | 205 | 47.8% |
| Brevig Mission | 265 | 198 | 183 | 15 | 92.4% |
| Ouzinkie | 246 | 209 | 178 | 31 | 85.2% |
| King Cove | 773 | 451 | 177 | 274 | 39.2% |
| Mekoryuk | 192 | 177 | 176 | 1 | 99.4% |
| Koliganek | 194 | 181 | 174 | 7 | 96.1% |
| Venetie | 241 | 182 | 171 | 11 | 94.0% |
| Nikiski | 3,023 | 2,743 | 168 | 2,575 | 6.1% |
| Shaktoolik | 226 | 178 | 168 | 10 | 94.4% |
| Diomede | 174 | 178 | 167 | 11 | 93.8% |
| Allakaket | 182 | 170 | 160 | 10 | 94.1% |
| Nondalton | 221 | 178 | 159 | 19 | 89.3% |
| Soldotna | 4,092 | 3,482 | 158 | 3,324 | 4.5% |
| White Mountain | 193 | 180 | 158 | 22 | 87.8% |
| Copper Center | 536 | 449 | 155 | 294 | 34.5% |
| Aleknagik | 226 | 185 | 154 | 31 | 83.2% |
| Newhalen | 177 | 160 | 151 | 9 | 94.4% |
| Port Graham | 186 | 166 | 150 | 16 | 90.4% |
| Port Lions | 239 | 222 | 150 | 72 | 67.6% |
| Deering | 158 | 157 | 148 | 9 | 94.3% |
| Nightmute | 217 | 153 | 146 | 7 | 95.4% |
| Upper Kalskag | 198 | 172 | 146 | 26 | 84.9% |
| Nanwalek | 177 | 158 | 144 | 14 | 91.1% |
| Wales | 162 | 161 | 143 | 18 | 88.8% |
| Tyonek | 151 | 154 | 142 | 12 | 92.2% |
| Kokhanok | 168 | 152 | 137 | 15 | 90.1% |
| Shageluk | 145 | 139 | 132 | 7 | 95.0% |
| Saint George | 184 | 138 | 131 | 7 | 94.9% |
| Teller | 265 | 151 | 131 | 20 | 86.8% |
| Homer | 4,126 | 3,660 | 130 | 3,530 | 3.6% |
| Pitka's Point | 154 | 135 | 129 | 6 | 95.6% |
| Ruby | 217 | 170 | 126 | 44 | 74.1% |
| Larsen Bay | 120 | 147 | 124 | 23 | 84.4% |
| Koyukuk | 126 | 126 | 123 | 3 | 97.6% |
| Chignik Lake | 127 | 133 | 122 | 11 | 91.7% |
| Golovin | 152 | 127 | 118 | 9 | 92.9% |
| Tok | 1,216 | 935 | 117 | 818 | 12.5% |
| Point Lay | 207 | 139 | 113 | 26 | 81.3% |
| Klukwan | 160 | 129 | 112 | 17 | 86.8% |
| King Salmon | 478 | 696 | 108 | 588 | 15.5% |

**Alaska Communities, by Population of Natives in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|-------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| South Naknek | 149 | 136 | 108 | 28 | 79.4% |
| Northway Village | 110 | 113 | 107 | 6 | 94.7% |
| Salamatof | 1,134 | 999 | 104 | 895 | 10.4% |
| Tatitlek | 99 | 119 | 103 | 16 | 86.6% |
| Perryville | 107 | 108 | 102 | 6 | 94.4% |
| Sheldon Point | 177 | 109 | 101 | 8 | 92.7% |
| Tanacross | 85 | 106 | 100 | 6 | 94.3% |
| Beaver | 118 | 103 | 98 | 5 | 95.1% |
| Nikolai | 108 | 109 | 97 | 12 | 89.0% |
| Crooked Creek | 138 | 106 | 96 | 10 | 90.6% |
| Ridgeway | 2,364 | 2,018 | 93 | 1,925 | 4.6% |
| Stevens Village | 99 | 102 | 93 | 9 | 91.2% |
| Sleetmute | 102 | 106 | 92 | 14 | 86.8% |
| Arctic Village | 121 | 96 | 90 | 6 | 93.8% |
| Ninilchik | 655 | 456 | 89 | 367 | 19.5% |
| Chuathbaluk | 115 | 97 | 87 | 10 | 89.7% |
| Levelock | 115 | 105 | 87 | 18 | 82.9% |
| Egegik | 127 | 122 | 86 | 36 | 70.5% |
| Port Heiden | 116 | 119 | 86 | 33 | 72.3% |
| Chignik | 125 | 188 | 85 | 103 | 45.2% |
| Chalkyitsik | 87 | 90 | 83 | 7 | 92.2% |
| Tetlin | 68 | 87 | 83 | 4 | 95.4% |
| Akutan | 420 | 599 | 80 | 509 | 13.6% |
| Northway | 119 | 123 | 79 | 44 | 64.2% |
| Sterling | 5,705 | 3,802 | 79 | 3,723 | 2.1% |
| North Pole | 1,631 | 1,456 | 78 | 1,378 | 5.4% |
| Anvik | 83 | 82 | 75 | 7 | 91.5% |
| Butte | 2,538 | 2,039 | 73 | 1,966 | 3.6% |
| Akhiok | 101 | 77 | 72 | 5 | 93.5% |
| Mentasta Lake | 122 | 96 | 70 | 26 | 72.9% |
| Meadow Lakes | 4,693 | 2,374 | 69 | 2,305 | 2.9% |
| Atka | 111 | 73 | 67 | 6 | 91.8% |
| Ekwok | 124 | 77 | 67 | 10 | 87.0% |
| Nelson Lagoon | 90 | 83 | 67 | 16 | 80.7% |
| Chenega Bay | 91 | 94 | 65 | 29 | 69.1% |
| Karluk | 48 | 71 | 65 | 6 | 91.5% |
| Pelican | 187 | 222 | 65 | 157 | 29.3% |
| Womens Bay | 662 | 620 | 65 | 555 | 10.5% |
| Rampart | 54 | 68 | 64 | 4 | 94.1% |
| Circle | 83 | 73 | 63 | 10 | 86.3% |
| Iliamna | 103 | 94 | 62 | 32 | 66.0% |
| Kobuk | 89 | 69 | 62 | 7 | 89.9% |
| Northway Junction | 114 | 88 | 62 | 26 | 70.5% |
| Gulkana | 95 | 103 | 61 | 42 | 59.2% |
| Twin Hills | 59 | 66 | 61 | 5 | 92.4% |
| Platinum | 41 | 64 | 59 | 5 | 92.2% |
| Tazlina | 297 | 247 | 57 | 190 | 23.1% |
| Big Lake | 2,243 | 1,477 | 54 | 1,423 | 3.7% |

**Alaska Communities, by Population of Natives in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|-----------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Clark's Point | 66 | 60 | 53 | 7 | 88.3% |
| Faise Pass | 64 | 68 | 52 | 16 | 76.5% |
| Oscarville | 59 | 57 | 52 | 5 | 91.2% |
| Hughes | 69 | 54 | 50 | 4 | 92.6% |
| Eielson AFB | 4,203 | 5,251 | 48 | 5,203 | 0.9% |
| Eklutna | 425 | 381 | 48 | 333 | 12.6% |
| Fritz Creek | 1,972 | 1,426 | 48 | 1,378 | 3.4% |
| Seldovia | 285 | 316 | 48 | 268 | 15.2% |
| Pilot Point | 115 | 53 | 45 | 8 | 84.9% |
| Stony River | 42 | 51 | 45 | 6 | 88.2% |
| Copperville | 196 | 163 | 43 | 120 | 26.4% |
| Kenny Lake | 500 | 423 | 41 | 382 | 9.7% |
| Healy Lake | 60 | 47 | 40 | 7 | 85.1% |
| Lime Village | 47 | 42 | 40 | 2 | 95.2% |
| Birch Creek | 37 | 42 | 38 | 4 | 90.5% |
| Dot Lake | 80 | 70 | 38 | 32 | 54.3% |
| Pedro Bay | 37 | 42 | 38 | 4 | 90.5% |
| Skagway | 816 | 692 | 38 | 654 | 5.5% |
| Chistochina | 55 | 60 | 37 | 23 | 61.7% |
| Lazy Mountain | 1,043 | 838 | 36 | 802 | 4.3% |
| Kodiak Station | 1,638 | 2,025 | 34 | 1,991 | 1.7% |
| Cantwell | 144 | 147 | 33 | 114 | 22.4% |
| Ivanof Bay | 27 | 35 | 33 | 2 | 94.3% |
| Two Rivers | 623 | 453 | 33 | 420 | 7.3% |
| Anchor Point | 1,157 | 866 | 32 | 834 | 3.7% |
| Knik | 443 | 272 | 31 | 241 | 11.4% |
| Chignik Lagoon | 74 | 53 | 30 | 23 | 56.6% |
| Glennallen | 513 | 451 | 30 | 421 | 6.7% |
| Whittier | 289 | 243 | 30 | 213 | 12.3% |
| Alatna | 32 | 31 | 29 | 2 | 93.5% |
| Delta Junction | 855 | 652 | 29 | 623 | 4.4% |
| Kasaan | 42 | 54 | 29 | 25 | 53.7% |
| Nikolski | 43 | 35 | 29 | 6 | 82.9% |
| Eagle Village | 34 | 35 | 28 | 7 | 80.0% |
| Red Devil | 49 | 53 | 27 | 26 | 50.9% |
| Igiugig | 46 | 33 | 26 | 7 | 78.8% |
| Houston | 994 | 697 | 25 | 672 | 3.6% |
| Anderson | 565 | 628 | 23 | 605 | 3.7% |
| Chitina | 84 | 49 | 23 | 26 | 46.9% |
| Fox | 321 | 275 | 20 | 255 | 7.3% |
| Evansville | 20 | 33 | 19 | 14 | 57.6% |
| Happy Valley | 391 | 309 | 19 | 290 | 6.1% |
| Pleasant Valley | 552 | 401 | 19 | 382 | 4.7% |
| Polk Inlet | 36 | 135 | 18 | 117 | 13.3% |
| Sutton | 431 | 308 | 18 | 290 | 5.8% |
| Trapper Creek | 306 | 296 | 18 | 278 | 6.1% |
| Takotna | 63 | 38 | 17 | 21 | 44.7% |
| Big Delta | 508 | 400 | 16 | 384 | 4.0% |

**Alaska Communities, by Population of Natives in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|-------------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Moose Creek | 683 | 610 | 15 | 595 | 2.5% |
| Salcha | 373 | 354 | 15 | 339 | 4.2% |
| Manley Hot Springs | 90 | 96 | 14 | 82 | 14.6% |
| Coffman Cove | 246 | 186 | 13 | 173 | 7.0% |
| Eyak | 166 | 172 | 13 | 159 | 7.6% |
| Hobart Bay | 107 | 187 | 12 | 175 | 6.4% |
| Kalifonsky | 335 | 285 | 12 | 273 | 4.2% |
| Fort Greely | 740 | 1,299 | 11 | 1,136 | 1.0% |
| Kachemak | 398 | 365 | 11 | 354 | 3.0% |
| Kasilof | 539 | 383 | 11 | 372 | 2.9% |
| Alexander Creek | 38 | 40 | 10 | 30 | 25.0% |
| Clam Gulch | 100 | 79 | 10 | 69 | 12.7% |
| Gustavus | 346 | 258 | 10 | 248 | 3.9% |
| Telida | 5 | 11 | 10 | 1 | 90.9% |
| Chickaloon | 205 | 145 | 9 | 136 | 6.2% |
| Cohoe | 598 | 508 | 9 | 499 | 1.8% |
| Cube Cove | 137 | 156 | 9 | 147 | 5.8% |
| Moose Pass | 116 | 81 | 9 | 72 | 11.1% |
| Rowan Bay | 9 | 133 | 9 | 124 | 6.8% |
| Tenakee Springs | 116 | 94 | 9 | 85 | 9.6% |
| Betties | 32 | 36 | 8 | 28 | 22.2% |
| Cold Bay | 120 | 148 | 8 | 140 | 5.4% |
| Lutak | 52 | 45 | 8 | 37 | 17.8% |
| Ester | 236 | 147 | 7 | 140 | 4.8% |
| Ferry | 69 | 56 | 7 | 49 | 12.5% |
| Healy | 603 | 487 | 7 | 480 | 1.4% |
| Thorne Bay | 625 | 569 | 7 | 562 | 1.2% |
| Tonsina | 46 | 38 | 7 | 31 | 18.4% |
| Lake Minchumina | 45 | 32 | 6 | 26 | 18.8% |
| Ugashik | 5 | 7 | 6 | 1 | 85.7% |
| Whitestone Logging Camp | 189 | 164 | 6 | 158 | 3.7% |
| Eagle | 165 | 168 | 5 | 163 | 3.0% |
| Hope | 152 | 161 | 5 | 156 | 3.1% |
| McKinley Park | 196 | 171 | 5 | 166 | 2.9% |
| Nikolaevsk | 474 | 371 | 5 | 366 | 1.3% |
| Wiseman | 24 | 33 | 5 | 28 | 15.2% |
| Chiniak | 74 | 69 | 4 | 65 | 5.8% |
| Meyers Chuck | 28 | 37 | 4 | 33 | 10.8% |
| Prudhoe Bay | 47 | 47 | 4 | 43 | 8.5% |
| Slana | 58 | 63 | 4 | 59 | 6.3% |
| Talkeetna | 347 | 250 | 4 | 246 | 1.6% |
| Cooper Landing | 271 | 243 | 3 | 240 | 1.2% |
| Crown Point | 88 | 62 | 3 | 59 | 4.8% |
| Deadhorse | 24 | 26 | 3 | 23 | 11.5% |
| Halibut Cove | 78 | 78 | 3 | 75 | 3.8% |
| Hollis | 175 | 111 | 3 | 108 | 2.7% |
| Napaimute | 3 | 3 | 3 | 0 | 100.0% |
| Port Alexander | 94 | 119 | 3 | 116 | 2.5% |

**Alaska Communities, by Population of Natives in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | |
|--------------------|-----------|------------------|---------|-------------|----------|
| | | 1990 Pop. | Natives | Non-Natives | % Native |
| Portage Creek | 14 | 5 | 3 | 2 | 60.0% |
| Willow | 408 | 285 | 3 | 282 | 1.1% |
| Ekuk | 2 | 3 | 2 | 1 | 33.3% |
| Mendeltna | 72 | 37 | 2 | 35 | 5.4% |
| Port Alice | 19 | 30 | 2 | 28 | 6.7% |
| Whale Pass | 79 | 75 | 2 | 73 | 2.7% |
| Central | 57 | 52 | 1 | 51 | 1.9% |
| Elfin Cove | 54 | 57 | 1 | 56 | 1.8% |
| Hyder | 151 | 99 | 1 | 98 | 1.0% |
| McCarthy | 28 | 25 | 1 | 24 | 4.0% |
| Mosquito Lake | 92 | 80 | 1 | 79 | 1.3% |
| Naukati Bay | 136 | 93 | 1 | 92 | 1.1% |
| Port Alsworth | 67 | 55 | 1 | 54 | 1.8% |
| Port Protection | 58 | 62 | 1 | 61 | 1.6% |
| Skwentna | 77 | 85 | 1 | 84 | 1.2% |
| Alcan | 16 | 27 | 0 | 27 | 0.0% |
| Chase | 53 | 38 | 0 | 38 | 0.0% |
| Circle Hot Springs | 32 | 29 | 0 | 29 | 0.0% |
| Coldfoot | 26 | 0 | 0 | 0 | 0.0% |
| Covenant Life | 54 | 47 | 0 | 47 | 0.0% |
| Dry Creek | 110 | 106 | 0 | 106 | 0.0% |
| Edna Bay | 70 | 86 | 0 | 86 | 0.0% |
| Fox River | 435 | 382 | 0 | 382 | 0.0% |
| Gakona | 23 | 25 | 0 | 25 | 0.0% |
| Game Creek | 67 | 61 | 0 | 61 | 0.0% |
| Harding Lake | 29 | 27 | 0 | 27 | 0.0% |
| Jakolof Bay | 35 | 28 | 0 | 28 | 0.0% |
| Kupreanof | 24 | 23 | 0 | 23 | 0.0% |
| Lignite | 122 | 99 | 0 | 99 | 0.0% |
| Paxson | 34 | 30 | 0 | 30 | 0.0% |
| Point Baker | 57 | 39 | 0 | 39 | 0.0% |
| Port Clarence | 24 | 26 | 0 | 26 | 0.0% |
| Primrose | 62 | 63 | 0 | 63 | 0.0% |

**Alaska Communities, by Median Household Income in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Eyak | 166 | \$150,001 | 7.6% | 0.0% | 4.3% | 22.1% |
| Deadhorse | 24 | \$102,264 | 11.5% | 0.0% | 0.0% | 0.0% |
| Fox River | 435 | \$93,848 | 0.0% | 9.1% | 0.0% | 45.7% |
| Lake Minchumina | 45 | \$75,222 | 18.8% | 0.0% | 0.0% | 48.3% |
| Lutak | 52 | \$70,485 | 17.8% | 0.0% | 0.0% | 48.4% |
| Halibut Cove | 78 | \$68,760 | 3.8% | 0.0% | 0.0% | 0.0% |
| Valdez | 4,486 | \$68,570 | 5.9% | 5.1% | 8.8% | 26.0% |
| Eklutna | 425 | \$66,946 | 12.6% | 8.0% | 3.5% | 29.1% |
| Chase | 53 | \$61,359 | 0.0% | 0.0% | 0.0% | 0.0% |
| Clam Gulch | 100 | \$60,233 | 12.7% | 0.0% | 0.0% | 61.3% |
| Rowan Bay | 9 | \$58,295 | 6.8% | 0.0% | 9.8% | 22.4% |
| Barrow | 4,380 | \$56,688 | 63.9% | 7.5% | 11.5% | 30.4% |
| Atkasuk | 235 | \$56,352 | 93.1% | 15.2% | 29.7% | 45.1% |
| Healy | 603 | \$56,313 | 1.4% | 3.8% | 3.9% | 39.4% |
| Chignik Lagoon | 74 | \$56,250 | 56.6% | 6.4% | 20.0% | 84.0% |
| Unalaska | 4,251 | \$56,215 | 8.4% | 15.3% | 1.0% | 7.8% |
| Kupreanof | 24 | \$55,447 | 0.0% | 0.0% | 0.0% | 0.0% |
| Kachemak | 398 | \$55,000 | 3.0% | 7.3% | 4.0% | 32.0% |
| King Salmon | 478 | \$54,072 | 15.5% | 3.0% | 5.8% | 16.2% |
| King Cove | 773 | \$53,631 | 39.2% | 10.0% | 1.8% | 24.0% |
| Two Rivers | 623 | \$53,518 | 7.3% | 4.0% | 10.5% | 32.2% |
| Anderson | 565 | \$53,413 | 3.7% | 3.7% | 11.5% | 22.2% |
| Alcan | 16 | \$53,338 | 0.0% | 0.0% | 0.0% | 33.3% |
| Hobart Bay | 107 | \$52,377 | 6.4% | 1.0% | 0.0% | 10.9% |
| Kalifornsky | 335 | \$52,354 | 4.2% | 12.2% | 25.6% | 47.8% |
| Harding Lake | 29 | \$52,126 | 0.0% | 0.0% | 0.0% | 76.0% |
| Kasilof | 539 | \$51,439 | 2.9% | 2.5% | 18.4% | 40.8% |
| Cube Cove | 137 | \$51,280 | 5.8% | 5.7% | 0.0% | 21.4% |
| Sterling | 5,705 | \$51,145 | 2.1% | 7.6% | 7.4% | 38.9% |
| Naknek | 640 | \$50,907 | 41.0% | 1.7% | 3.9% | 36.0% |
| Polk Inlet | 36 | \$50,446 | 13.3% | 4.4% | 24.4% | 36.3% |
| Point Lay | 207 | \$49,583 | 81.3% | 3.3% | 11.5% | 22.7% |
| Whale Pass | 79 | \$49,583 | 2.7% | 14.0% | 35.7% | 59.1% |
| Pleasant Valley | 552 | \$49,464 | 4.7% | 0.0% | 4.5% | 24.2% |
| Petersburg | 3,432 | \$49,318 | 10.4% | 4.1% | 4.2% | 28.8% |
| Ridgeway | 2,364 | \$48,967 | 4.6% | 6.1% | 6.3% | 30.6% |
| Ouzinkie | 246 | \$48,393 | 85.2% | 10.2% | 18.9% | 51.9% |
| Juneau | 30,396 | \$47,924 | 12.9% | 5.5% | 4.8% | 25.0% |
| Point Hope | 749 | \$47,788 | 91.9% | 9.2% | 23.4% | 52.0% |
| Craig | 2,043 | \$47,250 | 22.9% | 3.9% | 8.4% | 25.9% |
| Copperville | 196 | \$47,188 | 26.4% | 9.8% | 26.6% | 51.8% |
| Kasaan | 42 | \$46,667 | 53.7% | 0.0% | 64.5% | 73.8% |
| Nanwalek | 177 | \$46,563 | 91.1% | 11.0% | 46.4% | 66.7% |
| Primrose | 62 | \$46,563 | 0.0% | 0.0% | 0.0% | 35.2% |
| Cordova | 2,467 | \$46,304 | 11.2% | 4.7% | 3.1% | 23.8% |
| Kaktovik | 222 | \$46,250 | 84.4% | 20.6% | 30.7% | 50.0% |
| Kodiak | 6,749 | \$46,050 | 12.7% | 6.2% | 4.4% | 23.0% |

**Alaska Communities, by Median Household Income in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-------------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Nome | 3,656 | \$45,812 | 52.1% | 9.9% | 11.0% | 36.0% |
| Cold Bay | 120 | \$45,625 | 5.4% | 0.0% | 0.0% | 15.9% |
| Tazlina | 297 | \$45,625 | 23.1% | 22.0% | 13.2% | 36.4% |
| Whitestone Logging Camp | 189 | \$45,625 | 3.7% | 7.6% | 9.7% | 23.8% |
| Fritz Creek | 1,972 | \$45,143 | 3.4% | 3.4% | 6.1% | 38.5% |
| Womens Bay | 662 | \$44,861 | 10.5% | 3.2% | 6.5% | 26.2% |
| Ester | 236 | \$44,688 | 4.8% | 12.8% | 11.5% | 33.0% |
| Nelson Lagoon | 90 | \$44,583 | 80.7% | 26.0% | 0.0% | 80.8% |
| Chiniak | 74 | \$44,375 | 5.8% | 20.2% | 5.1% | 28.8% |
| Nikiski | 3,023 | \$44,242 | 6.1% | 7.0% | 14.5% | 42.2% |
| Dillingham | 2,252 | \$44,083 | 55.8% | 9.5% | 6.7% | 37.7% |
| Coffman Cove | 246 | \$44,063 | 7.0% | 4.7% | 14.7% | 29.8% |
| Cantwell | 144 | \$44,000 | 22.4% | 10.3% | 34.6% | 57.6% |
| Anchorage | 254,849 | \$43,946 | 6.4% | 7.0% | 7.0% | 26.7% |
| Crown Point | 88 | \$43,864 | 4.8% | 0.0% | 0.0% | 38.0% |
| Telida | 5 | \$43,750 | 90.9% | 0.0% | 0.0% | 0.0% |
| Sitka | 8,733 | \$43,337 | 20.9% | 4.8% | 6.7% | 26.7% |
| Naukati Bay | 136 | \$43,333 | 1.1% | 4.8% | 9.1% | 26.8% |
| College | 11,663 | \$43,329 | 8.4% | 9.6% | 7.8% | 32.3% |
| Elfin Cove | 54 | \$43,125 | 1.8% | 7.1% | 0.0% | 28.2% |
| Kenai | 6,971 | \$42,889 | 8.5% | 7.3% | 12.1% | 38.2% |
| Anchor Point | 1,157 | \$42,847 | 3.7% | 0.7% | 17.5% | 53.0% |
| Akhiok | 101 | \$42,500 | 93.5% | 2.4% | 18.8% | 50.9% |
| Kotzebue | 3,232 | \$42,367 | 75.1% | 12.7% | 13.1% | 41.2% |
| Cooper Landing | 271 | \$42,250 | 1.2% | 3.6% | 0.0% | 53.8% |
| Bethel | 5,277 | \$42,232 | 63.9% | 12.2% | 9.0% | 36.6% |
| Sand Point | 870 | \$42,083 | 49.3% | 12.5% | 2.9% | 32.1% |
| Ketchikan | 8,552 | \$41,931 | 15.7% | 5.5% | 8.6% | 31.2% |
| Northway Junction | 114 | \$41,875 | 70.5% | 10.0% | 36.8% | 73.9% |
| Gustavus | 346 | \$41,538 | 3.9% | 3.6% | 4.6% | 26.2% |
| Butte | 2,538 | \$41,471 | 3.6% | 7.7% | 10.4% | 35.5% |
| Igiugig | 46 | \$41,250 | 78.8% | 0.0% | 0.0% | 38.5% |
| Iliamna | 103 | \$41,250 | 66.0% | 12.1% | 0.0% | 42.1% |
| Port Lions | 239 | \$40,938 | 67.6% | 5.3% | 14.1% | 41.8% |
| Atka | 111 | \$40,625 | 91.8% | 16.2% | 25.7% | 44.7% |
| Dry Creek | 110 | \$40,625 | 0.0% | 12.8% | 0.0% | 13.7% |
| McKinley Park | 196 | \$40,313 | 2.9% | 4.0% | 13.4% | 40.8% |
| Saint Paul | 764 | \$39,922 | 66.1% | 7.1% | 10.8% | 32.6% |
| Larsen Bay | 120 | \$39,750 | 84.4% | 3.1% | 40.0% | 67.6% |
| Thorne Bay | 625 | \$39,688 | 1.2% | 5.2% | 18.6% | 38.4% |
| Prudhoe Bay | 47 | \$39,673 | 8.5% | 0.0% | 0.0% | 0.0% |
| Klawock | 704 | \$39,583 | 54.3% | 8.4% | 17.3% | 48.4% |
| Northway | 119 | \$39,375 | 64.2% | 11.9% | 26.0% | 54.9% |
| Gulkana | 95 | \$38,750 | 59.2% | 20.3% | 27.3% | 59.5% |
| Pilot Point | 115 | \$38,750 | 84.9% | 12.9% | 0.0% | 55.3% |
| Haines | 1,429 | \$38,542 | 18.1% | 4.9% | 5.4% | 30.9% |
| Mellakatta | 1,595 | \$38,370 | 82.4% | 9.8% | 12.8% | 49.2% |

**Alaska Communities, by Median Household Income in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|----------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Bettles | 32 | \$38,333 | 22.2% | 7.1% | 0.0% | 0.0% |
| Dot Lake | 80 | \$38,333 | 54.3% | 3.2% | 13.6% | 47.2% |
| Salamatof | 1,134 | \$38,203 | 10.4% | 9.8% | 14.6% | 64.9% |
| Lignite | 122 | \$38,125 | 0.0% | 1.9% | 15.2% | 43.5% |
| Pedro Bay | 37 | \$38,125 | 90.5% | 21.9% | 0.0% | 34.8% |
| Soldotna | 4,092 | \$38,004 | 4.5% | 5.7% | 8.7% | 33.0% |
| Wasilla | 4,917 | \$37,619 | 5.3% | 10.8% | 11.1% | 36.6% |
| Wrangell | 2,543 | \$37,538 | 20.0% | 6.0% | 9.0% | 34.1% |
| Skagway | 816 | \$37,500 | 5.5% | 4.2% | 10.6% | 27.5% |
| Ugashik | 5 | \$37,500 | 85.7% | 0.0% | 80.0% | 83.3% |
| Anaktuvuk Pass | 301 | \$37,292 | 84.9% | 16.1% | 23.6% | 45.5% |
| Seward | 2,999 | \$37,049 | 15.2% | 10.7% | 9.2% | 44.9% |
| Chignik | 125 | \$36,875 | 45.2% | 0.0% | 4.2% | 38.2% |
| Yakutat | 833 | \$36,875 | 55.1% | 10.5% | 11.8% | 33.7% |
| Homer | 4,126 | \$36,652 | 3.6% | 5.0% | 7.9% | 35.6% |
| Big Lake | 2,243 | \$36,583 | 3.7% | 11.3% | 12.9% | 43.8% |
| Noatak | 401 | \$36,458 | 96.7% | 17.1% | 45.1% | 75.1% |
| Hoonah | 906 | \$36,442 | 67.2% | 3.8% | 14.9% | 35.4% |
| Lazy Mountain | 1,043 | \$36,250 | 4.3% | 11.7% | 21.3% | 53.9% |
| McGrath | 456 | \$36,250 | 47.0% | 10.5% | 9.9% | 36.3% |
| Port Alsworth | 67 | \$36,250 | 1.8% | 0.0% | 10.5% | 54.1% |
| Klukwan | 160 | \$36,042 | 86.8% | 3.5% | 60.4% | 76.1% |
| Salcha | 373 | \$35,909 | 4.2% | 8.0% | 14.5% | 36.9% |
| Kake | 767 | \$35,875 | 73.4% | 7.0% | 10.9% | 46.8% |
| Port Heiden | 116 | \$35,000 | 72.3% | 24.3% | 22.0% | 45.8% |
| Palmer | 4,167 | \$34,940 | 7.7% | 6.2% | 16.7% | 53.9% |
| Willow | 408 | \$34,773 | 1.1% | 14.7% | 0.0% | 48.3% |
| Copper Center | 536 | \$34,643 | 34.5% | 12.9% | 0.0% | 53.8% |
| Unalakleet | 803 | \$34,531 | 81.8% | 11.6% | 19.2% | 46.0% |
| Kodiak Station | 1,638 | \$34,196 | 1.7% | 7.0% | 6.3% | 12.1% |
| Port Graham | 186 | \$33,750 | 90.4% | 2.1% | 38.8% | 62.4% |
| Whittier | 289 | \$33,636 | 12.3% | 13.0% | 8.0% | 37.0% |
| Cohoe | 598 | \$33,550 | 1.8% | 15.9% | 14.0% | 49.5% |
| Wainwright | 550 | \$33,333 | 94.3% | 4.1% | 10.2% | 40.4% |
| Kongiganak | 349 | \$33,250 | 97.3% | 30.3% | 16.3% | 60.0% |
| Meadow Lakes | 4,693 | \$33,106 | 2.9% | 12.5% | 13.3% | 44.1% |
| Noorvik | 631 | \$32,969 | 93.8% | 16.6% | 17.5% | 60.7% |
| North Pole | 1,631 | \$32,937 | 5.4% | 5.0% | 10.2% | 26.9% |
| Aniak | 578 | \$32,841 | 70.7% | 16.4% | 9.7% | 32.2% |
| Big Delta | 508 | \$32,813 | 4.0% | 23.2% | 1.6% | 54.0% |
| Gakona | 23 | \$32,500 | 0.0% | 60.0% | 0.0% | 25.0% |
| Houston | 994 | \$32,344 | 3.6% | 9.7% | 15.4% | 52.0% |
| Nuiqsut | 435 | \$32,188 | 92.7% | 13.3% | 33.1% | 48.2% |
| Angoon | 616 | \$32,083 | 82.3% | 21.9% | 35.1% | 54.1% |
| Chickaloon | 205 | \$32,083 | 6.2% | 31.2% | 26.7% | 38.2% |
| Fairbanks | 31,850 | \$32,033 | 9.2% | 10.3% | 11.6% | 29.6% |
| Ninilchik | 655 | \$31,518 | 19.5% | 9.6% | 24.4% | 59.7% |

**Alaska Communities, by Median Household Income in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Delta Junction | 855 | \$31,250 | 4.4% | 8.4% | 8.6% | 35.4% |
| Hollis | 175 | \$31,250 | 2.7% | 15.2% | 8.3% | 44.3% |
| Karluk | 48 | \$31,250 | 91.5% | 3.6% | 9.1% | 40.0% |
| Manley Hot Springs | 90 | \$31,250 | 14.6% | 30.0% | 12.5% | 32.3% |
| Paxson | 34 | \$31,250 | 0.0% | 3.4% | 0.0% | 30.0% |
| Trapper Creek | 306 | \$31,071 | 6.1% | 16.2% | 30.3% | 60.2% |
| Glennallen | 513 | \$30,833 | 6.7% | 8.0% | 4.4% | 30.7% |
| Saxman | 381 | \$30,481 | 77.0% | 5.7% | 25.5% | 51.6% |
| Tok | 1,216 | \$30,341 | 12.5% | 8.7% | 20.3% | 44.4% |
| Shungnak | 252 | \$29,583 | 94.6% | 5.7% | 14.0% | 64.9% |
| Evansville | 20 | \$29,167 | 57.6% | 36.1% | 16.0% | 16.0% |
| Andreafsky | 469 | \$28,958 | 84.4% | 26.0% | 18.6% | 43.8% |
| Marshall | 318 | \$28,750 | 92.7% | 16.9% | 19.0% | 55.5% |
| Mosquito Lake | 92 | \$28,750 | 1.3% | 38.8% | 7.3% | 32.1% |
| Port Alice | 19 | \$28,750 | 6.7% | 8.3% | 0.0% | 42.9% |
| Galena | 543 | \$28,611 | 45.3% | 18.2% | 9.2% | 24.7% |
| Saint Mary's | 504 | \$28,542 | 83.0% | 17.3% | 19.2% | 44.3% |
| Fox | 321 | \$28,250 | 7.3% | 9.2% | 18.0% | 47.8% |
| Kiana | 415 | \$28,125 | 93.5% | 24.5% | 27.4% | 62.1% |
| Central | 57 | \$28,036 | 1.9% | 13.7% | 19.0% | 64.6% |
| Kivalina | 357 | \$28,036 | 97.5% | 32.2% | 55.6% | 71.4% |
| Akutan | 420 | \$27,813 | 13.6% | 16.6% | 0.4% | 7.4% |
| Seldovia | 285 | \$27,500 | 15.2% | 16.2% | 11.8% | 50.3% |
| Nenana | 440 | \$27,292 | 47.8% | 10.4% | 17.5% | 52.8% |
| Tatitlek | 99 | \$27,188 | 86.6% | 19.8% | 0.0% | 75.8% |
| Pelican | 187 | \$27,083 | 29.3% | 13.6% | 3.4% | 17.2% |
| Mountain Village | 738 | \$26,750 | 91.1% | 25.3% | 36.7% | 68.0% |
| Kasigluk | 514 | \$26,563 | 95.3% | 20.4% | 34.8% | 66.3% |
| Knik | 443 | \$26,250 | 11.4% | 6.5% | 24.8% | 54.2% |
| Newhalen | 177 | \$26,250 | 94.4% | 22.4% | 5.5% | 46.9% |
| Oscarville | 59 | \$26,250 | 91.2% | 27.2% | 0.0% | 56.0% |
| Eielson AFB | 4,203 | \$25,924 | 0.9% | 2.8% | 13.0% | 18.2% |
| Fort Greely | 740 | \$25,801 | 1.0% | 6.3% | 14.4% | 21.7% |
| Emmonak | 820 | \$25,625 | 92.1% | 20.9% | 34.6% | 62.0% |
| Ferry | 69 | \$25,625 | 12.5% | 15.5% | 39.1% | 65.0% |
| Slana | 58 | \$25,417 | 6.3% | 19.0% | 44.4% | 62.5% |
| Moose Creek | 683 | \$25,326 | 2.5% | 9.4% | 10.5% | 32.7% |
| Saint George | 184 | \$25,250 | 94.9% | 41.9% | 14.9% | 52.9% |
| Perryville | 107 | \$25,000 | 94.4% | 25.4% | 13.6% | 72.9% |
| Red Devil | 49 | \$25,000 | 50.9% | 30.7% | 14.3% | 63.6% |
| Chistochina | 55 | \$24,167 | 61.7% | 17.7% | 52.0% | 72.1% |
| Akiachak | 560 | \$23,750 | 95.0% | 13.0% | 12.7% | 54.5% |
| Hyder | 151 | \$23,750 | 1.0% | 14.4% | 22.7% | 47.4% |
| McCarthy | 28 | \$23,750 | 4.0% | 0.0% | 100.0% | 100.0% |
| South Naknek | 149 | \$23,750 | 79.4% | 26.3% | 27.5% | 58.0% |
| Covenant Life | 54 | \$23,571 | 0.0% | 20.0% | 100.0% | 100.0% |
| Sutton | 431 | \$23,393 | 5.8% | 38.1% | 17.2% | 47.6% |

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| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|-----------------|-----------|------------------|--------------|-----------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Stebbins | 513 | \$23,333 | 94.8% | 32.3% | 39.2% | 64.0% |
| Saint Michael | 341 | \$23,194 | 91.2% | 20.9% | 22.9% | 60.6% |
| Platinum | 41 | \$23,056 | 92.2% | 35.8% | 8.0% | 54.0% |
| Ambler | 333 | \$22,500 | 89.7% | 31.1% | 39.3% | 66.3% |
| Chenega Bay | 91 | \$22,083 | 69.1% | 26.6% | 14.3% | 41.9% |
| Moose Pass | 116 | \$22,083 | 11.1% | 0.0% | 25.8% | 25.8% |
| Aleknagik | 226 | \$21,875 | 83.2% | 28.8% | 14.3% | 62.2% |
| Jakolof Bay | 35 | \$21,875 | 0.0% | 0.0% | 0.0% | 32.0% |
| Toksook Bay | 496 | \$21,875 | 95.5% | 39.2% | 25.5% | 59.1% |
| Selawik | 696 | \$21,833 | 95.5% | 23.1% | 31.3% | 67.2% |
| Kenny Lake | 500 | \$21,786 | 9.7% | 24.8% | 22.9% | 50.7% |
| Nondalton | 221 | \$21,750 | 89.3% | 20.3% | 42.6% | 70.0% |
| False Pass | 64 | \$21,667 | 76.5% | 17.9% | 0.0% | 53.1% |
| Russian Mission | 295 | \$21,667 | 94.7% | 45.0% | 21.0% | 61.1% |
| Grayling | 186 | \$21,641 | 93.3% | 12.6% | 29.6% | 57.5% |
| Ivanof Bay | 27 | \$21,500 | 94.3% | 18.4% | 0.0% | 45.8% |
| Eek | 277 | \$21,000 | 95.7% | 28.6% | 23.9% | 63.4% |
| Egegik | 127 | \$20,625 | 70.5% | 34.1% | 24.3% | 69.6% |
| Kobuk | 89 | \$20,625 | 89.9% | 34.7% | 35.0% | 66.7% |
| Port Alexander | 94 | \$20,625 | 2.5% | 18.2% | 11.5% | 31.3% |
| Manokotak | 387 | \$20,500 | 95.6% | 28.6% | 16.1% | 58.1% |
| Tuluksak | 385 | \$20,446 | 95.5% | 51.2% | 2.5% | 56.9% |
| Kotlik | 543 | \$20,417 | 97.0% | 17.7% | 36.6% | 65.2% |
| Beaver | 118 | \$20,313 | 95.1% | 32.2% | 22.6% | 63.6% |
| Chefornak | 405 | \$20,278 | 97.5% | 35.4% | 6.2% | 66.8% |
| Hydaburg | 425 | \$20,139 | 89.1% | 26.3% | 21.8% | 60.5% |
| Teller | 265 | \$20,000 | 86.8% | 32.1% | 3.3% | 38.9% |
| Nikolaevsk | 474 | \$19,688 | 1.3% | 46.1% | 0.0% | 52.5% |
| Chignik Lake | 127 | \$19,167 | 91.7% | 42.0% | 15.2% | 68.2% |
| Buckland | 412 | \$18,906 | 95.0% | 32.8% | 12.2% | 59.4% |
| Koyuk | 272 | \$18,750 | 94.8% | 30.0% | 37.3% | 64.6% |
| Mendeltna | 72 | \$18,750 | 5.4% | 5.7% | 0.0% | 60.0% |
| Napaskiak | 399 | \$18,750 | 94.8% | 34.3% | 22.7% | 63.4% |
| Takotna | 63 | \$18,750 | 44.7% | 14.2% | 0.0% | 36.0% |
| Tununak | 330 | \$18,750 | 96.2% | 26.3% | 14.0% | 50.0% |
| Shaktolik | 226 | \$18,438 | 94.4% | 22.8% | 31.9% | 54.4% |
| Hooper Bay | 1,012 | \$18,125 | 96.0% | 43.5% | 41.7% | 66.3% |
| Koliganek | 194 | \$18,125 | 96.1% | 35.6% | 11.1% | 72.4% |
| Napakiak | 354 | \$18,125 | 94.3% | 36.2% | 33.3% | 61.3% |
| Tenakee Springs | 116 | \$18,125 | 9.6% | 10.8% | 20.0% | 74.0% |
| Fort Yukon | 575 | \$17,969 | 85.0% | 32.1% | 27.4% | 55.4% |
| Nightmute | 217 | \$17,813 | 95.4% | 62.0% | 26.9% | 68.6% |
| Pitka's Point | 154 | \$17,813 | 95.6% | 28.2% | 5.1% | 57.0% |
| Alakanuk | 651 | \$17,708 | 95.8% | 29.4% | 26.8% | 61.5% |
| Skwentna | 77 | \$17,692 | 1.2% | 24.2% | 0.0% | 66.7% |
| Minto | 244 | \$17,656 | 97.2% | 35.0% | 60.3% | 81.6% |
| Quinhagak | 567 | \$17,500 | 93.8% | 37.2% | 5.9% | 60.6% |

**Alaska Communities, by Median Household Income in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|----------------|-----------|---------------------|-----------------|--------------------|----------------------|---------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unem- ployment* | % Adults Not Working** |
| Hope | 152 | \$17,250 | 3.1% | 33.5% | 38.4% | 50.8% |
| Chevak | 721 | \$17,222 | 93.0% | 27.0% | 17.8% | 53.5% |
| Nulato | 365 | \$17,143 | 96.9% | 35.9% | 25.7% | 66.7% |
| Circle | 83 | \$17,083 | 86.3% | 10.9% | 36.7% | 62.7% |
| Clark's Point | 66 | \$17,083 | 88.3% | 16.1% | 18.5% | 42.1% |
| Nunapitchuk | 489 | \$17,083 | 97.1% | 40.0% | 12.3% | 60.8% |
| Tanana | 299 | \$17,000 | 78.3% | 24.1% | 21.8% | 53.9% |
| Old Harbor | 301 | \$16,875 | 88.7% | 31.5% | 39.1% | 75.9% |
| Crooked Creek | 138 | \$16,250 | 90.6% | 28.7% | 27.3% | 64.7% |
| Elim | 301 | \$16,250 | 91.7% | 25.1% | 36.1% | 66.2% |
| Happy Valley | 391 | \$16,250 | 6.1% | 32.8% | 25.6% | 68.6% |
| Meyers Chuck | 28 | \$16,250 | 10.8% | 33.3% | 0.0% | 54.2% |
| Shageluk | 145 | \$16,250 | 95.0% | 34.8% | 22.9% | 67.5% |
| Sheldon Point | 177 | \$16,250 | 92.7% | 56.2% | 13.0% | 41.2% |
| Tonsina | 46 | \$16,250 | 18.4% | 0.0% | 0.0% | 66.7% |
| Upper Kalskag | 198 | \$16,250 | 84.9% | 39.6% | 25.5% | 68.5% |
| Golovin | 152 | \$16,146 | 92.9% | 8.3% | 15.3% | 44.4% |
| Kwethluk | 672 | \$16,000 | 96.4% | 38.7% | 11.8% | 72.0% |
| Pilot Station | 547 | \$16,000 | 95.0% | 51.3% | 35.1% | 62.9% |
| Gambell | 653 | \$15,938 | 96.2% | 46.4% | 16.8% | 71.1% |
| White Mountain | 193 | \$15,893 | 87.8% | 38.3% | 36.4% | 67.3% |
| Atmautluak | 292 | \$15,833 | 96.9% | 47.6% | 25.3% | 55.3% |
| Hughes | 69 | \$15,833 | 92.6% | 16.6% | 15.4% | 53.2% |
| Tellin | 68 | \$15,750 | 95.4% | 29.6% | 25.0% | 58.5% |
| Shishmaref | 542 | \$15,625 | 94.5% | 27.3% | 18.0% | 65.1% |
| Kaltag | 245 | \$15,500 | 92.5% | 41.4% | 24.1% | 52.9% |
| Deering | 158 | \$15,208 | 94.3% | 21.6% | 6.7% | 41.7% |
| Scammon Bay | 459 | \$15,179 | 96.5% | 40.7% | 18.4% | 60.1% |
| Brevig Mission | 265 | \$15,000 | 92.4% | 24.7% | 35.3% | 54.6% |
| Rampart | 54 | \$15,000 | 94.1% | 36.2% | 78.8% | 87.5% |
| Ruby | 217 | \$15,000 | 74.1% | 24.4% | 12.8% | 52.9% |
| Togiak | 762 | \$15,000 | 87.3% | 46.3% | 23.1% | 72.9% |
| Wales | 162 | \$15,000 | 88.8% | 35.2% | 19.3% | 53.5% |
| Newtok | 269 | \$14,844 | 93.2% | 50.2% | 25.9% | 68.2% |
| Mekoryuk | 192 | \$14,792 | 99.4% | 31.5% | 16.7% | 59.1% |
| Tanacross | 85 | \$14,750 | 94.3% | 23.8% | 35.4% | 59.7% |
| Venette | 241 | \$14,688 | 94.0% | 47.2% | 37.5% | 69.8% |
| Kwigillingok | 333 | \$14,500 | 95.0% | 43.1% | 9.2% | 58.6% |
| Tuntutuliak | 351 | \$14,444 | 96.7% | 46.0% | 6.4% | 59.5% |
| Diomedea | 174 | \$14,375 | 93.8% | 63.0% | 0.0% | 60.4% |
| Kokhanok | 168 | \$14,286 | 90.1% | 53.4% | 7.7% | 65.4% |
| Koyukuk | 126 | \$13,929 | 97.6% | 39.2% | 27.0% | 62.0% |
| Chuathbaluk | 115 | \$13,750 | 89.7% | 47.4% | 8.6% | 47.5% |
| Holy Cross | 260 | \$13,750 | 93.5% | 48.8% | 38.6% | 72.3% |
| Nikolski | 43 | \$13,750 | 82.9% | 0.0% | 0.0% | 53.3% |
| Akiak | 327 | \$13,571 | 97.2% | 33.9% | 16.0% | 60.2% |
| Goodnews Bay | 263 | \$13,523 | 95.9% | 41.8% | 3.1% | 56.6% |

**Alaska Communities, by Median Household Income in Descending Order
From 1990 U.S. Census Data**

| Community | 1997 Pop. | 1990 U.S. Census | | | | |
|--------------------|-----------|------------------|--------------|-----------------|-----------------|------------------------|
| | | Median HH Income | % Native Pop | % Below Poverty | % Unemployment* | % Adults Not Working** |
| Huslia | 245 | \$13,333 | 90.8% | 43.7% | 38.5% | 67.5% |
| Northway Village | 110 | \$13,333 | 94.7% | 47.0% | 51.3% | 72.1% |
| Chitina | 84 | \$13,125 | 46.9% | 40.9% | 33.3% | 64.7% |
| Chalkyitsik | 87 | \$12,750 | 92.2% | 67.3% | 31.3% | 81.0% |
| Eagle | 165 | \$12,500 | 3.0% | 43.4% | 32.5% | 52.5% |
| Game Creek | 67 | \$12,500 | 0.0% | 59.6% | 0.0% | 13.8% |
| Port Clarence | 24 | \$12,264 | 0.0% | 0.0% | 0.0% | 0.0% |
| Edna Bay | 70 | \$12,250 | 0.0% | 63.7% | 25.0% | 67.2% |
| Levelock | 115 | \$12,159 | 82.9% | 25.8% | 20.9% | 57.5% |
| New Stuyahok | 452 | \$12,083 | 95.9% | 51.0% | 17.7% | 74.9% |
| Point Baker | 57 | \$12,083 | 0.0% | 0.0% | 0.0% | 73.0% |
| Talkeetna | 347 | \$11,991 | 1.6% | 34.3% | 10.1% | 26.1% |
| Eagle Village | 34 | \$11,875 | 80.0% | 17.1% | 93.1% | 93.8% |
| Twin Hills | 59 | \$11,667 | 92.4% | 50.0% | 25.0% | 72.7% |
| Tyonek | 151 | \$11,591 | 92.2% | 37.1% | 37.7% | 64.5% |
| Allakaket | 182 | \$11,477 | 94.1% | 46.9% | 69.4% | 78.4% |
| Savoonga | 622 | \$11,339 | 95.2% | 50.9% | 14.7% | 72.2% |
| Mentasta Lake | 122 | \$11,250 | 72.9% | 44.1% | 18.8% | 81.9% |
| Nikolai | 108 | \$11,250 | 89.0% | 44.5% | 35.5% | 73.0% |
| Ekwok | 124 | \$10,833 | 87.0% | 52.0% | 23.5% | 73.1% |
| Anvik | 83 | \$10,694 | 91.5% | 45.0% | 13.6% | 60.4% |
| Lower Kalskag | 278 | \$10,357 | 98.3% | 61.2% | 37.9% | 77.5% |
| Port Protection | 58 | \$10,000 | 1.6% | 45.6% | 75.0% | 95.3% |
| Sleetmute | 102 | \$10,000 | 86.8% | 62.6% | 12.9% | 67.5% |
| Stevens Village | 99 | \$10,000 | 91.2% | 73.9% | 43.3% | 72.6% |
| Arctic Village | 121 | \$9,661 | 93.8% | 31.5% | 12.5% | 52.5% |
| Lime Village | 47 | \$9,257 | 95.2% | 63.8% | 13.6% | 36.7% |
| Alexander Creek | 38 | \$8,166 | 25.0% | 38.0% | 0.0% | 100.0% |
| Circle Hot Springs | 32 | \$6,250 | 0.0% | 74.1% | 33.3% | 54.5% |
| Alatna | 32 | \$6,030 | 93.5% | 83.0% | 100.0% | 100.0% |
| Healy Lake | 60 | \$5,841 | 85.1% | 70.8% | 33.3% | 85.7% |
| Portage Creek | 14 | \$5,360 | 60.0% | 100.0% | 0.0% | 100.0% |
| Stony River | 42 | \$5,156 | 88.2% | 100.0% | 26.7% | 64.5% |
| Birch Creek | 37 | \$5,032 | 90.5% | 92.6% | 0.0% | 48.0% |
| Kipnuk | 567 | \$4,999 | 97.4% | 76.6% | 12.9% | 78.7% |
| Wiseman | 24 | \$4,999 | 15.2% | 100.0% | 0.0% | 50.0% |

* % Unemployment =

Percent of persons age 16+ actively seeking employment, calculated from unemployment compensation claims

** % Adults Not Working =

Percent of persons age 16+ actively seeking employment and those not actively seeking employment ("discouraged workers", in school, retired, disabled, or at home raising children, for example)

ALASKA LAW REVIEW

"Equal Access" to Alaska's Fish and Wildlife

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resource uses. The court is presently faced with these issues in another appeal involving access to fish and wildlife.² Thus, the court has an immediate opportunity to more clearly define the meaning of "access" to fish and wildlife, and to concretely establish the scope and limitations of the equal access clauses.

This article will analyze the court's treatment of equal access in the fish and wildlife context to date. First, part II considers the court's "common use clause"³ jurisprudence. Part III then discusses decisions under the "no exclusive right of fishery" clause.⁴ Part IV analyzes the law under the "uniform application clause."⁵ Part V then examines some of the unifying principles and themes of the equal access clauses. Part VI discusses the relationship between the equal access clauses and other constitutional provisions, such as the "preferences among beneficial uses" clause and the equal protection clause. Finally, this note concludes that the court should take the next available opportunity to further clarify the meaning of "equal access."

II. THE "COMMON USE" CLAUSE

A. Public Trust Principles

Article VIII, section 3 of the Alaska Constitution, often referred to as the "common use" clause, provides that "[w]herever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."⁶ The Alaska Supreme Court has called the common use clause "a unique provision, not modeled on any other state constitution."⁷ The clause embodies public trust principles that arise from a long history in this country of state managed wildlife resources.⁸ The United States Supreme

2. In *State v. Kenaitze Indian Tribe*, No. S-6162, the state is appealing a decision holding that the provision in Alaska Statutes section 16.05.258, authorizing the establishment of nonsubsistence use areas, violates the equal access clauses. The lower court decision was issued in *Kenaitze Indian Tribe v. State*, No. 3AN-91-4569 Civil (Alaska Super., Nov. 26, 1993) (final judgment).

3. ALASKA CONST. art. VIII, § 3.

4. ALASKA CONST. art. VIII, § 15.

5. ALASKA CONST. art. VIII, § 17.

6. ALASKA CONST. art. VIII, § 3.

7. *Owsichek v. State*, 763 P.2d 488, 493 (Alaska 1988).

8. The anti-monopoly purpose of the clause "was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters. The constitutional framers'

Court has traced this history and concluded that the states have a trust responsibility to manage wildlife for the benefit of the public, not for the benefit of individuals or the government itself.⁹

Although the common use clause was intended to constitutionalize public trust principles,¹⁰ the Alaska Supreme Court has not yet decided whether the clause grants greater protection over public access to natural resources than the public trust doctrine does toward tidelands and submerged lands.¹¹ To date, the court has held only that the "common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people."¹²

reliance on historic principles regarding state management of wildlife and water resources is evident from a written explanation in the committee materials for the term "reserved to the people for common use." *Id.* The framers spoke of "[a]ncient traditions in property rights" which recognize that title to uncaptured wildlife "is reserved to the people or the state on behalf of the people." *Id.* (citing Alaska Constitutional Convention Papers, Folder 210, a paper prepared by Committee on Resources entitled "Terms").

9. *Geer v. Connecticut*, 161 U.S. 519 (1896). Specifically, the Court said that the state's power over wildlife "is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good." *Id.* at 529. The Alaska Supreme Court surmised that the framers of the constitution relied heavily on *Geer* when they drafted the common use clause. *Owsichek*, 763 P.2d at 495.

10. *Owsichek*, 763 P.2d at 496. Alaska's public trust responsibility to manage wildlife is comparable to its obligations under the "public trust doctrine," where the state has a trust duty to protect the public's right of access to certain lands and navigable waters for certain purposes. See *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387 (1892) (generally stating the public trust doctrine). In Alaska, the public has continuing access to privately held tidelands and submerged lands for navigation, commerce and fishing. *CWC Fisheries*, 755 P.2d at 1118.

11. In *CWC Fisheries*, the court examined whether a state tideland conveyance was subject to continuing public easements for navigation, commerce, and fisheries. Analyzing the conveyance under requirements of *Illinois Cent. R.R. Co.*, the court concluded that "[w]e need not decide at this time whether a fee simple tideland conveyance which satisfied the structures of *Illinois Central* would nonetheless run afoul of article VIII, section 3." *CWC Fisheries*, 755 P.2d at 1120 n.10.

12. *Owsichek*, 763 P.2d at 495.

B. Broad Public Access to Resources

The Alaska Supreme Court's principal interpretation of the common use clause regarding access to fish and wildlife can be found in *Owsichek v. State*.¹³ There the court examined the state's system for assigning exclusive guiding areas to the big game guide industry. Under that system, the Alaska Guide Licensing and Control Board designated geographic areas in which only certain guides could lead hunts. Although persons could hunt recreationally in an "exclusive guide area" ("EGA"), only the Board-assigned guide could lead hunts professionally within the designated area.¹⁴ The court concluded that the EGA system could not be justified as a wildlife management tool because the EGAs were endowed with many of the characteristics of private property.¹⁵ Thus, the court reasoned that the EGAs "resemble[d] the types of royal grants the common use clause expressly intended to prohibit."¹⁶ Although the court noted that the EGAs may have also violated the uniform application clause of the Alaska Constitution,¹⁷ it struck down EGAs solely because they violated the common use clause.¹⁸ In so doing, the court expressed a simple purpose for the common use clause, namely that it "was intended to guarantee broad public access to natural resources."¹⁹

The principle of broad access was reaffirmed and elaborated upon two years later. In *State v. Hebert*,²⁰ the court examined a regulation that established two "superexclusive" use fisheries. Under this type of fishery management, fishermen²¹ must choose among several geographic areas where a fish species occurs. If a

13. 763 P.2d 488 (Alaska 1988).

14. *Id.* at 489. In practice, there were two types of EGA's: truly "exclusive guide areas," which had only one designated guide in each, and "joint use areas," which had several designated guides in each. *Id.* The court referred to both types as "EGA's." *Id.* n.1.

15. *Id.* at 498.

16. *Id.* at 497-98.

17. *Id.* at 498 n.17. The court did not consider this issue in full because the parties did not include it in their arguments and because the case could be decided upon other grounds. *Id.*

18. *Id.* at 498.

19. *Id.* at 493.

20. 803 P.2d 863 (Alaska 1990).

21. The term "fishermen" is used for the sake of convenience. The regulation applied equally to male and females engaged in fishing activities.

person registers to fish an area designated as "superexclusive," he or she may not harvest that type of fish in any other area. On the other hand, if the fisherman registers to fish in an area that is not "superexclusive," he or she may not fish for the same species in a "superexclusive" area.²² The *Hebert* court cited evidence that the number of fishermen would probably increase under this type of registration-choice system, and thus, it would be possible for more rather than fewer persons to participate in the fishery. Therefore, the court upheld the superexclusive use regulation and noted that "if anything, [it] furthers the interests underlying section 3's common use mandate."²³ Thus, "broad public access" is a principle that favors maximizing the number of persons able to participate in a hunt or fishery rather than maximizing an individual's opportunities to catch as much fish or harvest as much game in as many areas as possible.²⁴

C. Common Use Clause Prohibitions

The court held in *Owsichek* that the common use clause implicitly prohibits what another equal access clause, the "no exclusive right of fishery" clause,²⁵ prohibits on its face, namely "special privileges" and "exclusive grants" to fish and wildlife.²⁶ Although the other two article VIII clauses share these prohibitions, the purposes underlying the common use clause are "wholly apart from the limits imposed by other constitutional provisions."²⁷ Specifically, the common use clause was enacted with the intent to prevent monopolization of natural resources.²⁸

The common use clause's prohibition against "special privileges" is best examined by its application in resolving the constitutionality of the EGA system. When an area was reassigned, the EGA

22. *Hebert*, 803 P.2d at 864.

23. *Id.* at 867.

24. This principle was followed by the state when it adopted a replacement for the EGA system struck down in *Owsichek*. The new system allows big game guides to select and register for up to three guiding areas in the state. ALASKA ADMIN. CODE tit. 12, § 38.820 (April 1994).

25. ALASKA CONST. art. VIII, § 15.

26. See *Owsichek*, 763 P.2d at 496. In an earlier decision, the court stated that the state's system for limiting entry into commercial fisheries is inconsistent with the common use clause because it grants an exclusive right to a select few. *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983).

27. *Owsichek*, 763 P.2d at 496.

28. *Id.*

system favored an applicant who had already used, occupied or invested in the area. Thus, this procedure worked like a seniority system that favored established guides over new entrants to the profession. The court found that such a system created a "special privilege" in violation of the common use clause.²⁹

The EGA system was also found to be in violation of the "no exclusive grants" purpose of the common use clause. The prohibition against "exclusive grants" is another expression of the anti-monopoly principle against the granting of private rights in a public resource. Although the EGA system was unique in wildlife management, the court found it worthwhile to recognize features that gave it private property status. These features included their unlimited duration and the fact that guides could transfer them for profit without providing compensation to the state.³⁰

The court found that the EGAs constituted an exclusive grant because they were unlimited in duration. The Alaska Supreme Court contrasted them with leases and concessions on state lands, which are limited in time, and therefore do not violate the common use clause.³¹ The court noted that limiting entry into guide areas was inconsistent with the common use clause because it resulted in an exclusive right that could be exercised season after season.³²

The *Owsichek* court also found that EGAs violated the public trust rationale underlying the common use clause because their sale generated no meaningful compensation to the public. The court again contrasted EGAs with leases and concessions, which do provide remuneration to the state.³³ Previously, the court had stated in dictum that the shore fisheries leasing program would not violate the public trust in part because shore fishery leases require compensation to the state for the use of public trust easements.³⁴ However, because profits realized from the sale of improvements constructed in an EGA went solely to the former EGA holder, and the Alaska Guide Licensing and Control Board routinely transferred the EGA to the buyer of those improvements, the public

29. *Id.*

30. *Id.* at 497.

31. *Id.* at 496-97.

32. *Id.* at 497.

33. *Id.*

34. *Id.* (citing *CWC Fisheries*, 755 P.2d at 1120-21).

trust doctrine was undermined by what was essentially an exclusive grant.³⁵

D. Common Use: Its Scope and Limits

The Alaska courts have held that the "common use" of fish and wildlife is entitled to a high degree of constitutional protection. In a 1983 dissent, Justice Rabinowitz introduced this idea, stating that common use is a "highly important interest running to each person within the state."³⁶ In later court decisions a majority has supported this statement. For example, the court held in *Owsichek* that the interest is so vital that grants of exclusive rights are subject to "close scrutiny."³⁷ Furthermore, the clause itself makes no distinction in the level of scrutiny between personal and professional use,³⁸ and it protects both derivative and direct uses of fish and wildlife.³⁹ Whether direct or derivative, the right protected under the common use clause must be defined by the nature of the resource (that is, fish, wildlife or waters) and the nature of the use (that is, commercial, sport, subsistence or personal use), but not by a particular method or means of use.⁴⁰

However, the common use clause does not govern all uses of fish and wildlife wherever they may be located. Constitutional history shows that the clause was not intended to govern the domestication of fur-bearing animals.⁴¹ Furthermore, the common

35. *Id.* at 496-98.

36. *State v. Ostrosky*, 667 P.2d 1184, 1196 (Alaska 1983) (Rabinowitz, J., dissenting).

37. *Owsichek*, 763 P.2d at 494.

38. In *CWC Fisheries*, the court noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as recreation. 755 P.2d at 1121 n.14. Later that year, the court stated, "[t]he same [*CWC Fisheries*] rationale applies to professional hunting guides under the common use clause." *Owsichek*, 763 P.2d at 497.

39. The derivative use, however, should be "closely tied" to the actual taking of the fish or wildlife. For example, although professional hunting guides do not actually take game themselves, the court said that "[t]he work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause." *Owsichek*, 763 P.2d at 497 n.15.

40. See *Alaska Fish Spotters Ass'n v. State Dep't of Fish and Game*, 838 P.2d 798 (Alaska 1992) (holding that the state may regulate the method of using natural resources without violating the common use clause).

41. 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Dec. 16, 1955).

use clause does not govern fish in private ponds or legally registered trap lines.⁴² And, although the common use clause protects the public's right to use fish in natural waterways, it does not authorize people to trespass over private property to reach the waters.⁴³

III. THE "NO EXCLUSIVE RIGHT OF FISHERY" CLAUSE

A. History of the Clause

Article VIII, section 15 of the Alaska Constitution is often called the "no exclusive right of fishery" clause. It 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 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.⁴⁴

Among the equal access clauses, section 15 is unique in two respects. First, because it applies only to fishery resources, this clause is narrower than both the common use clause,⁴⁵ which applies to wildlife, waters and fish, and the "uniform application" clause,⁴⁶ which applies to all natural resources. Second, unlike the other two clauses, the "no exclusive right of fishery" clause was not adopted in its entirety along with the original constitution. Only the first part, prohibiting exclusive rights and special privileges, was adopted originally. The second part, allowing the state to limit entry into fisheries, was added as an amendment sixteen years later.

The constitutional framers intended the first part to take the place of a pre-statehood federal law that regulated Alaska's fisheries.⁴⁷ That law, section 1 of the White Act, prohibited

42. *Id.*

43. *Owsichuk*, 763 P.2d at 494 (citing 4 Proceedings of the Alaska Constitutional Convention at 2460 (January 17, 1956)).

44. ALASKA CONST. art. VIII, § 15.

45. *Id.* § 3.

46. *Id.* § 17.

47. The Committee on Resources of the Constitutional Convention stated that "[t]his section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act." 6 Proceedings of the Alaska Constitutional Convention 87 (Alaska Legislative Council); see also 1960 Op. Att'y Gen. No. 9, at 3 (Apr. 8, 1960).

federal regulations from granting an "exclusive or several right of fishery."⁴⁸

The second part of the "no exclusive right of fishery" clause was submitted as a joint resolution to the Seventh Alaska Legislature in February 1971. It initially stated that "[t]he State may restrict entry to any fishery for purposes of conservation of the resource, to relieve economic distress among fishermen and those dependent upon them for a livelihood and to insure fair competition among those engaged in commercial fishing."⁴⁹ According to its sponsor, Governor William A. Egan, the purpose of the resolution was to make it "indisputably clear that the state may act to conserve and manage its fisheries in a manner which will benefit all Alaskans."⁵⁰ Further, the resolution was intended to remove all doubt that the first part of the clause, which prohibited exclusive rights of fisheries, did not necessarily prohibit "reasonable gear limitations or other restrictions on entry in our fisheries."⁵¹ Thus, the original resolution was considered to be a clarification of the prohibition against exclusive rights and special privileges, not an exception to it.

Ultimately, the opening language evolved from "[t]he State may restrict entry to any fishery . . . ," to "[t]his section does not restrict the power of the State to limit entry into any fishery"⁵² The legislature believed that the subtle change was needed to overcome ambiguity arising from the decision in *Bozanich v. Reetz*.⁵³ In *Bozanich*, the United States District Court for the District of Alaska held that laws limiting licenses to specific

48. Section 1 of the White Act reads:

Provided, that every such regulation made by the Secretary of the Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

White Act of 1924 ch. 272, § 1, 43 Stat. 464.

49. S.J. Res. 10, 7th Leg., 1971 SENATE J. 116.

50. Letter from Governor William A. Egan to Senator Terry Miller, Chairman, Senate Rules Committee (Feb. 3, 1971) in 1971 SENATE J. 116.

51. *Id.*

52. House Committee Substitute for Committee Substitute for S.J. Res. 10, 7th Leg., 1st Sess. (1971).

53. 297 F. Supp. 300 (D. Alaska 1969), *vacated on other grounds and remanded*, 397 U.S. 82 (1970).

groups of fishermen violated both the common use and the "no exclusive right of fishery" clauses.⁵⁴ In response to this decision, the Alaska Legislature altered the opening line in order "to show that the state's power to limit entry is a specific *exception* to the 'exclusive right' prohibition."⁵⁵ Because the amendment was intended to create an "exception" to the prohibition against exclusive rights and special privileges, the prohibition is more compelling than if the amendment were only intended to provide clarification.

B. Application of the Clause

In *McDowell v. State*,⁵⁶ the Alaska Supreme Court relied largely on section 15 in interpreting the constitutionality of the state's criterion for participating in subsistence uses of fish, game and other wild, renewable resources. Under the 1986 version of the subsistence law, only persons who resided in rural areas of Alaska were eligible to enjoy the subsistence priority, while persons residing in urban areas were excluded from subsistence uses.⁵⁷ It was this rural residency criterion that was challenged under the equal access clauses.⁵⁸

The *McDowell* court struck down the rural residency criterion, basing its decision on the "no exclusive right of fishery" clause and on its pre-statehood predecessor, the White Act. Noting that section 1 of the White Act guaranteed access to fisheries regardless of residence, the court reasoned that "section 15 likewise was

54. *Id.* at 304-07.

55. House Resources Committee, 1971 HOUSE J. 761 (emphasis added).

56. 785 P.2d 1 (Alaska 1989).

57. ALASKA STAT. § 16.05.258 (1987) (amended 1992). The subsistence law established two different systems, or "tiers," for distinguishing who was eligible to participate in subsistence uses. The tiers were determined by resource abundance. When there was enough harvestable resource to satisfy all subsistence uses, that is, at the "first tier" of abundance, the urban-rural criterion determined eligibility. When abundance diminished below the point where all subsistence uses could be satisfied, then rural residents, all of whom who had qualified under the "first tier," were further distinguished by their dependence, their local residency and their availability of alternative resources. *Id.* This is called the "second tier." The *McDowell* court examined the criterion for first-tier eligibility, namely, rural residency.

58. *McDowell*, 785 P.2d at 1.

meant to ensure an equal right to participate in fisheries, regardless of where one resides."⁵⁹

Three years after *McDowell*, the court again construed the "no exclusive right of fishery" clause in *Alaska Fish Spotters Ass'n v. State Department of Fish and Game*.⁶⁰ That case involved a ban on aerial fish spotting, the practice of using aircraft to locate fish and direct the operations of commercial fishermen, in the Bristol Bay salmon fishery.⁶¹ The court held that the ban did not violate the "no exclusive right of fishery" clause. The court found that the ban furthered equal access because all fishermen were equally excluded from aerial spotting, and that the pilots were not excluded from the numerous other uses of the resource.⁶² This finding suggests that if a certain method or means is prohibited, and a group of individuals has no other way to use the resource, the remaining users may have been granted an unconstitutional "exclusive right" or "special privilege."⁶³

Decisions construing the "limited entry" provision of article VIII, section 15 give further insight into the application of the "no exclusive right of fishery" clause. The Alaska Supreme Court has recognized the tension created by the clauses' simultaneous prohibition of exclusive rights in fisheries and the authorization of the state to limit entry.⁶⁴ The court has harmonized this apparent conflict by adopting a test of "least possible impingement."⁶⁵ This goal is achieved by the "optimum number" provision of Alaska Statutes section 16.43.290. Under this provision, the Commercial Fisheries Entry Commission establishes the optimum number of permits for each fishery. This number may be greater or less than

59. *Id.* at 9.

60. 838 P.2d 798 (Alaska 1992).

61. See ALASKA ADMIN. CODE tit. 5, § 06.378 (June 1990).

62. *Id.* Other uses of the resource, as suggested by the court, were commercial fishing, participating in industries that support the fish harvest, using their planes to spot fish before an open harvest and transporting supplies and personnel for commercial fishing clients. *Id.* at 802.

63. The court made several other significant findings in upholding the fish spotter ban. First, it rejected the pilots' claim that they constituted a "user group" entitled to protection under the common use clause. *Id.* at 802. The court held that user groups are defined according to the nature of the resource (fish or wildlife) and the nature of the use (commercial, sport or subsistence), and not according to the particular tool used to take the resource. *Id.*

64. See *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983).

65. *Id.* at 1191.

the actual number of permits issued for the fishery. If greater, the state must issue additional permits until the optimum number is reached.⁶⁶ If lesser, the state must buy back permits until the optimum number is reached.⁶⁷ The Alaska Supreme Court has found that this system strikes an acceptable balance between fishermen's interest in access and the state's interest in conserving resources.⁶⁸

Although limited entry is a unique situation, the "least impingement" principle may apply to other schemes that would create a special privilege for a subset of users.⁶⁹ In those instances, the inquiry should focus on whether another scheme, less intrusive upon equal access values, could achieve the same goals. For example, the Alaska Supreme Court suggested in *McDowell* that a system based on individual characteristics could be used to determine subsistence eligibility so long as it only minimally infringes upon the rights of those who are excluded.⁷⁰

As previously discussed, the common use clause does not prohibit restrictive registration systems, such as "superexclusive" fisheries, if the system's restrictions on individuals result in greater public participation.⁷¹ By the same rationale, these systems should also survive the exclusive use prohibitions of the "no exclusive right of fishery" clause. It is the element of choice that distinguishes a system where the state assigns areas (such as the EGA system)

66. ALASKA STAT. § 16.43.330 (1992).

67. *Id.* §§ 16.43.310-320.

68. *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256 (Alaska 1988).

69. Analysis under the "no exclusive right of fishery" clause, as discussed earlier, applies only to situations where a portion of a user group is granted a privilege over the remaining members or potential members. The analysis is not applicable to differential treatment between resource uses, e.g., an advantage given to sport use over commercial use of a certain fish stock. These "preferences among beneficial uses" are the crux of fish and wildlife allocations, and they are specifically endorsed by the constitution. See ALASKA CONST. art. VIII, § 4; *McDowell v. State*, 785 P.2d 1 (Alaska 1989); *Meier v. State* 739 P.2d 172 (Alaska 1987); *Kenai Peninsula v. State*, 628 P.2d 897 (Alaska 1981).

70. *McDowell*, 785 P.2d at 3.

71. For example, the court came to this conclusion when comparing the competitive bidding system for allocating leases and exclusive concessions on state lands with the seniority system for granting EGAs. See *Owsichek v. State*, 763 P.2d 488 (Alaska 1988). The court found that a bidding system is constitutional because it allows a wider field of applicants than does a system based on prior use, occupancy and investment in the area underlying the private rights. *Id.* at 497.

from one where users register for areas (such as the superexclusive registration system). Even though a user may not have access to all areas, he or she is not initially excluded from any particular area. Thus, the apparent meaning of "equal access" is that no citizen enjoys guaranteed and exclusive use of a fish stock or wildlife population.

IV. THE "UNIFORM APPLICATION" CLAUSE

The third equal access clause, section 17 of Article VIII, is often called the "uniform application clause." It states:

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.⁷²

The legislative history of the "uniform application clause" is sparse. The commentaries to the constitutional convention refer to it only once: "This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the state."⁷³

The Alaska Supreme Court recently interpreted the "uniform application" clause in *Gilbert v. State*.⁷⁴ There the court examined regulations allocating salmon among "intercept" and "destination" fisheries.⁷⁵ The regulations restrict harvest by fishermen who are further from spawning grounds in favor of fishermen who are closer to the grounds.⁷⁶ Drawing on principles derived from earlier decisions, the court articulated a test for satisfying the "uniform application" clause. Because the individual interest in equal access to fish and game resources is a "highly important interest running to each person within the state," the state must have an important purpose to countervail that interest.⁷⁷ The state then has the burden of proving that the means used to further its important purpose are carefully drawn and designed for the "least possible infringement on article VIII's open access values."⁷⁸

72. ALASKA CONST. art. VIII, § 17.

73. 6 Proceedings of the Alaska Constitutional Convention 84 (Dec. 16, 1955).

74. 803 P.2d 391 (Alaska 1990).

75. *Id.* at 393.

76. See ALASKA ADMIN. CODE tit. 5, § 18.260 (June 1988).

77. *Gilbert*, 803 P.2d at 399.

78. *Id.* (quoting *McDowell v. State*, 785 P.2d 1, 10 (Alaska 1989)).

A question left open by the *Gilbert* test concerns the meaning of "open access." One type of access not likely to be protected by this test involves access by one user group and a resulting denial of access to another user group. Inequality of access between user groups results from the need to allocate resources and derives support from the constitution's sanction of "preference among beneficial uses."⁷⁹ Due to the court's ability to distinguish user groups, it is unlikely that an allocation conflict would ever reach the potentially problematic final step of the *Gilbert* test. Competing groups will likely differ in meaningful ways and, thus, the issue would not qualify for analysis under the test. For example, the opposing fisheries in *Gilbert* differed in their biological spawning patterns, historic catch levels, and participation.⁸⁰ Thus, because the fisheries were not "similarly situated," there was not a "non-uniform classification," and the uniform application clause was not implicated.⁸¹

More likely, the *Gilbert* test applies to situations involving individual access to resource user groups. This inference derives from the court's distinction between allocation and limits on admission to these groups.⁸² This interpretation of *Gilbert* is also consistent with the court's decisions in *McDowell* and the limited entry cases. All of these cases examined limits on admission to user groups, not inter-group allocations.

In *Kenaitze Indian Tribe v. State*,⁸³ however, which is presently pending before the Alaska Supreme Court, a superior court interpreted the *Gilbert* decision differently. *Kenaitze* arose from the prohibitions on subsistence fishing and hunting established by a 1992 statute.⁸⁴ That statute states:

The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A non-subsistence area is an area or community where dependence

79. ALASKA CONST. art. VIII, § 4.

80. *Gilbert*, 803 P.2d at 399.

81. Similarly, the *Gilbert* test also did not apply to the ban on fish spotting in Bristol Bay. Because the ban applied equally to all citizens, there was no "non-uniform classification" and, therefore, the uniform application clause was not implicated. *Alaska Fish Spotters Ass'n v. State Dep't of Fish and Game*, 838 P.2d 798, 804 (Alaska 1992).

82. See *McDowell*, 785 P.2d at 8.

83. No. 3AN-91-4569 (Alaska Super. Ct. Oct. 26, 1993).

84. ALASKA STAT. § 16.05.258(c) (1992).

upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community.⁸⁵

Residents of nonsubsistence areas challenged this provision, claiming it violated the equal access clauses.⁸⁶ Despite finding that the legislature's purpose for authorizing nonsubsistence areas was to allocate resources, the superior court struck down the provision under the *Gilbert* test.⁸⁷

In *Kenaitze*, the superior court added a new condition for allocating natural resources. It held that, under the "least possible infringement" standard, the state could not prohibit subsistence activities in a certain area without first considering whether resources there could support some kind of balance between all possible uses.⁸⁸ Generally, this decision means that the state may not allocate resources so that one use is excluded in an area while maintaining others unless there is a finding that resource abundance will not support all uses simultaneously.

V. UNIFYING THEMES AMONG THE EQUAL ACCESS CLAUSES

There are several common themes and principles unifying the equal access clauses. Among these common themes are the clauses' reference to territorial fish and wildlife management, their prohibition on exclusive or special privileges and their focus on individual admission to resources "user groups."

A. Reference to Territorial Fish and Wildlife Management

In several opinions construing the equal access clauses, the Alaska Supreme Court has referred to pre-statehood fish and wildlife management practices. The court has assumed that the framers of the constitution were aware of these practices, and has consistently concluded that they did not intend the clauses to prohibit contemporary practices that are equivalent to historic ones.

In *Owsichek v. State*,⁸⁹ for example, the court stated:

We observe initially that, in guaranteeing people "common use" of fish, wildlife and water resources, the framers of the constitution clearly did not intend to prohibit all regulation of the use of these resources. Licensing requirements, bag limits, and seasonal restrictions, for example, are time-honored methods of conserv-

85. *Id.*

86. *Kenaitze*, No. 3AN-91-4569, slip op. at 4.

87. *Id.* at 12.

88. *Id.* at 10.

89. 763 P.2d 488 (Alaska 1988).

ing the resources that were respected by delegates to the constitutional convention.⁹⁰

Similarly, in *State v. Hebert*,⁹¹ the court observed that gear size and "time and area" limitations are among "time honored brakes" imposed on fishermen to achieve conservation.⁹² The court upheld superexclusive registration for herring fisheries because convention debates did not reveal an intent to prohibit a comparable, pre-statehood management tool, namely exclusive registration for salmon fisheries.⁹³ The court came to a similar conclusion regarding the ban on fish spotting in *Alaska Fish Spotters Ass'n v. State Department of Fish and Game*.⁹⁴ Because the framers of the constitution submitted the constitutional provision simultaneously with an ordinance prohibiting fish traps, the court concluded that the framers had found nothing inconsistent in adopting the common use clause while concurrently banning certain methods and means of harvest.⁹⁵

Although the court has recognized historic conservation practices, it is not clear whether the existence of a general conservation purpose will excuse a violation of equal access principles. On the one hand, usefulness in wildlife conservation and management was not sufficient to save the EGA system from being declared unconstitutional.⁹⁶ On the other hand, the court implied in *McDowell* that an exclusionary system would be more acceptable if it served conservation purposes.⁹⁷

B. Prohibition on Exclusive or Special Privileges

One principle that applies to all of the equal access clauses is reflected in the wording of the "no exclusive right of fishery" clause.⁹⁸ The court has interpreted this clause consistently, stating that "[a]lthough the ramifications of these clauses are varied, they

90. *Id.* at 492.

91. 803 P.2d 863 (Alaska 1990).

92. *Id.* at 866-67.

93. *Id.* at 866.

94. 838 P.2d 798 (Alaska 1992).

95. *Id.* at 802.

96. *See Owsichek v. State*, 763 P.2d 488 (Alaska 1988).

97. *McDowell*, 785 P.2d at 9. "We do not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons."
Id.

98. ALASKA CONST. art. VIII, § 15.

share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited."⁹⁹

The court has not limited its "no exclusive right or privilege" analysis to the "no exclusive right of fishery" clause. The court has similarly held that the common use and the uniform application clauses were also intended to prohibit exclusive or special privileges.¹⁰⁰

C. Individual Admission to Resource "User Groups"

The equal access clauses also scrutinize limits on admission to user groups.¹⁰¹ In fact, the EGA system and the rural residency criterion, the only state actions struck down under the clauses, have both involved such user group admission limits.¹⁰² Thus, it is important to understand the meaning of "user group" in fish and wildlife management in order to fully comprehend the application of the equal access clauses.

In the context of the common use clause, the court has defined user group according to "the nature of the resource (*i.e.*, fish or wildlife) and the nature of the use (*i.e.*, commercial, sport or subsistence)."¹⁰³ User groups include recreational hunters,

99. *McDowell*, 785 P.2d at 6.

100. *See, e.g.*, *State v. Hebert*, 803 P.2d 863 (Alaska 1990).

101. *See, e.g.*, *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314 (Alaska 1994) ("[T]he 'common use' clause of article VIII, section 3, the 'no exclusive right of fishery' clause of section 15, and the 'uniform application' clause of section 17 are not implicated unless limits are placed on the admission to resource user groups.").

102. This principle was recognized in a recent superior court decision. In *Kodiak Seafood Processors Ass'n v. State*, No. 1JU-93-274 CI, slip op. (Alaska Sup. Ct. Sept. 14, 1993), seafood processors challenged an exploratory scallop fishing permit issued by the Department of Fish and Game to a commercial fisherman. The permit allowed the fisherman, under the control of department biologists, to operate a scallop dredge in an area closed to commercial scallop fishing. *Id.* at 2-3. Plaintiffs claimed, *inter alia*, that issuance of the permit violated the equal access clauses. *Id.* at 4-5.

The superior court found that the issuance of the permit did not constitute the opening of a "commercial fishery" because it occurred at an exploratory, test-fishing stage during which no user group had access to the resource. *Id.* at 20-21. "Until the resource is open to recognized user groups, and the plaintiffs are excluded from a particular user group, . . . there can be no violation of the 'equal access clauses.'" *Id.* at 22. This holding is presently being appealed to the Alaska Supreme Court. *Kodiak Seafood Processors Ass'n v. State*, No. S-5987.

103. *Alaska Fish Spotters Ass'n v. State Dep't of Fish and Game*, 838 P.2d 798, 803 (Alaska 1992).

subsistence hunters, sport fishermen, commercial fishermen, personal use fishermen, subsistence fishermen and even professional hunting guides.¹⁰⁴ However, the court has rejected a definition of "user group" that is based on a particular means or method of using the resource. For example, persons who operate aircraft for aerial fish spotting are not a user group for purposes of the common use clause.¹⁰⁵

The court revisited the "user group" issue recently in *Tongass Sport Fishing Ass'n v. State*.¹⁰⁶ In 1991, the Board of Fisheries allocated chinook salmon in southeast Alaska between the commercial troll and sport fisheries by establishing a percentage of the harvestable stock which each group could catch. Several sport fishing groups filed a suit challenging the allocation scheme, claiming, *inter alia*, that the system violated both the common use and the no exclusive right of fishery clauses of Article VIII.¹⁰⁷

In rejecting the Article VIII claim, the Alaska Supreme Court restated principles announced in earlier opinions on the equal access clauses. The court affirmed that the equal access clauses are not implicated unless the state places limits to admission on resource user groups.¹⁰⁸ The court cited several opinions, including *Gilbert* and *Alaska Fish Spotters Ass'n*, in which the Board's authority to allocate among different fisheries had been recognized, and distinguished allocating resources from placing limits on admission to resource user groups.¹⁰⁹

VI. THE EQUAL ACCESS CLAUSES' RELATION TO OTHER CONSTITUTIONAL PROVISIONS

The equal access clauses do not function in a vacuum. In fact, the clauses are significantly influenced by at least two other constitutional provisions. Specifically, the Alaska Supreme Court has had to square the equal access clauses with the "preferences among beneficial uses" clause of Article VIII, section 4. Addition-

104. The court recognized that "[t]he work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause." *Owsichek v. State*, 763 P.2d 488, 497 n.15 (Alaska 1988).

105. *Alaska Fish Spotters Ass'n*, 838 P.2d at 803.

106. 866 P.2d 1314 (Alaska 1994).

107. *Id.* at 1315.

108. *Id.*

109. *Id.* at 1318.

ally, because the equal access clauses have been called "a special type of equal protection guarantee," it is necessary to compare the standard of review used by the court to apply the equal access clauses with the equal protection test articulated by the court under Article I, section 1 of the state's constitution.

A. The "Preferences Among Beneficial Uses" Clause

Article VIII, section 4 of the Alaska Constitution provides:

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*.¹¹⁰

The Alaska Supreme Court has recognized the tension between the equal access clauses, which prohibit exclusive rights and special privileges, and the last phrase of section 4, which authorizes "preferences." In *McDowell v. State*,¹¹¹ Justice Moore rejected any implication in the majority opinion that all preferences, especially subsistence preferences, would violate the equal access clauses.¹¹² Justice Moore noted the apparent conflict between the clauses' prohibition against special privileges and section 4, which "clearly authorizes some preferences based upon uses."¹¹³ Moreover, in his dissenting opinion, Justice Rabinowitz argued that the majority decision would conflict with the explicit language of section 4, which explicitly authorizes rural preferences.¹¹⁴

The court has attempted to clarify this apparent conflict by distinguishing between allocating resources among resource uses and limiting admission to resource user groups. In *Kenai Peninsula Fisherman's Cooperative Ass'n v. State*¹¹⁵ the court stated:

While section 15 [the "no exclusive rights" clause] does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species must also be allowed, would be to go far beyond the purpose of the section.¹¹⁶

110. ALASKA CONST. art. VIII, § 4 (emphasis added).

111. 785 P.2d 1 (Alaska 1989).

112. *Id.* at 13 (Moore, J., concurring).

113. *Id.* (Moore, J., concurring).

114. *Id.* at 17 (Rabinowitz, J., dissenting).

115. 628 P.2d 897 (Alaska 1981).

116. *Id.* at 904.

In *McDowell v. State*¹¹⁷ the court stated that “[t]he state may, indeed must, make allocation decisions between sport, commercial, and subsistence users. That authority, however, does not imply a power to limit admission to a user group.”¹¹⁸ As an allocative system, such application is unauthorized under the “preferences” phrase of section 4.

B. Equal Access and Equal Protection

Because the uniform application clause requires that laws and regulations “apply equally to all persons similarly situated,”¹¹⁹ it provides a clear equal protection guarantee for the use and disposal of natural resources. In *McDowell*, the court described the equal access clauses in general as “a special type of equal protection guarantee.”¹²⁰ This raises the question of how analysis under Alaska’s equal protection clause differs from analysis under the equal access clauses, and in particular, under the uniform application clause.

The equal protection clause in Article I, section 1 of the Alaska Constitution provides that “all persons are equal and entitled to equal rights, opportunities, and protection under the law”¹²¹ When determining whether legislation comports with this clause, Alaska courts employ a “sliding” test that the Alaska Supreme Court has described as follows:

We first determine the importance of the individual interest impaired by the challenged enactment. We then examine the importance of the state interest underlying the enactment, that is, the importance of the enactment. Depending on the importance of the individual interest, the equal protection clause requires that the state’s interest fall somewhere on a continuum from mere legitimacy to a compelling interest. Finally, we examine the nexus between the state interest and the state’s means of furthering that interest. Again depending upon the importance of the individual interest, the equal protection clause requires that the nexus fall somewhere on a continuum from substantial relationship to least restrictive means.¹²²

117. 785 P.2d 1 (Alaska 1989).

118. *Id.* at 8.

119. ALASKA CONST. art. VIII, § 17.

120. *McDowell*, 785 P.2d at 11.

121. ALASKA CONST. art. I, § 1.

122. *State v. Enserch Constr., Inc.*, 787 P.2d 624, 631-32 (Alaska 1989) (footnote omitted).

Before *McDowell*, the court had said very little about the test for applying the "uniform application clause," nor had it discussed the equal access clauses in terms of equal protection. In one instance, the court opined that in cases involving natural resources the "uniform application clause" may require more stringent review of a statute than does the general equal protection clause.¹²³ However, the court did not articulate a specific standard to be applied to natural resource cases.

In *McDowell*, the court implicitly followed an equal protection analysis in striking down the rural residency preference in the subsistence law. Placing the *McDowell* analysis into the equal protection framework leads to the conclusion that the "individual interest" at issue was the interest of each person in the state in participating in subsistence uses of renewable resources. The court said that this was a "highly important" interest.¹²⁴

As for the competing state interest, the court said that it must be at least "important" to sustain legislation that burdens the equal access clause.¹²⁵ The court noted that an "important" state interest embodied in the subsistence law was "to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so."¹²⁶

In analyzing the "nexus" between the state's "important" interest and the legislation's "means" for accomplishing it, the court held that the government's approach must be the "least possible infringement on article VIII's open access values."¹²⁷ When the court applied this standard, it concluded that the "means used to accomplish this purpose [were] extremely crude."¹²⁸ Specifically, the court pointed to evidence showing that there were "substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims."¹²⁹ Thus, the court's ground for striking down the rural-urban classification scheme was that it was

123. *Gilman v. Martin*, 662 P.2d 120 (Alaska 1983).

124. *McDowell*, 785 P.2d at 10.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 10-11.

both under-inclusive and over-inclusive.¹³⁰ In his *McDowell* concurrence, Justice Moore stated that he would have followed an explicit equal protection analysis under article 1, section 1 of the Alaska constitution. He argued that the individual interest at stake, access to wildlife for subsistence purposes, was "a species of the important right to engage in economic endeavor."¹³¹ The subsistence law, therefore, would be subjected to "close scrutiny," and it would have to at least be "closely related to an important state interest."¹³² Justice Moore called the state's interest more than "important"; it was "compelling."¹³³ Therefore, Justice Moore would have found the subsistence law defective because its classification scheme established only a modest correlation, rather than a close relationship, between those who resided in rural areas and those who were dependent on subsistence hunting and fishing.¹³⁴

In dissent, Justice Rabinowitz maintained that the individual interest at stake, the right to participate in subsistence hunting and fishing, was not a fundamental right. Thus, Justice Rabinowitz argued, the "strict scrutiny" and "least restrictive alternative" standards were not applicable.¹³⁵ Justice Rabinowitz therefore concluded that the means-end fit of the subsistence criterion was sufficiently close to satisfy equal protection under both the "uniform application clause" and under the general equal protection clause of the constitution.¹³⁶

Recently, the Alaska Court of Appeals addressed the issue of whether the Alaska Supreme Court had created a constitutional analysis for the equal access clauses that was distinct from its analysis for the equal protection clause. The Court of Appeals stated that the Alaska Supreme Court appeared to use the same

130. *McDowell*, 785 P.2d at 10-11. After striking down the "extremely crude" means for distinguishing persons who were eligible for subsistence uses, the court suggested a legislative solution: "A classification scheme employing individual characteristics would be less invasive of the article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criterion." *Id.* at 11.

131. *Id.* at 13 (Moore, J., concurring).

132. *Id.* (Moore, J., concurring).

133. *Id.* (Moore, J., concurring).

134. *Id.* (Moore, J., concurring).

135. *Id.* at 19 (Rabinowitz, J., dissenting).

136. *Id.* (Rabinowitz, J., dissenting).

approach for both, requiring the state to meet a rigorous test.¹³⁷ The state must demonstrate both an "important" legislative purpose and means narrowly tailored to accomplish that purpose.¹³⁸

VII. CONCLUSION

The equal access clauses are unique to Alaska's constitution and, at the same time, based on established, historic principles arising under the public trust doctrine, pre-statehood fish and wildlife management policy and equal protection analysis. Although largely neglected in their first three decades, the clauses have recently been frequently scrutinized by the Alaska Supreme Court. In six opinions since 1987, the court has attempted to clarify the meaning of "equal access" as it applies to Alaska's fish and wildlife. While exclusive and special privileges to take subsistence resources are prohibited, these limitations are qualified by constitutional provisions that authorize limited entry to commercial fisheries and that enable the state to establish preferences among various uses. From among these provisions, one fundamental, consistently applied principle has emerged: Limitations on admission to fish and wildlife "user groups" are subject to strict judicial scrutiny under the equal access clauses.

Several other principles have evolved pertaining to the individual equal access clauses. The common use clause, for example, disallows the "privatization" of public fish and wildlife resources, especially if special privileges are long-term and do not compensate the public. The "no exclusive right of fishery" clause requires a "least possible infringement" inquiry when faced with a scheme that creates exclusive rights in fisheries, even if it is a form of limited entry. A similar test under the "uniform application" clause applies to nonuniform classifications among Alaskans who harvest these resources.

The pending Alaska Supreme Court decision in *Kenaitze Indian Tribe v. State*¹³⁹ affords the court an opportunity to clarify the nature of the "access" guaranteed by the constitution. *Owsichek v. State*¹⁴⁰ and *McDowell v. State*¹⁴¹ hold that "access"

137. *Baker v. State*, 878 P.2d 642, 644-45 (Alaska Ct. App. 1994).

138. *Id.*

139. No. 3AN-91-4569 (Alaska Super. Ct. Oct. 26, 1993).

140. 763 P.2d 488 (Alaska 1988).

141. 785 P.2d 1 (Alaska 1989).

means access to membership in a user group. Other decisions hold that "access" does not mean equal opportunity among user groups to harvest fish and wildlife.¹⁴² However, the issue of whether the state may limit access to fish and wildlife outside of the context of a user group has not been decided.¹⁴³ Another unanswered question is whether a restriction on a certain use of a resource may be justified by the availability of other uses of that resource.¹⁴⁴ With Alaska's finite resources and Alaskans' growing demand for fish and wildlife, the equal access provisions of the constitution will have a continuing, central role in providing answers.

142. See, e.g., *Kenai Peninsula v. State*, 628 P.2d 897 (Alaska 1981).

143. There is some support for the idea that the court may limit access outside of this context. In interpreting the White Act, the territorial predecessor to the "no exclusive right of fishery clause," the United States Supreme Court stated that "[e]xclusive," as used in Section 1 of the White Act, forbids not only a grant to a *single person or corporation* but to any special group or number of people." *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 122 (1949) (emphasis added).

144. The answer to this question is probably yes. In *Alaska Fish Spotters Ass'n v. State Dep't of Fish and Game*, one reason the ban on fish spotting was found not to violate the common use clause is because there were alternative ways that aerial spotters could still use the fisheries resource. 838 P.2d at 802.

CS FOR HOUSE BILL NO. 406(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to subsistence uses of fish and game and to preferred uses of
2 fish and game."

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

4 * Section 1. FINDINGS AND INTENT. (a) The Alaska State Legislature finds that
5 (1) the ability to harvest fish and game for personal and family use for
6 sustenance is a fundamental right under the Constitution of the State of Alaska;
7 (2) the common use clause of the Constitution of the State of Alaska imposes
8 on the state a trust duty to manage the fish, game, and water resources of the state for the
9 benefit of all the people;
10 (3) the harvest of fish and game for personal and family use for sustenance is
11 the highest and best use of fish and game;
12 (4) the fish and game resources of Alaska have adequate biological and
13 reproductive capacity to provide an abundance of fish and game for all users.

14 (b) It is the intent of the Alaska State Legislature to provide

1 (1) for a preference for personal and family use of fish and game for
2 sustenance that parallels the Congressional intent underlying the subsistence preference under
3 Title VIII of the Alaska National Interest Lands Conservation Act but does not violate the
4 fundamental constitutional rights of Alaskans to subsistence, equal protection, and common
5 use of fish and game under the Constitution of the State of Alaska:

6 (2) a greater role for local fish and game advisory committees and regional fish
7 and game councils in the review and approval of regulations governing the use of fish and
8 game resources;

9 (3) for a greater abundance of fish and game resources to serve as a source of
10 food for persons who depend on those resources for personal and family use for sustenance.

11 * Sec. 2. AS 16.05 is amended by adding a new section to article 7 to read:

12 **Sec. 16.05.911. Preferred use of fish and game.** The harvest of fish and
13 game for personal or family use for sustenance by residents is the highest and best use
14 of fish and game. Notwithstanding other provisions of this chapter, the Board of
15 Fisheries, the Board of Game, and the department shall adopt regulations, policies, and
16 management plans to implement a preference for consumptive use of fish and game
17 for personal or family use for sustenance over other uses of fish and game.

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2/21/98

CS FOR HOUSE BILL NO. 406(RES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - SECOND SESSION****BY THE HOUSE RESOURCES COMMITTEE****Offered:****Referred:****Sponsor(s): HOUSE RESOURCES COMMITTEE****A BILL****FOR AN ACT ENTITLED****1 "An Act relating to fish and game."****2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:****3 * Section 1. FINDINGS AND INTENT. (a) The legislature finds that****4 (1) the ability to take fish and game for personal and family use for sustenance**
5 is a fundamental right under the Constitution of the State of Alaska;**6 (2) the common use clause of the Constitution of the State of Alaska imposes**
7 on the state a trust duty to manage the fish, game, and water resources of the state for the
8 benefit of all the people;**9 (3) the harvest of fish and game for personal and family use for sustenance is**
10 the highest and best use of fish and game;**11 (4) the fish and game resources of Alaska have adequate biological and**
12 reproductive capacity to provide an abundance of fish and game for all users;**13 (5) the harvest of fish and game for personal and family use for sustenance**
14 does not constitute or affect interstate commerce and is not subject to regulation under the
15 commerce clause of the Constitution of the United States.

1 (b) It is the intent of the legislature to provide
2 (1) a preference for personal and family use of fish and game for sustenance
3 that parallels the Congressional intent underlying the subsistence preference under Title VIII
4 of the Alaska National Interest Lands Conservation Act (P.L. 96-487) but does not violate the
5 fundamental constitutional rights of Alaskans to sustenance, equal protection, and common use
6 of fish and game under the Constitution of the State of Alaska;

7 (2) a greater role for local fish and game advisory committees and regional fish
8 and game management boards in the review and approval of regulations governing the use of
9 fish and game resources;

10 (3) for a greater abundance of fish and game resources to serve as a source of
11 food for persons who are dependent on fish and game for personal and family use for
12 sustenance.

13 * Sec. 2. AS 16 is amended by adding a new chapter to read:

14 **Chapter 16. Use of Fish and Game for Sustenance.**

15 **Sec. 16.16.010. Preferred use of fish and game.** The harvest of fish and
16 game for personal and family use for sustenance by residents is the highest and best
17 use of fish and game. The Board of Fisheries, the Board of Game, and the department
18 shall adopt regulations, policies, and management plans to implement a preference for
19 consumptive use of fish and game for personal and family use for sustenance over
20 other uses of fish and game.

21 **Sec. 16.16.020. Dependence on fish and game for sustenance.** (a) The
22 Board of Fisheries and the Board of Game acting jointly shall identify and define areas
23 of the state where fish and game dependent uses exist. A fish and game dependent use
24 area is an area where dependence on fish and game for personal and family use for
25 sustenance is the principal characteristic of the economy and way of life of the area.
26 In determining whether dependence on fish and game for personal and family use for
27 sustenance is the principal characteristic of the economy and way of life of an area
28 the Board of Fisheries and the Board of Game shall jointly consider the relative
29 importance of dependence on fish and game in the context of the totality of the
30 following socioeconomic characteristics of the area:

31 (1) the social and economic structure;

- 1 (2) the stability of the economy;
- 2 (3) the extent and kinds of employment for wages, including full-time,
- 3 part-time, temporary, and seasonal employment;
- 4 (4) the amount and distribution of cash income among those who live
- 5 in the area;
- 6 (5) the cost and availability of goods and services to those who live in
- 7 the area;
- 8 (6) the variety of fish and game species used by those who live in the
- 9 area;
- 10 (7) the seasonal cycle of economic activity;
- 11 (8) the percentage of those who live in the area participating in hunting
- 12 and fishing activities or using wild fish and game;
- 13 (9) the harvest levels of fish and game by those who live in the area;
- 14 (10) the historical, social, and economic values associated with the
- 15 taking and use of fish and game;
- 16 (11) the geographic locations where those who live in the area hunt and
- 17 fish;
- 18 (12) the extent of sharing and exchange of fish and game by those who
- 19 live in the area;
- 20 (13) the other sources of direct and indirect economic support available
- 21 in the area;
- 22 (14) additional similar factors the boards establish by regulation to be
- 23 relevant to a determination under this subsection.

24 (b) If the Board of Fisheries or the Board of Game, as appropriate, determines

25 that a shortage of fish or game resources available for harvest in a fish and game

26 dependent use area exists, the board may establish a preference for fish or game

27 dependent uses and, consistent with sustained yield, reserve a sufficient portion of the

28 resource to provide a reasonable opportunity to satisfy the need for fish and game

29 dependent uses of the resource. A board shall make its determination of whether

30 sufficient fish or game resources exist in an area to provide a reasonable opportunity

31 to satisfy fish and game dependent uses of the resource based on the recommendations

1 of the department's area management biologist for the area, the regional fish and game
2 board for the area, and the advisory committees for the area. The preference
3 established under this subsection shall be extended to a person who is determined to
4 be dependent on fish and game for personal and family use for sustenance under (c) -
5 (g) of this section. In a time of shortage of fish or game resources, the appropriate
6 board may adopt a regional preference among beneficial uses of fish and game by
7 requiring that the flesh or meat of fish and game be consumed within the region where
8 the fish or game was taken.

9 (c) A person is dependent on fish and game for personal and family use for
10 sustenance if the person

11 (1) possesses a \$5 resident hunting, trapping, and sport fishing license
12 issued under AS 16.05.340(a)(6); and

13 (2) submits to the local fish and game advisory committee for the area
14 in which the person lives a signed written statement that the person

15 (A) is dependent on fish and game for personal and family use
16 for sustenance or has no alternate means of sustenance as the result of the
17 absence of a cash-based economy in the area where the person lives or as the
18 result of the person's decision to adopt a fish and game dependent life style;

19 (B) has consumed in the preceding 12 months a minimum
20 number of species or groups of species of fish and game, as determined by the
21 Board of Fisheries and the Board of Game acting jointly; the minimum number
22 of species or groups of species or the groups of species may vary among the
23 fish and game management regions of the state in accordance with the diversity
24 of fish and game species in each region; and

25 (C) has shared fish and game resources taken by the person
26 with a minimum number of households, as determined by the Board of
27 Fisheries and the Board of Game acting jointly, or received fish and game
28 resources taken by members of a minimum number of other households, as
29 determined by the Board of Fisheries and the Board of Game acting jointly.

30 (d) Each local fish and game advisory committee shall review the written
31 statements submitted by persons asserting a dependence on fish and game for personal

1 and family use for sustenance and make recommendations as to whether the person is
2 entitled to a preference under (b) of this section. An advisory committee may hold a
3 hearing to gather additional information regarding whether a person is dependent on
4 fish and game for personal and family use for sustenance. Each advisory committee
5 shall forward its recommendations regarding each person's eligibility for a preference,
6 all written statements received by the advisory committee, and all additional
7 information collected by the advisory committee to the regional fish and game board
8 for the region in which the advisory committee is located. The regional board shall
9 defer to a recommendation made by an advisory committee unless a person disputes
10 the recommendation of the advisory committee under (e) of this section.

11 (e) A person who disputes the recommendation of the advisory committee as
12 to the person's eligibility for the preference may appeal the recommendation to the
13 regional fish and game board for the region in which the person lives. The regional
14 board shall make a determination as to whether the person is dependent on fish and
15 game for personal and family use for sustenance and should be recommended to the
16 Board of Fisheries and the Board of Game to receive the preference authorized under
17 (b) of this section. Proceedings of a regional board under this subsection are subject
18 to AS 44.62.330 - 44.62.630.

19 (f) Each regional fish and game board shall forward all recommendations,
20 written statements, and additional information received from the advisory committees
21 in the region, together with recommendations made by the regional board under (e) of
22 this section and additional information collected by the regional board, to the Board
23 of Fisheries and the Board of Game. The Board of Fisheries and the Board of Game,
24 acting jointly, shall make the final determination as to who is entitled to the preference
25 authorized under (b) of this section. The boards shall defer to the recommendations
26 of the advisory committees and the regional fish and game boards unless a person
27 disputes the recommendation made by an advisory committee or a regional board. The
28 boards shall hold a hearing subject to AS 44.62.330 - 44.62.630 to make a final
29 determination of whether the person is dependent on fish and game for personal and
30 family use for sustenance.

31 (g) A person who is determined by the Board of Fisheries and the Board of

1 Game to be dependent on fish and game for personal and family use for sustenance
2 may take fish and game in any location in the state where a preference for the harvest
3 of fish or game for personal and family use for sustenance has been established under
4 (b) of this section.

5 (h) The Board of Fisheries and the Board of Game shall adopt regulations
6 governing the allowable level of noncommercial barter and sharing of fish and game
7 resources taken for personal and family use for sustenance. The boards shall set the
8 level of allowable noncommercial barter at a documented historical level that does not
9 subject barter of fish and game taken for personal and family use for sustenance to
10 federal regulation under the commerce clause of the Constitution of the United States.

11 **Sec. 16.16.095. Definitions.** In this chapter,

12 (1) "principal" means more than 50 percent;

13 (2) "reasonable opportunity" means an opportunity, as determined by
14 the Board of Fisheries or the Board of Game, as appropriate, that allows a person to
15 participate in a fishery or hunt that provides a normally diligent participant with a
16 reasonable expectation of success of taking of fish or game; "reasonable opportunity"
17 does not mean a guarantee of taking fish or game;

18 (3) "shortage" means the amount of fish or game resources available
19 for harvest is not sufficient to reasonably provide for the sustenance needs of persons
20 who are dependent upon fish and game for personal and family use for sustenance;

21 (4) "sustained yield" means a level of utilization of a fish or game
22 population for consumptive uses by humans that is capable of being maintained in
23 perpetuity.

24 * Sec. 3. AS 16.05.090(c) is amended to read:

25 (c) There is established in the department a section of fish and game
26 dependent use [SUBSISTENCE HUNTING AND FISHING].

27 * Sec. 4. AS 16.05.094 is amended to read:

28 **Sec. 16.05.094. Duties of section of fish and game dependent use**
29 **[SUBSISTENCE HUNTING AND FISHING].** The section of fish and game
30 dependent use [SUBSISTENCE HUNTING AND FISHING] shall

31 (1) compile existing data and conduct studies to gather information,

1 including data from persons dependent upon fish and game for personal and family
2 use for sustenance [SUBSISTENCE USERS], on all aspects of the role of
3 [SUBSISTENCE] hunting and fishing for fish and game dependent use in the lives
4 of the residents of the state;

5 (2) quantify the amount, nutritional value, and extent of dependence on
6 food acquired through [SUBSISTENCE] hunting and fishing for fish and game
7 dependent use;

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

10 (4) assist the department, the Board of Fisheries, and the Board of
11 Game in determining what uses of fish and game, as well as which users and what
12 methods, should be termed fish and game dependent [SUBSISTENCE] uses, users,
13 and methods;

14 (5) evaluate the impact of state and federal laws and regulations on
15 [SUBSISTENCE] hunting and fishing for fish and game dependent use and, when
16 correctiv action is indicated, make recommendations to the department;

17 (6) make recommendations to the Board of Game and the Board of
18 Fisheries regarding adoption, amendment, and repeal of regulations affecting
19 [SUBSISTENCE] hunting and fishing for fish and game dependent use;

20 (7) participate with other divisions in the preparation of statewide and
21 regional management plans so that those plans recognize and incorporate the needs of
22 [SUBSISTENCE] users of fish and game for fish and game dependent use.

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

24 Sec. 16.05.245. Review of regulatory proposals. (a) Notwithstanding
25 AS 44.62, each proposal for a regulation to be adopted by the Board of Fisheries or
26 the Board of Game shall be submitted to local fish and game advisory committees and
27 regional fish and game boards that may be affected by the proposal. Each advisory
28 committee and regional board may review the proposed regulation and submit
29 comments and recommendations regarding the proposal to the Board of Fisheries or
30 the Board of Game, as appropriate. This subsection does not apply to emergency
31 regulations considered by either the Board of Fisheries or the Board of Game.

1 (b) The Board of Fisheries and the Board of Game shall carefully review each
2 recommenderdation made by a regional fish and game board and shall defer to the
3 recommendation of the regional board, unless

- 4 (1) there is a contrary recommendation from another regional board;
5 (2) the recommendation is not consistent with the conservation of the
6 fish or game resource;
7 (3) the recommendation involves issues of statewide significance; or
8 (4) the recommendation involves conflicts between regional boards.

9 (c) If the Board of Fisheries or the Board of Game chooses not to follow the
10 recommendation of an advisory committee or a regional board, the appropriate
11 statewide board shall inform the advisory committee or regional board of the action
12 and state the reasons for not following the recommendation.

13 (d) Subject to (a) and (b) of this section, the Board of Fisheries and the Board
14 of Game may consider and adopt any proposal for a regulation that is submitted for
15 adoption, even if comments or recommendations regarding the proposal are not
16 received from an advisory committee or a regional board.

17 * Sec. 6. AS 16.05.251(a) is amended to read:

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

20 (1) setting apart fish reserve areas, refuges, and sanctuaries in the
21 waters of the state over which it has jurisdiction, subject to the approval of the
22 legislature;

23 (2) establishing open and closed seasons and areas for the taking of
24 fish; if consistent with resource conservation and development goals, the board may
25 adopt regulations establishing restricted seasons and areas necessary for persons 60
26 years of age and older to participate in sport fishing, personal use fishing, or
27 [SUBSISTENCE] fishing for personal and family use for sustenance;

28 (3) setting quotas, bag limits, harvest levels, and sex and size
29 limitations on the taking of fish;

30 (4) establishing the means and methods employed in the pursuit,
31 capture, and transport of fish;

1 (5) establishing marking and identification requirements for means used
2 in pursuit, capture, and transport of fish;

3 (6) classifying as commercial fish, sport fish, guided sport fish,
4 personal use fish, [SUBSISTENCE FISH,] or predators or other categories essential
5 for regulatory purposes;

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

8 (8) investigating and determining the extent and effect of disease,
9 predation, and competition among fish in the state, exercising control measures
10 considered necessary to the resources of the state;

11 (9) prohibiting and regulating the live capture, possession, transport, or
12 release of native or exotic fish or their eggs;

13 (10) establishing seasons, areas, quotas, and methods of harvest for
14 aquatic plants;

15 (11) establishing the times and dates during which the issuance of
16 fishing licenses, permits, and registrations and the transfer of permits and registrations
17 between registration areas is allowed; however, this paragraph does not apply to
18 permits issued or transferred under AS 16.43;

19 (12) regulating commercial fishing, sport fishing, guided sport fishing,
20 fishing for personal and family use for sustenance [SUBSISTENCE], and personal
21 use fishing as needed for the conservation, development, and utilization of fisheries;

22 (13) requiring, in a fishery, observers on board fishing vessels, as
23 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined
24 in AS 16.05.475(c), after making a written determination that an on-board observer
25 program

26 (A) is the only practical data-gathering or enforcement
27 mechanism for that fishery;

28 (B) will not unduly disrupt the fishery;

29 (C) can be conducted at a reasonable cost; and

30 (D) can be coordinated with observer programs of other
31 agencies, including the National Marine Fisheries Service, North Pacific

1 Fishery Management Council, and the International Pacific Halibut
2 Commission;

3 (14) establishing nonexclusive, exclusive, and superexclusive
4 registration and use areas for regulating commercial fishing;

5 (15) regulating resident or nonresident sport fishermen as needed for
6 the conservation, development, and utilization of fishery resources;

7 (16) requiring unlicensed fishing vessels present in or transiting the
8 waters of the state to report to the department the quantity, species, and origin of fish
9 on board; in this paragraph, "unlicensed fishing vessel" means a fishing vessel that is
10 not licensed under AS 16.05.490 - 16.05.530.

11 * Sec. 7. AS 16.05.251(d) is amended to read:

12 (d) Regulations adopted under (a) of this section must, consistent with
13 sustained yield and the provisions of AS 16.16.020 [AS 16.05.258], provide a fair and
14 reasonable opportunity for the taking of fishery resources by personal use, sport, and
15 commercial fishermen.

16 * Sec. 8. AS 16.05.255(a) is amended to read:

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

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

22 (2) establishing open and closed seasons and areas for the taking of
23 game;

24 (3) establishing the means and methods employed in the pursuit,
25 capture, taking, and transport of game, including regulations, consistent with resource
26 conservation and development goals, establishing means and methods that may be
27 employed by persons with physical disabilities;

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

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

- 1 (6) methods, means, and harvest levels necessary to control predation
2 and competition among game in the state;
- 3 (7) watershed and habitat improvement, and management, conservation,
4 protection, use, disposal, propagation, and stocking of game;
- 5 (8) prohibiting the live capture, possession, transport, or release of
6 native or exotic game or their eggs;
- 7 (9) establishing the times and dates during which the issuance of game
8 licenses, permits, and registrations and the transfer of permits and registrations between
9 registration areas and game management units or subunits is allowed;
- 10 (10) regulating sport hunting and [SUBSISTENCE] hunting for
11 personal and family use for sustenance as needed for the conservation, development,
12 and utilization of game;
- 13 (11) taking game to ensure public safety.

14 * Sec. 9. AS 16.05.255(d) is amended to read:

- 15 (d) Regulations adopted under (a) of this section must provide that, consistent
16 with the provisions of AS 16.16.020 [AS 16.05.258], the taking of moose, deer, elk,
17 and caribou by residents for personal or family consumption has preference over taking
18 by nonresidents.

19 * Sec. 10. AS 16.05.255(f) is amended to read:

- 20 (f) The Board of Game may not significantly reduce the taking of an identified
21 big game prey population by adopting regulations relating to restrictions on harvest or
22 access to the population, or to management of the population by customary
23 adjustments in seasons, bag limits, open and closed areas, methods and means, or by
24 other customary means authorized under (a) of this section, unless the board has
25 adopted regulations, or has scheduled for adoption at the next regularly scheduled
26 meeting of the board regulations, that provide for intensive management to increase
27 the take of the population for human harvest consistent with (e) of this section. This
28 subsection does not apply if the board

- 29 (1) determines that intensive management would be
30 (A) ineffective, based on scientific information;
31 (B) inappropriate due to land ownership patterns; or

1 (C) against the best interest of persons who take game for
2 personal and family use for sustenance [SUBSISTENCE USES]; or

3 (2) declares that a biological emergency exists and takes immediate
4 action to protect or maintain the big game prey population in conjunction with the
5 scheduling for adoption of those regulations that are necessary to implement (e) of this
6 section.

7 * Sec. 11. AS 16.05.259 is amended to read:

8 Sec. 16.05.259. No personal and family use [SUBSISTENCE] defense. In
9 a prosecution for the taking of fish or game in violation of a statute or regulation, it
10 is not a defense that the taking was done for personal and family use for sustenance
11 [SUBSISTENCE USES].

12 * Sec. 12. AS 16.05.260 is repealed and reenacted to read:

13 Sec. 16.05.260. Local advisory committees and regional boards. (a) The
14 Board of Fisheries and the Board of Game, acting jointly, shall establish a maximum
15 of five fish and game management regions in the state.

16 (b) The Board of Fisheries and the Board of Game, acting jointly, shall adopt
17 regulations establishing a maximum of nine fish and game areas in each fish and game
18 management region established under (a) of this section that together comprise the
19 whole of the region and shall establish a local fish and game advisory committee for
20 each area. The advisory committees shall be composed of persons well informed on
21 the fish or game resources of the area. The boards shall set the number of members
22 and the terms of each of the members of the advisory committees and shall designate
23 one member of each committee as chair.

24 (c) A local fish and game advisory committee may

25 (1) hold public hearings on fish or game matters;

26 (2) make recommendations regarding fish and game matters and fish
27 and game regulatory proposals to the regional fish and game board for the region in
28 which the committee is located and to the Board of Fisheries, the Board of Game, and
29 the department;

30 (3) advise the Board of Fisheries and the Board of Game as to the
31 appropriate criteria for determining whether a person is dependent on fish and game

1 for personal and family use for sustenance under AS 16.16.020.

2 (d) Recommendations from the local fish and game advisory committees on
3 regulatory proposals and other fish and game matters shall be forwarded to the
4 appropriate regional and statewide boards for consideration.

5 (e) For each fish and game management region established under (a) of this
6 section, there is established a regional fish and game board. Each board consists of
7 nine members appointed by the governor from a list of names submitted by the fish
8 and game advisory committees within the region of the board. The governor may
9 reject one or more names submitted by the advisory committees and may ask for
10 additional names. The governor shall appoint each member on the basis of interest in
11 public affairs, good judgment, knowledge, and ability, and with a view to providing
12 diversity of interest and points of view in the membership. The members shall be
13 residents of the state and shall be appointed without regard to political affiliation or
14 geographical location of residence. The members of the boards appointed by the
15 governor are subject to confirmation by the legislature in joint session. The members
16 of the boards serve staggered terms of three years. The terms of members of the
17 boards begin on July 1. Notwithstanding AS 39.05.080(1), by April 1 of the calendar
18 year in which the term expires, the governor shall appoint a person to fill the vacancy
19 that will arise on a board due to expiration of the term of a member of the board and
20 submit the name of the person to the legislature for confirmation. If a vacancy arises
21 on the board, the governor shall, within 30 days after the vacancy arises, appoint a
22 person to serve the balance of the unexpired term and submit the name of the person
23 to the legislature for confirmation. A person appointed to fill the balance of an
24 unexpired term shall serve on the board from the date of appointment until the earlier
25 of the expiration of the term or the failure of the legislature to confirm the person
26 under AS 39.05.080. Members of a regional fish and game board serve without
27 compensation but are entitled to per diem and travel expenses authorized for boards
28 and commissions under AS 39.20.180.

29 (f) The governor may only remove a member of a regional fish and game
30 board for inefficiency, neglect of duty, or misconduct in office, or because the
31 member, while serving on the regional board, is convicted of a misdemeanor for

1 violating a statute or regulation related to fish or game or is convicted of a felony.
2 The governor shall deliver to the member a written copy of the charges and give the
3 member an opportunity to be heard in person or through counsel at a public hearing
4 before the governor or a designee upon at least 10 days' notice by registered mail.
5 The member may confront and cross-examine adverse witnesses. Upon removal, the
6 governor or a designee shall file in the proper state office the findings and a complete
7 statement of all charges made against the member.

8 (g) A majority of the members of a regional fish and game board constitutes
9 a quorum for the transaction of business, for the performance of any duty, and for the
10 exercise of any power. A majority of the full board membership is required to carry
11 all motions, regulations, and resolutions.

12 (h) Each regional fish and game board may

13 (1) exercise authority delegated to it by the Board of Fisheries, the
14 Board of Game, or the commissioner;

15 (2) hear appeals from recommendations of a local fish and game
16 advisory committee under AS 16.16.020;

17 (3) hold public hearings on fish and game matters;

18 (4) make recommendations regarding fish and game matters and fish
19 and game regulatory proposals to the Board of Fisheries, the Board of Game, and the
20 department;

21 (5) advise the Board of Fisheries and the Board of Game as to the
22 appropriate criteria for determining whether a person is dependent on fish and game
23 for personal and family use for sustenance under AS 16.16.020.

24 (i) The regional fish and game boards shall carefully review each
25 recommendation made by a local fish and game advisory committee within its region
26 regarding regulatory proposals and other fish and game matters. The regional board
27 shall defer to the recommendation of the advisory committee, unless there is a contrary
28 recommendation from another advisory committee, the recommendation is not
29 consistent with the conservation of the fish or game resource, the recommendation
30 involves issues of regional significance, or the recommendation involves conflicts
31 between advisory committees. If the regional board does not adopt or concur in the

1 proposal of the advisory committee, the board shall inform the advisory committee of
2 its decision and state the reasons for its action.

3 (j) The commissioner shall delegate authority to a regional board for
4 emergency closures during established seasons. The appropriate statewide board shall
5 adopt the necessary regulations governing these closures. The commissioner may set
6 aside and void only opening of seasons set by a regional board under this subsection.

7 * Sec. 13. AS 16.05.270 is amended to read:

8 **Sec. 16.05.270. Delegation of authority to commissioner or to a regional**
9 **fish and game management board.** (a) For the purpose of administering
10 AS 16.05.251 and 16.05.255, each board may delegate authority to the commissioner
11 **or to a regional fish and game board** to act in its behalf.

12 (b) If there is a conflict between the board and the commissioner on proposed
13 regulations, public hearings shall be held concerning the issues in question. If, after
14 the public hearings, the board and the commissioner continue to disagree, the issue
15 shall be certified in writing by the board and the commissioner to the governor who
16 shall make a decision. The decision of the governor is final.

17 * Sec. 14. AS 16.05.403 is amended to read:

18 **Sec. 16.05.403. Special licenses and permits.** (a) A resident hunting license,
19 a resident sport fishing license, a resident [SUBSISTENCE] fishing permit **for**
20 **personal and family use for sustenance,** or a resident personal use fishing permit
21 indicating that the purchaser is blind may be obtained from the department upon
22 payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon presentation of
23 either an affidavit of the applicant stating that the applicant cannot distinguish light
24 from darkness or an affidavit signed by a licensed physician or a licensed optometrist
25 stating that the applicant's central visual acuity does not exceed 20/200 in the better
26 eye with correcting lenses or that the applicant's widest diameter of visual field
27 subtends an angle no greater than 20 degrees.

28 (b) A resident who is a person with physical disabilities may obtain from the
29 department upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon
30 submission of satisfactory proof of physical disabilities a resident hunting license, a
31 resident sport fishing license, a resident [SUBSISTENCE] fishing permit **for personal**

1 and family use for sustenance, or a resident personal use fishing permit indicating
2 that the purchaser is a person with physical disabilities.

3 (c) A resident who is 65 years of age or older may obtain from the department
4 upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon submission
5 of satisfactory proof of age a resident hunting license, a resident sport fishing license,
6 a resident [SUBSISTENCE] fishing permit for personal and family use for
7 sustenance, or a resident personal use fishing permit indicating that the purchaser is
8 a person who is 65 years of age or older. This subsection does not limit the right of
9 a resident person who is 65 years of age or older to claim an exemption from hunting
10 or sport fishing license requirements under AS 16.05.400(b).

11 * Sec. 15. A 16.05.405(c) is amended to read:

12 (c) Notwithstanding AS 16.05.420(c), a resident holding a valid noncommercial
13 fishing license may take fish on behalf of a person who is blind, a person with
14 physical disabilities, or a person who is 65 years of age or older if the resident
15 possesses on the resident's person

16 (1) a document signed by the person on whose behalf the fish is taken,
17 stating that the resident possesses the person's sport fishing license, [SUBSISTENCE]
18 fishing permit for personal and family use for sustenance, personal use fishing
19 permit, or permanent identification card in order to take fish on behalf of that person;

20 (2) the person's

21 (A) resident sport fishing license issued under AS 16.05.403 or
22 permanent identification card issued under AS 16.05.400(b);

23 (B) resident [SUBSISTENCE] fishing permit for personal and
24 family use for sustenance issued under AS 16.05.403; or

25 (C) resident personal use fishing permit issued under
26 AS 16.05.403; and

27 (3) all other documents issued to the person that are required by law
28 as a condition of taking the fish being pursued.

29 * Sec. 16. AS 16.05.930(e) is amended to read:

30 (e) This chapter does not prevent the limited noncommercial
31 [TRADITIONAL] barter of fish and game taken for personal and family use for

1 sustenance [BY SUBSISTENCE HUNTING OR FISHING], except that the
2 commissioner may prohibit the barter of [SUBSISTENCE-TAKEN] fish and game by
3 regulation, emergency or otherwise, if a determination on the record is made that the
4 barter is resulting in a waste of the resource, damage to fish stocks or game
5 populations, or circumvention of fish or game management programs.

6 * Sec. 17. AS 16.05.940(2) is amended to read:

7 (2) "barter" means the exchange or trade of fish or game, or their parts,
8 taken for personal and family use for sustenance [SUBSISTENCE USES]

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

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

12 * Sec. 18. AS 16.05.940(5) is amended to read:

13 (5) "commercial fishing" means the taking, fishing for, or possession
14 of fish, shellfish, or other fishery resources with the intent of disposing of them for
15 profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid
16 fishing [SUBSISTENCE] permit for personal and family use for sustenance in
17 possession, if required by statute or regulation, is considered prima facie evidence of
18 commercial fishing if commercial fishing gear as specified by regulation is involved
19 in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

20 * Sec. 19. AS 16.05.940 is amended by adding a new paragraph to read:

21 (37) "fish and game dependent uses" means the noncommercial,
22 historical uses of fish and game by a resident for direct personal or family
23 consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and
24 selling of handicraft articles out of nonedible by-products of fish and game resources
25 taken for personal or family consumption, and for the limited noncommercial barter
26 or sharing for personal or family use for sustenance; in this paragraph, "family" means
27 persons related by blood, marriage, or adoption, and a person living in the household
28 on a permanent basis.

29 * Sec. 20. AS 16.10.380(b) is amended to read:

30 (b) In this section "user group" includes [, BUT IS NOT LIMITED TO,] sport
31 fishermen, processors, commercial fishermen, persons who fish for personal and

1 family use for sustenance [SUBSISTENCE FISHERMEN], and representatives of
2 local communities.

3 * Sec. 21. AS 16.10.750(a) is amended to read:

4 (a) The legislature finds that

5 (1) the salmon fishing industry is among the state's largest industries
6 and generates hundreds of millions of dollars and thousands of jobs each year; the
7 salmon fishery is vitally important to commercial, [SUBSISTENCE,] personal use, and
8 sport fishing interests, to persons who fish for personal and family use for
9 sustenance, and to the state's developing tourist industry;

10 (2) the state is committed to maintaining and enhancing its wild stocks
11 of salmon by careful management, by initiating a 20-year rebuilding program, and by
12 investing in the fishing industry;

13 (3) millions of Alaska salmon are being caught and injured by high
14 seas fisheries that intercept salmon contrary to state, federal, or international law; the
15 high seas interception of Alaska salmon defeats the state's management and rebuilding
16 programs, deprives the state of a return on its investment in the fishing industry, and
17 detrimentally affects personal and family uses of Alaska salmon for sustenance
18 [SUBSISTENCE] and sport fishing uses of Alaska salmon;

19 (4) vessels that engage in the high seas interception of salmon can
20 move relatively freely and undetected from region to region in the North Pacific and
21 thus are able to harvest whatever species is most readily available or most valuable;
22 by moving farther westward, a greater proportion of the take is Asian salmon; moving
23 eastward results in a greater proportion of the take being Alaska salmon; although
24 there is intermixing of Asian and North American salmon stocks, scientific evidence
25 proves that even a minimal harvest of salmon within the migratory range of each
26 species will contain Alaska salmon;

27 (5) the illegal taking of salmon detrimentally affects the Alaska fishing
28 industry; the illegal taking of Alaska salmon is of primary concern because of the
29 direct and immediate effect on the state; in addition, the illegal taking of Asian salmon
30 is also of concern because depletion of those stocks will ultimately result in a shifting
31 of high seas fishing efforts, both legal and illegal, to Alaska salmon;

1 (6) high seas interception of salmon occurs beyond the exclusive
2 economic zone of the United States, or through incursion within the exclusive
3 economic zone and the state's territorial sea, by vessels that are usually not registered
4 in this state; moreover, these vessels are not based in Alaska and can thus avoid
5 detection more easily than Alaska-based vessels; as a practical matter, it is extremely
6 difficult to directly or indirectly regulate the vessels themselves; it is therefore
7 necessary to prohibit activities within the state that give aid, comfort, and financial
8 incentives to high seas interception of salmon.

9 * Sec. 22. AS 16.10.800(1) is amended to read:

10 (1) "high seas interception," "interception," or a similar term means the
11 unauthorized catching, taking, or harvesting of salmon for other than sport, personal
12 and family use for sustenance [SUBSISTENCE], or personal use purposes [.]

13 (A) throughout the migratory range of each species, by a vessel
14 not registered under the laws of this state; or

15 (B) beyond the territorial sea of the state by a vessel registered
16 under the laws of the state;

17 * Sec. 23. AS 16.20.033(b) is amended to read:

18 (b) The Yakataga State Game Refuge is established to protect the

19 (1) fish and wildlife habitat and populations, including salmon
20 spawning and rearing habitat and critical goat and moose winter habitat;

21 (2) public uses of fish and wildlife and their habitat, particularly
22 commercial fishing, fishing for personal and family use for sustenance, and [.] sport
23 [., AND SUBSISTENCE] fishing, hunting, viewing, photography, and general public
24 recreation in a high quality environment; and

25 (3) the use and disposition of other resources when the activities are
26 not inconsistent with (1) and (2) of this subsection.

27 * Sec. 24. AS 16.20.033(f) is amended to read:

28 (f) The department shall allow commercial fishing, sport fishing, [AND
29 SUBSISTENCE] fishing for personal and family use for sustenance, and hunting
30 within the Yakataga State Game Refuge under regulations of the Board of Fisheries
31 and the Board of Game. The department shall also permit associated support activities

1 when necessary and consistent with AS 16.20.010 - 16.20.080 to support fishing and
2 hunting permitted under this section, including fish buying operations, aircraft support
3 including landing strips, and off-road vehicle use.

4 * Sec. 25. AS 16.20.090(a) is amended to read:

5 (a) The legislature recognizes that

6 (1) the Walrus Islands are the sole remaining place in the state where
7 walruses annually haul out on land and all similar "hauling grounds" in the state which
8 were formerly utilized have been abandoned by walruses due to excessive molestation
9 and slaughter;

10 (2) the Walrus Islands are uninhabited, and the walruses frequenting
11 them are not required by the state for personal and family use for sustenance
12 [SUBSISTENCE UTILIZATION];

13 (3) the Walrus Islands have great importance as a retreat for the Pacific
14 walrus from the standpoints of conservation, scientific value, and tourist interest;

15 (4) the Department of Natural Resources has taken appropriate action
16 to achieve transfer of title in the Walrus Islands to the state.

17 * Sec. 26. AS 16.20.615(d) is amended to read:

18 (d) The department shall permit existing [EXITING] cabins to remain,
19 personal and family use of fish and game for sustenance to continue,
20 [SUBSISTENCE AND] recreational uses to continue, and commercial uses such as
21 seal hunting and placer mining to continue, if appropriate under the management plan
22 adopted under (c) of this section to the extent that the activities are compatible with
23 the establishment of the Tugidak Island Critical Habitat Area.

24 * Sec. 27. AS 16.20.625(e) is amended to read:

25 (e) The department shall permit uses of the Redoubt Bay Critical Habitat Area
26 in a manner that is compatible with the purposes for which the critical habitat area is
27 established. The department shall permit the following public uses to continue without
28 further approval by the department unless the department determines that the use is not
29 compatible with the purposes for which the Redoubt Bay Critical Habitat Area is
30 established:

31 (1) hunting, including [SUBSISTENCE] hunting for personal and

1 family use for sustenance, trapping, fishing for personal and family use for
2 sustenance [AND SUBSISTENCE], commercial fishing, and sport fishing, including
3 the continued use of cabins for the purpose of hunting, trapping, and fishing;

4 (2) hiking, backpacking, and camping, including the use of campfires;

5 (3) cross-country skiing, snowmachining, boating, and the landing of
6 aircraft; and

7 (4) other related uses that are temporary in duration and have no
8 foreseeable adverse effects on vegetation, drainage, soil stability, or fish and game and
9 their habitat.

10 * Sec. 28. AS 16.40.120(c) is amended to read:

11 (c) The commissioner shall specify the expiration date of an acquisition permit
12 and may attach conditions to an acquisition permit, including conditions relating to the
13 time, place, and manner of harvest. Size, gear, place, time, licensing, and other
14 limitations applicable to sport harvest, commercial harvest, or [SUBSISTENCE]
15 harvest for personal and family use for sustenance of aquatic plants and shellfish do
16 not apply to a harvest with a permit issued under this section. The commissioner of
17 fish and game shall issue or deny a permit within 30 days after receiving an
18 application.

19 * Sec. 29. AS 16.40.120(d) is amended to read:

20 (d) The commissioner shall deny or restrict a permit under this section upon
21 finding that the proposed harvest will impair sustained yield of the species or will
22 unreasonably disrupt established uses of the resources by commercial, sport, or
23 personal use [, OR SUBSISTENCE] users and by persons who use the resources for
24 personal and family use for sustenance. The commissioner shall inform the Board
25 of Fisheries of any action taken on permit application: for species that support
26 commercial fisheries subject to limited entry under AS 16.43 and of any permits
27 denied because of unreasonable disruption of an established use. A denial of the permit
28 by the commissioner must contain the factual basis for the findings.

29 * Sec. 30. AS 16.40.120(f) is amended to read:

30 (f) Except as provided in (d) of this section or in a regulation adopted under
31 (e) of this section, the commissioner shall issue a permit if

- 1 (1) wild stock is necessary to meet the initial needs of farm or hatchery
2 stock;
- 3 (2) there are technological limitations on the propagation of culture
4 stock for the species sought;
- 5 (3) wild stock sought is not fully utilized by commercial fisheries,
6 sport fisheries, personal use [, OR SUBSISTENCE] fisheries, or by persons engaged
7 in personal and family use for sustenance; or
- 8 (4) wild stock is needed to maintain the gene pool of a hatchery or
9 aquatic farm.

10 * Sec. 31. AS 41.21.625(b) is amended to read:

11 (b) The governor shall appoint individuals to the Alaska Chilkat Bald Eagle
12 Preserve Advisory Council representing the following interests for a two-year term:

- 13 (1) a resident of the Haines Borough representing a conservation
14 organization;
- 15 (2) a representative of the United States Fish and Wildlife Service; and
- 16 (3) a member of the local [UPPER LYNN CANAL] fish and game
17 advisory committee for the area.

18 * Sec. 32. AS 16.05.258, 16.05.330(c), 16.05.940(8), 16.05.940(30), 16.05.940(31), and
19 16.05.940(32) are repealed.

20 * Sec. 33. Sections 3 and 5, ch. 1, SSSLA 1992, are repealed.

21 * Sec. 34. TRANSITION. (a) Notwithstanding the repeal of AS 16.05.258, by sec. 32 of
22 this Act, the areas outside of the nonsubsistence areas established by the Board of Fisheries
23 and the Board of Game shall constitute fish and game dependent use areas under
24 AS 16.16.020, added by sec. 2 of this Act, until the earlier of either the effective date of
25 regulations adopted by the Board of Fisheries and the Board of Game acting jointly to identify
26 fish and game dependent use areas under AS 16.16.020, added by sec. 2 of this Act, or two
27 years from the effective date of this Act.

28 (b) Notwithstanding the repeal and reenactment of AS 16.05.260 by sec. 12 of this
29 Act, a local fish and game advisory committee established before the effective date of this Act
30 that is active on the day before the effective date of this Act shall continue to operate under
31 the former provisions of AS 16.05.260 until the effective date of regulations adopted by the

1 Board of Fisheries and the Board of Game, acting jointly, that establish the local fish and
2 game advisory committees described in AS 16.05.260, as repealed and reenacted by sec. 12
3 of this Act. The Board of Fisheries and the Board of Game, acting jointly, shall appoint
4 persons to serve on the local fish and game advisory committees established under
5 AS 16.05.260, as repealed and reenacted by sec. 12 of this Act, immediately upon adoption
6 of regulations establishing the local fish and game advisory committees described in
7 AS 16.05.260, as repealed and reenacted by sec. 12 of this Act.

8 * **Sec. 35. INITIAL APPOINTMENT OF MEMBERS TO THE REGIONAL FISH AND**
9 **GAME BOARDS.** (a) Notwithstanding AS 16.05.260, as repealed and reenacted by sec. 12
10 of this Act, immediately upon the adoption of regulations by the Board of Fisheries and the
11 Board of Game, acting jointly, to define the boundaries of fish and game management regions
12 in the state, the governor shall solicit nominations from local fish and game advisory
13 committees in existence at that time for persons to serve on each of the regional fish and game
14 boards established under AS 16.05.260, as repealed and reenacted by sec. 12 of this Act.

15 (b) Notwithstanding AS 16.05.260(e), as repealed and reenacted by sec. 12 of this Act,
16 the governor shall appoint the initial members of each of the regional fish and game boards
17 to staggered terms in accordance with AS 39.05.055(7).

18 * **Sec. 36. REVISOR'S BILL.** The revisor of statutes shall prepare a bill for consideration
19 of the resource committees of the House of Representatives and the Senate of the Alaska State
20 Legislature that amends references to subsistence uses of fish and game outside of Title 16
21 of the Alaska Statutes to conform to the provisions of this Act. The bill shall be presented
22 to the resource committees by the 20th legislative day of the First Regular Session of the
23 Twenty-First Alaska State Legislature.

CS FOR HOUSE BILL NO. 406(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

4 (1) the ability to take fish and game for personal and family use for sustenance
5 is a fundamental right under the Constitution of the State of Alaska;

6 (2) the common use clause of the Constitution of the State of Alaska imposes
7 on the state a trust duty to manage the fish, game, and water resources of the state for the
8 benefit of all the people;

9 (3) the harvest of fish and game for personal and family use for sustenance is
10 the highest and best use of fish and game;

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

15 (5) although customs, traditions, and beliefs vary, these Alaskans share ideals

1 of respect for nature, the importance of using resources wisely, and the value and dignity of
2 a way of life in which they use Alaska's fish and game for a substantial portion of their
3 sustenance;

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

9 (7) the fish and game resources of Alaska have adequate biological and
10 reproductive capacity to provide an abundance of fish and game for all users;

11 (8) the harvest of fish and game for personal and family use for sustenance
12 does not constitute or affect interstate commerce and is not subject to regulation under the
13 commerce clause of the Constitution of the United States.

14 (b) It is the intent of the legislature to provide

15 (1) a preference for personal and family use of fish and game for sustenance
16 that parallels the Congressional intent underlying the subsistence preference under Title VIII
17 of the Alaska National Interest Lands Conservation Act (P.L. 96-487) but does not violate the
18 fundamental constitutional rights of Alaskans to sustenance, equal protection, and common use
19 of fish and game under the Constitution of the State of Alaska;

20 (2) a significant role for local fish and game advisory committees and regional
21 fish and game boards in the review of regulations governing the use of fish and game
22 resources;

23 (3) for a greater abundance of fish and game resources to serve as a source of
24 food for persons who are dependent on fish and game for personal and family use for
25 sustenance.

26 * Sec. 2. AS 16 is amended by adding a new chapter to read:

27 **Chapter 16. Use of Fish and Game for Sustenance.**

28 **Sec. 16.16.010. Preferred use of fish and game.** (a) The harvest of fish and
29 game for personal and family use for sustenance by residents is the highest and best
30 use of fish and game. The Board of Fisheries, the Board of Game, and the department
31 shall adopt regulations, policies, and management plans to implement a preference for

1 consumptive use of fish and game for personal and family use for sustenance over
2 other uses of fish and game.

3 (b) If the Board of Fisheries or the Board of Game determines that the
4 projected level of harvest of a fish stock or game population in an area would exceed
5 the sustainable level of harvest under the sustained yield principle, the appropriate
6 board shall allocate, notwithstanding AS 16.05.251(e), the harvestable portion of the
7 stock or population in that area among user groups in accordance with a ranking of
8 beneficial uses of the stock or population that assigns the highest preference to
9 consumptive use for personal and family use for sustenance.

10 **Sec. 16.16.020. Dependence on fish and game for sustenance.** (a) The
11 Board of Fisheries and the Board of Game acting jointly shall identify and define fish
12 and game dependent use areas. A fish and game dependent use area is an area where
13 dependence on fish and game for personal and family use for sustenance is the
14 principal characteristic of the economy and way of life of the area. In determining
15 whether dependence on fish and game for personal and family use for sustenance is
16 the principal characteristic of the economy and way of life of an area, the Board of
17 Fisheries and the Board of Game shall jointly consider the relative importance of
18 dependence on fish and game in the context of the totality of the following
19 socioeconomic characteristics of the area:

- 20 (1) the social and economic structure;
- 21 (2) the stability of the economy;
- 22 (3) the extent and kinds of employment for wages, including full-time,
23 part-time, temporary, and seasonal employment;
- 24 (4) the amount and distribution of cash income among those who live
25 in the area;
- 26 (5) the cost and availability of goods and services to those who live in
27 the area;
- 28 (6) the variety of fish and game species used by those who live in the
29 area;
- 30 (7) the seasonal cycle of economic activity;
- 31 (8) the percentage of those who live in the area participating in hunting

1 and fishing activities or using wild fish and game;

2 (9) the harvest levels of fish and game by those who live in the area;

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

5 (11) the geographic locations where those who live in the area hunt and
6 fish;

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

9 (13) the other sources of direct and indirect economic support available
10 in the area;

11 (14) additional similar factors the boards establish by regulation to be
12 relevant to a determination under this subsection.

13 (b) If the Board of Fisheries or the Board of Game, as appropriate, with the
14 concurrence of the department, determines that a shortage of a fish stock or game
15 population available for harvest in a fish and game dependent use area exists, the
16 board may establish a preference for fish or game dependent uses of the stock or
17 population and, consistent with sustained yield, reserve a sufficient portion of the stock
18 or population to provide a reasonable opportunity to satisfy the need for fish and game
19 dependent uses of the stock or population. A board shall make its determination of
20 whether sufficient fish or game resources exist in an area to provide a reasonable
21 opportunity to satisfy fish and game dependent uses of a stock or population based on
22 the recommendations of the regional fish and game board for the area and the local
23 fish and game advisory committees for the area. The preference established under this
24 subsection shall be extended to a person who is determined to be dependent on fish
25 and game for personal and family use for sustenance under (c) - (f) of this section.
26 In a time of shortage of fish or game resources, the appropriate board may adopt a
27 preference among beneficial uses of fish and game in a region or area by requiring that
28 the flesh or meat of fish and game be used within the region or area where the fish or
29 game was taken.

30 (c) A person is dependent on fish and game for personal and family use for
31 sustenance if the person

1 (1) possesses a \$5 resident hunting, trapping, and sport fishing license
2 issued under AS 16.05.340(a)(6); and

3 (2) submits to the regional fish and game board for the region in which
4 the person lives a signed written statement that the person

5 (A) is dependent on fish and game for personal and family use
6 for sustenance; or

7 (B) has no alternate means of sustenance as the result of

8 (i) the absence of a cash-based economy in the area
9 where the person lives; or

10 (ii) the person's decision to adopt a fish and game
11 dependent life style.

12 (d) Each regional fish and game board shall review the written statements
13 submitted by persons asserting a dependence on fish and game for personal and family
14 use for sustenance and make recommendations as to whether the person is entitled to
15 a preference under (b) of this section. A regional board may hold a hearing to gather
16 additional information regarding whether a person is dependent on fish and game for
17 personal and family use for sustenance. Each regional board shall forward
18 recommendations made by the regional board under this subsection and additional
19 information collected by the regional board to the Board of Fisheries and the Board
20 of Game.

21 (e) The Board of Fisheries and the Board of Game, acting jointly, shall make
22 the final determination as to who is entitled to the preference authorized under (b) of
23 this section. The statewide boards shall defer to the recommendations of the regional
24 fish and game boards unless a person disputes the recommendation made by a regional
25 board. The statewide boards shall hold a hearing subject to AS 44.62.330 - 44.62.630
26 to make a final determination of whether the person is dependent on fish and game for
27 personal and family use for sustenance.

28 (f) A person who is determined by the Board of Fisheries and the Board of
29 Game to be dependent on fish and game for personal and family use for sustenance
30 may take fish and game in any location in the state where a preference for the harvest
31 of fish or game for personal and family use for sustenance has been established under

1 (b) of this section.

2 (g) The Board of Fisheries and the Board of Game shall adopt regulations
3 governing the allowable level of noncommercial barter and sharing of fish and game
4 resources taken for personal and family use for sustenance. The boards shall set the
5 level of allowable noncommercial barter at a documented historical level that does not
6 subject barter of fish and game taken for personal and family use for sustenance to
7 federal regulation under the commerce clause of the Constitution of the United States.

8 **Sec. 16.16.095. Definitions.** In this chapter,

9 (1) "preference" means an advantage, but not necessarily an exclusive
10 privilege, conferred on a use of fish and game over other uses through the adoption
11 of seasons, areas, bag limits, methods and means, and other regulations that take into
12 consideration the consumptive uses and harvest methods of the user groups;

13 (2) "principal" means more than 50 percent;

14 (3) "reasonable opportunity" means an opportunity, as determined by
15 the Board of Fisheries or the Board of Game, as appropriate, that allows a person to
16 participate in a fishery or hunt that provides a normally diligent participant with a
17 reasonable expectation of success of taking of fish or game; "reasonable opportunity"
18 does not mean a guarantee of taking fish or game;

19 (4) "shortage" means the amount of a specific fish stock or game
20 population available for harvest is not sufficient to provide a reasonable opportunity
21 to take the stock or population for the sustenance needs of persons who are found to
22 be dependent on the fish and game for personal and family use for sustenance;

23 (5) "sustained yield" means a level of utilization of a fish or game
24 population for consumptive uses by humans that is capable of being maintained in
25 perpetuity.

26 * Sec. 3. AS 16.05.090(c) is amended to read:

27 (c) There is established in the department a section of fish and game
28 dependent use [SUBSISTENCE HUNTING AND FISHING].

29 * Sec. 4. AS 16.05.094 is amended to read:

30 **Sec. 16.05.094. Duties of section of fish and game dependent use**
31 **[SUBSISTENCE HUNTING AND FISHING].** The section of fish and game

1 dependent use [SUBSISTENCE HUNTING AND FISHING] shall

2 (1) compile existing data and conduct studies to gather information,
3 including data from persons dependent on fish and game for personal and family
4 use for sustenance [SUBSISTENCE USERS], on all aspects of the role of
5 [SUBSISTENCE] hunting and fishing for fish and game dependent use in the lives
6 of the residents of the state;

7 (2) quantify the amount, nutritional value, and extent of dependence on
8 food acquired through [SUBSISTENCE] hunting and fishing for fish and game
9 dependent use;

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

12 (4) assist the department, the Board of Fisheries, and the Board of
13 Game in determining what uses of fish and game, as well as which users and what
14 methods, should be termed fish and game dependent [SUBSISTENCE] uses, users,
15 and methods;

16 (5) evaluate the impact of state and federal laws and regulations on
17 [SUBSISTENCE] hunting and fishing for fish and game dependent use and, when
18 corrective action is indicated, make recommendations to the department;

19 (6) make recommendations to the Board of Game and the Board of
20 Fisheries regarding adoption, amendment, and repeal of regulations affecting
21 [SUBSISTENCE] hunting and fishing for fish and game dependent use;

22 (7) participate with other divisions in the preparation of statewide and
23 regional management plans so that those plans recognize and incorporate the needs of
24 [SUBSISTENCE] users of fish and game for fish and game dependent use.

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

26 **Sec. 16.05.245. Review of regulatory proposals.** (a) Notwithstanding
27 AS 44.62, each proposal for a regulation to be adopted by the Board of Fisheries or
28 the Board of Game shall be submitted to local fish and game advisory committees and
29 regional fish and game boards that may be affected by the proposal. Each advisory
30 committee and regional board may review the proposed regulation and submit
31 comments and recommendations regarding the proposal to the Board of Fisheries or

1 the Board of Game, as appropriate. This subsection does not apply to emergency
2 regulations considered by either the Board of Fisheries or the Board of Game.

3 (b) The Board of Fisheries and the Board of Game shall carefully review each
4 recommendation made by a regional fish and game board and shall defer to the
5 recommendation of the regional board, unless

6 (1) there is a contrary recommendation from another regional board;

7 (2) the recommendation is not consistent with the conservation of the
8 fish or game resource or with the sustained yield principle;

9 (3) the recommendation involves issues of statewide significance; or

10 (4) the recommendation involves conflicts between regional boards.

11 (c) If the Board of Fisheries or the Board of Game chooses not to follow the
12 recommendation of an advisory committee or a regional board, the appropriate
13 statewide board shall inform the advisory committee or regional board of the action
14 and state the reasons for not following the recommendation.

15 (d) Subject to (a) and (b) of this section, the Board of Fisheries and the Board
16 of Game may consider and adopt any proposal for a regulation that is submitted for
17 adoption, even if comments or recommendations regarding the proposal are not
18 received from an advisory committee or a regional board.

19 * Sec. 6. AS 16.05.251(a) is amended to read:

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

22 (1) setting apart fish reserve areas, refuges, and sanctuaries in the
23 waters of the state over which it has jurisdiction, subject to the approval of the
24 legislature;

25 (2) establishing open and closed seasons and areas for the taking of
26 fish; if consistent with resource conservation and development goals, the board may
27 adopt regulations establishing restricted seasons and areas necessary for persons 60
28 years of age and older to participate in sport fishing, personal use fishing, or
29 [SUBSISTENCE] fishing for personal and family use for sustenance;

30 (3) setting quotas, bag limits, harvest levels, and sex and size
31 limitations on the taking of fish;

1 (4) establishing the means and methods employed in the pursuit,
2 capture, and transport of fish;

3 (5) establishing marking and identification requirements for means used
4 in pursuit, capture, and transport of fish;

5 (6) classifying as commercial fish, sport fish, guided sport fish,
6 personal use fish, [SUBSISTENCE FISH,] or predators or other categories essential
7 for regulatory purposes;

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

10 (8) investigating and determining the extent and effect of disease,
11 predation, and competition among fish in the state, exercising control measures
12 considered necessary to the resources of the state;

13 (9) prohibiting and regulating the live capture, possession, transport, or
14 release of native or exotic fish or their eggs;

15 (10) establishing seasons, areas, quotas, and methods of harvest for
16 aquatic plants;

17 (11) establishing the times and dates during which the issuance of
18 fishing licenses, permits, and registrations and the transfer of permits and registrations
19 between registration areas is allowed; however, this paragraph does not apply to
20 permits issued or transferred under AS 16.43;

21 (12) regulating commercial fishing, sport fishing, guided sport fishing,
22 fishing for personal and family use for sustenance [SUBSISTENCE], and personal
23 use fishing as needed for the conservation, development, and utilization of fisheries;

24 (13) requiring, in a fishery, observers on board fishing vessels, as
25 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined
26 in AS 16.05.475(c), after making a written determination that an on-board observer
27 program

28 (A) is the only practical data-gathering or enforcement
29 mechanism for that fishery;

30 (B) will not unduly disrupt the fishery;

31 (C) can be conducted at a reasonable cost; and

1 (D) can be coordinated with observer programs of other
2 agencies, including the National Marine Fisheries Service, North Pacific
3 Fishery Management Council, and the International Pacific Halibut
4 Commission;

5 (14) establishing nonexclusive, exclusive, and superexclusive
6 registration and use areas for regulating commercial fishing;

7 (15) regulating resident or nonresident sport fishermen as needed for
8 the conservation, development, and utilization of fishery resources;

9 (16) requiring unlicensed fishing vessels present in or transiting the
10 waters of the state to report to the department the quantity, species, and origin of fish
11 on board; in this paragraph, "unlicensed fishing vessel" means a fishing vessel that is
12 not licensed under AS 16.05.490 - 16.05.530.

13 * Sec. 7. AS 16.05.251(d) is amended to read:

14 (d) Regulations adopted under (a) of this section must, consistent with
15 sustained yield and the provisions of AS 16.16.020 [AS 16.05.258], provide a fair and
16 reasonable opportunity for the taking of fishery resources by personal use, sport, and
17 commercial fishermen.

18 * Sec. 8. AS 16.05.255(a) is amended to read:

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

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

24 (2) establishing open and closed seasons and areas for the taking of
25 game;

26 (3) establishing the means and methods employed in the pursuit,
27 capture, taking, and transport of game, including regulations, consistent with resource
28 conservation and development goals, establishing means and methods that may be
29 employed by persons with physical disabilities;

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

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

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

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

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

9 (9) establishing the times and dates during which the issuance of game
10 licenses, permits, and registrations and the transfer of permits and registrations between
11 registration areas and game management units or subunits is allowed;

12 (10) regulating sport hunting and [SUBSISTENCE] hunting for
13 personal and family use for sustenance as needed for the conservation, development,
14 and utilization of game;

15 (11) taking game to ensure public safety.

16 * Sec. 9. AS 16.05.255(d) is amended to read:

17 (d) Regulations adopted under (a) of this section must provide that, consistent
18 with the provisions of AS 16.16.020 [AS 16.05.258], the taking of moose, deer, elk,
19 and caribou by residents for personal or family consumption has preference over taking
20 by nonresidents.

21 * Sec. 10. AS 16.05.255(f) is amended to read:

22 (f) The Board of Game may not significantly reduce the taking of an identified
23 big game prey population by adopting regulations relating to restrictions on harvest or
24 access to the population, or to management of the population by customary
25 adjustments in seasons, bag limits, open and closed areas, methods and means, or by
26 other customary means authorized under (a) of this section, unless the board has
27 adopted regulations, or has scheduled for adoption at the next regularly scheduled
28 meeting of the board regulations, that provide for intensive management to increase
29 the take of the population for human harvest consistent with (e) of this section. This
30 subsection does not apply if the board

31 (1) determines that intensive management would be

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- (A) ineffective, based on scientific information;
- (B) inappropriate due to land ownership patterns; or
- (C) against the best interest of persons who take game for

personal and family use for sustenance [SUBSISTENCE USES]; or

(2) declares that a biological emergency exists and takes immediate action to protect or maintain the big game prey population in conjunction with the scheduling for adoption of those regulations that are necessary to implement (e) of this section.

* Sec. 11. AS 16.05.259 is amended to read:

Sec. 16.05.259. No personal and family use [SUBSISTENCE] defense. In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense that the taking was done for personal and family use for sustenance [SUBSISTENCE USES].

* Sec. 12. AS 16.05.260 is repealed and reenacted to read:

Sec. 16.05.260. Local advisory committees and regional boards. (a) The Board of Fisheries and the Board of Game, acting jointly, shall establish a maximum of five fish and game management regions in the state.

(b) The Board of Fisheries and the Board of Game, acting jointly, shall adopt regulations establishing a maximum of nine fish and game areas in each fish and game management region established under (a) of this section that together comprise the whole of the region and shall establish a local fish and game advisory committee for each area. The advisory committees shall be composed of persons well informed on the fish or game resources of the area. The boards shall set the number of members and the terms of each of the members of the advisory committees and shall designate one member of each committee as chair.

(c) A local fish and game advisory committee may

- (1) hold public hearings on fish or game matters;
- (2) make recommendations regarding fish and game matters and fish and game regulatory proposals to the regional fish and game board for the region in which the committee is located and to the Board of Fisheries, the Board of Game, and the department;

1 (3) advise the Board of Fisheries and the Board of Game as to the
2 appropriate criteria for determining whether a person is dependent on fish and game
3 for personal and family use for sustenance under AS 16.16.020.

4 (d) Recommendations from the local fish and game advisory committees on
5 regulatory proposals and other fish and game matters shall be forwarded to the
6 appropriate regional and statewide boards for consideration.

7 (e) For each fish and game management region established under (a) of this
8 section, there is established a regional fish and game board. Each board consists of
9 nine members appointed by the governor. The local fish and game advisory
10 committees may submit the names of persons whom the committees recommend for
11 appointment to the regional boards. The governor shall appoint each member on the
12 basis of interest in public affairs, good judgment, knowledge, and ability, and with a
13 view to providing diversity of interest and points of view in the membership. The
14 members shall be residents of the state and shall be appointed without regard to
15 political affiliation or geographical location of residence. The members of the boards
16 appointed by the governor are subject to confirmation by the legislature in joint
17 session. The members of the boards serve staggered terms of three years. The terms
18 of members of the boards begin on July 1. Notwithstanding AS 39.05.080(1), by April
19 1 of the calendar year in which the term expires, the governor shall appoint a person
20 to fill the vacancy that will arise on a board due to expiration of the term of a member
21 of the board and submit the name of the person to the legislature for confirmation. If
22 a vacancy arises on the board, the governor shall, within 30 days after the vacancy
23 arises, appoint a person to serve the balance of the unexpired term and submit the
24 name of the person to the legislature for confirmation. A person appointed to fill the
25 balance of an unexpired term shall serve on the board from the date of appointment
26 until the earlier of the expiration of the term or the failure of the legislature to confirm
27 the person under AS 39.05.080. Members of a regional fish and game board serve
28 without compensation but are entitled to per diem and travel expenses authorized for
29 boards and commissions under AS 39.20.180.

30 (f) The governor may only remove a member of a regional fish and game
31 board for inefficiency, neglect of duty, or misconduct in office, or because the

1 member, while serving on the regional board, is convicted of a misdemeanor for
2 violating a statute or regulation related to fish or game or is convicted of a felony.
3 The governor shall deliver to the member a written copy of the charges and give the
4 member an opportunity to be heard in person or through counsel at a public hearing
5 before the governor or a designee upon at least 10 days' notice by registered mail.
6 The member may confront and cross-examine adverse witnesses. Upon removal, the
7 governor or a designee shall file in the proper state office the findings and a complete
8 statement of all charges made against the member.

9 (g) A majority of the members of a regional fish and game board constitutes
10 a quorum for the transaction of business, for the performance of any duty, and for the
11 exercise of any power. A majority of the full board membership is required to carry
12 all motions, regulations, and resolutions.

13 (h) Each regional fish and game board may

14 (1) exercise authority delegated to it by the Board of Fisheries or the
15 Board of Game;

16 (2) hold public hearings on fish and game matters;

17 (3) make recommendations regarding fish and game matters and fish
18 and game regulatory proposals to the Board of Fisheries, the Board of Game, and the
19 department;

20 (4) advise the Board of Fisheries and the Board of Game as to the
21 appropriate criteria for determining whether a person is dependent on fish and game
22 for personal and family use for sustenance under AS 16.16.020.

23 (i) The regional fish and game boards shall carefully review each
24 recommendation made by a local fish and game advisory committee within its region
25 regarding regulatory proposals and other fish and game matters. If the regional board
26 does not adopt or concur in the proposal of the advisory committee, the board shall
27 inform the advisory committee of its decision and state the reasons for its action.

28 * Sec. 13. AS 16.05.270 is amended to read:

29 **Sec. 16.05.270. Delegation of authority to commissioner or to a regional**
30 **fish and game board. (a) For the purpose of administering AS 16.05.251 and**
31 **16.05.255, each board may delegate authority to the commissioner or to a regional**

1 fish and game board to act in its behalf.

2 (b) If there is a conflict between the board and the commissioner on proposed
3 regulations, public hearings shall be held concerning the issues in question. If, after
4 the public hearings, the board and the commissioner continue to disagree, the issue
5 shall be certified in writing by the board and the commissioner to the governor who
6 shall make a decision. The decision of the governor is final.

7 * Sec. 14. AS 16.05.403 is amended to read:

8 Sec. 16.05.403. **Special licenses and permits.** (a) A resident hunting license,
9 a resident sport fishing license, a resident [SUBSISTENCE] fishing permit for
10 personal and family use for sustenance, or a resident personal use fishing permit
11 indicating that the purchaser is blind may be obtained from the department upon
12 payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon presentation of
13 either an affidavit of the applicant stating that the applicant cannot distinguish light
14 from darkness or an affidavit signed by a licensed physician or a licensed optometrist
15 stating that the applicant's central visual acuity does not exceed 20/200 in the better
16 eye with correcting lenses or that the applicant's widest diameter of visual field
17 subtends an angle no greater than 20 degrees.

18 (b) A resident who is a person with physical disabilities may obtain from the
19 department upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon
20 submission of satisfactory proof of physical disabilities a resident hunting license, a
21 resident sport fishing license, a resident [SUBSISTENCE] fishing permit for personal
22 and family use for sustenance, or a resident personal use fishing permit indicating
23 that the purchaser is a person with physical disabilities.

24 (c) A resident who is 65 years of age or older may obtain from the department
25 upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon submission
26 of satisfactory proof of age a resident hunting license, a resident sport fishing license,
27 a resident [SUBSISTENCE] fishing permit for personal and family use for
28 sustenance, or a resident personal use fishing permit indicating that the purchaser is
29 a person who is 65 years of age or older. This subsection does not limit the right of
30 a resident person who is 65 years of age or older to claim an exemption from hunting
31 or sport fishing license requirements under AS 16.05.400(b).

1 * Sec. 15. A 16.05.405(c) is amended to read:

2 (c) Notwithstanding AS 16.05.420(c), a resident holding a valid noncommercial
3 fishing license may take fish on behalf of a person who is blind, a person with
4 physical disabilities, or a person who is 65 years of age or older if the resident
5 possesses on the resident's person

6 (1) a document signed by the person on whose behalf the fish is taken,
7 stating that the resident possesses the person's sport fishing license, [SUBSISTENCE]
8 fishing permit for personal and family use for sustenance, personal use fishing
9 permit, or permanent identification card in order to take fish on behalf of that person;

10 (2) the person's

11 (A) resident sport fishing license issued under AS 16.05.403 or
12 permanent identification card issued under AS 16.05.400(b);

13 (B) resident [SUBSISTENCE] fishing permit for personal and
14 family use for sustenance issued under AS 16.05.403; or

15 (C) resident personal use fishing permit issued under
16 AS 16.05.403; and

17 (3) all other documents issued to the person that are required by law
18 as a condition of taking the fish being pursued.

19 * Sec. 16. AS 16.05.930(e) is amended to read:

20 (e) This chapter does not prevent the limited noncommercial
21 [TRADITIONAL] barter of fish and game taken for personal and family use for
22 sustenance [BY SUBSISTENCE HUNTING OR FISHING], except that the
23 commissioner may prohibit the barter of [SUBSISTENCE-TAKEN] fish and game by
24 regulation, emergency or otherwise, if a determination on the record is made that the
25 barter is resulting in a waste of the resource, damage to fish stocks or game
26 populations, or circumvention of fish or game management programs.

27 * Sec. 17. AS 16.05.940(2) is amended to read:

28 (2) "barter" means the exchange or trade of fish or game, or their parts,
29 taken for personal and family use for sustenance [SUBSISTENCE USES]

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

31 (B) for other food or for nonedible items other than money if

1 the exchange is of a limited and noncommercial nature;

2 * Sec. 18. AS 16.05.940(5) is amended to read:

3 (5) "commercial fishing" means the taking, fishing for, or possession
4 of fish, shellfish, or other fishery resources with the intent of disposing of them for
5 profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid
6 fishing [SUBSISTENCE] permit for personal and family use for sustenance in
7 possession, if required by statute or regulation, is considered prima facie evidence of
8 commercial fishing if commercial fishing gear as specified by regulation is involved
9 in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

10 * Sec. 19. AS 16.05.940 is amended by adding a new paragraph to read:

11 (37) "fish and game dependent uses" means the noncommercial,
12 historical uses of fish and game by a resident for direct personal or family
13 consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and
14 selling of handicraft articles out of nonedible by-products of fish and game resources
15 taken for personal or family consumption, and for the limited noncommercial barter
16 or sharing for personal or family use for sustenance; in this paragraph, "family" means
17 persons related by blood, marriage, or adoption, and a person living in the household
18 on a permanent basis.

19 * Sec. 20. AS 16.10.380(b) is amended to read:

20 (b) In this section "user group" includes [, BUT IS NOT LIMITED TO,] sport
21 fishermen, processors, commercial fishermen, persons who fish for personal and
22 family use for sustenance [SUBSISTENCE FISHERMEN], and representatives of
23 local communities.

24 * Sec. 21. AS 16.10.750(a) is amended to read:

25 (a) The legislature finds that

26 (1) the salmon fishing industry is among the state's largest industries
27 and generate; hundreds of millions of dollars and thousands of jobs each year; the
28 salmon fishery is vitally important to commercial, [SUBSISTENCE,] personal use, and
29 sport fishing interests, to persons who fish for personal and family use for
30 sustenance, and to the state's developing tourist industry;

31 (2) the state is committed to maintaining and enhancing its wild stocks

1 of salmon by careful management, by initiating a 20-year rebuilding program, and by
2 investing in the fishing industry;

3 (3) millions of Alaska salmon are being caught and injured by high
4 seas fisheries that intercept salmon contrary to state, federal, or international law; the
5 high seas interception of Alaska salmon defeats the state's management and rebuilding
6 programs, deprives the state of a return on its investment in the fishing industry, and
7 detrimentally affects personal and family uses of Alaska salmon for sustenance
8 [SUBSISTENCE] and sport fishing uses of Alaska salmon;

9 (4) vessels that engage in the high seas interception of salmon can
10 move relatively freely and undetected from region to region in the North Pacific and
11 thus are able to harvest whatever species is most readily available or most valuable;
12 by moving farther westward, a greater proportion of the take is Asian salmon; moving
13 eastward results in a greater proportion of the take being Alaska salmon; although
14 there is intermixing of Asian and North American salmon stocks, scientific evidence
15 proves that even a minimal harvest of salmon within the migratory range of each
16 species will contain Alaska salmon;

17 (5) the illegal taking of salmon detrimentally affects the Alaska fishing
18 industry; the illegal taking of Alaska salmon is of primary concern because of the
19 direct and immediate effect on the state; in addition, the illegal taking of Asian salmon
20 is also of concern because depletion of those stocks will ultimately result in a shifting
21 of high seas fishing efforts, both legal and illegal, to Alaska salmon;

22 (6) high seas interception of salmon occurs beyond the exclusive
23 economic zone of the United States, or through incursion within the exclusive
24 economic zone and the state's territorial sea, by vessels that are usually not registered
25 in this state; moreover, these vessels are not based in Alaska and can thus avoid
26 detection more easily than Alaska-based vessels; as a practical matter, it is extremely
27 difficult to directly or indirectly regulate the vessels themselves; it is therefore
28 necessary to prohibit activities within the state that give aid, comfort, and financial
29 incentives to high seas interception of salmon.

30 * Sec. 22. AS 16.10.800(1) is amended to read:

31 (1) "high seas interception," "interception," or a similar term means the

1 unauthorized catching, taking, or harvesting of salmon for other than sport, personal
2 and family use for sustenance [SUBSISTENCE], or personal use purposes [.]

3 (A) throughout the migratory range of each species, by a vessel
4 not registered under the laws of this state; or

5 (B) beyond the territorial sea of the state by a vessel registered
6 under the laws of the state;

7 * Sec. 23. AS 16.20.033(b) is amended to read:

8 (b) The Yakataga State Game Refuge is established to protect the

9 (1) fish and wildlife habitat and populations, including salmon
10 spawning and rearing habitat and critical goat and moose winter habitat;

11 (2) public uses of fish and wildlife and their habitat, particularly
12 commercial fishing, fishing for personal and family use for sustenance, and [.] sport
13 [, AND SUBSISTENCE] fishing, hunting, viewing, photography, and general public
14 recreation in a high quality environment; and

15 (3) the use and disposition of other resources when the activities are
16 not inconsistent with (1) and (2) of this subsection.

17 * Sec. 24. AS 16.20.033(f) is amended to read:

18 (f) The department shall allow commercial fishing, sport fishing, [AND
19 SUBSISTENCE] fishing for personal and family use for sustenance, and hunting
20 within the Yakataga State Game Refuge under regulations of the Board of Fisheries
21 and the Board of Game. The department shall also permit associated support activities
22 when necessary and consistent with AS 16.20.010 - 16.20.080 to support fishing and
23 hunting permitted under this section, including fish buying operations, aircraft support
24 including landing strips, and off-road vehicle use.

25 * Sec. 25. AS 16.20.090(a) is amended to read:

26 (a) The legislature recognizes that

27 (1) the Walrus Islands are the sole remaining place in the state where
28 walrus annually haul out on land and all similar "hauling grounds" in the state which
29 were formerly utilized have been abandoned by walrus due to excessive molestation
30 and slaughter;

31 (2) the Walrus Islands are uninhabited, and the walrus frequenting

1 them are not required by the state for personal and family use for sustenance
2 [SUBSISTENCE UTILIZATION];

3 (3) the Walrus Islands have great importance as a retreat for the Pacific
4 walrus from the standpoints of conservation, scientific value, and tourist interest;

5 (4) the Department of Natural Resources has taken appropriate action
6 to achieve transfer of title in the Walrus Islands to the state.

7 * Sec. 26. AS 16.20.615(d) is amended to read:

8 (d) The department shall permit existing [EXITING] cabins to remain,
9 personal and family use of fish and game for sustenance to continue,
10 [SUBSISTENCE AND] recreational uses to continue, and commercial uses such as
11 seal hunting and placer mining to continue, if appropriate under the management plan
12 adopted under (c) of this section to the extent that the activities are compatible with
13 the establishment of the Tugidak Island Critical Habitat Area.

14 * Sec. 27. AS 16.20.625(e) is amended to read:

15 (e) The department shall permit uses of the Redoubt Bay Critical Habitat Area
16 in a manner that is compatible with the purposes for which the critical habitat area is
17 established. The department shall permit the following public uses to continue without
18 further approval by the department unless the department determines that the use is not
19 compatible with the purposes for which the Redoubt Bay Critical Habitat Area is
20 established:

21 (1) hunting, including [SUBSISTENCE] hunting for personal and
22 family use for sustenance, trapping, fishing for personal and family use for
23 sustenance [AND SUBSISTENCE], commercial fishing, and sport fishing, including
24 the continued use of cabins for the purpose of hunting, trapping, and fishing;

25 (2) hiking, backpacking, and camping, including the use of campfires;

26 (3) cross-country skiing, snowmachining, boating, and the landing of
27 aircraft; and

28 (4) other related uses that are temporary in duration and have no
29 foreseeable adverse effects on vegetation, drainage, soil stability, or fish and game and
30 their habitat.

31 * Sec. 28. AS 16.40.120(c) is amended to read:

1 (c) The commissioner shall specify the expiration date of an acquisition permit
2 and may attach conditions to an acquisition permit, including conditions relating to the
3 time, place, and manner of harvest. Size, gear, place, time, licensing, and other
4 limitations applicable to sport harvest, commercial harvest, or [SUBSISTENCE]
5 harvest for personal and family use for sustenance of aquatic plants and shellfish do
6 not apply to a harvest with a permit issued under this section. The commissioner of
7 fish and game shall issue or deny a permit within 30 days after receiving an
8 application.

9 * Sec. 29. AS 16.40.120(d) is amended to read:

10 (d) The commissioner shall deny or restrict a permit under this section upon
11 finding that the proposed harvest will impair sustained yield of the species or will
12 unreasonably disrupt established uses of the resources by commercial, sport, or
13 personal use [, OR SUBSISTENCE] users and by persons who use the resources for
14 personal and family use for sustenance. The commissioner shall inform the Board
15 of Fisheries of any action taken on permit applications for species that support
16 commercial fisheries subject to limited entry under AS 16.43 and of any permits
17 denied because of unreasonable disruption of an established use. A denial of the permit
18 by the commissioner must contain the factual basis for the findings.

19 * Sec. 30. AS 16.40.120(f) is amended to read:

20 (f) Except as provided in (d) of this section or in a regulation adopted under
21 (e) of this section, the commissioner shall issue a permit if

22 (1) wild stock is necessary to meet the initial needs of farm or hatchery
23 stock;

24 (2) there are technological limitations on the propagation of culture
25 stock for the species sought;

26 (3) wild stock sought is not fully utilized by commercial fisheries,
27 sport fisheries, personal use [, OR SUBSISTENCE] fisheries, or by persons engaged
28 in personal and family use for sustenance; or

29 (4) wild stock is needed to maintain the gene pool of a hatchery or
30 aquatic farm.

31 * Sec. 31. AS 41.21.625(b) is amended to read:

1 (b) The governor shall appoint individuals to the Alaska Chilkat Bald Eagle
2 Preserve Advisory Council representing the following interests for a two-year term:

3 (1) a resident of the Haines Borough representing a conservation
4 organization;

5 (2) a representative of the United States Fish and Wildlife Service; and

6 (3) a member of the local [UPPER LYNN CANAL] fish and game
7 advisory committee for the area.

8 * Sec. 32. AS 16.05.258, 16.05.330(c), 16.05.940(7), 16.05.940(8), 16.05.940(27),
9 16.05.940(30), 16.05.940(31), and 16.05.940(32) are repealed.

10 * Sec. 33. Sections 3 and 5, ch. 1, SSSLA 1992, are repealed.

11 * Sec. 34. TRANSITION. (a) Notwithstanding the repeal of AS 16.05.258, by sec. 32 of
12 this Act, the areas outside of the nonsubsistence areas established by the Board of Fisheries
13 and the Board of Game shall constitute fish and game dependent use areas under
14 AS 16.16.020, added by sec. 2 of this Act, until the earlier of either the effective date of
15 regulations adopted by the Board of Fisheries and the Board of Game acting jointly to identify
16 fish and game dependent use areas under AS 16.16.020, added by sec. 2 of this Act, or two
17 years from the effective date of this section.

18 (b) Notwithstanding the repeal and reenactment of AS 16.05.260 by sec. 12 of this
19 Act, a local fish and game advisory committee established before the effective date of sec. 12
20 of this Act that is active on the day before the effective date of sec. 12 of this Act shall
21 continue to operate under the former provisions of AS 16.05.260 until the effective date of
22 regulations adopted by the Board of Fisheries and the Board of Game, acting jointly, that
23 establish the local fish and game advisory committees described in AS 16.05.260, as repealed
24 and reenacted by sec. 12 of this Act. The Board of Fisheries and the Board of Game, acting
25 jointly, shall appoint persons to serve on the local fish and game advisory committees
26 established under AS 16.05.260, as repealed and reenacted by sec. 12 of this Act, immediately
27 upon adoption of regulations establishing the local fish and game advisory committees
28 described in AS 16.05.260, as repealed and reenacted by sec. 12 of this Act.

29 * Sec. 35. INITIAL APPOINTMENT OF MEMBERS TO THE REGIONAL FISH AND
30 GAME BOARDS. (a) Notwithstanding AS 16.05.260, as repealed and reenacted by sec. 12
31 of this Act, immediately upon the adoption of regulations by the Board of Fisheries and the

1 Board of Game, acting jointly, to define the boundaries of fish and game management regions
2 in the state, the governor shall solicit nominations from local fish and game advisory
3 committees in existence at that time for persons to serve on each of the regional fish and game
4 boards established under AS 16.05.260, as repealed and reenacted by sec. 12 of this Act.

5 (b) Notwithstanding AS 16.05.260(e), as repealed and reenacted by sec. 12 of this Act,
6 the governor shall appoint the initial members of each of the regional fish and game boards
7 to staggered terms in accordance with AS 39.05.055(7).

8 * Sec. 36. REVISOR'S BILL. The revisor of statutes shall prepare a bill for consideration
9 of the resource committees of the House of Representatives and the Senate of the Alaska State
10 Legislature that amends references to subsistence uses of fish and game outside of Title 16
11 of the Alaska Statutes to conform to the provisions of this Act. The bill shall be presented
12 to the resource committees by the 20th legislative day of the next regular session of the
13 Alaska State Legislature following the effective date of this section.

14 * Sec. 37. ADVISORY VOTE ON PREFERENCE FOR USE OF FISH AND GAME FOR
15 PERSONAL AND FAMILY USE FOR SUSTENANCE. The lieutenant governor shall place
16 before the qualified voters of the state at the next primary election a question advisory to the
17 legislature as to whether the legislature should establish a preference for use of fish and game
18 for personal and family use for sustenance. The question shall appear on the ballot in the
19 following form:

20 Q U E S T I O N

21 Shall a law (HB 406) passed by the legislature
22 which grants a preference in times of shortage
23 for use of fish and game for personal and family
24 use for sustenance take effect and shall the
25 federal law (Alaska National Interest Lands
26 Conservation Act) be amended to conform to
27 state law regarding use of fish and game?

28 Yes [] No []

29 * Sec. 38. Sections 1 - 36 of this Act are repealed upon certification by the lieutenant
30 governor that a majority of the voters voting on the proposition described in sec. 37 of this
31 Act have voted "No" in response to the question presented.

1 * Sec. 39. Sections 37 and 38 of this Act take effect immediately under AS 01.10.070(c).

2 * Sec. 40. Except as provided by sec. 39 of this Act, this Act takes effect only if the events
3 described in (1) and (2) of this section occur and if the Act takes effect, it takes effect upon
4 the later of

5 (1) the day following the date on which the lieutenant governor certifies that
6 a majority of the voters voting on the proposition described in sec. 37 of this Act have voted
7 "Yes" in response to the question presented;

8 (2) the day following the date on which the Attorney General for the State of
9 Alaska determines that Title VIII of the Alaska National Interest Lands Conservation Act (P.L.
10 96-487) has been amended in such a manner that

11 (A) the provisions of this Act are consistent with the preference for
12 subsistence uses of fish and wildlife under the Alaska National Interest Lands
13 Conservation Act;

14 (B) the State of Alaska may resume management of fish and game on
15 federal public land in the state under provisions of this Act;

16 (C) the definition of "public lands" in the Alaska National Interest
17 Lands Conservation Act is amended to exclude state and private land and water,
18 including navigable water;

19 (D) federal court oversight over state and private land and water,
20 including navigable water, is eliminated; and

21 (E) the portion of sec. 316(b)(3)(B) of P.L. 105-83 relating to the
22 management of fish and wildlife for subsistence uses on public lands in Alaska by the
23 Secretary of the Interior is repealed.

RESOLUTION 91-01

Jim Sykes
338-5551

SUBSISTENCE

(The first resolution approved by the Green Party of Alaska)

WHEREAS, Subsistence users with critical skills and knowledge have never become an important part of fish and game management, but need to become an effective part of fish and game management systems, and

WHEREAS, The federal government recognizes its obligation towards American indigenous peoples to provide health care, education and the right to continue indigenous cultures, and

WHEREAS, Subsistence is part of all Alaska Native cultures, involving special skills and knowledge, sharing and other cultural values not easily definable in numbers, and

WHEREAS, The valid existing rights of Alaska's Native peoples have not been recognized by the State of Alaska, and

WHEREAS, There are non-Native subsistence users who have established rural lifestyles and customary and traditional use of subsistence resources, and

WHEREAS, The Alaska National Interest Lands Conservation Act calls for a decentralized fish and game management system and a rural subsistence priority, and

WHEREAS, There are few conflicts regarding subsistence use outside of road connected regions, now

THEREFORE BE IT RESOLVED, That the Green Party of Alaska supports the guarantee for all traditional and customary subsistence users, Alaska Native or non-Native, to have continuous access to subsistence resources with top priority going to sustaining of the resources, and

BE IT FURTHER RESOLVED, That subsistence activities are viable economic pursuits in some of our rural communities. The Green Party of Alaska will work to ensure land use regulations, resource allocation and wildlife management regimes to reflect full local consultation, and

BE IT STILL FURTHER RESOLVED, That the Green Party of Alaska will listen carefully and develop policies and programs to strengthen and support the subsistence economy. The Green Party of Alaska will work with all concerned to resolve this problem that has been stretched way out of proportion.

APPROVED BY CONSENSUS THIS 17th DAY OF March, 1991

AT THE GREEN PARTY OF ALASKA CONVENTION IN ANCHORAGE, ALASKA.

Joni Whitmore, Chair

Jean-Marie Crumb, Secretary

Green Party of Alaska, P.O. Box 1, Anchorage, AK 99524-0001
email: greenak@alaska.net Tim Feller, Chair 907-278-7637

0-LS1573P
Utermohle
3/5/98

CS FOR HOUSE BILL NO. 406(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

4 (1) the ability to take fish and game for personal and family use for sustenance
5 is a fundamental right under the Constitution of the State of Alaska;

6 (2) the common use clause of the Constitution of the State of Alaska imposes
7 on the state a trust duty to manage the fish, game, and water resources of the state for the
8 benefit of all the people;

9 (3) the harvest of fish and game for personal and family use for sustenance is
10 the highest and best use of fish and game;

11 [new] (4) there are Alaskans, both Native and non-Native, who have a traditional,
12 social, or cultural relationship to and dependence upon the wild renewable resources produced
13 by Alaska's land and water; the harvest and use of fish and game for personal and family
14 consumption is an integral part of those relationships;

15 (5) although customs, traditions, and beliefs vary, these Alaskans share ideals

1 of respect for nature, the importance of using resources wisely, and the value and dignity of
2 a way of life in which they use Alaska's fish and game for a substantial portion of their
3 sustenance;

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

9 (7) the fish and game resources of Alaska have adequate biological and
10 reproductive capacity to provide an abundance of fish and game for all users;

11 (8) the harvest of fish and game for personal and family use for sustenance
12 does not constitute or affect interstate commerce and is not subject to regulation under the
13 commerce clause of the Constitution of the United States.

14 (b) It is the intent of the legislature to provide

15 (1) a preference for personal and family use of fish and game for sustenance
16 that parallels the Congressional intent underlying the subsistence preference under Title VIII
17 of the Alaska National Interest Lands Conservation Act (P.L. 96-487) but does not violate the
18 fundamental constitutional rights of Alaskans to sustenance, equal protection, and common use
19 of fish and game under the Constitution of the State of Alaska;

20 (2) a significant role for local fish and game advisory committees and regional
21 fish and game boards in the review of regulations governing the use of fish and game
22 resources;

23 (3) for a greater abundance of fish and game resources to serve as a source of
24 food for persons who are dependent on fish and game for personal and family use for
25 sustenance.

26 * Sec. 2. AS 16 is amended by adding a new chapter to read:

27 **Chapter 16. Use of Fish and Game for Sustenance.**

28 **Sec. 16.16.010. Preferred use of fish and game.** (a) The harvest of fish and
29 game for personal and family use for sustenance by residents is the highest and best
30 use of fish and game. The Board of Fisheries, the Board of Game, and the department
31 shall adopt regulations, policies, and management plans to implement a preference for

1 consumptive use of fish and game for personal and family use for sustenance over
2 other uses of fish and game.

3 (new) (b) If the Board of Fisheries or the Board of Game determines that the
4 projected level of harvest of a fish stock or game population in an area would exceed
5 the sustainable level of harvest under the sustained yield principle, the appropriate
6 board shall allocate, notwithstanding AS 16.05.251(e), the harvestable portion of the
7 stock or population in that area among user groups in accordance with a ranking of
8 beneficial uses of the stock or population that assigns the highest preference to
9 consumptive use for personal and family use for sustenance.

10 **Sec. 16.16.020. Dependence on fish and game for sustenance.** (a) The
11 Board of Fisheries and the Board of Game acting jointly shall identify and define fish
12 and game dependent use areas. A fish and game dependent use area is an area where
13 dependence on fish and game for personal and family use for sustenance is the
14 principal characteristic of the economy and way of life of the area. In determining
15 whether dependence on fish and game for personal and family use for sustenance is
16 the principal characteristic of the economy and way of life of an area, the Board of
17 Fisheries and the Board of Game shall jointly consider the relative importance of
18 dependence on fish and game in the context of the totality of the following
19 socioeconomic characteristics of the area:

- 20 (1) the social and economic structure;
- 21 (2) the stability of the economy;
- 22 (3) the extent and kinds of employment for wages, including full-time,
23 part-time, temporary, and seasonal employment;
- 24 (4) the amount and distribution of cash income among those who live
25 in the area;
- 26 (5) the cost and availability of goods and services to those who live in
27 the area;
- 28 (6) the variety of fish and game species used by those who live in the
29 area;
- 30 (7) the seasonal cycle of economic activity;
- 31 (8) the percentage of those who live in the area participating in hunting

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and fishing activities or using wild fish and game;

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

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

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

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

(13) the other sources of direct and indirect economic support available in the area;

(14) additional similar factors the boards establish by regulation to be relevant to a determination under this subsection.

(rewritten) (b) If the Board of Fisheries or the Board of Game, as appropriate, with the concurrence of the department, determines that a shortage of a fish stock or game population available for harvest in a fish and game dependent use area exists, the board may establish a preference for fish or game dependent uses of the stock or population and, consistent with sustained yield, reserve a sufficient portion of the stock or population to provide a reasonable opportunity to satisfy the need for fish and game dependent uses of the stock or population. A board shall make its determination of whether sufficient fish or game resources exist in an area to provide a reasonable opportunity to satisfy fish and game dependent uses of a stock or population based on the recommendations of the regional fish and game board for the area and the local fish and game advisory committees for the area. The preference established under this subsection shall be extended to a person who is determined to be dependent on fish and game for personal and family use for sustenance under (c) - (f) of this section.

Amendment

In a time of shortage of fish or game resources, the appropriate board may adopt a preference among beneficial uses of fish and game in a region or area by requiring that the flesh or meat of fish and game be used within the region or area where the fish or game was taken.

(new) (c) A person is dependent on fish and game for personal and family use for sustenance if the person

1 (1) possesses a \$5 resident hunting, trapping, and sport fishing license
2 issued under AS 16.05.340(a)(6) ~~and~~

3 (2) submits to the regional fish and game board for the region in which
4 the person lives a signed written statement that the person

5 (A) is dependent on fish and game for personal and family use
6 for sustenance; or

7 (B) has no alternate means of sustenance as the result of

8 (i) the absence of a cash-based economy in the area
9 where the person lives; or

10 — (ii) the person's decision to adopt a fish and game
11 dependent life style.

12 < new > (d) Each regional fish and game board shall review the written statements
13 submitted by persons asserting a dependence on fish and game for personal and family
14 use for sustenance and make recommendations as to whether the person is entitled to
15 a preference under (b) of this section. A regional board may hold a hearing to gather
16 additional information regarding whether a person is dependent on fish and game for
17 personal and family use for sustenance. Each regional board shall forward
18 recommendations made by the regional board under this subsection and additional
19 information collected by the regional board to the Board of Fisheries and the Board
20 of Game.

21 < new > (e) The Board of Fisheries and the Board of Game, acting jointly, shall make
22 the final determination as to who is entitled to the preference authorized under (b) of
23 this section. The statewide boards ~~shall~~ refer to the recommendations of the regional
24 fish and game boards unless a person disputes the recommendation made by a regional
25 board. The statewide boards shall hold a hearing subject to AS 44.62.330 - 44.62.630
26 to make a final determination of whether the person is dependent on fish and game for
27 personal and family use for sustenance.

28 < new > (f) A person who is determined by the Board of Fisheries and the Board of
29 Game to be dependent on fish and game for personal and family use for sustenance
30 may take fish and game in any location in the state where a preference for the harvest
31 of fish or game for personal and family use for sustenance has been established under

1 (b) of this section.

2 (g) The Board of Fisheries and the Board of Game shall adopt regulations
3 governing the allowable level of noncommercial barter and sharing of fish and game
4 resources taken for personal and family use for sustenance. The boards shall set the
5 level of allowable noncommercial barter at a documented historical level that does not
6 subject barter of fish and game taken for personal and family use for sustenance to
7 federal regulation under the commerce clause of the Constitution of the United States.

8 **Sec. 16.16.095. Definitions.** In this chapter,

9 (1) "preference" means an advantage, but not necessarily an exclusive
10 privilege, conferred on a use of fish and game over other uses through the adoption
11 of seasons, areas, bag limits, methods and means, and other regulations that take into
12 consideration the consumptive uses and harvest methods of the user groups;

13 (2) "principal" means more than 50 percent;

14 (3) "reasonable opportunity" means an opportunity, as determined by
15 the Board of Fisheries or the Board of Game, as appropriate, that allows a person to
16 participate in a fishery or hunt that provides a normally diligent participant with a
17 reasonable expectation of success of taking of fish or game; "reasonable opportunity"
18 does not mean a guarantee of taking fish or game;

19 (4) "shortage" means the amount of a specific fish stock or game
20 population available for harvest is not sufficient to provide a reasonable opportunity
21 to take the stock or population for the sustenance needs of persons who are found to
22 be dependent on the fish and game for personal and family use for sustenance;

23 (5) "sustained yield" means a level of utilization of a fish or game
24 population for consumptive uses by humans that is capable of being maintained in
25 perpetuity.

26 * Sec. 3. AS 16.05.090(c) is amended to read:

27 (c) There is established in the department a section of fish and game
28 dependent use [SUBSISTENCE HUNTING AND FISHING].

29 * Sec. 4. AS 16.05.094 is amended to read:

30 **Sec. 16.05.094. Duties of section of fish and game dependent use**
31 **[SUBSISTENCE HUNTING AND FISHING].** The section of fish and game

1 dependent use [SUBSISTENCE HUNTING AND FISHING] shall

2 (1) compile existing data and conduct studies to gather information,
3 including data from persons dependent on fish and game for personal and family
4 use for sustenance [SUBSISTENCE USERS], on all aspects of the role of
5 [SUBSISTENCE] hunting and fishing for fish and game dependent use in the lives
6 of the residents of the state;

7 (2) quantify the amount, nutritional value, and extent of dependence on
8 food acquired through [SUBSISTENCE] hunting and fishing for fish and game
9 dependent use;

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

12 (4) assist the department, the Board of Fisheries, and the Board of
13 Game in determining what uses of fish and game, as well as which users and what
14 methods, should be termed fish and game dependent [SUBSISTENCE] uses, users,
15 and methods;

16 (5) evaluate the impact of state and federal laws and regulations on
17 [SUBSISTENCE] hunting and fishing for fish and game dependent use and, when
18 corrective action is indicated, make recommendations to the department;

19 (6) make recommendations to the Board of Game and the Board of
20 Fisheries regarding adoption, amendment, and repeal of regulations affecting
21 [SUBSISTENCE] hunting and fishing for fish and game dependent use;

22 (7) participate with other divisions in the preparation of statewide and
23 regional management plans so that those plans recognize and incorporate the needs of
24 [SUBSISTENCE] users of fish and game for fish and game dependent use.

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

26 **Sec. 16.05.245. Review of regulatory proposals.** (a) Notwithstanding
27 AS 44.62, each proposal for a regulation to be adopted by the Board of Fisheries or
28 the Board of Game shall be submitted to local fish and game advisory committees and
29 regional fish and game boards that may be affected by the proposal. Each advisory
30 committee and regional board may review the proposed regulation and submit
31 comments and recommendations regarding the proposal to the Board of Fisheries or

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the Board of Game, as appropriate. This subsection does not apply to emergency regulations considered by either the Board of Fisheries or the Board of Game.

(b) The Board of Fisheries and the Board of Game shall carefully review each recommendation made by a regional fish and game board and ~~shall~~ defer to the recommendation of the regional board ~~unless~~ ^{OK} ~~unless~~ ^{unless}

amend.

- ~~(1) there is a contrary recommendation from another regional board;~~
- ~~(2) the recommendation is ~~not~~ consistent with the conservation of the fish or game resource ~~with~~ ^{and} the sustained yield principle;~~
- ~~(3) the recommendation involves issues of statewide significance; or~~
- ~~(4) the recommendation involves conflicts between regional boards.~~

(c) If the Board of Fisheries or the Board of Game chooses not to follow the recommendation of an advisory committee or a regional board, the appropriate statewide board shall inform the advisory committee or regional board of the action and state the reasons for not following the recommendation.

(d) Subject to (a) and (b) of this section, the Board of Fisheries and the Board of Game may consider and adopt any proposal for a regulation that is submitted for adoption, even if comments or recommendations regarding the proposal are not received from an advisory committee or a regional board.

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

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

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

(2) establishing open and closed seasons and areas for the taking of fish; if consistent with resource conservation and development goals, the board may adopt regulations establishing restricted seasons and areas necessary for persons 60 years of age and older to participate in sport fishing, personal use fishing, or [SUBSISTENCE] fishing for personal and family use for sustenance;

(3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB406 (RES)

Revision Date: 3/5/98
Title: An Act Relating To Subsistence
Use of Fish & Game
Sponsor: Representative Scott Ogan
Requester: House Resources Committee

Dept. Affected Fish & Game
BRU _____
Component _____
Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
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| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES [] | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE

(Thousands of Dollars)

| FUND SOURCE | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|----------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1091 Designated Program Receipts | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY97) cost: _____

POSITIONS

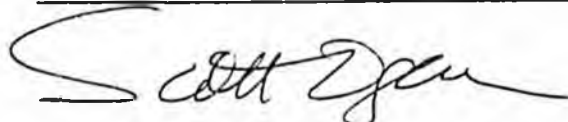
| POSITIONS | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-----------|-------|-------|-------|-------|-------|-------|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Any cost associated with this legislation will be identified in the next committee of referral and has not been brought to my attention at this time.

Prepared by House Resources Committee
Division _____
Approved by Representative Scott Ogan
Agency Co-Chair House Resources Committee

Phone 465-3715
Date 3/5/98
Date _____



FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB406 (RES)

Revision Date: 3/5/98
Title: An Act Relating To Subsistence
Use of Fish & Game
Sponsor: Representative Scott Ogan
Requester: House Resource Committee

Dept. Affected Dept. of Law
BRU _____
Component _____
Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
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|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE

(Thousands of Dollars)

| | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|----------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1031 Designated Program Receipts | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY97) cost: _____

POSITIONS

| | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-----------|-------|-------|-------|-------|-------|-------|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

Any cost associated with this legislation will be identified in the next committee of referral and has not been brought to my attention at this time.

Prepared by House Resources Committee
Division _____
Approved by Representative Scott Ogan
Agency Co-Chair House Resources Committee

Phone 465-3715
Date 3/5/98
Date _____

Scott Ogan