

**HJR**

**101**



COMMITTEE: JOINT HOUSE  
JUDICIARY AND HOUSE RESOURCES

DATE: May 27, 1998

Subject of meeting:

HJR101 - CONST. AM; SUBSIT. PREF. BASED ON  
RESIDENCE

# SIGN-IN

PLEASE PRINT!

NAME

ADDRESS (MAILING / ZIP)

PHONE

REPRESENTING

DO YOU  
WANT TO  
TESTIFY?

NAME	ADDRESS (MAILING / ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
ADFG STAFF			ADFG	✓
BRUCE BOTZELHO			THE GOVERNOR	✓
Charles E. Culu			Task Force	
JULIAN MASON			The Governor	
Carl Rosier			Alaska Outdoor Council	
Dick Bishop			"	
Walt Sheridan			"	
David Kelleyhouse			"	
Tamara Axelsson			"	
Janie Leask				



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DO YOU  
WANT TO  
TESTIFY?  
Listen Only

NAME	ADDRESS (MAILING / ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY? Listen Only
LISA AMAROK	Box 62011 Golovin, AK 99762	779-2207	Chinik Eskimo Community	Testimony (by invitation)
Jack Fagerstrom	62003 GLO AK 99762	779-2204	C.E.C. + GNC	
FRANK KAVAIRLOOK	Box 53025 Koyuk AK 99753	907)963-3651	KAWERAK INC./ Koyuk Trad. Council	
George Kudrin	401 E. Fineward Ln. #201 Anch. AK 99503	907-276-2700	Alutian / Pribilof Islands Assn. Inc.	
Darlene Turner	PO Box 33 Shishmaref, AK 99772	(907)649-4511	DRA Village of Shishmaref	
Karen J. Sinnok	P.O. Box 17 Shishmaref, AK 99772	649-4211	Kawerak, Inc. Shishmaref DRA Council	
LONNIE E. TYONE	P.O. Box 761 Glennallen AK. 99588	822-5432	Copper River Native Association	
Katie John	PO Box 6007 Mentasta AK 99780	291-2316	Anitna Inc.	
James A Denny	P.O. Box 243 Tok, AK 99780	8835353	Anitna Inc.	
Gabe Sam	122 First Ave. Fbks, AK 99701	452-8251	T.C.C.	



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TESTIFY?

Michelle Sparck	AJCP, INC. PO Box 219 Bethel, Ak 99559	543 7342	ASSOC of Village Council Presidents	
Thomas H. Abel	P.O. Box 358 Hoonah AK 99827	945-3623 945-3624	Haida Elders	
George C. Shaffer	Fort Myers Fl. 33919 841 Cypress Lake Circle	941-481- 0737		
Stem Ginnis	P.O. Box 382 Ft. Yukon, Ak. 99740	662-3078	TCC	
Harold Brown	122 First Ave, Ste 600 Fkks 99701	452-8251	TCC	
Dick Bishop	211 4th St # 302A TNO 99501	463 3830	AOC	
Thomas Tilden	PO Box 786 Dillingham Alaska 99576	842 2259	BBA - Reg. Ltd.	Yes



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PHONE

REPRESENTING

DO YOU  
WANT TO  
TESTIFY?

NAME	ADDRESS (MAILING / ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
JOHN WASHYI, II	P.O. Box 74 SAVOONGA, AK 99769	984-6446	Community of Savoonga/ <sup>from</sup> AK	Yes
Caleb Pungowiyi	Box 948 Nome, AK 99762	443-5231	Kawerak, INC	NO
Robert Keith	POB 70 E. Lim AK 99762	907 890 3737	Kawerak / E. Lim	
J. Bullard	PO Box 948 Nome, AK 99762	907-443-5231	Kawerak	can't
Bruce Walter	PO Box 1652 Nome, AK 99762	907 443 5231	Kawerak	
Sandra T. Tanbone	P.O. Box 1090 Nome, AK 99762	443-2246	Kawerak / Nome Eskimo Com.	
Gloria Stickwan	PO Box 264 Copper Center, AK 99524		CRVA	
Gilbert Dement, Sr.	Box 14 Cantwell AK 99724	907 768 2562	CRNA	NO
FRED JOHN	Box 6024 Mentasta AK 99780	907 291 2309	AHTNA	
JANET AMULIKOLIK	Box 62101 Golovin, AK 99702	907 771 5581	Golovin Nat. Corp.	Yes

0-LS1815A  
Utermohle  
5/27/98

**HOUSE JOINT RESOLUTION NO.**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SPECIAL SESSION**

**BY**

**Introduced:**

**Referred:**

**A RESOLUTION**

1 **Relating to changes to Title VIII of the Alaska National Interest Lands**  
2 **Conservation Act.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the Alaska State Legislature is currently considering the issues concerning  
5 the management of subsistence uses of fish and wildlife; and

6 **WHEREAS** the federal government has preempted state management of subsistence  
7 uses of fish and wildlife on federal public lands in Alaska; and

8 **WHEREAS** the State of Alaska must comply with certain provisions of Title VIII of  
9 the Alaska National Interest Lands Conservation Act (P.L. 96-487) in order to regain authority  
10 to manage subsistence uses of fish and wildlife on federal public lands in Alaska; and

11 **WHEREAS** certain provisions of Title VIII of the Alaska National Interest Lands  
12 Conservation Act (P.L. 96-487) must be amended in order for the State of Alaska to be able  
13 to comply with the Act;

14 **BE IT RESOLVED** that the Alaska State Legislature finds that Title VIII of the  
15 Alaska National Interest Lands Conservation Act (P.L. 96-487) must be amended in a manner  
16 that accomplishes each of the following items:

1 (1) affirms the sovereignty of the state over state and private lands and  
2 waters and for the management of fish and wildlife in the state;

3 (2) defines the term "public lands" to expressly exclude state and  
4 private lands and waters, including navigable waters;

5 (3) prohibits federal preemption of state management of fish and  
6 wildlife on state and private lands and waters in the state;

7 (4) expressly waives or renounces all claims to authority for  
8 management of fish and wildlife on state and private lands and waters that may arise  
9 under the navigational servitude doctrine or the doctrine of reserved water rights;

10 (5) repeals the jurisdiction of the federal courts under Title VIII, Alaska  
11 National Interest Lands Conservation Act (P.L. 96-487), as amended, to hear cases  
12 arising from state management of fish and wildlife on state and private lands and  
13 waters, including navigable waters, in the state;

14 (6) either repeals the federal regional advisory councils established  
15 under Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as  
16 amended, or amends the powers and functions of the councils so that the councils  
17 serve only as advisors to managers of fish and wildlife resources;

18 (7) defines the terms "customary and traditional," "customary trade,"  
19 and "barter" to be consistent with the laws of the state;

20 (8) amends the subsistence preference of Title VIII, Alaska National  
21 Interest Lands Conservation Act (P.L. 96-487), as amended, to provide a preference  
22 for a reasonable opportunity for subsistence uses of fish and wildlife on federal public  
23 lands in the state;

24 (9) repeals sec. 801(b)(4), Alaska National Interest Lands Conservation  
25 Act (P.L. 96-487), as added by sec. 316(b)(3)(B) of P.L. 105-83, relating to  
26 management by the Secretary of the Interior of fish and wildlife for subsistence uses  
27 on all federal public lands in Alaska;

28 (10) repeals sec. 801(b)(5), Alaska National Interest Lands  
29 Conservation Act (P.L. 96-487), as added by sec. 316(b)(3)(B) of P.L. 105-83, relating  
30 to the application of the federal subsistence preference on federal public lands to  
31 navigable waters in which the United States has reserved water rights;

1 (11) repeals sec. 814, Alaska National Interest Lands Conservation Act  
2 (P.L. 96-487), as amended, relating to the adoption of federal regulations as necessary  
3 and appropriate to implement Title VIII, Alaska National Interest Lands Conservation  
4 Act;

5 (12) amends Title VIII, Alaska National Interest Lands Conservation  
6 Act (P.L. 96-487), as amended, as necessary to limit subsistence uses and the  
7 preference for subsistence uses to fish and wildlife;

8 (13) amends Title VIII, Alaska National Interest Lands Conservation  
9 Act (P.L. 96-487), as amended, to eliminate references to comanagement agreements;  
10 and

11 (14) affirms that the laws of the state are consistent with provisions of  
12 federal law, as amended in accordance with this clause, governing the subsistence uses  
13 of fish and wildlife on federal public lands in the state.

PROPOSED CHANGES TO ANILCA

**Effective Date and Repeal of Amendment.** A constitutional amendment regarding subsistence, takes effect on the day following the date that the governor certifies that federal law governing subsistence uses of fish and wildlife on federal public lands in the State

(1) affirms the sovereignty of the State over State and private lands and waters and for the management of fish and wildlife in the State;

(2) defines the term "public lands" to expressly exclude State and private lands and waters, including navigable waters;

(3) prohibits federal preemption of State management of fish and wildlife on State and private lands and waters in the State;

(4) expressly waives or renounces all claims to authority for management of fish and wildlife on State and private lands and waters that may arise under the navigational servitude doctrine or the doctrine of reserved water rights;

(5) repeals the jurisdiction of the federal courts under Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, to hear cases arising from State management of fish and wildlife on State and private lands and waters, including navigable waters, in the State;

(6) either repeals the federal regional advisory councils established under Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, or amends the powers and functions of the councils so that the councils serve only as advisors to managers of fish and wildlife resources;

(7) defines the terms "customary and traditional," "customary trade," and "barter" to be consistent with the laws of the State;

(8) amends the subsistence preference of Title

VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, to provide a preference for a reasonable opportunity for subsistence uses of fish and wildlife on federal public lands in the State;

(9) repeals sec. 801(b)(4), Alaska National Interest Lands Conservation Act (P.L. 96-487), as added by sec. 316(b)(3)(B) of P.L. 105-83, relating to management by the Secretary of the Interior of fish and wildlife for subsistence uses on all federal public lands in Alaska;

(10) repeals sec. 801(b)(5), Alaska National Interest Lands Conservation Act (P.L. 96-487), as added by sec. 316(b)(3)(B) of P.L. 105-83, relating to the application of the federal subsistence priority on federal public lands to navigable waters in which the United States has reserved water rights;

(11) repeals sec. 814, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, relating to the adoption of federal regulations as necessary and appropriate to implement Title VIII, Alaska National Interest Lands Conservation Act;

(12) amends Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, as necessary to limit subsistence uses and the preference for subsistence uses to fish and wildlife;

(13) amends Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, to eliminate references to comanagement agreements; and

(14) affirms that the laws of the State are consistent with provisions of federal law, as amended in accordance with this subsection, governing the subsistence uses of fish and wildlife on federal public lands in the State.

(15) Title VIII Section 801(2) is amended to read "no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses."

(b) the amendment would be repealed if

(1) within two years from the date that voter approval of the ballot proposition for the amendments proposed by this resolution was certified by the lieutenant governor, the governor does not make the certification described in (a) of this section;

(2) the State is determined by a federal agency or federal court to be substantially out of compliance with federal law governing the subsistence uses of fish and wildlife on federal public land in the State; or

(3) a federal court issues a final judgment that the rural subsistence preference enacted by Title VIII of the Alaska National Interest Lands Conservation Act violates the Constitution of the United States.

AMENDMENT # 1 by \_\_\_\_\_

INSERT on Page 2 Line 5 after resolution

Sec 4. **Effective Date and Repeal of Amendment.** take effect on the day following the date that the legislature certifies, by concurrent resolution, that federal law governing subsistence uses of fish and wildlife on federal public lands in the State has been modified to substantially comply as follows:

(1) affirms the sovereignty of the State over State and private lands and waters and for the management of fish and wildlife in the State;

(2) defines the term "public lands" to expressly exclude State and private lands and waters, including navigable waters;

(3) prohibits federal preemption of State management of fish and wildlife on State and private lands and waters in the State;

(4) expressly waives or renounces all claims to authority for management of fish and wildlife on State and private lands and waters that may arise under the navigational servitude doctrine or the doctrine of reserved water rights;

(5) repeals the jurisdiction of the federal courts under Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, to hear cases arising from State management of fish and wildlife on State and private lands and waters, including navigable waters, in the State;

(6) either repeals the federal regional advisory councils established under Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, or amends the powers and functions of the councils so that the councils serve only as advisors to managers of fish and wildlife resources;

(7) defines the terms "customary and traditional," "customary trade," and "barter" to be consistent with the laws of the State;

(8) amends the subsistence preference of Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, to provide a preference for a reasonable opportunity for subsistence uses of fish and wildlife on federal public lands in the State;

(9) repeals sec. 801(b)(4), Alaska National Interest Lands Conservation Act (P.L. 96-487), as added by sec. 316(b)(3)(B) of P.L. 105-83, relating to management by the Secretary of the Interior of fish and wildlife for subsistence uses on all federal public lands in Alaska;

(10) repeals sec. 801(b)(5), Alaska National Interest Lands Conservation Act (P.L. 96-487), as added by sec. 316(b)(3)(B) of P.L. 105-83, relating to the application of the federal subsistence priority on federal public lands to navigable waters in which the United States has reserved water rights;

(11) repeals sec. 814, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, relating to the adoption of federal regulations as necessary and appropriate to implement Title VIII, Alaska National Interest Lands Conservation Act;

(12) amends Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, as necessary to limit subsistence uses and the preference for subsistence uses to fish and wildlife;

(13) amends Title VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), as amended, to eliminate references to comanagement agreements; and

(14) affirms that the laws of the State are consistent with provisions of federal law, as amended in accordance with this subsection, governing the subsistence uses of fish and wildlife on federal public lands in the State.

(15) Title VIII Section 801(2) is amended to read "no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses."

(b) the amendment would be repealed if

(1) within two years from the date that voter approval of the ballot proposition for the amendments proposed by this resolution was certified by the lieutenant governor, the legislature does not make the certification described in (a) of this section;

(2) the State is determined by a federal agency or federal court to be substantially out of compliance with federal law governing the subsistence uses of fish and wildlife on federal public land in the State; or

(3) a federal court issues a final judgment that the rural subsistence preference enacted by Title VIII of the Alaska National Interest Lands Conservation Act violates the Constitution of the United States.

**PRESENTATION ON  
SUBSISTENCE ISSUES**

**May 26, 1998**

**Attorney General Bruce Botelho**

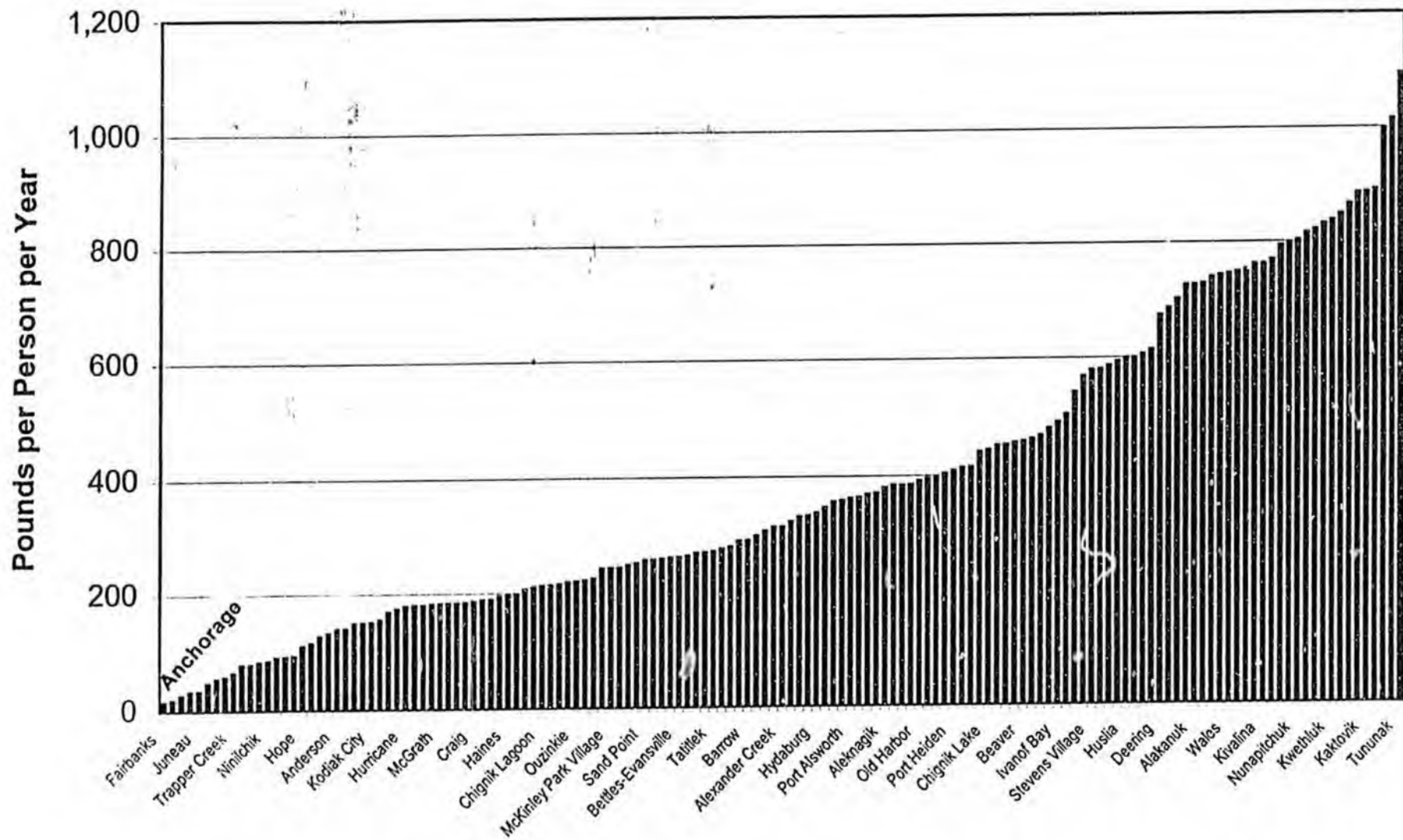
**Former Attorney General Charlie Cole**

**Table 1 - Annual Harvest of Subsistence Foods,  
by Geographical Area**

<b>Geographical Area</b>	<b>Annual Harvest (Pounds/Person)</b>
Anchorage/Juneau/Fairbanks/Mat-Su	30
Kenai Peninsula	96
Copper Basin	149
Southeast	212
Upper Tanana	218
Prince William Sound	256
Northern Cook Inlet	265
Alaska Peninsula	290
North Slope	364
Kodiak Island	426
Southwest	626
Western	732
Yukon-Koyukuk	839
Northwest Arctic	1,067

Source: Alaska Department of Fish and Game, 1987

## Annual Wild Food Harvests by Alaska Community



**“The conference committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.”**

**Conference Committee Report on  
ANCSA (1971)**

**“The legislature . . . determines that it is in the public interest to clearly establish subsistence use as a priority of Alaska’s fish and game resources and to recognize the needs, customs and traditions of Alaskan residents.”**

**1978 Session Laws**

## **ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT (1980)**

### **Policy**

**Sec. 802(1). It is hereby declared to be the policy of Congress that-- consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles . . . the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.**

### **Definitions**

**Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural residents of wild renewable resources for direct personal or family consumption. . . .**

### **Preference for Subsistence Uses**

**Sec. 804.** Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. . . .

### **Local and Regional Participation**

**Sec. 805(d).** The Secretary shall not implement . . . this section if . . . the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in [the Act].

***“We therefore conclude 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.***

***“The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing. We do not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons. We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional.***

**McDowell v. State of Alaska (1989)**

***“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.”***

***“Inconvenience is in no sense the equivalent of a bar to eligibility for participation in subsistence hunting and fishing and does not suffice to trigger an analysis under the equal access clauses.”***

**State v. Kenatize Indian Tribe (1995)**

***“By virtue of its reserved water rights, the United States has interests in some navigable waters. Consequently, public lands subject to subsistence management under ANILCA include certain navigable waters. . . .***

***“We also hold that the federal agencies that administer the subsistence priority are responsible for identifying those waters.”***

***Katie John v. U.S. (9th Cir. 1995)***

***“Because the Submerged Lands Act of 1953 specifically gives state authority over fish and animals in navigable waters and precludes the navigational servitude or reserved water rights from being used to erode that authority,” because the navigational servitude and reserved waters rights are not interests to which title can be held, because of the clear statement doctrine, because the navigational servitude and reserved water rights are limited interests which do not give the federal government power over navigable or reserved waters unrelated to those interests, and for the other reasons discussed above, we hold that navigable waters are generally not “public lands” under ANILCA. Therefore, ANILCA does not curtail the State’s authority to regulate hunting and fishing in navigable waters, and the State has criminal jurisdiction over Totemoff.”***

**Totemoff v. State (1995)**

## **Principles of the Bipartisan 1997 Task Force on Subsistence**

- 1. To establish effective state authority, and eliminate federal authority, over fish and game management on all lands and waters of Alaska.**
- 2. To recognize the paramount importance of the subsistence way of life to rural Alaskans and to those Alaskans who demonstrate a customary and traditional use or a direct dependence on fish and game resources.**
- 3. To maintain neutrality on the issue of tribal sovereignty over lands within Alaska.**
- 4. To make only those changes to the Alaska Constitution, ANILCA and state law that are absolutely necessary to accomplish those ends.**

## **THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION**

**This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.**

**U.S. Const., Art. VI, cl. 2**

## **The Property Clause of the U.S. Constitution**

**Congress shall have power to dispose of  
and make all needful rules and  
regulations respecting the territory or  
other property belonging to the United  
States.**

**U.S. Const., Art. IV, sec 3, cl.2.**

***"And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that the power over the public land thus entrusted to Congress is without limitations."***

**Kleppe v. New Mexico 426 U.S. 529, 539  
(1976)**

***" In our view, the 'complete power' that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there."***

**Kleppe v. New Mexico 426 U.S. 529 (1976)**

**“With this guidance, we must decide the question left open in *Kleppe* -- the scope of Congress’ property clause power as applied to activity occurring off federal land. Without defining the limits of the power, the Court in *Kleppe*, relying on its decision in *Camfield v. United States* . . . acknowledged that ‘it is clear the regulations under the Property Clause may have some effect on private lands not otherwise under federal control.’ . . .**

**“Under this authority to protect public land, Congress’ power must extend to regulation of conduct on or off the public land that would threaten the designated purpose of federal lands. Congress clearly has the power to dedicate federal land for particular purposes. As a necessary incident of that power, Congress must have the ability to insure**

**that these lands be protected against interference with their intended purposes.”**

**State of Minnesota by Alexander v. Block.  
660 F.2d 1240 (1981)**

**Joint Department of the Interior and the  
Department of Agriculture Budget  
Proposal for the Federal Subsistence  
Fishing Program in Alaska:**

***"Implementation of the Court's decision  
will result in the unprecedented  
expansion of Federal management of  
Alaska's fisheries in many areas of the  
State."***

***"For several areas, Federal managers may  
be called on to intervene in the  
management of commercial harvests to  
assure upstream delivery of salmon to  
subsistence users."***

## **LOCAL AND REGIONAL PARTICIPATION**

**SEC. 805(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses....**

## **JUDICIAL ENFORCEMENT**

**SEC. 807(a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is**

appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

## **JUDICIAL ENFORCEMENT**

**SEC. 807 (b) State agency actions may be declared invalid by the court only if they are arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with law. When reviewing any action within the specialized knowledge of a State agency, the court shall give the decision of the State agency the same deference it would give the same decision of a comparable Federal agency.**

## **REGULATIONS**

**SEC. 814** The secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

**SELECTED 1997 AMENDMENTS  
TO ANILCA**

**Public Law 105-83**

## TITLE VIII-SUBSISTENCE MANAGEMENT AND USE

### SEC. 801.

### FINDINGS

*(b) The Congress finds and declares further that-*

*(1) subsequent to the enactment of this Act in 1980, the subsistence law of the State of Alaska (AS 16.05) accomplished the goals of Congress and requirements of this Act in providing subsistence use opportunities for rural residents of Alaska, both Native and non-Native;*

*(2) the Alaska subsistence law was challenged in Alaska courts, and the rural preference requirement in the law was found in 1989 by the Alaska Supreme Court in *McDowell v. State of Alaska* (785 P.2d 1, 1989) to violate the Alaska Constitution;*

*(3) since that time, repeated attempts to restore the validity of the State law through an amendment to the Alaska Constitution have failed, and the people of Alaska have not been given the opportunity to vote on such an amendment;*

*(4) in accordance with Title VIII of this Act, the Secretary of the Interior is required to manage fish and wildlife for subsistence uses on all public lands in Alaska because of the failure of State law to provide a rural preference;*

*(5) the Ninth Circuit Court of Appeals determined in 1995 in *State of Alaska v. Babbitt* (73 F.3d 698) that the subsistence priority required on public lands under section 804 of this Act applies to navigable waters in which the United States has reserved water rights as identified by the Secretary of the Interior;*

*(6) management of fish and wildlife resources by State governments has proven successful in all 50 states, including Alaska, and the State of Alaska should have the opportunity to continue to manage such resources on all lands, including public lands, in Alaska in accordance with this Act, as amended; and*

*(7) it is necessary to amend portions of this Act to restore the original intent of Congress to protect and provide for the continued opportunity for subsistence uses on public lands for Native and non-Native rural residents through the management of the State of Alaska.*

## DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

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

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

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

(4) *"customary trade" means, except for money sales of furs and furbearers, the limited, noncommercial exchange for money of fish and wildlife or their parts in minimal quantities; and*

(5) *"rural Alaska resident" means a resident of a rural community or rural area. A "rural community or area" means a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses.*

## PREFERENCE FOR SUBSISTENCE USES

SEC. 804.

*(b) The priority granted by this section is for a reasonable opportunity to take fish and wildlife. For the purposes of this subsection, the term "reasonable opportunity" means an opportunity, consistent with customary and traditional uses (as defined in section 803(3)), to participate in a subsistence hunt or fishery with a reasonable expectation of success, and does not mean a guarantee that fish and wildlife will be taken.*

## Essential Elements of a Subsistence Bill

Protects subsistence uses; provides opportunity for sport, commercial, personal use

			TASK FORCE APPROACH
			Designed to secure state management of hunting and fishing on all lands and waters; recognizes rural dependence on subsistence; makes minimal changes to current state statute
<b>Who</b>	<u>Eligibility</u>	⇒ Define a mechanism for determining who can participate in subsistence hunting and fishing.	<ul style="list-style-type: none"> <li>Residents of areas determined by the boards to be rural are eligible.</li> <li>All Alaskans have opportunity to hunt and fish as long as there is a reasonable opportunity for subsistence</li> <li>General hunting/sport fishing, commercial, personal use fishing, proxy subsistence permits and cultural/educational permits provide for urban residents' opportunity.</li> </ul>
<b>Where</b>	<u>Location</u>	⇒ Identify portions of the state where hunting and fishing may occur under subsistence regulations.	<ul style="list-style-type: none"> <li>Rural areas are "places found by boards to be dependent on fish and wildlife for nutritional and other subsistence uses." All other places are non-rural (non-subsistence) areas.</li> </ul>
<b>How</b>	<u>Process</u>	⇒ Identify the mechanism for developing subsistence regulations that implement the subsistence priority.	<ul style="list-style-type: none"> <li>State boards implement steps to provide subsistence priority: (1) joint boards identify rural areas; (2) fish or game board identifies c&amp;t use of stock or population, amount needed for reasonable subsistence use opportunity. In times of shortage subsistence uses are last to be eliminated.</li> <li>Regional Councils provide subsistence advice; boards give deference</li> </ul>
<b>What</b>	<u>Definitions</u>	⇒ Clarify what use is being afforded a preference, and key terms used in statute to direct actions of the boards.	<ul style="list-style-type: none"> <li>Subsistence; reasonable opportunity; rural area; customary trade; customary and traditional use</li> </ul>

**Legislative Research Report 98.075**

**May 22, 1998**

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## **Subsistence Hearings Sponsored by the Legislature or the Governor, 1990-1998**

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Legislative Research Services  
Division of Legal and Research Services  
Legislative Affairs Agency  
Alaska State Legislature

Prepared for Senator Tim Kelly  
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## SUMMARY

You asked about public hearings aimed at resolving the impact of the Alaska Supreme Court's December 1989 decision in *McDowell v. State*. In that decision, the Court held that the state's 1986 subsistence law violated the state constitution because it excluded urban residents from subsistence activities.

In attempts to resolve the issue since then, the legislature has met twice in special session (June 1990 and June 1992), and two governors have convened task forces (Governor Hickel's Subsistence Advisory Council in 1991-92 and Governor Knowles' Subsistence Task Force in 1997-98). Also, since the *McDowell* decision, the Legislature has held over 100 hearings on the issue, taking testimony from approximately 240 state and federal officials, and over 1,000 members of the public. Table 1 summarizes the statistics on legislative hearings; Tables 2 and 3 present more detail, including bill number and subject, committee, and hearing dates.

**Table 1: Legislative Hearings on Subsistence, 1990-1998**

LEGISLATURE	HEARINGS	TESTIMONY FROM PUBLIC OFFICIALS	TESTIMONY FROM MEMBERS OF THE PUBLIC (including interest group representatives)
16 <sup>TH</sup> Legislature	25	78	152
17 <sup>TH</sup> Legislature	30	79	235
18 <sup>TH</sup> Legislature	0	0	0
19 <sup>TH</sup> Legislature	11	10	259
20 <sup>TH</sup> Legislature	37	72	482
<b>TOTAL</b>	<b>103</b>	<b>239</b>	<b>1,128</b>

**NOTE:** These numbers do NOT represent numbers of different individuals who testified; rather, they are the sum of the total number testifying at each hearing (i.e., many public officials and interest group representatives testified numerous times).

Governor Hickel's Subsistence Advisory Council, charged with proposing a statutory fix that did not include constitutional amendments, convened first in February 1991 but was reorganized in the fall. According to Advisory Council member Byron Mallott, the group met five or six times between November 1991 and February 1992, primarily in the governor's conference room in the Frontier Building in Anchorage. Mr. Mallott reports that while the meetings were open to the public and the press, and several individuals and representatives from stakeholder groups attended the meetings to express opinions, the meetings were informal and Advisory Council members did not open them to formal testimony.

Likewise, according to Tim Tawarek in the Governors' office, Governor Knowles' Subsistence Task Force also did not take formal public testimony. Mr. Tawarek reports that the public had ample opportunity for input as the Task Force met six times between June 1 and September 17, 1997, faxed a summary of a July 9 draft plan to approximately 1,000 individuals, mailed 200 copies of the entire draft, and considered the 60 written comments submitted. In addition, stakeholder groups were invited to make presentations to the Task Force on September 13. The Alaska Federation of Natives, Alaska Inter-tribal Council, RuralCAP, United Fishermen of Alaska, and various sportfishing groups participated (the Alaska Outdoor Council and hunting guide groups said they were unable to send representatives).

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I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

TABLE 2

Legislative Hearings on Subsistence, 1990-1998 (by Bill)

Committee	Date	Heard Testimony From:
<b>16th Legislature (1989-1990)</b>		
<b>HJR 74, 88, 90 -- Constitutional Amendments on Subsistence</b>		
House Resources	March 7, 1990	5 state officials, 1 member of the public
House Resources	March 10, 1990	2 state officials, 51 members of the public
House Resources	March 21, 1990	1 state official, 28 members of the public
House Resources	April 5, 1990	2 state officials, 10 members of the public
House Resources	April 20, 1990	3 state officials, 5 members of the public
House Resources	April 21, 1990	2 state officials
House Judiciary	April 27, 1990	4 officials (3 state, 1 federal), 4 members of the public
House Judiciary	April 30, 1990	3 state officials, 3 members of the public
House Judiciary	May 1, 1990	3 state officials
House Judiciary	May 4, 1990	5 state officials
<b>SJR 78, SB 305 -- Subsistence Uses of Fish and Wildlife</b>		
Senate Resources	May 3, 1990	4 state officials
<b>SJR 78 -- Subsistence Uses of Fish and Wildlife</b>		
Senate Resources	May 4, 1990	4 state officials, 2 members of the public
Senate Resources	May 6, 1990	3 state officials
Senate Resources	May 7, 1990	1 state official, 6 members of the public
<b>16th Legislature, First Special Session, 1990 (June 25-July 8)</b>		
<b>HB 599, HB 600, HB 601, HCR 68, HJR 97, SB 553, SJR 86, SJR 88 -- Various, on Subsistence</b>		
<b>SB 555 -- Commission on Subsistence Use of Fish &amp; Game (became law -- Chapter 1 FSSLA 90)</b>		
House Work Session	June 20, 1990	In Anchorage -- 2 state officials, 10 members of the public
House Resources	June 25, 1990	7 officials (incl. Cowper, Murkowski, Stevens, Young), 10 public
House Resources	June 26, 1990	4 state officials
House Resources	June 27, 1990	1 state official
House Resources	June 29, 1990	5 state officials
House Resources	June 29, 1990	5 state officials
<b>SB 553, SCR 61, SJR 86, SJR 88 -- Various, on Subsistence</b>		
<b>SB 555 -- Commission on Subsistence Use of Fish &amp; Game (became law -- Chapter 1 FSSLA 90)</b>		
Senate Resources	June 26, 1990	17 members of the public
<b>SCR 62 -- Subsistence Legal Challenge</b>		
Senate Resources	June 27, 1990	5 state officials, 1 member of the public
Senate Finance	June 28, 1990	3 state officials, 1 member of the public
Senate Rules	June 29, 1990	No testimony; committee discussion only
<b>HJR 99 -- Constitutional Amendment: Subsistence Preference</b>		
House Rules	July 7, 1990	6 state officials, 3 members of the public
<b>THE FOLLOWING BILLS RECEIVED NO HEARINGS:</b>		
HB 602-Subsistence Hunting and Fishing		SB 556-Subsistence Hunting and Fishing
HB 603-Subsistence Uses of Fish/Game		SCR 39-Joint Commission on Subsistence
HCR 70-Subsistence Regulations		SJR 87-Constitutional Amendment: Subsistence
HJR 98-Constitutional Amendment		SJR 89-Constitutional Amendment: Subsistence
HJR 100-Constitutional Amendment: Subsistence/Personal Use		
HR 16 -- Requesting Alaska Supreme Court to Extend Stay (became Legislative Resolve 10)		

TABLE 2  
Legislative Hearings on Subsistence 1991-1992 by Bill

Committee	Date	Heard Testimony From:
<b>17th Legislature (1991-1992)</b>		
<b>HB 552 -- Subsistence Use of Fish and Game</b>		
House Resources	April 1, 1992	2 state officials (including Governor Hickel)
House Resources	May 11, 1992	1 state official, 3 members of the public
<b>HB 592 -- Subsistence Uses</b>		
House Resources	May 11, 1992	4 members of the public
<b>SCR 8 -- Fish and Wildlife Management</b>		
Senate Resources	April 5, 1991	1 state official
House Resources	May 5, 1992	1 state official, 1 member of the public
<b>SB 443 -- Taking of Fish and Game for Subsistence</b>		
Senate Resources	March 5, 1992	4 state officials (including Governor Hickel)
Senate Resources	March 6, 1992	1 state official
Senate Resources	March 7, 1992	33 members of the public
Senate Resources	March 10, 1992	1 state official, 1 member of the public
Senate Resources	March 23, 1992	3 state officials
Senate Resources	March 25, 1992	2 state officials, 1 member of the public
Senate Resources	March 27, 1992	1 state official
Senate Judiciary	April 7, 1992	4 state officials, 2 members of the public
Senate Judiciary	April 9, 1992	2 state officials
<b>THE FOLLOWING BILLS RECEIVED NO HEARINGS:</b>		
HJR 77/SJR 49; HJR 78/SJR 50; HJR 79 -- Constitutional Amendments: Subsistence Preference		
<b>17th Legislature, Second Special Session, 1992 (June 15-June 22)</b>		
<b>HJR 86 -- Constitutional Amendment: Subsistence Preference</b>		
H State Affairs/Judiciary	June 16, 1992	3 state officials, 5 members of the public
H State Affairs/Judiciary	June 17, 1992	2 state officials, 6 members of the public
<b>SB 484, SB 485 -- Subsistence Taking of Fish and Game/Subsistence Uses</b>		
Senate Finance	June 19, 1992	4 state officials
S Comm of the Whole	June 15, 1992	2 state officials, 8 members of the public
S Comm of the Whole	June 16, 1992	4 state officials, 17 members of the public
S Comm of the Whole	June 17, 1992	6 officials (4 state, 2 federal), 7 members of the public
S Comm of the Whole	June 18, 1992	7 state officials, 4 members of the public
<b>General Hearing on Subsistence</b>		
House Judiciary	June 10, 1992	3 state officials, 44 members of the public
<b>General Briefings on Subsistence</b>		
House Resources	June 15, 1992	3 state officials
House Resources	June 16, 1992	1 former state official
<b>HB 599, HB 600, HB 601 -- Subsistence Taking of Fish and Game</b>		
H Resources/Judiciary	June 16, 1992	4 state officials, 67 members of the public
House Resources	June 17, 1992	22 members of the public
H Resources/Judiciary	June 17, 1992	1 state official, 7 members of the public
<b>HB 601 -- Subsistence Uses (became law -- Chapter 1, SSSLA 92)</b>		
House Judiciary	June 19, 1992	3 state officials
S Comm of the Whole	June 19, 1992	5 state officials, 3 members of the public
Conference Committee	6/21-22/92	6 state officials, 1 member of the public

**TABLE 2**  
**Legislative Hearings on Subsistence, 1993-1998, by Bill**

Committee	Date	Heard Testimony From:
<b>18th Legislature (1993-1994)</b>		
<b>THE FOLLOWING BILLS RECEIVED NO HEARINGS:</b>		
HJR 23 / SJR 42 -- Constitutional Amendment: Subsistence Preference		
SJR 12 -- Constitutional Amendment on Subsistence Preference		
<b>19th Legislature (1995-1996)</b>		
<b>HB 312 -- Extend Current Subsistence Law</b>		
House Resources	April 25, 1995	3 state officials, 1 member of the public
House Resources	April 27, 1995	1 state official, 4 members of the public
<b>HJR 33 -- Amendments to ANILCA</b>		
House Judiciary	March 17, 1995	24 members of the public
House Judiciary	March 22, 1995	2 state officials, 80 members of the public
<b>SCR 6 -- State v Babbitt Lawsuit Continuation (became Legislative Resolve 1)</b>		
House Rules	January 27, 1995	No testimony; committee discussion only
<b>SB 171 -- Extend Current Subsistence Law (became law -- Chapter 68 SLA 95)</b>		
Senate Resources	April 28, 1995	1 state official, 3 members of the public
<b>SJR 19 -- Ask Congress to Amend ANILCA (became Legislative Resolve 26)</b>		
Senate Resources	March 29, 1995	In Fairbanks -- 1 state official, 69 members of the public
Senate Resources	April 8, 1995	In Soldotna -- 33 members of the public
Senate Resources	April 10, 1995	1 state official, 29 members of the public
Senate Rules	April 11, 1995	No testimony; committee discussion only
House Judiciary	May 1, 1995	1 state official, 16 members of the public
<b>THE FOLLOWING BILLS RECEIVED NO HEARINGS:</b>		
HCR 7 -- State v Babbitt Lawsuit Continuation		
HJR 14/SJR 2 -- Constitutional Amendment: Subsistence Preference		
<b>20th Legislature 1997-1998</b>		
<b>HJR 21 -- Requesting that Congress Amend Title VIII of ANILCA</b>		
House Resources	March 13, 1997	19 members of the public
House Resources	March 20, 1997	1 state official, 14 members of the public
House Resources	March 27, 1997	No testimony; committee discussion, then bill moved out
House State Affairs	April 10, 1997	1 state official, 15 members of the public
House State Affairs	April 15, 1997	23 members of the public
House State Affairs	May 3, 1997	No testimony; committee discussion, then bill moved out
<b>HB 243 -- Extend Current Subsistence Law (became law -- Chapter 109 SLA 97)</b>		
House Resources	May 1, 1997	2 state officials, 1 member of the public
Senate Resources	May 8, 1997	1 state official
<b>HB 255 -- Subsistence Hunting &amp; Fishing</b>		
House Resources	May 1, 1997	2 state officials, 7 members of the public

**TABLE 2**

**Public Hearings on Subsistence, 1990-1998, by Bill**

<b>Committee</b>	<b>Date</b>	<b>Heard Testimony From:</b>
<b>Public Subsistence Hearings (no specific bill)</b>		
House Resources	September 10, 1997	In Bethel -- 3 state officials, 52 members of the public
House Resources	September 12, 1997	In Ketchikan -- 2 state officials, 47 members of the public
Senate Resources	September 24, 1997	In Fairbanks -- 4 state officials, 28 members of the public
Senate Resources	September 25, 1997	In Wasilla -- 1 state official, 19 members of the public
Senate Resources	September 26, 1997	In Soldotna -- 1 state official, 28 members of the public
Senate Resources	September 27, 1997	In Anchorage -- 3 officials, 23 members of the public
Senate Resources	October 17, 1997	In Galena -- 45 members of the public
<b>HB 406 -- Subsistence Uses of Fish &amp; Game (Passed, awaiting transmittal to Governor)</b>		
House Resources	February 17, 1998	2 state officials
House Resources	February 21, 1998	2 state officials
House Resources	February 28, 1998	1 state official, 52 members of the public
House Resources	March 3, 1998	1 state official
House Resources	March 5, 1998	5 state officials, 28 members of the public
House Judiciary	March 9, 1998	2 state officials
House Judiciary	March 11, 1998	4 state officials, 23 members of the public
House Judiciary	March 18, 1998	2 state officials, 10 members of the public
House Judiciary	March 20, 1998	3 members of the public
House Judiciary	March 25, 1998	No testimony; committee discussion only
House Judiciary	March 27, 1998	3 state officials, 1 member of the public
House Judiciary	March 28, 1998	6 members of the public
House Judiciary	March 30, 1998	1 state official, 22 members of the public
House Judiciary	April 3, 1998	2 state officials
House Judiciary	April 6, 1998	3 state officials, 1 members of the public
House Finance	April 9, 1998	4 state officials
Senate Judiciary	April 25, 1998	9 members of the public
Senate Judiciary	May 1, 1998	1 member of the public
Senate Judiciary	May 5, 1998	1 state official, 4 members of the public
Senate Judiciary	May 6, 1998	No testimony or discussion, moved bill out
<b>THE FOLLOWING BILLS RECEIVED NO HEARINGS:</b>		
HB 295	Enforcement of Subsistence Laws	
HJR 10/SJR 6	Constitutional Amendment: Subsistence	
HJR 66	Constitutional Amendments: Subsistence Priority	
HB 320/SB 239	Subsistence Uses of Fish & Wildlife	
HJR 46/SJR 31	Constitutional Amendment: Priority for Subsistence Uses	
HJR 3/SJR 2	Constitutional Amendment: Subsistence Preference	

**NOTE:**

We compiled this information by first selecting major subsistence bills listed by subject in the *Final Status of Bills and Resolutions*, then searching through BASIS and FOLIO Views databases for meeting minutes. Because BASIS information is no longer available for the 16th and 17th Legislature, we also looked through committee records maintained in the Legislative Library.

**SOURCES:**

*Final Status of Bills and Resolutions* for each Legislature (published by the Legislative Affairs Agency); BASIS for the 18th, 19th, 20th Legislatures; FOLIO Views (committee minutes database); Committee records in the Legislative Library.

TABLE 3

## Legislative Hearings on Subsistence, 1990-1998, by Date

Committee	Date	Heard Testimony From:
<b>16th Legislature (1989-1990)</b>		
House Resources	March 7, 1990	5 state officials, 1 member of the public
House Resources	March 10, 1990	2 state officials, 51 members of the public
House Resources	March 21, 1990	1 state official, 28 members of the public
House Resources	April 5, 1990	2 state officials, 10 members of the public
House Resources	April 20, 1990	3 state officials, 5 members of the public
House Resources	April 21, 1990	2 state officials
House Judiciary	April 27, 1990	4 officials (3 state, 1 federal), 4 members of the public
House Judiciary	April 30, 1990	3 state officials, 3 members of the public
House Judiciary	May 1, 1990	3 state officials
Senate Resources	May 3, 1990	4 state officials
House Judiciary	May 4, 1990	5 state officials
Senate Resources	May 4, 1990	4 state officials, 2 members of the public
Senate Resources	May 6, 1990	3 state officials
Senate Resources	May 7, 1990	1 state official, 6 members of the public
House Work Session	June 20, 1990	In Anchorage -- 2 state officials, 10 members of the public
House Resources	June 25, 1990	7 officials (incl. Cowper, Murkowski, Stevens, Young), 10 public
House Resources	June 26, 1990	4 state officials
Senate Resources	June 26, 1990	17 members of the public
House Resources	June 27, 1990	1 state official
Senate Resources	June 27, 1990	5 state officials, 1 member of the public
Senate Finance	June 28, 1990	3 state officials, 1 member of the public
House Resources	June 29, 1990	5 state officials
House Resources	June 29, 1990	5 state officials
Senate Rules	June 29, 1990	No testimony; committee discussion only
House Rules	July 7, 1990	6 state officials, 3 members of the public
<b>17th Legislature (1991-1992)</b>		
Senate Resources	April 5, 1991	1 state official
Senate Resources	March 5, 1992	4 state officials (including Governor Hickel)
Senate Resources	March 6, 1992	1 state official
Senate Resources	March 7, 1992	33 members of the public
Senate Resources	March 10, 1992	1 state official, 1 member of the public
Senate Resources	March 23, 1992	3 state officials
Senate Resources	March 27, 1992	1 state official
House Resources	April 1, 1992	2 state officials (including Governor Hickel)
Senate Judiciary	April 7, 1992	4 state officials, 2 members of the public
Senate Judiciary	April 9, 1992	2 state officials
House Resources	May 5, 1992	1 state official, 1 member of the public
House Resources	May 11, 1992	1 state official, 3 members of the public
House Resources	May 11, 1992	4 members of the public
Conference Committee	May 21-22, 1992	6 state officials, 1 member of the public
House Judiciary	June 10, 1992	3 state officials, 44 members of the public
S Comm of the Whole	June 15, 1992	2 state officials, 8 members of the public
House Resources	June 15, 1992	3 state officials
H State Affairs/Judiciary	June 16, 1992	3 state officials, 5 members of the public
S Comm of the Whole	June 16, 1992	4 state officials, 17 members of the public
House Resources	June 16, 1992	1 former state official

TABLE 3

## Legislative Hearings on Subsistence, 1990-1998, by Date

Committee	Date	Heard Testimony From:
H Resources/Judiciary	June 16, 1992	4 state officials, 67 members of the public
H State Affairs/Judiciary	June 17, 1992	2 state officials, 6 members of the public
S Comm of the Whole	June 17, 1992	6 officials (4 state, 2 federal), 7 members of the public
House Resources	June 17, 1992	22 members of the public
H Resources/Judiciary	June 17, 1992	1 state official, 7 members of the public
S Comm of the Whole	June 18, 1992	7 state officials, 4 members of the public
Senate Finance	June 19, 1992	4 state officials
House Judiciary	June 19, 1992	3 state officials
S Comm of the Whole	June 19, 1992	5 state officials, 3 members of the public
<b>18th Legislature (1993-1994)</b>		
No hearings on major subsistence legislation		
<b>19th Legislature (1995-1996)</b>		
House Rules	January 27, 1995	No testimony; committee discussion only
House Judiciary	March 17, 1995	24 members of the public
House Judiciary	March 22, 1995	2 state officials, 80 members of the public
Senate Resources	March 29, 1995	In Fairbanks -- 1 state official, 69 members of the public
Senate Resources	April 8, 1995	In Soldotna -- 33 members of the public
Senate Resources	April 10, 1995	1 state official, 29 members of the public
Senate Rules	April 11, 1995	No testimony; committee discussion only
House Resources	April 25, 1995	3 state officials, 1 member of the public
House Resources	April 27, 1995	1 state official, 4 members of the public
Senate Resources	April 28, 1995	1 state official, 3 members of the public
House Judiciary	May 1, 1995	1 state official, 16 members of the public
<b>20th Legislature 1997-1998</b>		
House Resources	March 13, 1997	19 members of the public
House Resources	March 20, 1997	1 state official, 14 members of the public
House Resources	March 27, 1997	No testimony; committee discussion, then bill moved out
House State Affairs	April 10, 1997	1 state official, 15 members of the public
House State Affairs	April 15, 1997	23 members of the public
House Resources	May 1, 1997	2 state officials, 1 member of the public
House Resources	May 1, 1997	2 state officials, 7 members of the public
House State Affairs	May 3, 1997	No testimony; committee discussion, then bill moved out
Senate Resources	May 8, 1997	1 state official
House Resources	September 10, 1997	In Belhel -- 3 state officials, 52 members of the public
House Resources	September 12, 1997	In Ketchikan -- 2 state officials, 47 members of the public
Senate Resources	September 24, 1997	In Fairbanks -- 4 state officials, 28 members of the public
Senate Resources	September 25, 1997	In Wasilla -- 1 state official, 19 members of the public
Senate Resources	September 26, 1997	In Soldotna -- 1 state official, 28 members of the public
Senate Resources	September 27, 1997	In Anchorage -- 3 officials, 23 members of the public
Senate Resources	October 17, 1997	In Galena -- 45 members of the public
House Resources	February 17, 1998	2 state officials
House Resources	February 21, 1998	2 state officials
House Resources	February 28, 1998	1 state official, 52 members of the public
House Resources	March 3, 1998	1 state official
House Resources	March 5, 1998	5 state officials, 28 members of the public

**TABLE 6**  
**Hearings on Subsistence, 1998-1999 by Date**

<b>Committee</b>	<b>Date</b>	<b>Heard Testimony From:</b>
House Judiciary	March 9, 1998	2 state officials
House Judiciary	March 11, 1998	4 state officials, 23 members of the public
House Judiciary	March 18, 1998	2 state officials, 10 members of the public
House Judiciary	March 20, 1998	3 members of the public
Senate Resources	March 25, 1998	2 state officials, 1 member of the public
House Judiciary	March 25, 1998	No testimony; committee discussion only
House Judiciary	March 27, 1998	3 state officials, 1 member of the public
House Judiciary	March 28, 1998	6 members of the public
House Judiciary	March 30, 1998	1 state official, 22 members of the public
House Judiciary	April 3, 1998	2 state officials
House Judiciary	April 6, 1998	3 state officials, 1 members of the public
House Finance	April 9, 1998	4 state officials
Senate Judiciary	April 25, 1998	9 members of the public
Senate Judiciary	May 1, 1998	1 member of the public
Senate Judiciary	May 5, 1998	1 state official, 4 members of the public
Senate Judiciary	May 6, 1998	No testimony or discussion, moved bill out

**NOTE:**

We compiled this information by first selecting major subsistence bills listed by subject in the *Final Status of Bills and Resolutions*, then searching through BASIS and FOLIO Views databases for meeting minutes. Because BASIS information is no longer available for the 16th and 17th Legislature, we also looked through committee records maintained in the Legislative Library.

**SOURCES:**

*Final Status of Bills and Resolutions* for each Legislature (published by the Legislative Affairs Agency); BASIS for the 18th, 19th, 20th Legislatures; FOLIO Views (committee minutes database); Committee records in the Legislative Library.

# Subsistence In Alaska: 1998 Update

Division of Subsistence, Alaska Department of Fish and Game  
Box 25526, Juneau, Alaska, 99802 (907) 465-4147  
March 1, 1998

## Introduction

Subsistence fishing and hunting are important for the economies and cultures of many families and communities in Alaska. Subsistence exists alongside other important uses of fish and game in Alaska, including commercial fishing, sport fishing, personal use fishing, and general hunting. This report provides an update on subsistence in Alaska, including its interaction with other types of fishing and hunting.

## What is Subsistence?

State and federal law define subsistence as the "customary and traditional uses" of wild resources for food, clothing, fuel, transportation, construction, art, crafts, sharing, and customary trade. Subsistence uses are central to the customs and traditions of many cultural groups in Alaska, including Aleut, Athabaskan, Alutiiq, Euroamerican, Haida, Inupiat, Tlingit, Tsimshian, and Yup'ik. Subsistence fishing and hunting are important sources of employment and nutrition in almost all rural communities.

Commercial fishing differs from subsistence fishing, as it is fishing for sale on commercial markets. Subsistence fish

and game cannot be commercially sold. Personal use fishing is similar to subsistence fishing, except that it is fishing with nets for food in areas generally closed to subsistence, particularly by residents of urbanized areas. Sport fishing and hunting differ from subsistence in that, although food is one product, they are conducted primarily for recreational values, following principles of "fair chase". While subsistence is productive economic activity which is part of a normal routine of work in rural areas, sport fishing and hunting usually are scheduled as recreational breaks from a normal work routine.

## Who Qualifies for Subsistence?

Federal and state laws currently differ in who qualifies for subsistence. Rural Alaska residents qualify for subsistence under federal law. About 20% of Alaska's population (124,367 people in 270 communities) lived in rural areas in 1995 (see Fig. 1). Of the rural population, 61,320 (49.3%) were Alaska Native and 63,047 (50.7%) were not Alaska Native. Of Alaska's urban population (491,533 people), about 33,782 (6.9%) were Alaska Native and 457,751 (93.1%) were not Alaska Native. Under state law, rural residents qualified for subsistence from 1978-1989. Since 1989, all state residents have qualified under state law.

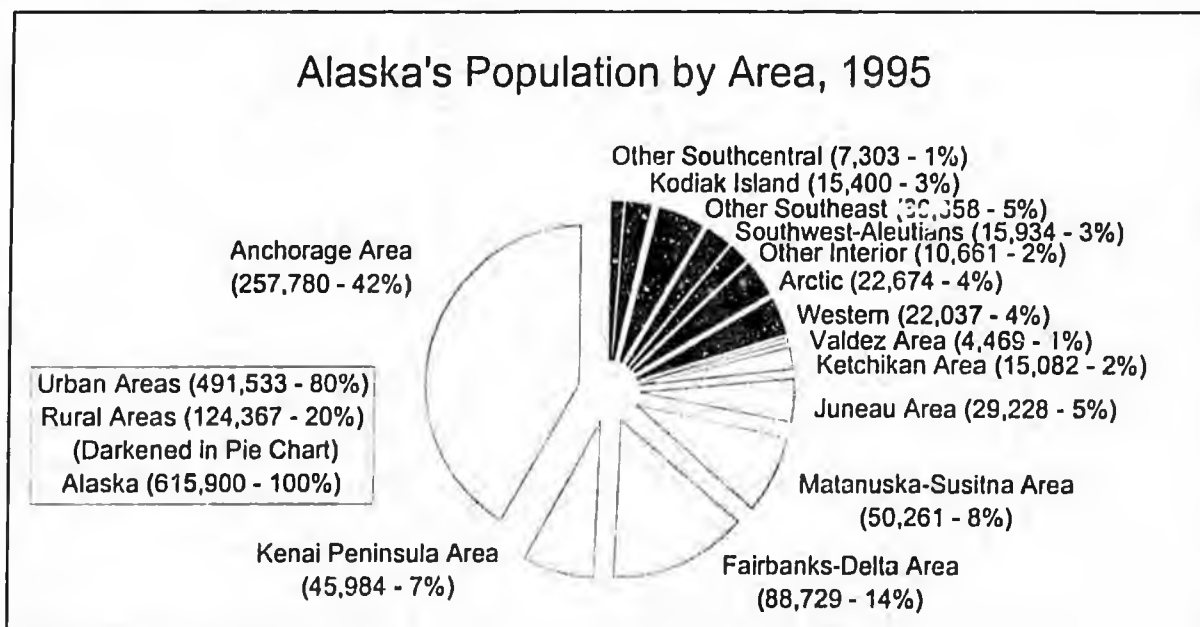


Figure 1

**Percent of Households Participating in Subsistence Activities in Rural Areas**

Area	Harvesting Game	Using Game	Harvesting Fish	Using Fish
Arctic	63%	92%	78%	96%
Interior	69%	88%	75%	92%
Southcentral	55%	79%	80%	94%
Southeast	48%	79%	80%	95%
Southwest	65%	90%	86%	94%
Western	70%	90%	98%	100%
Total Rural	60%	86%	83%	95%

Figure 2

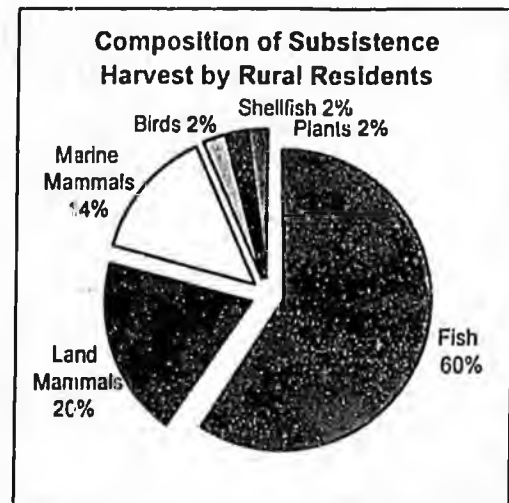


Figure 3

**Who Participates in Subsistence?**

Most rural families in Alaska depend on subsistence fishing and hunting. A substantial proportion of rural households harvest and use wild foods (see Fig. 2). For surveyed communities in different rural areas, from 92%-100% of sampled households used fish, 79%-92% used wildlife, 75%-98% harvested fish, and 48%-70% harvested wildlife. Because subsistence foods are widely shared, most residents of rural communities make use of subsistence foods during the course of the year.

**What is the Rural Food Harvest?**

Most of the wild food harvested by rural families is composed of fish (about 60% by weight), along with land mammals (20%), marine mammals (14%), birds (2%), shellfish (2%), and plants (2%) (see Fig. 3). Fish varieties include salmon, halibut, herring, and whitefish. Seals, sea lion, walrus, beluga, and bowhead whale comprise the marine mammal harvest. Moose, caribou, deer, bear, Dall

sheep, mountain goat, and beaver are commonly used land mammals, depending on the community and area.

**How Large is the Subsistence Harvest?**

The subsistence food harvest in rural areas represents about 2% of the fish and game harvested annually in Alaska (see Fig. 4). Commercial fisheries harvest about 97% of the statewide harvest (about 2.0 billion lbs annually), while sport fishing and hunting take about 1% (18.0 million lbs).

Though relatively small in the statewide picture, subsistence fishing and hunting provide a major part of the food supply of rural Alaska (see Figs. 5 and 6). Our best estimate is about 43.7 million lbs (usable weight) of wild foods are harvested annually by residents of rural areas of the state, and 9.8 million lbs by urban residents (see Fig. 6). On a per person basis, the annual wild food harvest is about 375 lbs per person per year for residents of rural areas (about a pound a day per person), and 22 lbs per person per year for urban areas (see Fig. 5).



Figure 4

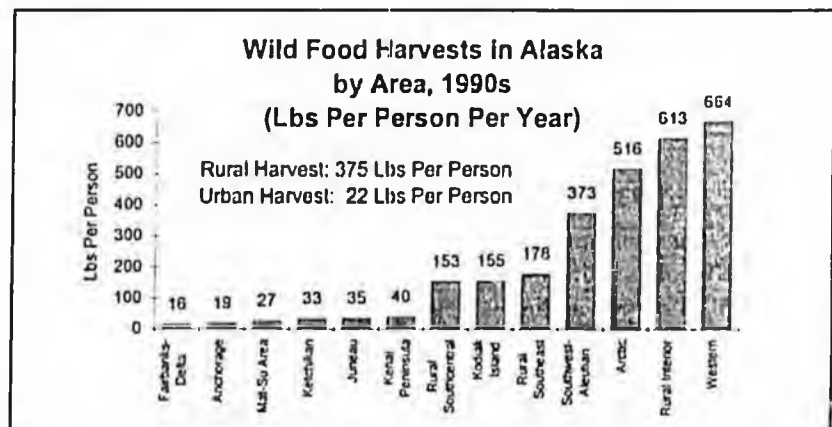


Figure 5

### Nutritional Value of Subsistence

The subsistence food harvest provides a major part of the nutritional requirements of Alaska's population. The annual rural harvest of 375 lbs per person contains 242% of the protein requirements of the rural population (that is, it contains about 118 grams of protein per person per day; about 49 grams is the mean daily requirement) (see Fig. 6). The subsistence harvest contains 35% of the caloric requirements of the rural population (that is, it contains about 840 Kcal daily, assuming a 2,400 Kcal/day mean daily requirement). The urban wild food harvests contain 15% of the protein requirements and 2% of the caloric requirements of the urban population (see Fig. 6).

	Annual Wild Food Harvest (Lbs Per Person)	Annual Wild Food Harvest (Total Lbs)	Percent of Population's Required		Estimated Wild Food Replacement Value @ \$3/lb	Estimated Wild Food Replacement Value @ \$5/lb
			Protein (49 g/day)	Calories (2400 C/day)		
<b>Rural Areas</b>						
Southcentral	153	1,688,467	99%	14%	\$5,065,401	\$8,442,335
Kodiak Island	155	2,061,607	100%	14%	\$6,184,821	\$10,308,035
Southeast	178	5,084,509	115%	17%	\$15,193,527	\$25,322,545
Southwest-Aleutian	373	5,114,522	241%	35%	\$15,343,566	\$25,572,610
Interior	613	8,359,597	398%	57%	\$19,078,791	\$31,797,985
Arctic	516	10,507,255	333%	48%	\$31,521,765	\$52,536,275
Western	664	12,918,649	429%	62%	\$38,755,947	\$64,593,245
<b>Total Rural</b>	<b>375</b>	<b>43,714,606</b>	<b>242%</b>	<b>35%</b>	<b>\$131,143,816</b>	<b>\$218,573,030</b>
<b>Urban Areas</b>						
Ketchikan Area	33	461,855	22%	3%	\$1,385,566	\$2,309,276
Juneau Area	35	922,910	22%	3%	\$2,768,729	\$4,614,548
Matsu Area	27	1,056,322	17%	2%	\$3,168,966	\$5,281,610
Fairbanks-Delta	16	1,307,648	10%	1%	\$3,922,944	\$6,530,240
Kona Peninsula	40	1,600,320	26%	4%	\$4,800,960	\$8,001,600
Anchorage Area	19	4,390,957	13%	2%	\$13,172,872	\$21,954,786
<b>Total Urban</b>	<b>23</b>	<b>9,740,012</b>	<b>15%</b>	<b>2%</b>	<b>\$29,220,036</b>	<b>\$48,700,060</b>
<b>Alaska Total</b>	<b>100</b>	<b>53,454,618</b>	<b>65%</b>	<b>8%</b>	<b>\$160,363,854</b>	<b>\$267,273,090</b>

Figure 6

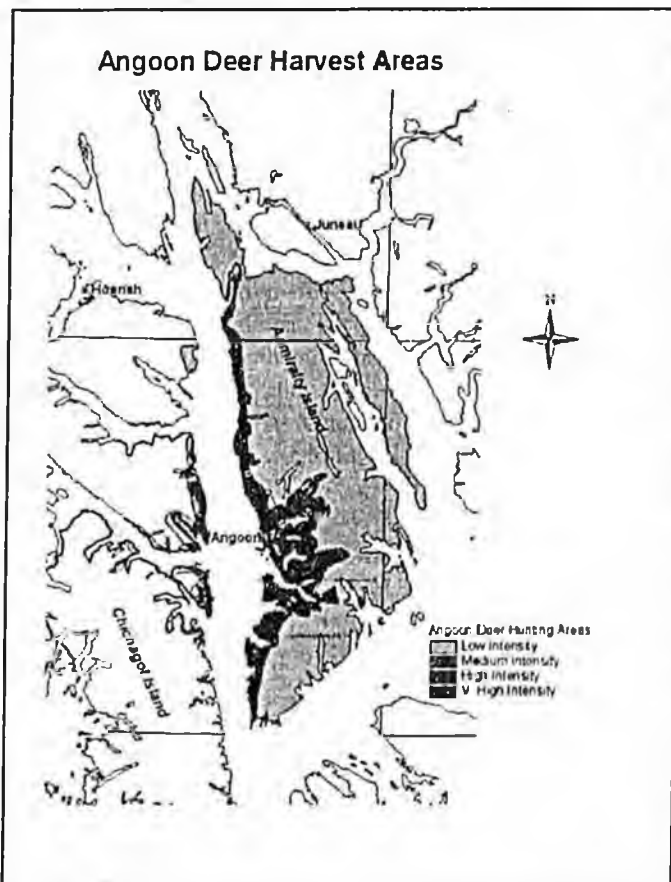


Figure 7

### Traditional Harvest Areas

Studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. Subsistence harvest areas are accessible from the community, although seasonal camps are used to access some species. Subsistence harvest areas for communities are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (see Fig. 7).

### The Monetary Value of Subsistence Harvests

Subsistence fishing and hunting are important to the rural economy. Attaching a dollar value to wild food harvests is difficult, as subsistence products do not circulate in markets. However, if families did not have subsistence foods, substitutes would have to be purchased. If one assumes a replacement expense of \$3 - \$5 per pound, the simple "replacement value" of the wild food harvests in rural Alaska may be estimated at \$131.1 - \$218.6 million dollars annually (see Fig. 6).

### Subsistence and Money

Subsistence is part of a rural economic system, called a "mixed, subsistence-market" economy. Families invest

money into small-scale, efficient technologies to harvest wild foods, such as fishwheels, gill nets, motorized skiffs, and snowmachines. Subsistence food production is directed toward meeting the self-limited needs of families and small communities, not market sale or accumulated profit as in commercial market production. Families follow a prudent economic strategy of using a portion of the household monetary earnings to capitalize in subsistence technologies for producing food. This combination of money from paid employment and subsistence food production is what characterizes the mixed, subsistence-market economies of rural areas. Successful families in rural areas combine jobs with subsistence activities and share wild food harvests with cash-poor households who cannot fish or hunt, such as elders, the disabled, and single mothers with small children.

### Subsistence and Sport

Subsistence harvests in rural areas commonly occur alongside recreational fishing and hunting from urban neighbors. Most urban residents hunt and fish under general hunting and sport fishing regulations. In 1995, Anchorage had 22,148 licensed hunters (9% of Anchorage residents); Matanuska-Susitna area, 8,820 (18%); Fairbanks, 11,489 (13%); Kenai Peninsula, 8,670 (19%); Ketchikan, 2,569 (17%); and Juneau, 3,672 (13%). For sport fishing, Anchorage had 70,885 licensed anglers (27% of Anchorage residents); Matanuska-Susitna area, 15,985 (32%); Fairbanks, 22,581 (25%); Kenai Peninsula, 18,657 (41%); Ketchikan, 5,626 (37%); and Juneau, 9,743 (33%).

Urban residents primarily hunt in areas surrounding their home communities (see Fig. 8). About 80% of the wild

meat harvested by urban hunters came from locally-accessible Game Management Units (1.6 million lbs of 2.0 million lbs annually). Many recreational hunters also hunt in more distant locations, so that hunting by urban residents touches all areas of Alaska. Recreational fishing by anglers follows a similar geographic pattern.

### The Subsistence Priority

Subsistence uses are given a priority over commercial fishing and recreational fishing and hunting in state and federal law. By and large, urban fishers and hunters have not experienced major changes in harvest opportunity due to the subsistence priority. Personal use net fisheries provide for established food fisheries of urban residents in areas closed to subsistence fishing. General hunting and sport fishing regulations continue to provide opportunities for residents and non-residents.

For example, during the eleven-year period when the rural priority was being implemented under state management (1978-1989), general resident hunting seasons for caribou increased by 36% (from 5,505 days to 7,500 days), moose hunting days decreased by 10% (from 2,961 days to 2,671 days), and Dall sheep hunting days increased by 2% (from 1,855 days to 1,900 days) – comparing the 1978-79 resident season with the 1989-90 resident season. That is, during this period, hunting days by urban hunters for caribou, moose, and sheep were not significantly changed by the rural subsistence priority.

The greatest effect of state and federal subsistence laws has been to legally recognize customary and traditional harvest practices and uses in rural areas. Because of the law, the

Boards of Fisheries and Game have created subsistence regulations designed to provide opportunity for the continued harvest of the rural food supply. While impacts on urban residents have been relatively small, the impacts on rural areas have been great. Rural residents now have a legally protected opportunity to fish and hunt to feed families following long-term customs and traditions.

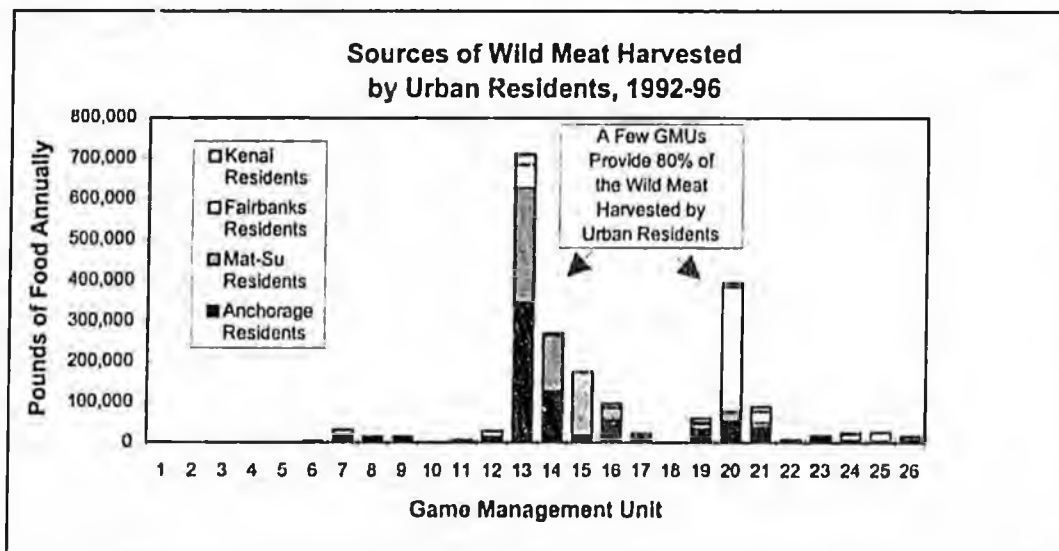


Figure 8