

SUBSIST-  
ENCE:  
COMPARI-  
SON

## OUTLINE

### GOVERNOR HICKEL'S SUBSISTENCE COUNCIL'S PROPOSAL

2/2/98

- A. Definition of subsistence - altered to emphasize "taking and uses of fish and game by a resident in a subsistence use area..."
- B. Subsistence limited to qualified users.
- C. Qualification based on point system applied across the state with three different levels of presumption. The seven criteria are:
  - 1. The quantity of fish and game consumed by the person in the preceding 12 months, with a mandatory minimum of 125 pounds.
  - 2. The number of species and groups of species of fish and game from the subsistence use area consumed by the person in the preceding 12 months, with a mandatory minimum set by the boards by region.
  - 3. The number of days in the preceding 12 months that the person engaged in taking fish or game in the subsistence use area or spent processing that fish or game, with a mandatory minimum of 30 days.
  - 4. The number of months in the preceding 12 months in which the applicant engaged in taking fish or game in the subsistence use area, with a mandatory minimum of four months.
  - 5. The number of week, in the preceding 12 months, during which the taking or processing of fish and game was the applicant's principal work effort, to a maximum of 26 weeks.
  - 6. The number of households, other than the person's household, with which the person shared or received fish and game in the preceding 12 months, with a maximum of 10 households.
  - 7. Whether the person's taking of fish and game occurred solely in the subsistence use area for which they are qualifying.

D. Communities and areas of state classified into three groups:

Group 1 - Areas where population of each community is less than 2,500 and subsistence is a principal characteristic of the economy, culture, and way of life. A person is presumed to meet the subsistence eligibility standard.

Group 2 - Consists of communities where the population is 2,500 to 7,000 and subsistence is a principal characteristic of the economy, culture, and way of life. A person is rebuttably presumed to meet the eligibility standard upon signing an affidavit.

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

E. Provides 13 criteria for determining whether dependence on subsistence is a principal characteristic of the economy, culture and way of life of an area or community.

F. Retains tiered system and may require elimination of "proximity to resource" criterion.

G. Constitutional Amendment requirements unclear.

H. Emphasis on providing reasonable opportunity for subsistence

I. Defines "customary and traditional", "customary trade", "reasonable opportunity" and "sustained yield."

# Voice of The Times

## Murkowski: Legislature must act this year

Following is an excerpt of Sen. Frank Murkowski's address before the Alaska State Legislature on Jan. 22.

By SEN. FRANK MURKOWSKI

The challenge for the Legislature is to come to a resolution on subsistence before the moratorium on the federal government's take-over of our fisheries ends.

The federal government is already managing game on federal lands in Alaska and they intend to control our fisheries — and more — by year-end.

This Legislature has the opportunity to provide me with recommendations on amendments to ANILCA.

As chairman of the Energy and Natural Resources Committee, my intention, after Alaska lawmakers complete their work and make their recommendations, is to conduct hearings and to legislate any additional changes to ANILCA.

However, a full repeal of Title 8 is politically unrealistic, because it would face a certain presidential veto. The Legislature has a decision to make if we are going to avoid the federal takeover of our fish and return management of our game to our state.



Murkowski

We all have a fundamental responsibility to the people of Alaska. The time to act is now! Do not, do not — by your failure to act — allow Secretary Bruce Babbitt on Dec. 1 to take control of our fish and game. We fought hard to become a state. Do not, by your inaction, turn the clock back 40 years to territorial days.

### Indian Country

Last month, the Supreme Court heard the state's appeal of the Venetie decision. What is at stake is whether tribal governments will replace the authority of the state on over 40 million acres of Native lands. If the lower court decision is not reversed, what will follow is a resurgence of the authority of the BIA and other federal agencies that will become intimately involved in the lives of Alaskans.

How this is resolved is fundamental to our future.

While we wait for the court's decision, we need to act on the needs of rural Alaskans. Clean water, safe sanitation, education and economic opportunities, health care, law enforcement — all are in need of vast improvement. Residents of

I LOST THE WAR. NOW,  
I DICTATE WHAT I WILL  
ALLOW AND NOT ALLOW  
THE VICTORS TO DO.



Long live George Orwell

Upper and Lower Kalskag are entitled to the same life opportunities as residents of Anchorage or Juneau.

You know that a state is only as strong as its communities, and the best way to make Alaska's rural communities stronger is to increase the amount of control local residents have over the decisions that affect their lives. We need to empower village Alaska with more self-determination — morally, legally, and economically.

Whether it be greater local powers to handle misdemeanor offenses, setting educational curriculum, control of alcohol, or encouraging job training and economic development, a workable government structure must be set in place in rural Alaska with emphasis on real jobs that use the latest technology for resource development in their areas.

Also, we must hold the secretary of Interior accountable for his trust responsibility for the welfare of Alaska Natives. This secretary has an on-going conflict between his desire to appease environmentalists and his responsibility to enhance the welfare of Alaska Natives through the development and preservation of their lands.

This has been evident in the secretary's aggressive attempts to use the Exxon-Valdez oil spill fund to acquire Native-owned lands and put them under the control of his department. Already, more than \$380 million of the available \$900 million has been committed to buy up to 750,000 acres of Alaska land — more land than the entire state of Rhode Island!

Future generations of Alaska Natives

have lost their land heritage as a result of these sales with no guarantee that they will benefit from these cash payments in the future.

### Alaska resources at crossroads

Today, I see our Alaska economy in a state of transition — a transition that blends our gift of abundant natural resources with the skills, discipline, and scientific capabilities of our hard-working people.

Soon we will be dedicating the new international Arctic Research Center at the University of Alaska, a partnership with the government of Japan, that will study the planet and our global environment as never before.

We're building a spaceport in Kodiak that could become the Cape Canaveral of the North for commercial satellites. We have built air cargo transshipment points in Anchorage and Fairbanks that are the gateways between Europe, the Orient and North America.

These are new and exciting opportunities for our future. But Alaska cannot ignore its traditional base for economic development — energy, mining, timber, fishing and our growing tourism industry. Our great strength is the development of our abundant natural resources.

And in Alaska we have shown that with the application of science and advanced technology, we can do it right — preserving and protecting our natural bounty for our children and future generations. I have the greatest faith that the people of Alaska can meet any challenge and overcome what others may think are near-impossible obstacles.

I share with you a vision of Alaska where every child can grow and prosper without the fear of abuse, neglect or the scourge of drugs, alcohol and tobacco. Where a mother does not fear for her child's health because she lacks proper sanitation, safe drinking water, or health coverage.

- An Alaska, where every citizen has the opportunity for a first-class education that enables every Alaskan to get a good job and build a family. Alaskans must come first. "Local hire" is the watchword.

- An Alaska where Alaskans make decisions for themselves; not let far away bureaucrats dictate our lifestyles.

You in the Legislature know the issues that you must address this year. I know you will put aside your differences and provide the leadership that all Alaskans expect of you.

# Alaska State Legislature

## House Resources Committee

Co-Chair Scott Ogan  
(907) 465-3715  
FAX (907) 465-3265  
Capitol Building, Room 124  
Juneau, Alaska 99801



Co-Chair Bill Hudson  
(907) 465-6820  
FAX (907) 465-2273  
Committee Meetings  
T/Th 1 - 4 p.m.

Vice Chair: Beverly Masek.

Representatives Ramona Barnes, Fred Dyson, Joe Green, Reggie Joule, Irene Nicholia, William Williams

### RESOURCES COMMITTEE SCHEDULE

1:00 PM - 4:00 PM

Capitol Room 124

Noticed: January 29, 1998

#### Tuesday, February 3:

**\*SUBSISTENCE WORK SESSION:**

Overview of subsistence proposals past and present.  
(Teleconference - Listen Only)

-Bills previously scheduled or heard in committee

#### Thursday, February 5:

\*+HB 168: Traditional Access for Traditional Activities

\*+SCR 2: Management of Wildlife Resources

- Bills previously scheduled or heard in committee

#### Saturday, February 7:

NO MEETING SCHEDULED

\*First Hearing

+Teleconference

**AMENDMENT TO BE OFFERED BY SENATOR STEVENS TO H.R. 2107**

VIZ: Insert at the appropriate place in the bill:

**TITLE \_\_\_--SUBSISTENCE HUNTING AND FISHING IN ALASKA****SEC. \_\_01. MORATORIUM ON FEDERAL MANAGEMENT.**

None of the funds made available to the Department of the Interior or the Department of Agriculture by this or any other Act hereafter enacted may be used prior to December 1, 1998 to issue or implement final regulations, rules, or policies pursuant to Title VIII of the Alaska National Interest Lands Conservation Act to assert jurisdiction, management, or control over the navigable waters transferred to the State of Alaska pursuant to the Submerged Lands Act of 1953 or the Alaska Statehood Act of 1959.

**SEC. \_\_02. AMENDMENTS TO ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.**

(a) AMENDMENT OF ANILCA.--Except as otherwise expressly provided, whenever in this section an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(b) DEFINITIONS.--Section 102(2) (16 U.S.C. 3102(2)) is amended to read as follows:

"(2) The term 'Federal land' means lands the title to which is in the United States after December 2, 1980. 'Federal land' does not include lands the title to which is in the State, a Native Corporation, or other private ownership."

(c) FINDINGS.— Section 801 (16 U.S.C. 3111) is amended—

(1) by inserting "(a)" immediately before "The Congress finds and declares"; and

(2) by inserting at the end the following new subsection:

"(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."

(d) TITLE VIII DEFINITIONS.—Section 803 (16 U.S.C. 3113) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the period and inserting a semicolon at the end of paragraph (2); and

(3) by inserting at the end the following new paragraphs:

"(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 and wildlife;

"(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 area. A 'rural community or area' means a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses."

(e) PREFERENCE FOR SUBSISTENCE USES.—Section 804 (16 U.S.C. 3114) is amended—

(1) by inserting "(a)" immediately before the first sentence; and

(2) by inserting at the end the following new subsection:

"(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."

(f) LOCAL AND REGIONAL PARTICIPATION.—Section 805 (16 U.S.C. 3115) is amended—

(1) In subsection (a) by striking "one year after the date of enactment of this Act,"; and

(2) by amending subsection (d) to read as follows:

"(d)(1) Upon certification by the Secretary 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 sections 803, 804, and 805, the Secretary shall not implement subsections (a), (b), and (c) of this section, and the State may immediately assume management for the taking of fish and wildlife on the public lands for subsistence uses pursuant to this title. Upon assumption of such management by the State, the Secretary shall not implement subsections (a), (b), and (c) of this section unless a court of competent jurisdiction determines that such laws have been repealed, modified, or implemented in way that is inconsistent with, or does not provide for, the definition, preference, and participation specified in sections 803, 804, and 805, or that the State has failed to cure any such inconsistency after such determination. The State laws shall otherwise 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. The Secretary may bring a judicial

action to enforce this subsection.

"(2)(A) Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

"(B) The members of each regional advisory council established under this subsection shall be appointed by the Governor of Alaska. Each council shall have ten members, four of whom shall be selected from nominees who reside in the region submitted by tribal councils in the region, and six of whom shall be selected from nominees submitted by local governments and local advisory committees. Three of these six shall be subsistence users who reside in the subsistence resource region and three shall be sport or commercial users who may be residents of any subsistence resource region. Regional council members shall have staggered terms of three years in length, with no limit on the number of terms a member may serve. A quorum shall be a majority of the members of the council."

(g) JUDICIAL ENFORCEMENT.--Section 807 (16 U.S.C. 3117) is amended by inserting the following as subsection (b):

"(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."

(h) REGULATIONS.--Section 814 (16 U.S.C. 3124) is amended--

(1) by inserting ", and the State at any time the State has complied with section 805(d)" after "Secretary"; and

(2) by adding at the end the following new sentence: "During any time that the State has complied with section 805(d), the Secretary shall not make or enforce regulations implementing sections 805(a), (b), or (c)."

(i) LIMITATIONS, SAVINGS CLAUSES.--Section 815 (16 U.S.C. 3125) is amended--

(1) by striking "or" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting in lieu thereof a semicolon and "or"; and

(3) by inserting at the end the following new paragraph:

"(5) prohibiting the Secretary or the State from entering into co-management agreements with Native organizations or other local or regional entities when either is managing fish and wildlife on public lands in Alaska for subsistence uses."

**SEC. 03. SAVINGS CLAUSE.**

No provision of this title, amendment made by this title, or exercise of authority pursuant to this title may be construed to validate, invalidate, or in any way affect--

(1) any assertion that a Native organization (including a federally recognized tribe, traditional Native council, or Native council organized pursuant

to the Act of June 18, 1934 (25 U.S.C. 461 et seq.), as amended) has or does not have governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or persons within the boundaries of the State of Alaska;

(2) any assertion that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist within the boundaries of the State of Alaska;

(3) any assertion that the Alaska National Interest Lands Conservation Act, as amended, (16 U.S.C. 3101 et seq.) is or is not Indian law; or

(4) the authority of the Secretary of the Interior under section 1314(c) of the Alaskan National Interest Lands Conservation Act (16 U.S.C. 3202(c)).

#### **SEC. \_04. EFFECTIVE DATE.**

Unless and until laws are adopted in the State of Alaska which provide for the definition, preference, and participation specified in sections 803, 804, and 805 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111 et seq.), the amendments made by section \_02 of this title shall be effective only for the purposes of determining whether the State's laws provide for such definition, preference, and participation. The Secretary shall certify before December 1, 1998 if such laws have been adopted in the State of Alaska. Section \_02 shall be repealed on such date if such laws have not been adopted.

STEVENS AMENDMENTS TO ANILCA UNDER H.R. 2107**Sec \_\_02 Definitions**

Definition of "Federal Lands": Simply repeats the definition of federal lands found elsewhere in ANILCA. Does nothing to address the problems raised in Katie John. Does nothing to affect Interior's asserted powers of extraterritorial expansion onto state and private lands where necessary to regulate subsistence priority on federal lands.

**Findings**

(4): This section codifies and presumably validates an issue strenuously opposed by the State Legislature, mainly that the Department of Interior is legally authorized to manage fish and wildlife for subsistence purposes on federal lands in Alaska. In the Babbitt litigation and elsewhere, the State has vigorously opposed the Secretary's legal authority to manage fish and wildlife in Alaska. Yet here the statutory amendment runs the substantial risk of further foreclosing the argument for the State, and consequently strengthening Interior's position. This provision is a further expansion of Title VIII completely unnecessary to achieve Congress' purposes.

(5): This section codifies as a Congressional finding the Ninth Circuit's determination that public land includes navigable waters for purposes of federal management. Again, it is unnecessary and runs the risk of weakening the State's ability to challenge this assertion in subsequent litigation.

**(d) Title VIII Definitions--Sec. 803**

(3) "Customary and Traditional Uses" uses word "or" instead of original Task Force suggestion and current State law of "and" in Line 16. This significantly broadens the current definition beyond what is necessary to achieve the Congressional purposes asserted.

**(f) Local and Regional Participation--Sec. 805**

(d)(1): Note that State will be out of compliance if a court of competent jurisdiction determines that the State has implemented subsections (a), (b), and (c) in a way inconsistent with Sec.'s 803, 804, and 805. Federal courts will make that determination, and there is no language setting any standard whatever for the court's determination that the State's implementation is inconsistent. (i.e. Could have stated that court must determine that State has "substantially failed" to implement provisions, or some similar language.)

(2)(B): Nominees for Regional Advisory Councils must come from Tribal Councils. This statutory mandate to effectively co-manage with Tribal groups threatens to invalidate the neutrality provisions contained in Sec. \_\_03. This mandate could be construed at some later date as an additional federal and state recognition of Tribal Councils as sovereign governmental entities. That interpretation is dangerous considering the State's current litigation position before the Supreme Court in Venerie. It could also be used in the future to bolster an argument that ANILCA is Indian legislation, and therefore should be construed differently when an issue is in doubt.

**(g) Judicial Enforcement--Sec. 807**

(b): Language has been added to Task Force's proposed language regarding deference to State agencies by federal courts. Under this draft, State agency decisions may be overturned if "arbitrary, capricious, or an abuse of discretion, *or otherwise not in accordance with law.*" This phrase is ambiguous and extremely broad. It effectively nullifies the standard set forth immediately preceding it, and instead may permit a court of law to use any law, state or federal, to overrule state agency decisions. The original intent behind this amendment was to strengthen State agency decisions. This added language achieves the opposite result in weakening agency decisionmaking authority. It fails to reduce federal oversight in any appreciable way.

**(i) Limitations, Savings Clauses--Sec. 815**

(5): Explicitly recognizes that the State and federal government may enter co-management agreements with Native organizations or other local entities. This is new language, not contemplated by the Task Force. The decision to co-manage will be made Administratively. Local or Native entities with co-management authority will presumably have full authority to set subsistence regulations both on federal lands, and under interior's asserted powers to do so, on state and private lands where necessary to protect subsistence uses on federal lands.

Note that any attempted co-management arrangement may fail under the Alaska Constitution. Once it is determined that the State has the authority to manage fish and game, whether under authority of Title VIII or its own Constitution, a co-management arrangement may constitute an improper delegation of Legislative and/or Executive authority, whether this section is added to ANILCA or not. A court will likely find that only the Legislature or Executive may manage, and that delegation of that power to local entities, especially those not recognized as official government subunits, is improper. The State would then have to amend its Constitution yet again to permit co-management with local entities.

Additionally, further statutory recognition of Native entities poses same threats discussed *Supra* at Sec 805 (2)(B).

**Sec \_\_04 Effective Date**

Ostensibly requires that State pass a constitutional amendment and state statutory reforms consistent with Title VIII before the amendments to ANILCA become effective. Sec. \_\_02 amendments will be effective, however, for determining whether State has complied with Sec.'s 803, 804, and 805. Note that Sec. \_\_03 Savings Clause is not included as effective for determining whether State has complied. Thus, there is no effective date for Sec. \_\_03. Its status is therefore unknown, as distinct from Sec. \_\_02. It is unclear whether this section will remain effective if the State does not comply.

SUBSTANTIVE TASK FORCE CHANGES TO ANILCA VS. STEVENS CHANGES

TASK FORCE

SENATOR STEVENS

Sec. \_\_01--Moratorium--  
Not included

Sec. \_\_01--Moratorium--  
Extended until December  
1, 1998

Sec. 801--Findings--  
No proposed changes

(b)(1) through (7)--  
Recognizes McDowell,  
Babbitt, and other historical  
events relating to subsistence  
in Alaska

Note that Sec.'s (4) and  
(5) recognize and potentially  
validate issues of major  
contention for Alaska, mainly  
the Secretary's authority to  
manage in Alaska and those  
rights over navigable waters.  
Statutory validation could  
weaken State's ability to  
successfully raise those issues  
later

Sec. 803--Defines "customary and traditional";  
"customary trade"; and "rural Alaska resident"

Essentially the same; under  
definition of "rural",  
however, word "or" used in  
line 2, page 4 of Stevens  
version. Changed from "and"  
in Task Force version

Sec. 804--Amended to grant only a "reasonable  
opportunity" to take fish or wildlife

Essentially the same

16 U.S.C. 3102(2)--Definition of "Federal  
land"

Leaves out "selections" which  
may put lands selected but  
not yet conveyed under  
questionable jurisdiction

Sec. 805/806--Regional Advisory Council  
provisions to match state law

Council provisions essentially  
the same

(d)(1) differs from Task Force

TASK FORCE

SENATOR STEVENS

/ Sec. 807--Judicial Enforcement--  
Agency decisions to be overturned  
only if "arbitrary, capricious, or  
an abuse of discretion." Designed to  
strengthen State agency decisions

plan in that a court of  
competent jurisdiction may  
determine that State is out of  
compliance by finding that the  
new law has not been  
implemented in a way  
consistent with Title VIII.  
Under Task Force plan, court  
must determine that State has  
"substantially failed" to  
implement operative sections.  
Under Stevens Plan, much  
easier for courts to find State  
out of compliance

/ Sec. 814--Regulations--

Adds the term "or otherwise  
not in accordance with law."  
Means courts could use any  
law, state or federal, to  
overturn State agency  
decisions. Substantially  
weakens decisionmaking  
authority of State agencies

Sec. 815--Limitations--  
No changes suggested by  
Task Force proposal.

Essentially the same

/ Sec. 816--Savings Clause--  
Essentially a neutrality provision  
on sovereignty, Indian country,  
and construal as Indian law

(5) explicitly recognizes that  
nothing in this title shall  
prohibit the Secretary or the  
State from entering into co-  
management arrangements  
with Native organizations or  
other local entities

/ Linkage Section--  
As currently written, does not  
require that all amendments to  
ANILCA be passed before  
constitutional amendment goes

Sec. 03--Adds (4) stating this  
will not in any way affect  
the authority of the Secretary  
of Interior under section  
1314(c) of ANILCA. This  
ambiguous provision may  
invalidate proposed changes  
to Sec.'s 804, 805, 814, and  
others which arguably do in  
fact affect the Secretary's  
powers under ANILCA

Sec. \_\_04--Effective Date--  
Amendments not effective  
unless and until state law is  
changed to provide for the  
definition, preference, and

TASK FORCE

on the ballot

SENATOR STEVENS

participation specified in ANILCA, except that they are effective for determining whether State has complied

Note that Sec. \_\_03 Savings Clause is not included as effective for determining whether State has complied. Thus, there is no effective date for Sec. \_\_03. It is unclear whether that section will remain effective if the State does not comply

SB 443  
HB 552

**An Act Relating to the Taking of Fish and Game for Subsistence;  
and Providing For an Effective Date**



*Prepared by:*  
The Governor's Subsistence Advisory Council

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State of Alaska  
Office of the Governor  
March 3, 1992

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- VI. Fiscal Notes
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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 21, 1992

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

Dear President Eliason:

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

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

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

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

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

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

The Honorable Richard Eliason  
February 21, 1992  
Page 2

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

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

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

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

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

Sincerely,

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

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

### **How would the new law work?**

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

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

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

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

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

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

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

### **What are the qualification standards?**

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

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

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

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

(5) the number of weeks, in the preceding twelve months, during which the taking or processing of fish and game was the applicant's principal work effort, to a maximum of 26 weeks;

(6) the number of households, other than the person's household, with which the person shared or received fish and game in the preceding twelve months, with a maximum of 10 households; and

(7) whether the person's taking of fish and game occurred solely in the subsistence use area for which they are qualifying.

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

#### **Where would people be able to go for subsistence hunting and fishing?**

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

#### **What are the advantages of this approach?**

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

## SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

## A BILL

## FOR AN ACT ENTITLED

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

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

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

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

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

13 (3) customary and traditional uses of Alaska's fish and game originated with Alaska  
14 Natives, and have been adopted and supplemented by many non-Native Alaskans as well; these uses.

1 among others, are culturally, socially, spiritually, and nutritionally important and provide a sense of  
2 identity for many subsistence users;

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

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

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

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

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

21 (b) It is the purpose of this Act

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

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

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

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

1 (c) It is the intent of the legislature

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

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

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

7 \* Sec. 2. AS 16.05 is amended by adding a new section to read:

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

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

12 The commissioner shall provide recommendations to the boards on the identifications. The  
13 boards shall make identifications required under this subsection after receipt of the  
14 commissioner's recommendations.

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

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

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

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

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

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

26 (A) shall adopt regulations that provide a reasonable opportunity to  
27 participate in the subsistence uses of those stocks or population.

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

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

1 this paragraph:

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

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

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

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

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

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

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

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

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

31 (e) Each board shall consider subsistence use area boundaries described in (d) of this

1 section. Each board shall delineate a different boundary for a particular stock or population if  
2 the appropriate board determines that the boundary of a subsistence use area is inconsistent with  
3 established patterns of taking and use of that fish stock or game population for subsistence, or  
4 is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the  
5 customary and traditional taking and use of fish and game for subsistence.

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

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

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

16 (3) category 3, an area that

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

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

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

26 (1) the social and economic structure;

27 (2) the stability of the economy;

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

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

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

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

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

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

30 (3) a person domiciled in an area identified under (f)(3) of this section or who  
31 is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery

1 or hunt in that subsistence use area only upon certification by the commissioner that the person  
2 meets the requirements for qualification under (i) of this section.

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

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

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

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

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

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

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

31 (7) whether the person's taking of fish and game occurred solely in the

1 subsistence use area.

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

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

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

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

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

22 (o) For purposes of

23 (i) subsection (b) of this section, "reasonable opportunity" is an opportunity, as  
24 determined by the appropriate board,

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

30 (B) based on the findings of the appropriate board on each of the  
31 following factors:

- 1 (i) resource population and management objectives;  
2 (ii) estimated harvest per unit of effort by participants in the  
3 fishery or hunt;  
4 (iii) patterns and levels of customary and traditional taking and use  
5 of the fish or game;  
6 (iv) migratory patterns and availability of fish or game;  
7 (v) competition for the fish or game from other subsistence and  
8 nonsubsistence uses; and  
9 (vi) other factors that the appropriate board considers relevant.

10 (2) subsection (i) of this section, "preceding 12 months" means

11 (A) for a person described in (h)(1) of this section, the 12 months  
12 preceding the taking of the fish or game resource;

13 (B) for a person described in (h)(2) of this section, the 12 months  
14 preceding the date of signing of the required statement;

15 (C) for a person described in (h)(3) of this section, the 12 months  
16 preceding the date of signing the application to the commissioner.

17 \* Sec. 3. AS 16.05.940(29) is amended to read:

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

23 \* Sec. 4. AS 16.05.940(30) is amended to read:

24 (30) "subsistence hunting" means the taking [OF, HUNTING FOR.] or possession,  
25 by a qualified resident, of game [BY A RESIDENT DOMICILED] in a subsistence use  
26 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for  
27 subsistence uses by means defined by the Board of Game;

28 \* Sec. 5. AS 16.05.940(31) is amended to read:

29 (31) "subsistence [USES]" means the noncommercial, customary and traditional  
30 taking and uses of fish and game [WILD, RENEWABLE RESOURCES] by a resident  
31 [DOMICILED] in a subsistence use [RURAL] area of the state for direct personal or family

1 consumption as food[, SHELTER, FUEL], clothing, [TOOLS,] or transportation, for the making  
2 and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken  
3 for personal or family consumption, for sharing, and for barter and [THE] customary trade of  
4 a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for  
5 personal or family consumption; in this paragraph, "family" means persons related by blood,  
6 marriage, or adoption, and a person living in the same household on a permanent basis;

7 \* **Sec. 6.** AS 16.05.940 is amended by adding new paragraphs to read:

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

12 (37) "customary trade" means the limited, noncommercial exchange, for minimal  
13 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested  
14 primarily for personal or family consumption; "customary trade" does not include sales in  
15 commercial channels; the terms of this paragraph do not apply to money sales of furs or  
16 furbearers;

17 (38) "game management unit" means a management area of the state established  
18 by the Board of Game under AS 16.05.255;

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

24 \* **Sec. 7.** AS 16.05.258 and AS 16.05.940(26) are repealed.

25 \* **Sec. 8. REGULATIONS.** Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,  
26 Board of Game, and Department of Fish and Game may adopt regulations necessary to implement the  
27 provisions of this Act.

28 \* **Sec. 9. TRANSITION.** (a) It is the intent of the legislature that the Board of Fisheries and the  
29 Board of Game expeditiously adopt regulations necessary to implement this Act.

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

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

4 \* Sec. 10. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a  
5 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature  
6 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the  
7 governor no later than June 1, 1994.

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

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

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

17 \* Sec. 11. Sections 8 and 9 of this Act take effect immediately under AS 01.10.070(c).

18 \* Sec. 12. Sections 1 - 7 and 10 of this Act take effect on the effective date of regulations first  
19 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.

GOVERNOR'S SUBSISTENCE BILL

SECTION-BY-SECTION DESCRIPTION

February 21, 1992

Section 1

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

Section 2

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

Proposed AS 16.05.268(a):

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

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

The identification of fish stocks and game populations subject to subsistence regulations is a situation where all groups can potentially win. Identified stocks and populations are the ones on which allocation errors would infringe on subsistence. Identification of these stocks and populations will assure that the subsistence preference is protected.

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

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

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

Proposed AS 16.05.268(b):

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

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

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

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

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

AS 16.05.268(b) (1):

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

AS 16.05.268(b) (2):

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

AS 16.05.268(b) (3):

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

AS 16.05.268(b)(4):

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

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

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

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

Second, as in existing AS 16.05.258 and the federal law, the subsistence preference is only a preference over other consumptive uses. Catch and release fisheries, taking of fish and game for management purposes such as transplanting stocks or poisoning undesirable fish prior to stocking are not consumptive uses for purposes of the subsistence law, so long as they do not interfere with reasonable opportunities for subsistence.

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

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

Proposed AS 16.05.268(c):

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

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

Proposed AS 16.05.268(d):

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

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

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

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

Proposed AS 16.05.268(e):

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

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

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

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

AS 16.05.268(f):

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

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

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

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

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

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

Proposed AS 16.05.268(a):

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

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

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

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

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

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

Proposed AS 16.05.268(h):

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

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

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

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

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

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

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

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

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

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

Proposed AS 16.05.268(i):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed AS 16.05.268(i):

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

Proposed AS 16.05.268(k):

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

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

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

Proposed AS 16.05.268(l):

The department's regulations are to provide for an expedited review procedure, most likely by way of an appeal to the commissioner for a decision within 30 days, for persons who have been denied qualification. If the commissioner affirms the original denial, the decision would be final for the department and the person could appeal to the superior court under the Alaska Rules of Appellate Procedure. This subsection contemplates that the person will be given a meaningful opportunity to present relevant evidence supporting qualification. It does not require an adjudication of individual qualification under the Administrative Procedure Act (AS 44.62), which applies only to Department of Fish and Game functions relating to the protection of fish habitat under AS 16.05.870. (See AS 44.62.330(a)(48)).

Proposed AS 16.05.268(m):

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

Proposed AS 16.05.268(n):

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

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

Proposed AS 16.05.268(o):  
Paragraph (1):

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

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

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

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

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

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

Paragraph (2):

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

Sections 3 and 4:

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

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

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

#### Section 5:

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

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

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

#### Section 6:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7:  
(Repealers)

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

Sections 8, 9, 11, and 12:

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

Section 10:

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 6, 1992

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

Dear Mitch,

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

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

*In about a week and a half, I will introduce legislation you have helped to draft. As we conclude the Council's deliberations and begin the legislative process, none of you will continue to be involved, both individually and on behalf of the interests you have so ably represented. I appreciate the Council's willingness to reassemble, if necessary, as we continue through the process and in two years to review how the law has functioned. Passage of subsistence legislation continues as a top priority for me. I want you and Kathleen to join me for a great party at the signing ceremony.*

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

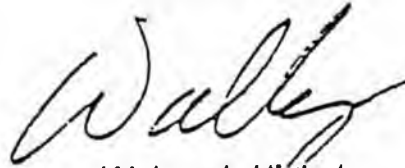
*I asked you to draft the best possible subsistence legislation for Alaska, and I think you have done it. I sat at the table as meeting after meeting you hammered out the hard points and forged a document that works. Most important, you have proved that all users of our fish and game can work together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

Mr. Mitch Demientieff  
February 6, 1992  
Page 2

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

*With warm regards.*

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter".

Walter J. Hickel  
Governor

*A similar letter to...*

GOVERNOR'S SUBSISTENCE ADVISOR COUNCIL

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Mr. Mitch Demientieff  
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Mr. McKie Campbell  
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Phone: 465-3500 Fax: 465-3454



## FISCAL NOTE ANALYSIS: Division of Subsistence

### **Development of a Subsistence Permitting Program:**

#### **OVERVIEW:**

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

#### **PROCESS:**

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

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

#### **CORE STAFFING:**

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

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

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

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

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

#### SUPPORT STAFF:

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

#### BUDGET--Division of Subsistence:

##### FY 93

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

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

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

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

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

**FY 94:**

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

**FY 95:**

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

**FY 96:**

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

**FY 97 and FY 98:**

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

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. \_\_\_

Revision Date: \_\_\_\_\_

Department Affected: Fish and Game

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

BRU: Boards

Component: Board Services

Sponsor: Rules Committee

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 

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

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

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

GENERAL FUND	280.8	292.3	259.6	125.5	125.5	125.5
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>280.8</b>	<b>292.3</b>	<b>259.6</b>	<b>125.5</b>	<b>125.5</b>	<b>125.5</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Laird Jones *Laird A. Jones* Phone: 465-4110  
 Division: Division of Boards Date: 2/20/92  
 Approved by Commissioner: *Cliff R. Jones*  
 Agency: Department of Fish and Game Date: 2/20/92

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

**DIVISION OF BOARDS  
FISCAL NOTE FOR SUBSISTENCE BILL**

**ANALYSIS**

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

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

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

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

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

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

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

COSTS - FY93

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

COSTS - FY94:

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

COSTS - FY95:

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

COSTS - FUTURE YEARS

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

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

BILL NO. \_\_\_\_\_

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

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

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

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

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

Estimate of current year impact: \_\_\_\_\_

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

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

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

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

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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	116.5	110.0	110.0	63.0	63.0	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
<b>TOTAL</b>						

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Pegues*

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

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. \_\_\_\_\_

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

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

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

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

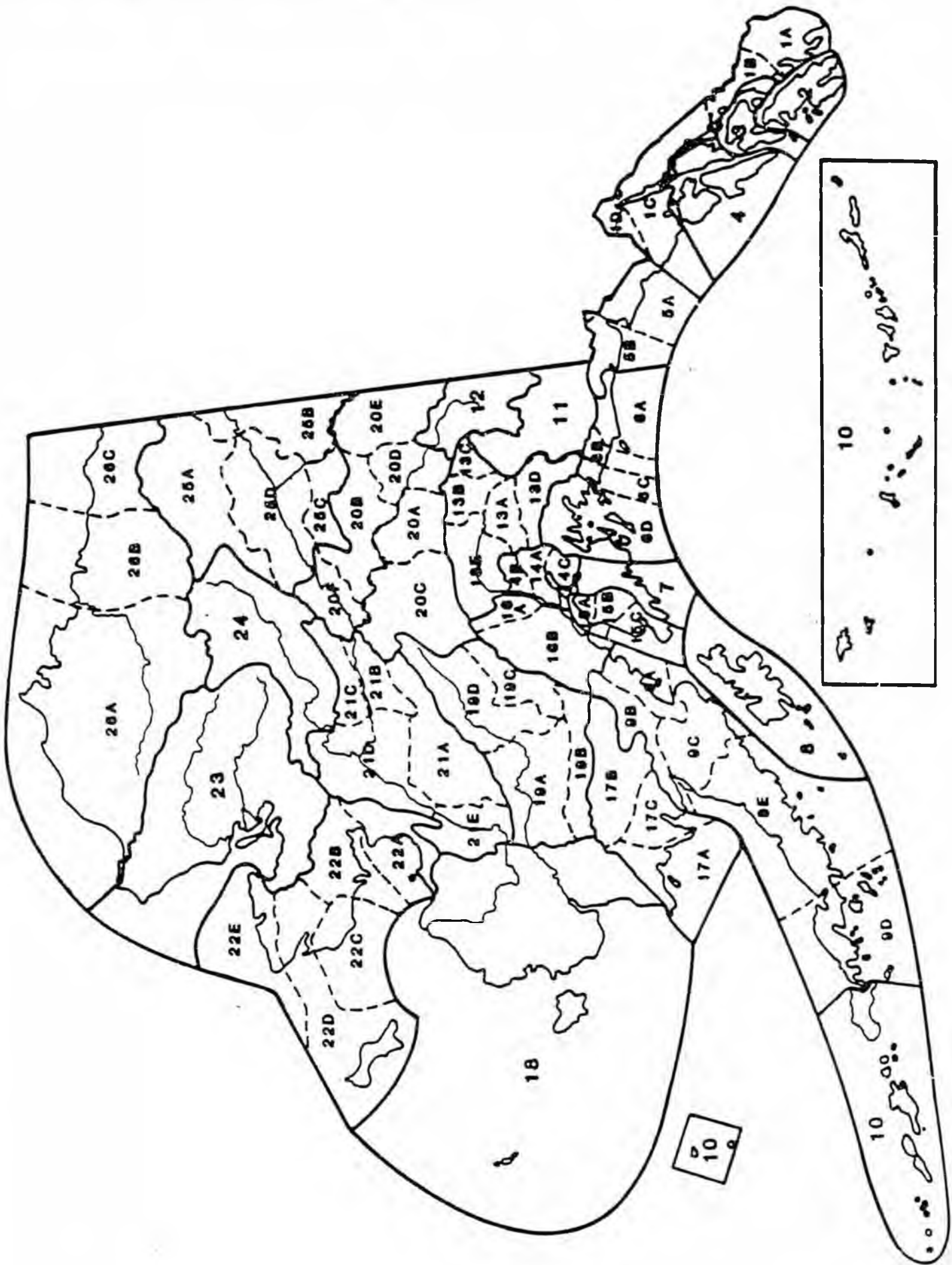
**Request For  
New Position**

AGENCY Department of Law  
BRU Legal Services  
COMPONENT Operations

**FY** 93

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Revised Date: \_\_\_\_\_

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



## GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX B

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

February 1992

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

#### Three Types of Communities and Areas

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

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

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

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

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

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

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

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

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

#### **Assumptions for the Preliminary Listing**

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

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

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

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

## The Preliminary Listing

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

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

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

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

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Balance of Bristol Bay Census Area	3	100.00	Southwest	Rural
Portage Creek	5	60.00	Southwest	Rural
Solomon	6	100.00	Arctic	Rural
Ugashik	7	85.70	Southwest	Rural
Council	8	82.50	Arctic	Rural
Balance of Lower Kuskokwim Census	10	40.00	Western	Rural
Telida	11	90.90	Interior	Rural
Balance of Barrow-Point Hope Census	13	7.70	Arctic	Rural
Balance of Wade Hampton Census Sub	17	70.60	Western	Rural
Balance of Angoon Census Sub-Area	19	0.00	Southeast	Rural
Balance of Outer Ketchikan Census Su	21	9.50	Southeast	Rural
Gakona	25	0.00	Southcentral	Rural
McCarthy	25	4.00	Southcentral	Rural
Port Clarence	28	0.00	Arctic	Rural
Paxson	30	0.00	Southcentral	Rural
Paxson-Sourdough	30	0.00	Southcentral	Rural
Alatna	31	93.60	Interior	Rural
Balance of Lake and Peninsula Borough	31	16.10	Southwest	Rural
Lake Minchumina	32	18.80	Interior	Rural
Balance of Dillingham Census Area	32	31.25	Southwest	Rural
Igiugig	33	78.80	Southwest	Rural
Evansville	33	57.60	Interior	Rural
Wiseman	33	15.20	Interior	Rural
Eagle Village	35	80.00	Interior	Rural
Nikolaki	35	82.85	Southwest	Rural
Ivanof Bay	35	94.30	Southwest	Rural
Bettles	36	22.20	Interior	Rural
Meyers Chuck	37	10.80	Southeast	Rural
Mendaltna	37	5.40	Southcentral	Rural
Takotna	38	44.70	Interior	Rural
Chase	38	0.00	Southcentral	Rural
Tonsina	38	18.40	Southcentral	Rural
Point Baker	39	0.00	Southeast	Rural
Birch Creek	42	90.50	Interior	Rural
Pedro Bay	42	90.50	Southwest	Rural
Lime Village	42	95.24	Western	Rural
Annette	43	16.30	Southeast	Rural
Healy Lake	47	85.10	Interior	Rural
Chitina	49	46.90	Southcentral	Rural
Stony River	51	88.24	Western	Rural
Central	52	1.90	Interior	Rural
Red Devil	53	50.94	Western	Rural
Chignik Lagoon	53	56.60	Southwest	Rural
Pilot Point	53	84.90	Southwest	Rural
Hughes	54	92.60	Interior	Rural
Kasaan	54	53.70	Southeast	Rural
Port Alsworth	55	1.90	Southwest	Rural
Balance of McGrath-Holy Cross Census	56	10.70	Interior	Rural
Ferry	56	12.50	Interior	Rural
Elfin Cove	57	1.90	Southeast	Rural
Oscarville	57	91.22	Western	Rural
Clark's Point	60	88.30	Southwest	Rural
Chistochina	60	61.70	Southcentral	Rural
Cuma Creek Census Designated Place	61	0.00	Southeast	Rural
Port Protection	62	1.60	Southeast	Rural
Siana	63	6.40	Southcentral	Rural
Platinum	64	92.18	Western	Rural
Twin Mills	66	92.40	Southwest	Rural

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
False Pass	68	76.47	Southwest	Rural
Rampart	68	94.10	Interior	Rural
Kobuk	69	89.90	Arctic	Rural
Chiniak	69	5.80	Southwest	Rural
Batties/Evansville	69	39.10	Interior	Rural
Dot Lake	70	54.29	Interior	Rural
Balance of Aniak Census Sub-Area	71	63.38	Western	Rural
Karluk	71	91.50	Southwest	Rural
Circle	73	86.30	Interior	Rural
Whale Pass	75	2.70	Southeast	Rural
Ekwok	77	87.00	Southwest	Rural
Akhiok	77	93.50	Southwest	Rural
Anvik	82	91.50	Interior	Rural
Nelson Lagoon	83	80.72	Southwest	Rural
Skwentna	85	1.20	Southcentral	Rural
Edna Bay	86	0.00	Southeast	Rural
Balance of Prince William Sound Censu	86	0.00	Southcentral	Rural
Tetlin	87	95.40	Interior	Rural
Balance of Wrangell Census Sub-Area	87	11.50	Southeast	Rural
Northway Junction	88	70.50	Interior	Rural
Chalkyitsik	90	92.20	Interior	Rural
Balance of Yukon Flats Census Sub-Ar	91	38.50	Interior	Rural
Balance of Nome Census Area	92	48.74	Arctic	Rural
Iliamna	94	65.90	Southwest	Rural
Chenega Bay	94	69.20	Southcentral	Rural
Tenakee Springs	94	9.60	Southeast	Rural
Arctic Village	96	93.80	Interior	Rural
Mentasta Lake	96	72.90	Southcentral	Rural
Manley Hot Springs	96	14.60	Interior	Rural
Chuathbaluk	97	89.69	Western	Rural
Atka	98	92.85	Southwest	Rural
Hyder	99	1.00	Southeast	Rural
Lignite	99	0.00	Interior	Rural
Stevens Village	102	91.20	Interior	Rural
Beaver	103	95.20	Interior	Rural
Gulkana	103	59.20	Southcentral	Rural
Levelock	105	82.90	Southwest	Rural
Sleetmute	106	86.79	Western	Rural
Crooked Creek	106	90.56	Western	Rural
Tanacross	106	94.30	Interior	Rural
Dry Creek	106	0.00	Interior	Rural
Perryville	108	94.40	Southwest	Rural
Nikolai	109	88.90	Interior	Rural
Sheldon Point	109	92.70	Western	Rural
Hollis	111	2.70	Southeast	Rural
Northway Village	113	94.70	Interior	Rural
Port Alexander	119	2.50	Southeast	Rural
Port Heiden	119	72.30	Southwest	Rural
Tatitlek	119	96.60	Southcentral	Rural
Balance of Northwest Arctic Borough	122	67.20	Arctic	Rural
Egegik	122	70.50	Southwest	Rural
Northway	123	64.20	Interior	Rural
Koyukuk	126	97.60	Interior	Rural
Golovin	127	92.90	Arctic	Rural
Klukwan	129	86.80	Southeast	Rural
Chignik Lake	133	91.80	Southwest	Rural
Pitka's Point	135	95.60	Western	Rural
South Naknek	136	79.40	Southwest	Rural

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Allakaket	138	94.30	Interior	Rural
Saint George	138	94.92	Southwest	Rural
Point Lay	139	81.30	Arctic	Rural
Shageluk	139	94.90	Interior	Rural
Chickaloon	145	6.20	Southcentral	Rural
Larsen Bay	147	84.40	Southwest	Rural
Cantwell	147	22.50	Interior	Rural
Cold Bay	148	5.40	Southwest	Rural
Kokhanok	152	90.10	Southwest	Rural
Nightmute	153	95.42	Western	Rural
Tyonek	154	92.20*	Southcentral	Rural
Deering	157	54.30	Arctic	Rural
English Bay	158	91.10	Southcentral	Rural
Newhalen	160	94.40	Southwest	Rural
W alas	161	88.90	Arctic	Rural
Copperville	163	26.40	Southcentral	Rural
Port Graham	166	90.40	Southcentral	Rural
Eagle	168	3.00	Interior	Rural
Ruby	170	74.10	Interior	Rural
Allakaket/Alatna	170	94.10	Interior	Rural
McKinley Park Village	171	2.90	Interior	Rural
Upper Kalskag	172	84.88	Western	Rural
Mekoryuk	177	99.44	Western	Rural
Nondalton	178	89.30	Southwest	Rural
Diomeda	178	93.80	Arctic	Rural
Shaktolik	178	94.40	Arctic	Rural
White Mountain	180	87.80	Arctic	Rural
Koliganek	181	96.10	Southwest	Rural
Venetie	182	93.90	Interior	Rural
Aleknagik	185	83.20	Southwest	Rural
Coffman Cove	186	6.90	Southeast	Rural
Chignik Bay	188	45.20	Southwest	Rural
Brevig Mission	198	92.40	Arctic	Rural
Huslia	207	90.80	Interior	Rural
Nawtok	207	93.24	Western	Rural
Grayling	208	93.30	Interior	Rural
Ouzinkie	209	85.20	Southwest	Rural
Arqasuk	216	93.10	Arctic	Rural
Minto	218	97.30	Interior	Rural
Port Lions	222	67.60	Southwest	Rural
Pelican	222	29.30	Southeast	Rural
Shungnak	223	94.60	Arctic	Rural
Kaktovik	224	84.40	Arctic	Rural
Balance of Petersburg Census Sub-Area	225	0.00	Southeast	Rural
Teller	230	91.30	Arctic	Rural
Koyuk	231	94.80	Arctic	Rural
Kaltag	240	92.50	Interior	Rural
Goodnews Bay	241	95.85	Western	Rural
Russian Mission	246	94.70	Western	Rural
Balance of Aleutians East Borough	247	91.09	Southwest	Rural
Tazlina	247	23.10	Southcentral	Rural
Ek	254	95.67	Western	Rural
Atmautluak	258	96.89	Western	Rural
Gustavus	258	3.90	Southeast	Rural
Anaktuvuk Pass	259	84.90	Arctic	Rural
Elim	264	91.70	Arctic	Rural
Marshall (Fortuna Ledge)	273	92.70	Western	Rural
Holy Cross	277	93.50	Interior	Rural

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Kwigillingok	278	94.98	Western	Rural
Old Harbor	284	88.70	Southwest	Rural
Akiak	285	97.19	Western	Rural
Lower Kalskag	291	98.28	Western	Rural
Kongiganak	294	97.28	Western	Rural
Saint Michael	295	91.20	Arctic	Rural
Tuntutuliak	300	96.66	Western	Rural
Ambler	311	89.70	Arctic	Rural
Balance of Hoonah-Yakutat Census Su	311	15.40	Southeast	Rural
Tununak	318	98.20	Western	Rural
Seldovia	316	15.20	Southcentral	Rural
Kivalina	317	97.50	Arctic	Rural
Napakiaik	318	94.34	Western	Rural
Buckland	318	94.90	Arctic	Rural
Chefornak	320	97.50	Western	Rural
Napaskiak	328	94.92	Western	Rural
Noatak	333	96.70	Arctic	Rural
Scammon Bay	343	96.50	Western	Rural
Tanana	345	78.30	Interior	Rural
Nuiqsut	354	92.70	Arctic	Rural
Tuluksak	358	95.53	Western	Rural
Nulato	359	96.90	Interior	Rural
Nunepitchuk	378	97.09	Western	Rural
Hydaburg	384	89.10	Southeast	Rural
Kiana	385	93.50	Arctic	Rural
Manokotak	385	95.60	Southwest	Rural
New Stuyahok	391	95.90	Southwest	Rural
Nenana	393	47.80	Interior	Rural
Stebbins	400	94.80	Arctic	Rural
Toksook Bay	420	95.48	Western	Rural
Kenny Lake	423	9.70	Southcentral	Rural
Kasigluk	425	95.29	Western	Rural
Saint Marys (Andreafsky)	441	82.90	Western	Rural
Balance of Prince of Wales Census Sub	442	7.00	Southeast	Rural
Copper Center	449	34.50	Southcentral	Rural
Glennallen	451	6.70	Southcentral	Rural
King Cove	451	39.25	Southwest	Rural
Shishmaref	456	94.50	Arctic	Rural
Kotlik	461	96.90	Western	Rural
Pilot Station	463	95.00	Western	Rural
Kipnuk	470	97.45	Western	Rural
Akiachek	483	95.03	Western	Rural
Healy	487	1.40	Interior	Rural
Wainwright	492	94.30	Arctic	Rural
Quinhagak	501	93.81	Western	Rural
Balance of Copper River Census Sub-A	504	0.90	Southcentral	Rural
Savoonga	519	95.20	Arctic	Rural
Gambell	525	96.20	Arctic	Rural
McGrath	528	46.90	Interior	Rural
Noorvik	531	93.80	Arctic	Rural
Yakutat	534	55.10	Southeast	Rural
Aniak	540	70.74	Western	Rural
Alakanuk	544	95.80	Western	Rural
Kwethluk	558	96.42	Western	Rural
Thorne Bay	569	1.20	Southeast	Rural
Naknek	575	41.00	Southwest	Rural
Fort Yukon	580	85.00	Interior	Rural
Balance of Koyukuk-Middle Yukon Cen	589	11.60	Interior	Rural

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

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

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

<b>Place Name</b>	<b>1990 Population</b>	<b>Percent Native</b>	<b>Region</b>	<b>Old Rural Status</b>
Cordova Area	2579	10.52	Southcentral	Rural
Kotzebue	2751	75.10	Arctic	Rural
Unalaska	3089	8.38	Southwest	Rural
Petersburg	3230	10.10	Southeast	Rural
Barrow	3469	63.90	Arctic	Rural
Nome	3500	52.10	Arctic	Rural
Bethel	4674	63.89	Western	Rural

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Amchitka	25	8.00	Southwest	Rural
Deadhorse	28	11.50	Arctic	Rural
Alcan	27	0.00	Interior	Rural
Circle Hot Springs Station	29	0.00	Interior	Rural
Port Alice	30	6.70	Southeast	Rural
Balance of Aleutians West Census Area	33	20.00	Southwest	Rural
Prudhoe Bay	47	8.50	Arctic	Urban
Dora Bay	57	3.50	Southeast	Rural
Freshwater Bay	88	10.30	Southeast	Rural
Saint John's Harbor	69	1.50	Southeast	Rural
Naukat Bay	93	1.10	Southeast	Rural
Balance of Prudhoe Bay-Kaktovik Cens	101	8.90	Arctic	Rural
Rowan Bay	133	6.80	Southeast	Rural
Polk Inlet	135	13.30	Southeast	Rural
LaBouchere Bay	149	1.30	Southeast	Rural
Cube Cove	156	5.80	Southeast	Rural
Whitestone Logging Camp	164	3.70	Southeast	Rural
Hobart Bay	187	6.40	Southeast	Rural
Long Island	198	4.50	Southeast	Rural
Whittier	243	12.40	Southcentral	Urban
Shemya Station Census Designated Pla	684	0.45	Southwest	Rural
Seward Area	3357	13.89	Southcentral	Urban
Delta Area	4008	2.79	Interior	Urban
Valdez	4068	5.90	Southcentral	Urban
Adak Station	4033	1.20	Southwest	Rural
Sitka	8588	20.90	Southeast	Rural
Kodiak City Area	12230	10.45	Southwest	Rural
Ketchikan Area	13828	13.73	Southeast	Urban
Juneau	26751	12.90	Southeast	Urban
Kenai Peninsula Area	36651	7.35	Southcentral	Urban
Matsu Area	39415	4.91	Southcentral	Urban
Fairbanks North Star Borough	77720	6.80	Interior	Urban
Anchorage	226338	6.44	Southcentral	Urban

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

	NON-NATIVES		ALASKA NATIVES		STATE TOTALS	
GROUP 1	24485	5.3%	42313	49.2%	66798	12.1%
GROUP 2	13344	2.9%	9948	11.6%	23292	4.2%
GROUP 3	426518	91.9%	33703	39.2%	460221	83.6%
STATE TOTAL	464347	100.0%	85964	100.0%	550311	100 0%

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

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

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

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

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

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

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

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

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

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

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

**CERTIFICATION**

Signature of Applicant \_\_\_\_\_

Signature of Witness \_\_\_\_\_

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

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

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

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

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

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

**GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX D**

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

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

Preamble

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

**STATE OF ALASKA  
SUBSISTENCE HARVEST PERMIT APPLICATION  
(PAGE 2)**

A. Background Questions

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

**STATE OF ALASKA  
SUBSISTENCE HARVEST PERMIT APPLICATION  
(PAGE 3)**

**B. Instructions for Questions C1 through C8**

While answering Questions C1 through C8 below:

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

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

C. Qualifying Questions

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

Pounds \_\_\_\_

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

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

Number of types of fish and game: \_\_\_\_ types

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

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

Yes \_\_\_\_

No \_\_\_\_

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

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

Days \_\_\_\_

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

**STATE OF ALASKA  
SUBSISTENCE HARVEST PERMIT APPLICATION  
(PAGE 5)**

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

Months \_\_\_\_\_

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

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

Weeks \_\_\_\_\_

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

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

Number of households \_\_\_\_\_

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

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

Yes \_\_\_\_\_

No \_\_\_\_\_

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

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

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

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

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

**D. Worksheets: Supporting Documentation**

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

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

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

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

**STATE OF ALASKA**  
**SUBSISTENCE HARVEST PERMIT APPLICATION QUESTIONS**  
**(PAGE 8)**

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

\_\_\_\_\_ Number of lbs of fish and game you consumed

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

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

\_\_\_\_\_ Types of fish and game

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

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

\_\_\_\_\_ Number of different dates

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

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

\_\_\_\_\_ Number of different months

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

**STATE OF ALASKA  
SUBSISTENCE HARVEST PERMIT APPLICATION QUESTIONS  
(PAGE 9)**

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

---

---

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

\_\_\_\_\_ Number of different households

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

**NOTIFICATION OF POSSIBLE ADDITIONAL MATERIALS**

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

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

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

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

**CERTIFICATION**

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

Signature of Applicant \_\_\_\_\_

Signature of Witness \_\_\_\_\_

# GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX E

## APPLICANT CASE EXAMPLES SUBSISTENCE PERMIT APPLICATIONS AND SCORES

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case 1 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

#### Case 2 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

		Applicant		Applicant	
Criterion	Minimum	Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	90	/ 10 =	9	7.2%
B. Number of species used	6	6	x 3 =	18	17.7%
C. Days spent taking or processing	30	40	/ 1 =	40	38.7%
D. No. of months when taking occurred	4	5	x 2 =	10	10.0%
E. Weeks when taking fish/game was main work	0	2	x 1 =	2	2.0%
F. Households receiving or giving	0	10	x 2 =	20	19.2%
G. Taking was in subsistence use area? y=5, n=0	0	5	x 1 =	5	5.0%
TOTAL				104	100.0%

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

### Case 3 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

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

Criterion	Minimum	Applicant		Score	Percent
		Answer	Formula		
A. Quantity of fish and game consumed	125	98	$/ 10 =$	9.8	12%
B. Number of species used	6	4	$\times 3 =$	12	14%
C. Days spent taking or processing	30	40	$/ 1 =$	40	47%
D. No. of months when taking occurred	4	6	$\times 2 =$	12	14%
E. Weeks when taking fish/game was main work	0	0	$\times 1 =$	0	0%
F. Households receiving or giving	0	3	$\times 2 =$	6	7%
G. Taking was in subsistence use area? $y=5, n=0$	0	5	$\times 1 =$	5	6%
TOTAL				84.8	100

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

#### Case 4 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

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

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

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

#### Case 5 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used the minimum of 6 resource categories with the following weights: king salmon (32), chum salmon (74), halibut (24), crab (?), shrimp (?), and hooligan (?) (categories not counted included: clams, elk, moose, and caribou because they were taken with inefficient air transportation; trout because it was taken with inefficient rod and reel; and cranberries, blueberries, and raspberries because they are not fish and game)
- (2) the applicant consumed 65 lbs personally, as the total household harvest weighed about 129 lbs. or about 0.5 lbs per member (only harvests taken with efficient gear were counted)
- (3) the minimum of 30 days were spent taking or processing (30 days fishing)
- (4) the harvest occurred in 7 different months
- (5) there were no weeks where taking fish and game was the main activity
- (6) the applicant shared with 2 households
- (7) some of the taking occurred non-locally

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

		Applicant		Applicant	
Criterion	Minimum	Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	110	/ 10 =	11	14%
B. Number of species used	6	7	x 3 =	21	27%
C. Days spent taking or processing	30	20	/ 1 =	20	28%
D. No. of months when taking occurred	4	6	x 2 =	12	16%
E. Weeks when taking fish/game was main work	0	0	x 1 =	0	0%
F. Households receiving or giving	0	4	x 2 =	8	10%
G. Taking was in subsistence use area? y=5, n=0	0	5	x 1 =	5	6%
TOTAL				77	100%

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

#### Case 6 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

Criterion	Minimum	Applicant		Score	Percent
		Answer	Formula		
A. Quantity of fish and game consumed	125	130	$/ 10 =$	13	21%
B. Number of species used	6	2	$\times 3 =$	6	11%
C. Days spent taking or processing	30	10	$/ 1 =$	10	18%
D. No. of months when taking occurred	4	1	$\times 2 =$	2	4%
E. Weeks when taking fish/game was main work	0	0	$\times 1 =$	0	0%
F. Households receiving or giving	0	10	$\times 2 =$	20	36%
G. Taking was in subsistence use area? $y=5, n=0$	0	5	$\times 1 =$	5	9%
TOTAL				56	100%

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

#### Case 7 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case 8 Assumptions

To score this case, the following assumptions were made:

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

## GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX F

### COMMUNITY SIZE, ECONOMY, AND NUMBER OF SUBSISTENCE USERS

February 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There were seven mid-sized communities in Alaska with populations of 2,500-7,000 people in 1990: Cordova (2,579), Kotzebue (2,751), Unalaska (3,089), Petersburg (3,230), Barrow (3,469), Nome (3,500), and Bethel (4,674). Dillingham, with a growing population of 2,017 people, was approaching the 2,500 level. In 1986,

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

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

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

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

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

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

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

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

#### Communities > 7,000 People

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

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

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

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

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

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

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

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

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## GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX G

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

February 1992

#### Resource Diversity

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

#### Threshold Levels

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

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

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

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

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

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

### **Basic Resource Lists**

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

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

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

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

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

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

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

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

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

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

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

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

Source: Community Profile Database, Division of Subsistence ADFG

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

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

Source: Community Profile Database, Division of Subsistence ADFG


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

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

Source: Community Profile Database, Division of Subsistence ADFG

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

Table 2

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

Source: Community Profile Database, Division of Subsistence ADFG

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







## GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX H

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

February 1992

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

#### Basic Listing of Subsistence Studies

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

#### **How would the new law work?**

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

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

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

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

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

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

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

#### **What are the qualification standards?**

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

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

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

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

#### Where would people be able to go for subsistence hunting and fishing?

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

#### What are the advantages of this approach?

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

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 21, 1992

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

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

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

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

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

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

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

The Honorable Ben Grussendorf  
February 21, 1992  
Page 2

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

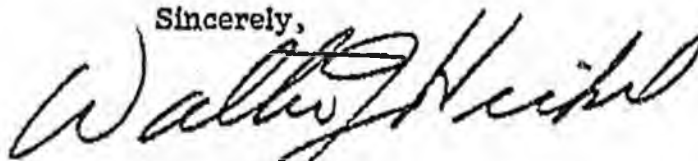
The legislation is not what any one member, any one group, nor I, by myself, would have drafted. It is legislation that protects the resource, the interests of every group, and can pass. In designing this statute, great emphasis has been placed on how it will actually work. Extensive time has been spent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

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

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

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

Sincerely,



Walter J. Hickel  
Governor

7-GS2002.A

SENATE BILL NO: 443

IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:  
Referred:

## A BILL

## FOR AN ACT ENTITLED

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

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

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

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

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

13 (3) customary and traditional uses of Alaska's fish and game originated with Alaska  
14 Natives, and have been adopted and supplemented by many non-Native Alaskans as well; these uses,

1 among others, are culturally, socially, spiritually, and nutritionally important and provide a sense of  
2 identity for many subsistence users;

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

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

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

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

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

21 (b) It is the purpose of this Act

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

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

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

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

1 (c) It is the intent of the legislature

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

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

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

7 \* Sec. 2. AS 16.05 is amended by adding a new section to read:

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

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

12 The commissioner shall provide recommendations to the boards on the identifications. The  
13 boards shall make identifications required under this subsection after receipt of the  
14 commissioner's recommendations.

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

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

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

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

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

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

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

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

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

1           this paragraph;

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

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

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

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

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

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

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

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

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

31           (e) Each board shall consider subsistence use area boundaries described in (d) of this

1 section. Each board shall delineate a different boundary for a particular stock or population if  
2 the appropriate board determines that the boundary of a subsistence use area is inconsistent with  
3 established patterns of taking and use of that fish stock or game population for subsistence, or  
4 is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the  
5 customary and traditional taking and use of fish and game for subsistence.

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

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

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

16 (3) category 3, an area that

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

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

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

26 (1) the social and economic structure;

27 (2) the stability of the economy;

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

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

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

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

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

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

30 (3) a person domiciled in an area identified under (f)(3) of this section or who  
31 is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery

1 or hunt in that subsistence use area only upon certification by the commissioner that the person  
2 meets the requirements for qualification under (i) of this section.

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

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

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

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

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

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

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

31 (7) whether the person's taking of fish and game occurred solely in the

1 subsistence use area.

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

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

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

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

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

22 (o) For purposes of

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

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

30 (B) based on the findings of the appropriate board on each of the  
31 following factors:

- 1 (i) resource population and management objectives;  
 2 (ii) estimated harvest per unit of effort by participants in the  
 3 fishery or hunt;  
 4 (iii) patterns and levels of customary and traditional taking and use  
 5 of the fish or game;  
 6 (iv) migratory patterns and availability of fish or game;  
 7 (v) competition for the fish or game from other subsistence and  
 8 nonsubsistence uses; and  
 9 (vi) other factors that the appropriate board considers relevant.

10 (2) subsection (i) of this section, "preceding 12 months" means

11 (A) for a person described in (h)(1) of this section, the 12 months  
 12 preceding the taking of the fish or game resource;

13 (B) for a person described in (h)(2) of this section, the 12 months  
 14 preceding the date of signing of the required statement;

15 (C) for a person described in (h)(3) of this section, the 12 months  
 16 preceding the date of signing the application to the commissioner.

17 \* Sec. 3. AS 16.05.940(29) is amended to read:

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

23 \* Sec. 4. AS 16.05.940(30) is amended to read:

24 (30) "subsistence hunting" means the taking [OF, HUNTING FOR,] or possession,  
 25 by a qualified resident, of game [BY A RESIDENT DOMICILED] in a subsistence use  
 26 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for  
 27 subsistence uses by means defined by the Board of Game;

28 \* Sec. 5. AS 16.05.940(31) is amended to read:

29 (31) "subsistence [USES]" means the noncommercial, customary and traditional  
 30 taking and uses of fish and game [WILD, RENEWABLE RESOURCES] by a resident  
 31 [DOMICILED] in a subsistence use [RURAL] area of the state for direct personal or family

1 consumption as food[, SHELTER, FUEL], clothing, [TOOLS,] or transportation, for the making  
2 and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken  
3 for personal or family consumption, for sharing, and for barter and [THE] customary trade of  
4 a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for  
5 personal or family consumption; in this paragraph, "family" means persons related by blood,  
6 marriage, or adoption, and a person living in the same household on a permanent basis;

7 \* Sec. 6. AS 16.05.940 is amended by adding new paragraphs to read:

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

12 (37) "customary trade" means the limited, noncommercial exchange, for minimal  
13 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested  
14 primarily for personal or family consumption; "customary trade" does not include sales in  
15 commercial channels; the terms of this paragraph do not apply to money sales of furs or  
16 furbearers;

17 (38) "game management unit" means a management area of the state established  
18 by the Board of Game under AS 16.05.255;

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

24 \* Sec. 7. AS 16.05.258 and AS 16.05.940(26) are repealed.

25 \* Sec. 8. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,  
26 Board of Game, and Department of Fish and Game may adopt regulations necessary to implement the  
27 provisions of this Act.

28 \* Sec. 9. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the  
29 Board of Game expeditiously adopt regulations necessary to implement this Act.

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

1 (c) Regulations or without regulations adopted under the authority of AS 10.10.070(c), 10.10.070,  
2 or 16.05.258 and in effect on June 1, 1992 are inconsistent with the provisions of this Act, they may  
3 continue to be implemented and enforced until the effective date of this Act.

4 \* Sec. 10. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a  
5 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature  
6 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the  
7 governor no later than June 1, 1994.

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

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

15 (d) No later than September 1, 1994, the governor shall provide a report to the legislature on  
16 the results of the review and any proposed recommendation\* for statutory amendments.

17 \* Sec. 11. Sections 8 and 9 of this Act take effect immediately under AS 01.10.070(c).

18 \* Sec. 12. Sections 1 - 7 and 10 of this Act take effect on the effective date of regulations first  
19 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.



## Alaska Outdoor Council

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### Public Testimony: CS FOR SENATE CONCURRENT Resolution NO. 2(RES)

The need for passage of Senate Concurrent Resolution (SCR2) has been made painfully clear to AOC members since (SB77) became law, effective July 11, 1994. The 18 th Legislature enacted into statute, A.S. 1605.255(e)- (g) a powerful mandate regarding natural resource management, embodied in Article VIII of the Alaska Constitution.

Legislatively designed responsibility for Alaska's replenishable wildlife resources has not been implemented adequately by the Commissioner of Fish & Game since the Knowles administration took office in Nov. 1994. Although, in fact, \$900,000.00 was allocated, by the Legislature in 1995 for projects to enhance abundance of certain game populations. The funding met with minimal results. When Commissioner Frank Rue was questioned as to why the Dept. of Fish & Game was unable to implement management for abundance his written reply was

" this administration will not authorize expenditure of funds for predator control (which is the main management alterable component of environmental resistance to abundant wildlife) unless the program is:

- 1) Scientifically Sound
- 2) Cost Effective
- 3) Broadly Acceptable of Alaska's Public

In response to (#1 priority), *Scientifically Sound*.

The intensive management program for GMU 20 calling for predator reduction was reviewed by its peers and won the 1993 Wildlife Monograph of the year by the Wildlife Society. *The Role of Predation in Limiting Moose at Low Densities in Alaska and Yukon and Implications for Conservation* .

In response to (#2 priority), *Cost Effective*.

Hunters and trappers through license and excise taxes are paying. The total is over 175 million dollars to the Alaska Fish & Game Fund as of 1992. In GMU 20 alone had intensive management been implemented an increased

yield of over 1 million pounds of meat would have been available according to Dr. Samuel Harbo, Jr., 1993.

In response to (#3 priority) Broadly Acceptable of Alaska's Public

The intent of the framers of the Alaska State Constitution regarding, Article VIII Sec 4 " subject to preferences among beneficial uses" needs statutory definitions to require the Commissioner of F&G to manage wildlife for abundance. Clearly, specific terms found in Article VIII Sections 1 through 4 of Alaska's Constitution such as:

1) Utilization, Development of all Natural Resources,

*Sec 2- General Authority*

2) Maximum Benefit of its People, *Sec 2*

3) Common Use, *Sec 3 Common Use*

4) Maintained on the sustained yield principle, *Sec 4 Sustained Yield*

mandate resource agencies to strive for wildlife abundance.

The Bottom Line is,

"Conserving the world's natural resources and biodiversity and protecting the overall biosphere, while at the same time substantially increasing their productive yield is one of civilization's greatest challenges ". the mission statement from *Agenda 21, 1992 UN. Conferences on the Environment*

The Framers of Alaska's Constitution were Visionaries. Passage of Resolution, SCR 2, will help preserve the scope of their vision.

Thank You.

Rod Arno, president



Alaska Outdoor Council

Cross Comparison Between Constitutional Amendments Proposed by Task Force and Proposal in HJR 46

SUBSISTENCE TASK FORCE PROPOSAL	HJR 46 (GOVERNOR'S BILL)
<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19. Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>NOTE:</b> There is a linkage between this constitutional amendment and changes to ANILCA and state statutes. Amendments to ANILCA and amendments to Alaska's fish and game statutes will be passed prior to voting on this constitutional amendment, but will not become effective unless the constitutional amendment passes.</p> <p><b>Sec. 3.</b> The amendment proposed by this resolution shall be effective immediately upon certification that it has passed.</p>	<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19. Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>Sec. 3.</b> If adopted by the voters at the next general election, the amendment proposed by this resolution takes effect immediately upon certification of the election returns by the lieutenant governor.</p>

SEP 25 1997

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**PLAN FOR A SUBSISTENCE PRIORITY  
AND RETURNING FISH AND WILDLIFE  
MANAGEMENT TO THE STATE**

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Report of the

**Governor's Task Force on Subsistence**

Governor Tony Knowles  
Lt. Governor Fran Ulmer  
Senate President Mike Miller  
House Speaker Gail Phillips  
Governor Jay Hammond  
Charlie Cole  
Byron Mallott

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*September 1997*



# Final Task Force Plan for a Subsistence Priority and Returning Fish and Game Management to the State

Updated: 9/23/97

## THE BASIC PACKAGE AND LINKAGE

There are two primary goals:

- To ensure effective state authority over fish and game management on all lands and waters of Alaska;
- To recognize the paramount importance of the subsistence way of life to Alaskans.

Alaskans may be reluctant to amend the Alaska Constitution without knowing what changes will be made in the Alaska National Interest Lands Conservation Act (ANILCA) and the state fish and game statutes. The solution is a linked package of amendments to ANILCA, the Alaska Constitution, and the Alaska statutes.

The effective date of the ANILCA amendments and the state statutory amendments will be the passage of the constitutional amendment. Voters will know exactly what is in the ANILCA amendments and the state statutory amendments when they vote on the constitutional amendment. The package will include a congressional determination that the state, upon passage of the constitutional amendment and implementation of the revised statutes, is in compliance with ANILCA and may resume fish and game management statewide.

The constitutional amendment cannot be voted on until the November 1998 general election.

## THE STATE CONSTITUTIONAL AMENDMENT

The Alaska Constitution will be amended to permit, but not to require, the Alaska Legislature to grant a subsistence priority based on place of residence. Simultaneously, state statutes will be amended to create a rural subsistence priority and those statutes, and the ANILCA amendments, will become effective only if the constitutional amendment is passed.

## THE STATE STATUTORY AMENDMENTS

The Alaska fish and game statutes will be amended to grant a subsistence priority to rural residents. Communities outside the current non-subsistence areas will be classified as rural on the day the state regains management. The Boards of Fisheries and Game acting jointly through regulation will have the power to change community classifications (add or delete) in the future as communities change.

The state statutes will also be amended to:

- a. improve the proxy hunting and fishing provisions;
- b. provide for educational hunting and fishing permits;
- c. clarify the definitions of "rural," "customary trade," and "customary and traditional;"
- d. make clear that the subsistence priority is a reasonable opportunity to take, not a guarantee of taking; and
- e. refine the subsistence management system, including adding a state Regional Subsistence Council system.

## ANILCA AMENDMENTS

The amendments fall roughly into four categories.

- a. **Definitions** - The priority created by ANILCA is keyed to rural residency, but "rural" is not defined. ANILCA leaves the determination of what is rural to the administrative process subject to court review. In this subsistence package, a rural community or area has been carefully defined as "a community or area substantially dependent on fish and game for nutritional and other subsistence uses." In addition, "customary trade" will be defined so that subsistence taking of fish and game cannot become a commercial enterprise. "Customary and traditional," an operative but undefined term in ANILCA, will also be defined. Finally, the concept of "reasonable opportunity" will be defined to make clear that the priority is a reasonable opportunity to take, not a guarantee of taking, and that the boards must consider customary and traditional uses.
- b. **Court Oversight** - Section 807 will be amended to state the standard of review for actions of the fish and game boards ("arbitrary, capricious, or abuse of discretion") and to require the federal courts to give board decisions the same deference that would be given a federal agency decision. Adding these standards is not believed to be a change in current federal law, but the standards are not explicit in Title VIII.
- c. **State Management** - Title VIII will be amended to make it clear that the state manages subsistence on all lands and waters, whether federal, state, or private.
  - i. Section 814 will be amended so that the Secretary of the Interior cannot interfere with state regulations.
  - ii. The definition of "federal public lands" will be clarified to ensure that it excludes all private and state lands.

The collective purpose of these amendments is to make clear the state has full management authority while the state is in compliance with ANILCA.

- d. **Congressional Seal of Approval, Noncompliance, and Neutrality on Indian Country** - Section 805 will be amended (1) to declare the state in compliance with Section 805(d) when it passes the constitutional amendment and statutory amendments (see above) and (2) to make future noncompliance a court determination.

A new section will be added to declare that these ANILCA changes do not affect and cannot be used to argue Indian country and sovereignty issues.

*This proposal was written by the Governor's Task Force on Subsistence. The members of the Task Force were: Governor Tony Knowles, Lieutenant Governor Fran Ulmer, Governor Jay Hammond, Senate President Mike Miller, House Speaker Gail Phillips, Alaska Permanent Fund Corporation Executive Director Byron Mallott, and Former Attorney General Charlie Cole.*

*The complete proposal from the Governor's Task Force on Subsistence is available on the Internet at [www.gov.state.ak.us/lsgov/subsist/subprop.htm](http://www.gov.state.ak.us/lsgov/subsist/subprop.htm) or by calling your local Legislative Information Office or the Governor's Office at (907) 269-7450.*

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CONSTITUTIONAL AMENDMENT

HOUSE JOINT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SPECIAL SESSION

BY

Introduced:

Referred:

A RESOLUTION

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of renewable natural resources by rural residents.

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

\*Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 19. Subsistence. The legislature (may), consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.

\*Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

**NOTE:** There is a linkage between this constitutional amendment and changes to ANILCA and state statutes. Amendments to ANILCA and amendments to Alaska's fish and game statutes will be passed prior to voting on this constitutional amendment, but will not become effective unless the constitutional amendment passes.

\*Sec. 3. The amendment proposed by this resolution shall be effective immediately upon certification that it has passed.

# ANILCA (TITLE VIII) AMENDMENTS

PUBLIC LAW 96-487—DEC. 2, 1980

## TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

### FINDINGS

16 USC 3111.

Sec. 301. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, 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;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

43 USC 1601  
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

Sec. 302. It is hereby declared to be the policy of Congress that—

(1) 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 and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

ANILCA p. 2377

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

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.

**This section shall be amended by adding the following definitions:**

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

**(4) "customary trade" means the limited noncommercial exchange for cash of fish or wildlife or their parts in minimal quantities. The terms of this paragraph do not restrict money sales of furs and furbearers.**

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

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. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

16 USC 3114

Priority criteria.

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

**A new paragraph shall be added:**

**The priority granted by this section is for a reasonable opportunity to take fish and wildlife. "Reasonable opportunity" means an opportunity, consistent with customary and traditional use, to participate in a subsistence hunt or fishery with a reasonable expectation of success. Reasonable opportunity shall not guarantee the taking of fish or wildlife.**

**NOTE:** These definitions apply to Title VIII but are in Title I (16 U.S.C. § 3102). They are reprinted here for convenience.

## ANILCA LAND DEFINITIONS

### § 3102. Definitions

As used in this Act (except that in titles IX and XIV the following terms shall have the same meaning as they have in the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.], and the Alaska Statehood Act)—

- (1) The term "land" means lands, waters, and interests therein.
- (2) ~~The term "Federal land" means lands the title to which is in the United States after December 2, 1980.~~

**Proposed amendment to 16 USC 3102(2),**

**The term "federal land" means lands the title to which is in the United States after December 2, 1980. "Federal land" does not include lands the title to which is in the State after December 2, 1980, Native lands, other private lands, or Native Corporation and State land selections defined in subsection (3)(A) and (B) below.**

(3) The term "public lands" means land situated in Alaska which, after December 2, 1980, are Federal lands, except—

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1613(b)].

(4) The term "conservation system unit" means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.

(5) The term "Alaska Native Claims Settlement Act" means "An Act to provide for the settlement of certain land claims of Alaska Natives, and for other purposes", approved December 13, 1971 (85 Stat. 633), as amended [43 U.S.C.A. § 1601 et seq.].

(6) The term "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Native Group.

(7) The term "Regional Corporation" has the same meaning as such term has under section 3(z) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1602(z)].

(8) The term "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1602(j)].

(9) The term "Urban Corporation" means those Native entities which have incorporated pursuant to section 14(h) (3) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1613(h) (3)].

(10) The term "Native Group" has the same meaning as such term has under sections 3(d) and 14(h) (2) of the Alaska Native Claims Settlement Act [43 U.S.C.A. §§ 1602(d) and 1613(h) (2)].

(11) The term "Native land" means land owned by a Native Corporation or any Native Group and includes land which, as of December 2, 1980, had been selected under the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] by a Native Corporation or Native Group and had not been conveyed by the Secretary (except to the extent such selection is determined to be invalid or has been relinquished) and land referred to in section 19(b) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1618(b)].

(12) The term "Secretary" means the Secretary of the Interior, except that when such term is used with respect to any unit of the National Forest System, such term means the Secretary of Agriculture.

(13) The terms "wilderness" and "National Wilderness Preservation System" have the same meaning as when used in the Wilderness Act (78 Stat. 890) [16 U.S.C.A. § 1131 et seq.].

(14) The term "Alaska Statehood Act" means the Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (72 Stat. 339), as amended.

(15) The term "State" means the State of Alaska.

(16) The term "Alaska Native" or "Native" has the same meaning as the term "Native" has in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1602(b)).

(17) The term "fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(18) The term "take" or "taking" as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(Pub.L. 96-487, Title I, § 102, Dec. 2, 1980, 94 Stat. 2375.)

NOTE: The state management system is discussed at pages 35-40.

**SECTION 805 OF TITLE VIII WITH AMENDMENT  
TO MAKE THE SECTION CONSISTENT WITH  
THE STATE STATUTORY AMENDMENTS**

**LOCAL AND REGIONAL PARTICIPATION**

1  
2 SEC. 805. (a)(1) Except as otherwise provided in subsection (d) of this section, ~~one-year~~  
3 ~~after the date of enactment of this Act,~~ the Secretary in consultation with the State shall  
4 establish—

5 ~~(1)(A)~~ at least six Alaska subsistence resource regions which, ~~taken~~ together,  
6 include all public lands. The number and boundaries of the regions shall be sufficient  
7 to assure that regional differences in subsistence uses are adequately accommodated;

8 ~~(2)(B)~~ such local advisory committees within each region as he finds necessary  
9 at such time as he may determine, after notice and hearing, that the ~~existing~~ State  
10 fish and game advisory committees do not adequately perform the functions of the  
11 local committee system set forth in a paragraph (3)(D)(iv) of this subsection; and

12 ~~(3)(C)~~ a regional advisory council in each subsistence resource region.

13 ~~(2) The members of each regional advisory council shall be appointed by the~~  
14 ~~Governor of Alaska. Each council shall have ten members, four of whom shall be selected~~  
15 ~~from nominees who reside in the region submitted by tribal councils in the region, and six~~  
16 ~~of whom shall be selected from nominees submitted by local governments and local advisory~~  
17 ~~committees. Three of these six shall be subsistence users who reside in the region and three~~  
18 ~~shall be sport or commercial users. Sport and commercial representatives may be residents~~  
19 ~~of any subsistence resource region. The regulations shall provide for staggered terms of~~

1 council members. The maximum term shall be three years, with no limit on the number of  
2 terms served. A quorum shall be a majority of the members of a council. Each regional  
3 advisory council ~~shall be composed of residents of the region and~~ shall have the following  
4 authority:

5 (A) the review and evaluation of proposals for regulations, policies,  
6 management plans, and other matters relating to subsistence uses of fish and wildlife  
7 within the region;

8 (B) the provision of a forum for the expression of opinions and  
9 recommendations by persons interested in any matter related to the subsistence uses  
10 of fish and wildlife within the region;

11 (C) the encouragement of local and regional participation pursuant to the  
12 provisions of this title in the decision making process affecting the taking of fish and  
13 wildlife on the public lands within the region for subsistence uses;

14 (D) the preparation of an annual report to the Secretary which shall contain --  
15 (i) an identification of current and anticipated subsistence uses of fish  
16 and wildlife populations within the region;

17 (ii) an evaluation of current and anticipated subsistence needs for fish  
18 and wildlife populations within the region;

19 (iii) a recommended strategy for the management of fish and wildlife  
20 populations within the region to accommodate such subsistence uses and  
21 needs; and

1 (iv) recommendations concerning policies, standards, guidelines, and  
2 regulations to implement the strategy. The State fish and game advisory  
3 committees or such local advisory committees as the Secretary may establish  
4 pursuant to paragraph (2) of this subsection may provide advice to, and assist,  
5 the regional advisory councils in carrying out the functions set forth in this  
6 paragraph.

7 (b) The Secretary shall assign adequate qualified staff to the regional advisory  
8 councils and make timely distribution of all available relevant technical and scientific support  
9 data to the regional advisory councils and the State fish and game advisory committees or  
10 such local advisory committees as the Secretary may establish pursuant to paragraph (2) of  
11 subsection (a).

12 (c) The Secretary, in performing his monitoring responsibility pursuant to section 806  
13 and in the exercise of his closure and other administrative authority over the public lands,  
14 shall consider the report and recommendations of the regional advisory councils concerning  
15 the taking of fish and wildlife on the public lands within their respective regions for  
16 subsistence uses. The Secretary may choose not to follow any recommendation which he  
17 determines is not supported by substantial evidence, violates recognized principles of fish  
18 and wildlife conservation, or would be detrimental to the satisfaction of, subsistence needs.  
19 If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and  
20 the reasons for his decision.

21 (d) The Secretary shall not implement subsections (a), (b), and (c) of this section if  
22 ~~within one year from the date of enactment of this Act, an amendment to Alaska's~~

1 Constitution has been adopted which allows for the preference specified in section 804, and  
2 the State enacts and implements laws of general applicability which are consistent with, and  
3 which provide for the definition, preference, and participation specified in section 803, 804,  
4 and 805, ~~such~~. Such laws, unless and until repealed, shall supersede such sections insofar  
5 as such sections govern State responsibility pursuant to this title for the taking of fish and  
6 wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory  
7 committees and regional advisory councils consistent with section 805 shall provide that the  
8 State rulemaking authority shall consider the advice and recommendations of the regional  
9 councils concerning the taking of fish and wildlife populations on public lands within their  
10 respective regions for subsistence uses. The regional councils may present  
11 recommendations, and the evidence upon which such recommendations are based, to the  
12 State rulemaking authority during the course of the administrative proceedings of such  
13 authority. The State rulemaking authority may choose not to follow any recommendation  
14 which it determines is not supported by substantial evidence presented during the course of  
15 its administrative proceedings, violates recognized principles of fish and wildlife conservation  
16 or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation  
17 is not adopted by the State rulemaking authority, such authority shall set forth the factual  
18 basis and the reasons for its decision.

19 (e)(1) The Secretary shall reimburse the State, from funds appropriated to the  
20 Department of the Interior for such purposes, for reasonable costs relating to the  
21 establishment and operation of the regional advisory councils established by the State in  
22 accordance with subsection (d) and the operation of the State fish and game advisory

1 committees so long as such committees are not superseded by the Secretary pursuant to  
2 paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such  
3 costs in any fiscal year. Such costs shall be verified in a statement which the Secretary  
4 determines to be adequate and accurate. Sums paid under this subsection shall be in  
5 addition to any grants, payments, or other sums to which the State is entitled from  
6 appropriations to the Department of the Interior.

7 (2) Total payments to the State under this subsection shall not exceed the sum of  
8 \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in  
9 every five years as to whether or not the maximum payments specified in this subsection are  
10 adequate to ensure the effectiveness of the program established by the State to provide the  
11 preference for subsistence uses of fish and wildlife set forth in section 804.

For reference, unamended section 805 is reproduced in its entirety.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3113

Sec. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council authority.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

(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. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

Implementation.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

Reimbursement to States.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

Report to Congress.

(a)

FEDERAL MONITORING

Sec. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

Report to con-  
gressional com-  
mittees.  
16 USC 3116

Existing Section 806 shall become Section 806 (a) and a new subsection shall be added:

(b) At such time as the State of Alaska enacts into law and implements the [Subsistence Act of 1997 is the working title] and the people of Alaska approve the amendment to the Alaska Constitution which is incorporated into that Act by reference and which empowers the Alaska legislature to enact the Act, the State shall be deemed to have complied with section 805(d) and the State may immediately assume fish and game management as provided in section 805(d). Sections (a), (b), and (c) of section 805 shall not be implemented by the Secretary unless and until the Act or the constitutional amendment is repealed or a court of competent jurisdiction determines that the State has substantially failed to implement their provisions and that the State has failed or refused to cure that failure within a reasonable period following the court's determination.

JUDICIAL ENFORCEMENT

Civil actions  
16 USC 3117.

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 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.

Hearing.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

**Two new sentences shall be inserted in Section 807:**

**Agency actions may be declared invalid by the court only if they are arbitrary, capricious, or an abuse of discretion. 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 decision of a comparable federal agency.**

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

Subsistence  
hunting pro-  
gram.

Sec. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

Program and  
recommendation  
implementation.

COOPERATIVE AGREEMENTS

Sec. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title. 16 USC 3119

SUBSISTENCE AND LAND USE DECISIONS

Sec. 310. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Notice and hearings.

42 USC 4332.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

48 USC note prec. 21.

43 USC 1601 note.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

ACCESS

16 USC 3121.

Sec. 511. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

RESEARCH

16 USC 3122

Sec. 312. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submission to  
Speaker of  
House and Presi-  
dent of Senate.  
16 USC 3123

Sec. 313. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

(1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;

(2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;

(3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;

(4) the role of subsistence uses in the economy and culture of rural Alaska;

(5) comments on the Secretary's report by the State, the local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;

(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and

(7) such other recommendations the Secretary deems appropriate.

A notice of the report shall be published in the Federal Register and the report shall be made available to the public.

Publication in  
Federal Regis-  
ter.

or the State at any time the State has complied with section 805(d)

REGULATIONS

SEC. 314. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

**A new sentence shall be added:**

**During any time that the State has complied with Section 805(d), the Secretary shall not make or enforce regulations implementing sections 805(a), (b), or (c).**

**NOTE: This change is necessary to clarify the "Secretary shall not implement" language in Section 805(d).**

LIMITATIONS, SAVINGS CLAUSES

Sec. 815. Nothing in this title shall be construed as—

16 USC 1125

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-ij), the National Park Service Organic Act (39 Stat. 535; 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777K), or any amendments to any one or more of such Acts.

16 USC 1151  
NOTE

16 USC  
665-665d

Pub. p. 3100

16 USC 3126

Sec. 316. (a) All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence uses and sport fishing shall be authorized in such areas by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

Publication in  
Federal Register.

**A new paragraph shall be added:**

**(c) No provision of this Act (the Alaska National Interest Lands Conservation Act Amendments of 1997), exercise of authority pursuant to this Act, or change made by, or pursuant to, this Act shall be construed to validate or invalidate or in any way affect --**

**(1) any assertion that a Native organization (including a federally recognized tribe, traditional Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 1987), as amended) [section 461 et seq. of Title 25, Indians] has or does not have governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or persons within the boundaries of the State of Alaska, or**

**(2) any assertion that Indian country (as defined by 18 U.S.C. § 1151 [section 1151 of Title 18, Crimes and Criminal Procedure] or any other authority) exists or does not exist within the boundaries of the State of Alaska, or**

**(3) any assertion that the Alaska National Interest Lands Conservation Act is or is not Indian Law.**

1 **Draft Revised Fish & Game Statutes (AS 16.05)**  
2 **Subsistence Act of 1997**

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6  
7 **Sec. 16.05.258. Subsistence use and allocation of fish and [GAME] wildlife.**

8 (a) [EXCEPT IN NONSUBSISTENCE AREAS.] In areas and communities classified as rural,

9 the Board of Fisheries and the Board of Game shall identify the fish stocks and [GAME] wildlife

10 populations, or portions of stocks or populations, that are customarily and traditionally taken or

11 used for subsistence. The commissioner [SHALL] may<sup>1</sup> provide recommendations to the boards

12 concerning the stock and population identifications. [THE BOARDS SHALL MAKE

13 IDENTIFICATIONS REQUIRED UNDER THIS SUBSECTION AFTER RECEIPT OF THE

14 COMMISSIONER'S RECOMMENDATIONS.]

15 (b) The appropriate board shall determine whether a portion of a fish stock or

16 [GAME] wildlife population identified under (a) of this section can be harvested consistent with

17 sustained yield. If a portion of a fish stock or wildlife population can be harvested consistent with

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<sup>1</sup>This change was suggested by ADF&G in 1996 to reflect actual practice.

1       sustained yield, the board shall determine the amount of the harvestable portion that is reasonably  
2       necessary for subsistence uses and

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

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

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

9               (C) may adopt regulations to differentiate among uses;

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

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

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

3 (C) shall adopt regulations to differentiate among consumptive uses that provide  
4 for a [PREFERENCE] priority for [THE] subsistence uses, if regulations are adopted under (B)  
5 of this paragraph;

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

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

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

12 (4) if the harvestable portion of the fish stock or wildlife population is not sufficient  
13 to provide a reasonable opportunity for human consumptive subsistence uses, the appropriate  
14 board shall

1 (A) adopt regulations eliminating consumptive uses[,] other than human  
2 consumptive subsistence uses;

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

4 (I) the customary and direct dependence of the fish stock or [GAME] wildlife  
5 population by the subsistence user for human consumption as a mainstay of livelihood;

6 (ii) the proximity of the domicile of the subsistence user to the fish stock or wildlife  
7 population; and

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

10 [(c) THE BOARDS MAY NOT PERMIT SUBSISTENCE HUNTING OR  
11 FISHING IN A NONSUBSISTENCE AREA. THE BOARDS, ACTING JOINTLY, SHALL  
12 IDENTIFY BY REGULATION THE BOUNDARIES OF NONSUBSISTENCE AREAS. A  
13 NONSUBSISTENCE AREA IS AN AREA OR COMMUNITY WHERE DEPENDENCE UPON  
14 SUBSISTENCE IS NOT A PRINCIPAL CHARACTERISTIC OF THE ECONOMY,  
15 CULTURE, AND WAY OF LIFE OF THE AREA OR COMMUNITY. IN DETERMINING

1 WHETHER DEPENDENCE UPON SUBSISTENCE IS A PRINCIPAL CHARACTERISTIC OF  
2 THE ECONOMY, CULTURE, AND WAY OF LIFE OF AN AREA OR COMMUNITY  
3 UNDER THIS SUBSECTION, THE BOARDS SHALL JOINTLY CONSIDER THE RELATIVE  
4 IMPORTANCE OF SUBSISTENCE IN THE CONTEXT OF THE TOTALITY OF THE  
5 FOLLOWING SOCIO-ECONOMIC CHARACTERISTICS OF THE AREA OR COMMUNITY:]

6 (c) On the effective date of this Act, all communities and areas outside the  
7 nonsubsistence areas established by regulations adopted by the Board of Fisheries and Board  
8 of Game and effective on May 15, 1993, shall be classified as rural for purposes of this Act.  
9 The Board of Fisheries and the Board of Game, acting jointly, shall determine by regulation  
10 whether additional communities or areas should be classified as rural and whether  
11 communities or areas classified as rural should no longer be classified as rural.

12 (d) The boards may permit subsistence hunting or fishing only in areas or  
13 communities classified as rural. Fish stocks and [GAME] wildlife populations, or portions of  
14 fish stocks and [GAME] wildlife populations not identified under (a) of this section may be taken  
15 only under nonsubsistence regulations.

1 (e) Takings and uses of fish and [GAME] wildlife authorized under this section are  
2 subject to regulations regarding open and closed areas, seasons, methods and means, marking and  
3 identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations.  
4 Takings and uses of resources authorized under this section are subject to AS 16.05.831 and  
5 AS 16.30.<sup>2</sup>

6 (f) For purposes of this section, "reasonable opportunity" means an opportunity,  
7 [AS DETERMINED BY THE APPROPRIATE BOARD, THAT ALLOWS A SUBSISTENCE  
8 USER] consistent with customary and traditional uses, to participate in a subsistence hunt or  
9 fishery [THAT PROVIDES A NORMALLY DILIGENT PARTICIPANT] with a reasonable  
10 expectation of success. [OF TAKING OF FISH OR GAME] Reasonable opportunity shall not  
11 guarantee the taking of fish or wildlife.

12 (g) No provision of this section requires the Board of Fisheries to close  
13 non-retention fishing if the board has made a finding that the mortality caused by

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<sup>2</sup>These two statutes prohibit waste of salmon and wanton waste of game, respectively.

1 non-retention fishing does not jeopardize subsistence uses or the conservation of healthy  
2 stocks.

3           **Sec. 16.05.259. No subsistence defense.** In a prosecution for the taking of fish  
4 or [GAME] wildlife in violation of a statute or regulation, it is not a defense that the taking was  
5 done for subsistence uses.

6           **Sec. 16.05.260. Advisory committees.** (a) The Board of Fisheries and the Board  
7 of Game may adopt regulations they consider advisable in accordance with AS 44.62  
8 (Administrative Procedure Act) establishing, at places in the state designated by the individual  
9 boards, advisory committees to be composed of persons who collectively represent user groups  
10 in the area and who are well informed on the fish or [GAME] wildlife resource of the locality.

11 The boards shall set the number and terms of each of the members of the advisory committees.  
12 shall delegate one member of each committee as chairman, and shall give the chairman authority  
13 to hold public hearings on fish or [GAME] wildlife matters.  
14

1           **(b) Recommendations from the advisory committees on uses other than**  
2           **subsistence** shall be forwarded to the appropriate board for their consideration but if the Board  
3           of Fisheries or the Board of Game chooses not to follow the recommendations of the local  
4           advisory committee the appropriate board shall inform the appropriate advisory committee of this  
5           action and state the reasons for not following the recommendations.

6           **(c) Recommendations from the advisory committees on subsistence uses shall**  
7           **be sent to regional subsistence councils. If the regional subsistence council does not adopt**  
8           **the recommendation of the advisory committee, the council shall inform the advisory**  
9           **committee, state the reasons, and forward the advisory committee recommendation to the**  
10          **board.**

11           **Sec. 16.05.261. Alaskan Regional Subsistence Councils. (a) The Board of**  
12           **Fisheries and the Board of Game shall adopt regulations establishing at least six subsistence**  
13           **resource regions which, taken together, cover the entire state. The number and boundaries**  
14           **of the regions shall be sufficient to assure that regional differences in subsistence uses are**  
15           **adequately accommodated.**

1           (b) Each subsistence resource region shall be represented by a regional  
2           subsistence council with members appointed by the Governor. Each regional subsistence  
3           council shall have ten members, four of whom shall be selected from nominees who reside  
4           in the region submitted by tribal councils in the region, and six of whom shall be selected  
5           from nominees submitted by local governments and local advisory committees. Three of  
6           these six shall be subsistence users who reside in the region and three shall be sport or  
7           commercial users. Sport and commercial representatives may be residents of any subsistence  
8           resource region. The regulations shall provide for staggered terms of council members. The  
9           maximum term shall be three years, with no limit on the number of terms served. A  
10           quorum shall be a majority of the members of a council.

11           (c) Regional subsistence councils shall strive for consensus, but  
12           recommendations shall be decided by majority vote.

13           (d) Each regional subsistence council shall have the authority to

14           (1) elect officers and adopt rules of procedure;

1                   (2) hold public meetings on fish and wildlife matters and solicit proposals from  
2                   the public on subsistence use;

3                   (3) in consultation with the local fish and game advisory committees in its  
4                   region and with the department, review, evaluate, and make a recommendation to a board  
5                   on any existing or proposed regulation, policy, or management plan, or any other matter  
6                   directly relating to the subsistence use of fish and wildlife within its region;

7                   (4) comment on sport, personal use, and commercial proposals;

8                   (5) make recommendations concerning permits provided in AS 16.05.330(d)  
9                   and .405(g);

10                  (6) submit to the boards, the department, and the Secretaries of Interior and  
11                  Agriculture of the United States, by November 15 of each year, an annual report,  
12                  containing:

13                  (A) an identification of current and anticipated subsistence uses of fish and  
14                  wildlife populations within the region, and other fish and wildlife uses that the council  
15                  identifies;

1                   (B) an evaluation of current and anticipated subsistence needs for use of fish  
2                   and wildlife populations within the region, and of other fish and wildlife needs that the  
3                   council identifies;

4                   (C) a recommended strategy for the management of fish and wildlife  
5                   populations within the region to accommodate the identified fish and wildlife uses and needs;  
6                   and

7                   (D) recommendations concerning policies, standards, guidelines, and  
8                   regulations to implement the strategy; and

9                   (7) perform other duties specified by a board.

10                  (e) Each council shall provide a forum for, and assist its local fish and game  
11                  advisory committees in, obtaining the opinions and proposals of people interested in fish and  
12                  wildlife matters so as to achieve the greatest possible local participation in the  
13                  decision-making process.

1                   (f) Proposals relating primarily to subsistence issues initiated by the public or  
2                   by local fish and game advisory committees must be reviewed by the appropriate regional  
3                   subsistence council before the board takes action on the proposal.

4                   (g) Regional subsistence councils may meet to develop recommendations on  
5                   inter-regional proposals and issues.

6                   (h) The appropriate board shall consider the reports and recommendations of  
7                   the regional subsistence councils and shall give deference to their subsistence  
8                   recommendations. If the council recommendation is unanimous, there is a presumption in  
9                   favor of adoption by the board. However, the board may decide not to adopt any  
10                  recommendation which it determines violates the sustained yield principle, is not supported  
11                  by substantial evidence, is detrimental to subsistence uses, involves an unresolved statewide  
12                  or inter-regional subsistence management issue, or is contrary to an overriding statewide fish  
13                  or wildlife management interest. If a recommendation is not adopted by the board, the  
14                  board shall provide a written statement of the factual basis and reasons for its decision and

1 shall remand the recommendation to the regional subsistence council for further  
2 consideration.

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

7 (i) Regional subsistence councils may adopt a mediation process.

8 (k) When implementing the provisions of this section, the boards, the regional  
9 subsistence councils, and the department shall seek data from, consult with, and make use  
10 of the special knowledge of subsistence users. The department may, when appropriate to  
11 implement the provisions of this section, contract for services with subsistence users and local  
12 groups in order to utilize their special knowledge of resources in the region.

13 (k) The regional subsistence councils shall be adequately funded.

1                   **Sec. 16.05.330. Licenses, tags, and subsistence permits.** (a) Except as otherwise  
2 permitted in this chapter, without having the appropriate license or tag in actual possession a  
3 person may not engage in

4                   (1) sport fishing, including the taking of razor clams;

5                   (2) hunting, trapping, or fur dealing;

6                   (3) the farming of fish, fur, or [GAME] wildlife; or

7                   (4) taxidermy.

8                   (b) When obtaining the appropriate license or tag in (a) of this section, an applicant  
9 who asserts residency in the state shall provide the license vendor with the proof of residence that  
10 the department requires by regulation.

11                   (c) The Board of Fisheries and the Board of Game may adopt regulations providing  
12 for the issuance and expiration of subsistence permits for areas, villages, communities, groups,  
13 or individuals as needed for authorizing, regulating, and monitoring the subsistence harvest of fish  
14 and [GAME] wildlife. [THE BOARDS SHALL ADOPT THESE REGULATIONS WHEN THE  
15 SUBSISTENCE PREFERENCE REQUIRES A REDUCTION IN THE HARVEST OF A FISH

1 STOCK OR GAME POPULATION BY NONSUBSISTENCE USERS.]<sup>1</sup> To be eligible to take  
2 fish or wildlife in a rural community or area, a person must be a resident domiciled in that  
3 community or area.

4 (d) The Board of Fisheries and the Board of Game shall adopt regulations  
5 allowing the commissioner to issue permits for the taking of fish and wildlife in order to  
6 teach and preserve historic or traditional uses and harvest practices. The permits under this  
7 paragraph shall not entitle successful applicants to the subsistence priority in AS 16.05.258.

8  
9 **Sec. 16.05.405. Taking fish and [GAME] wildlife by proxy.** (a) Subject to  
10 regulations adopted by the Board of Fisheries or the Board of Game to implement this section,  
11 including regulations relating to or restricting seasons, areas, methods and means, and species,  
12 a resident may take fish or [GAME] wildlife harvested primarily for food on behalf of another  
13 person under this section.

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<sup>1</sup>This sentence is deleted because it applies only in the context of the current "all Alaskans" system, which would be eliminated.

1 (b) Notwithstanding AS 16.05.420(c), a resident holding a valid resident hunting  
2 license may take [GAME] wildlife on behalf of a person who is blind, a person with physical  
3 disabilities, or a person who is 65 years of age or older if the resident possesses on the resident's  
4 person

5 (1) a document signed by the person on whose behalf the [GAME] wildlife is taken,  
6 stating that the resident possesses the person's hunting license or permanent identification card in  
7 order to take [GAME] wildlife on behalf of that person; and

8 (2) the person's

9 (A) resident hunting license issued under AS 16.05.403 or permanent identification  
10 card issued under AS 16.05.400(b); and

11 (B) harvest ticket, tag, stamp, or other document required by law as a condition of  
12 taking the [GAME] wildlife being hunted.

13 (c) Notwithstanding AS 16 05.420(c), a resident holding a valid noncommercial  
14 fishing license may take fish on behalf of a person who is blind, a person with physical

1 disabilities, or a person who is 65 years of age or older if the resident possesses on the resident's  
2 person

3 (1) a document signed by the person on whose behalf the fish is taken, stating that  
4 the resident possesses the person's sport fishing license, subsistence fishing permit, personal use  
5 fishing permit, or permanent identification card in order to take fish on behalf of that person; and

6 (2) the person's

7 (A) resident sport fishing license issued under AS 16.05.403 or permanent  
8 identification card issued under AS 16.05.400(b);

9 (B) resident subsistence fishing permit issued under AS 16.05.403; or

10 (C) resident personal use fishing permit issued under AS 16.05.403.

11 (d) A resident who takes fish or [GAME] wildlife on behalf of another person  
12 under this section may, subject to applicable regulations of the Board of Fisheries or the Board  
13 of Game, take the fish or [GAME] wildlife only under those conditions that would apply to the  
14 other person if the other person took the fish or [GAME] wildlife personally.

1 (e) A resident who takes, or attempts to take, fish or [GAME] wildlife on behalf  
2 of a person under this section may also simultaneously engage in fishing or hunting for the  
3 resident's use; however, the resident may not take or attempt to take fish or [GAME] wildlife by  
4 proxy for more than one person at a time. For the purposes of this subsection, a resident is  
5 engaged in taking, or attempting to take, fish or [GAME] wildlife by proxy while the resident has  
6 possession of

7 (1) another person's license, permit, or identification card and the other person's  
8 signed document under (b)(1) or (c)(1) of this section; or

9 (2) fish or [GAME] wildlife taken on behalf of another person.

10 (f) A resident who takes fish or [GAME] wildlife on behalf of another person under  
11 this section shall

12 (1) complete reports relating to the taking of the fish or [GAME] wildlife as  
13 required by the commissioner of fish and [GAME] wildlife under AS 16.05.370;

1 (2) deliver all parts of fish and [GAME] wildlife removed from the field to the  
2 person on whose behalf the fish or [GAME] wildlife was taken within a reasonable time after the  
3 fish or [GAME] wildlife is taken;

4 (3) retain the license or permit and the signed document required under (b)(1) or  
5 (c)(1) of this section of the person on whose behalf the fish or [GAME] wildlife is taken until the  
6 fish or [GAME] wildlife is delivered to that person.

7 (g) In addition to the proxy hunting and fishing opportunities authorized by  
8 AS 16.05.405(a)-(f), the Board of Fisheries and the Board of Game shall adopt regulations  
9 to permit a resident who is a member of the family of a resident of a community or area  
10 classified as rural or any person who is a resident of a rural community or area to  
11 participate in subsistence harvest activities as a proxy for a resident eligible for the  
12 subsistence priority under AS 16.05.258, regardless of the eligible resident's age or physical  
13 ability to hunt or fish. A proxy hunter or fisher who is not part of the eligible resident's  
14 family must be a resident of the area in which the eligible resident lives. For purposes of this  
15 paragraph, "family" has the same meaning as in AS 16.05.940(32). The amount of fish or

1 wildlife permitted to be taken for subsistence uses in an area or community shall not be  
2 increased because of proxy hunting or fishing. Any fish or wildlife taken by a proxy  
3 pursuant to this section shall belong to the person on whose behalf it was taken and the  
4 majority of the fish and wildlife taken by a proxy shall remain in the community or area in  
5 which it was taken. No person may give or receive cash remuneration in connection with  
6 any proxy harvest. A person who gives a proxy pursuant to this section may not participate  
7 in the hunt or fishery for which the proxy was given. The proxy hunting and fishing  
8 authorized by this section shall be further subject to the limitations and reporting  
9 requirements of AS 16.05.405(d), (e), and (f).

10  
11           Sec. 16.05.940. Definitions. In AS 16.05 - AS 16.40

12           ...

13           (2) "barter" means the exchange or trade of fish or [GAME] wildlife, or their

14 parts, taken for subsistence uses

15           (A) for other fish or [GAME] wildlife or their parts; or

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

3 . . .

4 (7) "customary and traditional" means the noncommercial, long-term, and  
5 consistent taking of, use of, or reliance upon fish or [GAME] wildlife in a specific area and the  
6 [USE] patterns of taking or use of that fish or [GAME] wildlife that have been established over  
7 a reasonable period of time, taking into consideration the availability of the fish or [GAME]  
8 wildlife;

9 (8) "customary trade" means the limited noncommercial exchange for cash of fish  
10 or wildlife or their parts in minimal quantities, [FOR MINIMAL AMOUNTS OF CASH,] as  
11 restricted by the appropriate board, [OF FISH OR GAME RESOURCES;] The terms of this  
12 paragraph do not restrict money sales of furs and furbearers;

13 . . .

14 (11) "domicile" means the true and permanent home of a person from which the  
15 person has no present intention of moving and to which the person intends to return whenever the

1 person is away; [DOMICILE MAY BE PROVED BY PRESENTING EVIDENCE  
2 ACCEPTABLE TO THE BOARDS OF FISHERIES AND GAME;]

3 (12) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any  
4 stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic  
5 finfish, invertebrate, or amphibian;

6 . . .

7 (14) "fishery" means a specific administrative area in which a specific fishery  
8 resource is taken with a specific type of gear; however, the Board of Fisheries may designate a  
9 fishery to include more than one specific administrative area, type of gear, or fishery resource;  
10 in this paragraph

11 (A) "gear" means the specific apparatus used in the harvest of a fishery resource;

12 and

13 (B) "type of gear" means an identifiable classification of gear and may include

1 (I) classifications for which separate regulations are adopted by the Board of  
2 Fisheries or for which separate gear licenses were required by former AS 16.05.550 - 16.05.630;  
3 and

4 (ii) distinct subclassifications of gear such as "power" troll gear and "hand" troll  
5 gear or sport gear and guided sport gear;

6 ...

7 (16) "fish stock" means a species, subspecies, geographic grouping or other  
8 category of fish manageable as a unit;

9 ...

10 (18) ["GAME"] "Wildlife" means any species of bird, reptile, and mammal,  
11 including a feral domestic animal, found or introduced in the state, except domestic birds and  
12 mammals; and [GAME] wildlife may be classified by regulation as big game, small game, fur  
13 bearers or other categories considered essential for carrying out the intention and purposes of  
14 AS 16.05 - AS 16.40;

1                   (33) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner  
2                   disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner  
3                   capture or kill fish or [GAME] wildlife;

4                   .....

5                   Sec. \_\_\_\_ This Act takes effect on the effective date of [describe the  
6                   constitutional amendment authorizing a rural priority].

1 THE STATE] for subsistence uses with gill net, seine, fish wheel, long line, or other means  
2 defined by the Board of Fisheries;

3 (31) "subsistence hunting" means the taking of, hunting for, or possession of  
4 wildlife [GAME BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for  
5 subsistence uses by means defined by the Board of Game;

6 (32) "subsistence uses" means the noncommercial, customary and traditional uses  
7 of wild, renewable resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE  
8 STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or  
9 transportation, for the making and selling of handicraft articles out of nonedible by-products of  
10 fish and wildlife resources taken for personal or family consumption, and for the customary trade,  
11 barter, or sharing for personal or family consumption; in this paragraph, "family" means persons  
12 related by blood, marriage, or adoption, and a person living in the household on a permanent  
13 basis;

20 • Sec. 3. AS 16.05.940(25) is amended to read:

21 (25) "resident" means

22 (A) a person who for the (PRECEDING) 12 consecutive months  
23 immediately preceding the time when the assertion of residence is made  
24 has maintained the person's domicile (A PERMANENT PLACE OF ABODE)  
25 in the state and who is neither claiming residency in another state, territory,  
26 or country nor obtaining benefits under a claim of residency in another  
27 state, territory, or country;

28 (B) (HAS CONTINUALLY MAINTAINED A VOTING  
29 RESIDENCE IN THE STATE; AND IN THE CASE OF) a partnership,  
30 association, joint stock company, trust, or corporation (, "RESIDENT" MEANS  
31 ONE) that has its main office or headquarters in the state: a natural person  
1 who does not otherwise qualify as a resident under this paragraph may not  
2 qualify as a resident by virtue of an interest in a partnership, association,  
3 joint stock company, trust, or corporation;

4 (C) (HOWEVER,) a member of the military service, or United  
5 States Coast Guard, who has been stationed in the state for the  
6 (PRECEDING) 12 consecutive months immediately preceding the time when  
7 the assertion of residence is made;

8 (D) a person who is (A RESIDENT FOR THE PURPOSES OF  
9 THIS PARAGRAPH, AND) the dependent of a resident member of the military  
10 service, or the United States Coast Guard, and who has lived (BEEN  
11 LIVING) in the state for the 12 consecutive months immediately preceding  
12 the time when the assertion of residence is made; or

13 (E) (PRECEDING YEAR IS A RESIDENT FOR THE  
14 PURPOSES OF THIS PARAGRAPH; AND A PERSON WHO IS) an alien  
15 (BUT) who for the 12 consecutive months immediately preceding the time  
16 when the assertion of residence is made (ONE YEAR) has maintained the  
17 person's domicile (A PERMANENT PLACE OF ABODE) in the state and  
18 who is neither claiming residency in another state, territory, or country  
19 nor obtaining benefits under a claim of residency in another state,  
20 territory, or country (IS A RESIDENT FOR THE PURPOSES OF THIS  
21 PARAGRAPH);

22 • Sec. 4. This Act takes effect January 1, 1998.

1

2 **NOTE:** The sunset provision in Section 12, Chapter 1, SSSLA 1992 must be repealed  
3 as part of the package.

4  
5 **NOTE:** Should boards be given authority to adopt implementing regulations before  
6 the effective date of the statute?

7  
8 **NOTE:** Appropriate legislative findings should be added to the Act.

9  
10 **NOTE:** There is some housekeeping to do after basic structure is in place (*e.g.*,  
11 consistent use of community or area, capitalization, use of domicile and  
12 resident).

13  
14 **NOTE:** The term "wildlife" has been used in place of "game" in the draft statutes.  
15 Other statutes governing fish and game/wildlife use the term "game."  
16 Conforming amendments will be necessary in the rest of AS 16.05 and the  
17 regulations to standardize the use of these terms.

## Cross Comparison Between Constitutional Amendments Proposed by Task Force and Proposal in HJR 46

SUBSISTENCE TASK FORCE PROPOSAL	HJR 46 (GOVERNOR'S BILL)
<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19, Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>NOTE:</b> There is a linkage between this constitutional amendment and changes to ANILCA and state statutes. Amendments to ANILCA and amendments to Alaska's fish and game statutes will be passed prior to voting on this constitutional amendment, but will not become effective unless the constitutional amendment passes.</p> <p><b>Sec. 3.</b> The amendment proposed by this resolution shall be effective immediately upon certification that it has passed.</p>	<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19, Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>Sec. 3.</b> If adopted by the voters at the next general election, the amendment proposed by this resolution takes effect immediately upon certification of the election returns by the lieutenant governor.</p>

A Cross Comparison of Existing Statutory Provisions in AS 16 with the Subsistence Task Force Proposal and HB 320 Submitted by the Governor

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 320 (GOVERNOR'S BILL, 1/14/98)
<p><b>Sec. 16.05.258 (a): Subsistence use and allocation of fish and wildlife.</b>                      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.</p>	<p><b>(a) Amended:</b> In areas and communities classified as rural, the Board of Fisheries and the Board of Game shall identify the fish stocks and wildlife populations....</p>	<p>The same as Task Force Proposal.</p>
<p><b>Sec. 16.05.258 (b)(4): Subsistence use and allocation of fish and wildlife.</b>                      If the harvestable portion of the fish stock or wildlife population is not sufficient to provide a reasonable opportunity for subsistence uses....</p>	<p>If the harvestable portion of the fish stock or wildlife population is not sufficient to provide a reasonable opportunity for "human consumptive" subsistence uses....</p>	<p>The same as Task Force Proposal.</p>
<p><b>Sec. 16.05.258 (c): Subsistence use and allocation of fish and wildlife.</b>                      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....</p>	<p><b>Replace with new Sec. (c):</b> On the effective date of this Act, all communities and areas outside the nonsubsistence areas established by regulations adopted by the Board of Fisheries and Board of Game and effective on May 15, 1993 shall be classified as rural for purposes of this Act. The Board of Fisheries and Board of Game, acting jointly, shall determine by regulation whether additional communities or areas should be classified as rural and whether communities or areas classified as rural should no longer be classified as rural.</p>	<p><b>Added as Section 28.</b> All communities and areas outside the nonsubsistence areas established by regulations adopted by the Board of Fisheries and the Board of Game and effective on May 15, 1993, are classified as rural for the purpose of this Act. The classifications made under this section are subject to the provisions of AS 16.05.258 (c) as repealed and reenacted by Sec. 3 of this Act.</p>
<p><b>Sec. 16.05.258 (d): Subsistence use and allocation of fish and wildlife.</b>                      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.</p>	<p><b>Amended:</b> The boards may permit subsistence hunting or fishing only in areas or communities classified as rural. Fish stocks and wildlife populations....</p>	<p><b>Amended:</b> The boards may permit subsistence hunting or fishing under the priority in this section in areas or communities classified as rural. Fish stocks and wildlife populations....</p>
<p><b>Sec. 16.05.258 (f): Reasonable Opportunity.</b>                      Reasonable opportunity means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery with a reasonable expectation of success of taking fish or game;</p>	<p>Means an opportunity, consistent with customary and traditional uses, to participate in a subsistence hunt or fishery with a reasonable expectation of success. Reasonable opportunity shall not guarantee the taking of fish or wildlife.</p>	<p>Essentially the same as Subsistence Task Force Proposal.</p>
<p><b>Sec. 16.05.258 (g): Subsistence use and allocation of fish and wildlife.</b>                      Section (g) does not exist.</p>	<p><b>Add new Sec. (g):</b> No provision of this section requires the Board of Fisheries to close non-retention fishing if the board has made a finding that the mortality caused by non-retention fishing does not jeopardize subsistence uses or the conservation of healthy stocks.</p>	<p><b>Add new Sec. (g):</b> Essentially the same as Task Force Proposal.</p>

<u>STATE STATUTORY PROVISIONS AS 16:</u>	<b>SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)</b>	<b>HB NO. 320 (GOVERNOR'S BILL, 1/14/98)</b>
<p><b>Sec. 16.05.260 (c). Advisory Committees.</b> Section (c) does not exist.</p>	<p><b>Add new Sec. (c):</b> Recommendations from the advisory committees on subsistence uses shall be sent to regional subsistence councils. If the regional subsistence council does not adopt the recommendation of the advisory committee, the council shall inform the advisory committee, state the reasons, and forward the advisory committee recommendation to the board.</p>	<p><b>Add new Sec. (c):</b> Essentially the same as Task Force proposal.</p>
<p><b>Sec. 16.05.262. Regional Subsistence Councils.</b> Section 16.05.262 does not exist.</p>	<p><b>Add new Sec.:</b> Creation of Regional Subsistence Councils.</p> <ul style="list-style-type: none"> <li>(a) Joint Boards of Fisheries and Game meeting jointly adopt regulations including the establishment of six subsistence resource regions.</li> <li>(b) Each regional subsistence council must have 10 members, four of whom shall be selected from nominees who reside in that region of the state submitted by tribal councils in the region and six of whom shall be selected from nominees submitted by local governments and local advisory committees. Three of these six must be subsistence users who reside in the region and three must be sport or commercial users. Sport or commercial representatives may be residents of any subsistence resource region.</li> <li>(c) Councils shall strive for consensus but may decide by majority vote.</li> <li>(d) Each councils has the authority to make recommendations to Boards on regulations, policies, or any matter related to subsistence uses; comment on nonsubsistence proposals; make recommendations on permits; submit annual reports to state and federal agencies concerning subsistence identification, needs, strategies, policies, standards, guidelines and regulations.</li> <li>(e) Assist local fish and game advisory committees in achieving local participation.</li> <li>(f) Requires regulatory proposals relating to subsistence be reviewed by appropriate regional council before the board takes action.</li> <li>(g) Provides for councils to meet on inter-regional proposals.</li> <li>(h) The appropriate board shall consider the reports and recommendations of the regional subsistence councils and shall</li> </ul>	<p><b>Add new Sec.:</b> Essentially the same as Task Force proposal.</p>

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 320 (GOVERNOR'S BILL, 1/14/98)
	<p>give deference to their subsistence recommendations. If the council recommendation is unanimous, there is a presumption in favor of adoption. The board may decide not to adopt a recommendation that 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. A written statement shall be provided for all rejected recommendations.</p> <ul style="list-style-type: none"><li>(i) Regional councils shall give deference to proposals from local governments, tribal councils and local advisory committees related to subsistence.</li><li>(j) Authorizes use of mediation process.</li><li>(k) Requires use of knowledge of subsistence users. Authorizes the department to contract with subsistence users and local groups for utilization of local special knowledge.</li><li>(l) Requires adequate funding for councils.</li></ul>	

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 32 <sup>r</sup> (GOVERNOR'S BILL, 1/14/98)
<p><b>Sec. 16.05.330 (e) &amp; (e): Licenses, tags and Subsistence Permits</b>  <b>Section (e):</b> The Board of Fisheries and the Board of Game may adopt regulations providing for the issuance and expiration of subsistence permits for areas, villages, communities, groups, or individuals as needed for authorizing, regulating, and monitoring the subsistence harvest of fish and game.            Section (e) does not exist.</p>	<p><b>Adds to existing Sec. (e):</b> To be eligible to take fish or wildlife in a rural community or area using the subsistence priority in AS 16.05.258, a person must be a resident domiciled in that community or area.  <b>Add new Sec. (e):</b> Provides authority for Commissioner to issue permits for taking fish and wildlife in order to teach and preserve historic or traditional uses and harvest practices. Does not have a priority.</p>	<p><b>Add to existing Sec. (e):</b> Same as Task Force Proposal.  <b>Add new Sec. (e):</b> Essentially the same as Task Force proposal.</p>
<p><b>Sec. 16.05.405: Taking fish and wildlife by proxy.</b>            (a) - (f): Authorizes a resident to take fish and wildlife harvested primarily for food on behalf of another person who is blind, has physical disabilities or is 65 years or older.            Section (g) does not exist.</p>	<p><b>Add new Sec. (g):</b> Authorizes a permit for a resident who is member of the family of a resident of a rural community or area or any person who is a resident of a rural community or area to participate in subsistence harvest activities as a proxy, regardless of the eligible resident's age or physical ability to hunt or fish. Fish or wildlife taken by proxy under this section shall belong to the person on whose behalf it was taken and the majority of the fish and wildlife taken by proxy shall remain in the community or area. No person may give or receive cash remuneration in connection with any proxy harvest.</p>	<p><b>Add new Sec. (g):</b> Same as Task Force Proposal.</p>

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 320 (GOVERNOR'S BILL, 1/14/98)
<p><b>Sec. 16.05.940: Definitions.</b></p> <p>(2) "barter" amended to change "game" to "wildlife,"</p> <p>(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 fish or game;</p> <p>(8) "customary trade" means the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph to not restrict money sales of furs and furbearers;</p> <p>(11) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the Boards of Fisheries and Game.</p> <p>(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;</p> <p>(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....</p> <p>(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....</p> <p>(32) "subsistence uses" means the noncommercial, customary and traditional uses of wild renewable resource 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....</p> <p>(37) Does not exist.</p> <p>(38) Does not exist.</p>	<p>(2) - same</p> <p>(7) means the noncommercial, long term, and consistent taking of, use of, "or" reliance upon fish or wildlife in a specific area and the patterns of taking or use of that fish or wildlife that....</p> <p>(8) means the limited noncommercial exchange for cash of fish or wildlife or their parts in minimal quantities....</p> <p>(11) <del>delete:</del> domicile maybe proved by presenting evidence acceptable to the Boards of Fisheries and Game;</p> <p>(27) "rural community or area" is a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses;</p> <p>(30) <del>delete:</del> "by a resident domiciled in a rural area of the state"</p> <p>(31) <del>delete:</del> "by a resident domiciled in a rural area of the state"</p> <p>(32) <del>delete:</del> "by a resident domiciled in a rural area of the state"</p> <p>(37) "wildlife" has the same meaning given "game" in this section; wildlife may be classified by regulation as big game, small game, furbearers, or other categories considered essential for carrying out the intention and purposes of AS 16.05 - AS 16.40.</p> <p>(38) "wildlife population" has the meaning given "game population" in this section.</p>	<p><b>Except as specifically identified, all of these definitions are the same as Subsistence Task Force Proposal.</b></p> <p>(7) means the noncommercial, long term, and consistent taking of, use of, "and" reliance upon fish or wildlife....</p>

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 320 (GOVERNOR'S BILL, 1/14/98)
Section 31. Effective date.		Sec. 31 Provides that the Act takes effect on the effective date of an amendment to the Constitution of the State of Alaska, approved by the voters in 1998, authorizing a priority for subsistence uses of renewable natural resources that is based on place of residence.
Sunset Provision: Present subsistence law reverts to 1986 law on January 1, 1999 if 1992 law is not extended.		

A Cross Comparison of the Elements in ANILCA Changed by Public Law 105-83 and the Subsistence Task Force Proposal

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
Sec. 316(a): Moratorium		Extended until December 1, 1998	
Sec. 316(b): Amendments to ANILCA		Amendment or repeal refers to ANILCA in this section	
Sec. 316(c): Savings Clause		Does not affect Native governmental authority over lands or fish and wildlife; assertions of Indian Country in Alaska; assertion that ANILCA is Indian Law; or the authority of the Secretary of Interior under Sec. 1314(c) of ANILCA	Added as Sec. 816(c)(1),(2), and (3): Same as PL 105-83, except no provision regarding authority of Secretary of Interior
Sec. 316(d): Effective Date		State must adopt laws providing for the definition, preference, and participation specified in Sec.'s 803, 804, and 805 of ANILCA by December 1, 1998 or the amendments to ANILCA will be repealed. Secretary must certify that State is in compliance before amendments become effective	Adds Sec 806(a): When State enacts state laws and constitutional amendment contained in proposal, it will immediately assume fish and game management.
Sec. 102(2): Definition of "Federal Land"	The lands the title to which is in the United States after the date of enactment of this Act	Lands the title to which is in the United States after December 2, 1980. 'Federal Lands' does not include lands the title to which is in the State, a Native Corporation, or other private ownership.	[Amended in Title I] The term "federal land" means land the title to which is in the United States after December 2, 1980. "Federal land" does not include lands the title to which is in the State after December 2, 1980, Native lands, other private lands, or Native Corporation and State land selections defined in subsection (3)(A) and (B) below

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
Sec. 801(b): Findings	Sec. 801(a): National interest in protecting the subsistence way of life for Natives and Non-Natives alike in rural areas of the state.	Sec. 801(b) added: (1) rural preference law formerly passed by Alaska accomplished goals of ANILCA; (2) <i>McDowell</i> case found preference unconstitutional; (3) no constitutional amendment since then; (4) in accordance with Title VIII, Secretary is required to manage on all public lands because state law failed to provide rural preference; (5) <i>State v. Babbitt</i> determined that priority applies to navigable waters in which U.S. has reserved water rights; (6) State of Alaska should have opportunity to manage its own resources	
Sec. 803: Definitions: Sec. 803(3): "Customary and Traditional Uses"		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	Essentially the same as PL. 105-83
Sec. 803(4): "Customary Trade"		Except for money sales of furs and furbearers, the limited, non-commercial exchange for money of fish and wildlife or their parts in minimal quantities	Essentially the same as PL. 105-83
Sec. 803(5): "Rural Alaska Resident"		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	Essentially the same as PL. 105-83

<u><b>ANILCA PROVISIONS:</b></u>	<b>ANILCA TODAY</b>	<b>PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)</b>	<b>SUBSISTENCE TASK FORCE PROPOSAL (September 1997)</b>
<b>Sec. 804(b): "Reasonable Opportunity"</b>	Sec. 804(a) provides that subsistence taking of resources is afforded a priority over other purposes. When necessary to restrict subsistence taking, priority and limitations are based on customary and direct dependence, local residency, and the availability of alternative resources	Adds Sec. 804(b) which states that the priority afforded under this section is for a reasonable opportunity to take fish and wildlife only. "Reasonable opportunity" means an opportunity, consistent with customary and traditional uses, 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	Essentially the same as PL 105-83

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
<p><b>Sec. 805: Local and Regional Participation</b></p>	<p>Established at least six subsistence resource regions, local advisory committees, and regional advisory councils</p>	<p>Adds Sec. 805(d): When Secretary certifies that State has passed laws consistent with 803, 804, and 805, state shall assume management on public lands. Secretary shall then not implement sections a,b, and c (federal management structure) unless a court of competent jurisdiction determines that state is out of compliance</p> <p>Secretary may bring a judicial action to enforce this subsection</p> <p>(2)(A) regional councils will present recommendations to state boards, which may choose not to follow recommendations which are not supported by substantial evidence, violate recognized principles of fish and wildlife conservation, or are detrimental to the satisfaction of rural subsistence needs</p> <p>(B) members of each regional advisory council appointed by Governor. 10 members, 4 selected from nominees who live in region and presented by tribal councils; 6 from nominees submitted by local governments and advisory committees. 3 of the 6 are subsistence users who live in the region; 3 of 6 are sport or commercial users who live in any subsistence region. 3 year staggered term on councils</p>	<p>Sec. 806(b) added which essentially mirrors 805(d) except that sections (a), (b), and (c) (the federal management structure) shall not be implemented unless a court of competent jurisdiction determines that the State has <u>substantially failed</u> to implement the provisions of Title VIII</p> <p>No similar provision in Task Force Proposal</p> <p>Adds two additional grounds upon which the Boards may base a rejection of a recommendation: 1.) involves an unresolved statewide or inter-regional subsistence management issue, or 2.) is contrary to an overriding statewide fish or wildlife management interest.</p> <p>Essentially the same as PL. 105-83</p>

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
<b>Sec. 807: Judicial Enforcement</b>	Individuals aggrieved by State's failure to implement provisions of Title VIII may, upon exhaustion of administrative remedies, file a civil action in U.S. District Court for enforcement	Adds 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	Essentially the same as PL 105-83, except does not contain the added phrase "or otherwise not in accordance with law"
<b>Sec. 814: Regulations</b>	The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title	The Secretary, and the State at any time the State has complied with section 805(d), shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title. During any time that the State has complied with section 805(d), the Secretary shall not make or enforce regulations concerning section 805(a), (b), or (c)	Essentially the same as PL 105-83
<b>Sec. 815: Limitations, Savings Clauses</b>	Title is consistent with conservation of healthy fish and wildlife populations; no assignment of rights; no hunting in permanently closed areas; no restricting non-subsistence uses unless necessary to continue subsistence uses or to maintain healthy populations; does not modify or repeal other federal lands Acts	Adds Sec. 815(5): Nothing prohibits Secretary or the State from entering into co-management agreements with native organizations or other local or regional entities when either is managing fish and wildlife on public lands in Alaska for subsistence uses	