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JUNEAU ALASKA

# Alaska State Legislature House

INTERIM COMMITTEE ON SUBSISTENCE  
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Final Report  
of the  
Interim Committee on Subsistence  
Alaska Tenth Legislature  
Second Session

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INTERIM COMMITTEE ON SUBSISTENCE

Committee Members

Representative Nels A. Anderson, Jr., Chairman, Dillingham

Representative William Akers, Chuloonawick

Representative Sam Cotten, Eagle River

Representative Joe Hayes, Anchorage

Representative Al Nakak, Nome

Representative Leo Schaeffer, Kotzebue

Representative Steve Cowper, Fairbanks

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INTERIM COMMITTEE ON SUBSISTENCE  
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### I. INTRODUCTION

By Representative Nels A. Anderson, Jr., Chairman of the Alaska State Legislative Interim Committee on Subsistence

#### SUBSISTENCE

The term "subsistence" has been a loosely defined term used to legitimize use of Alaska's land and water resources for survival in dire emergencies. Alaska's people have not placed the subsistence harvest of fish and game, birds and vegetation very high on their priority of uses until of late.

Commercial and sport interests have been the deciding voice on how our fish and game resources are regulated. Exclusive game guide areas are set up, sport fishing seasons are guaranteed by the sheer weight of numbers, commercial fishing seasons are often opened even though biological evidence dictates otherwise.

The means of travel and killing animals and fish is becoming more sophisticated. High speed planes fly far from urban Alaska cities to remote parts of rural Alaska, placing unprecedented harvest pressures on caribou and moose herds throughout Alaska. Fishing fleets travel faster and farther with more holding capacity thus extending their once limited ranges into areas that once were beyond their capabilities.

The Department of Fish and Game, the favorite scapegoat of politicians, special interest groups, and frustrated fish and game users is funded by two methods :

the General Fund and funds from the sale of licenses which are in turn matched by Federal funds. It is complex and causes concern because one's income may influence one's attitude in making decisions.

In the meantime, subsistence users are generally alarmed because there are no legislative guarantees that fish and game populations will be protected for their use. The State Legislature has addressed "Subsistence" in a haphazard manner which leaves the subsistence user twisting in the wind.

There are four primary users of our fish, game, birds, and vegetation resources in Alaska : 1) The Subsistence user 2) The Commercial user 3) The Sports user 4) The Recreation user.

The four uses of our renewable resources on the land, in the air and in the waters of Alaska must be recognized by the State of Alaska as competing uses of the above mentioned resources.

The changing land ownership patterns, diminishing fish and game resources, increased hunting and fishing technology, growing population pressures, are all factors that require our State to wrestle with and solve the problem of "Subsistence". Hopefully, the following recommendations will lead us toward a solution that will satisfy all the users of our renewable resources.

## A. Role of Interim Committee on Subsistence

### 1) Goals of Committee

The Interim Committee on Subsistence was established by the 1977 Alaska State Legislature for the purpose of seeking a consensus on subsistence. The Committee's goals and objectives were to conduct public hearings throughout the various communities around the State, both rural and urban; to collect testimony on the issue of subsistence; to gather available information on the subject; to attempt to quantify the amounts of subsistence resources taken from the land and water; to review State statutes regarding subsistence; to review subsistence activities on federal land; and to attempt to define subsistence.

Accomplishments of the Staff and Committee have been to collect available data, conduct hearings and collect public testimony from the following schedule of villages and towns and written testimony from a statewide source through letters and reports of testimony. We have collected available data that quantifies amounts of subsistence harvests in several areas. We have maps and overlays that designate land use for subsistence harvests in over 40 villages, along with surveys done by several organizations that quantifies various uses of subsistence resources. After the Staff and Committee began to assess the amount of work, the funding, and the length of time necessary to perform the ideal goals of the Committee, we decided to put more emphasis on the hearing schedule, gathering of testimony from a statewide source. In our travels, the emphasis and scope of the Committee came more into focus by what was being brought

to our attention in the testimony, though it would have been valuable to be able to quantify subsistence harvest to be able to show in dollars and cents the impact a loss of subsistence would have economically, socially and fiscally upon the State of Alaska. To accomplish these goals would mean a concentrated survey, research and a great deal of time and money expended on one aspect. This effort could be tackled at a later time, and should the Legislature choose to implement the recommendations of this Committee, this definitely would become part of the functions of the body created to attack the subsistence issue.

We briefly touched upon subsistence activities on federal lands.

It is felt that this area of concentration will be faced by the federal legislators, with input from our State government through the Steering Council for Alaska Lands, chaired by Representative Steve Cowper, who is also a member of the Interim Committee on Subsistence. In order for any governing bodies to do any planning regarding lands, it is vitally important that the status of the lands be clarified, that title to private lands through Alaska Native Claims Settlement Act and State-selected lands be conveyed. Attached to this report, as a part of the public record, is a copy of "Legal Issues in Federal Protection For Subsistence On The Proposed National Interest Lands" by Dennis D. Kelso. It is a comprehensive, indepth report regarding federal lands.

The history leading to the formation of this Committee stems from the interest, insistence, and persistence of many individuals and organizations who felt that subsistence is a vitally important issue

that needed to be addressed by the State of Alaska, legislatively and administratively. Countless times, the term subsistence was broached when discussing land use policies, selection of land, both State, federal and Native, in the management and in the protection and enforcement of the fish and game resources.

There have been several legislators who recognized the necessity of facing and dealing with the issue of subsistence because of the diminishing fish and game resources, increased population density, changes in means and methods of taking subsistence resources, and the easy access to the resources. The ANCSA had such an impact on the State of Alaska and subsistence was a constant reminder in the passage of that piece of legislation. Now, the State is faced with the task of providing a more realistic approach that can be implemented.

The Committee posed several questions to generate a response from the residents of the State relating to subsistence:

- 1) Should subsistence be taken into consideration when land and water use policy is developed?
- 2) Should subsistence be defined?
- 3) What should the State do about protecting subsistence?

The response and testimony from the public will be in the content of the public hearing testimony record attached to this report, under Section II.

## 2) Budget and Operations Cost

The first budget request for the operations for this Committee was \$100,420.00 which ideally would have accomplished much of

the work that needs to be done in the area of subsistence. The budget was pared down to \$40,400 which was the figure used to develop the hearing schedule and activities of Staff and the Committee. The office was opened in Dillingham in space provided by Representative Anderson; the only cost to the State was the cost of the fuel oil. The major expenses were salaries, travel and per diem, telephone, copy service, transcribing costs, maps, supplies, postage. At this writing, we do not have a final accounting of the exact expenditures. We do not anticipate any over expenditures and feel that we may be under what the total allocation for what the budget was.

### 3) Committee Membership

The Committee was chaired by Representative Nels A. Anderson, Jr., of Dillingham with other members as follows: Senator Patrick Rodey of Anchorage, Representative William Akers of Chuloonawick, Representative Samuel Cotten of Eagle River, Representative Joe Hayes of Anchorage, Representative Al Nakak of Nome, Representative Leo Schaeffer, Jr., of Kotzebue, and Representative Steve Cowper of Fairbanks. It is felt that a good cross section of the Legislature was represented with this Committee with urban and rural legislators alike participating.

## II. ACTIVITIES OF COMMITTEE AND STAFF

A. The Staff Assistant, Dorothy Larson of Dillingham began working full time the latter part of July and Secretary Adelheid Herrmann of Naknek began work in early August. The Committee held its first meeting in Dillingham on August 9, 1977. At this initial meeting, the Committee heard Staff Attorney Joe Guthrie, Commissioner of the Alaska Department

of Fish and Game Ron Skoog, Attorney Hank Cavallera and George Allen of RuralCap give an overview of subsistence issue. At the meeting in August, the Committee agreed unanimously that a hearing schedule would be developed with a maximum of 3 or 4 members and the Staff Assistant conducting the hearing. At most of the hearings, there was at least one other Committee member and the Committee Chairman and staff present. You will find on the hearing testimony this information.

**B. Schedule of Hearings**

The Committee adhered to the schedule below for the travel and hearing itinerary:

Kipnuk.....	Sept. 3
Kotzebue.....	Sept. 16
Nome.....	Sept. 16
Glenallen.....	Oct. 3
Fairbanks.....	Oct. 4
Nenana.....	Oct. 5
Kodiak.....	Oct. 17
Nome.....	Oct. 27
Anchorage.....	Nov. 10
Galena.....	Nov. 21
Juneau.....	Dec. 9
Barrow.....	Dec. 12

**C. Brief Summary and Overview of Hearings**

The hearing attendance was considered to be fair. It appears that during the interim period of the 1977 and 1978 Legislature, there were countless hearings and meetings held throughout the State.

There was a very good cross-section of each community represented in urban and rural areas. Approximately 500 people were in attendance at the hearings. Those testifying at the public hearings numbered 150,\*\* while others presented written testimony and letters.

When the Committee began on the hearing circuit, it was felt that in order to be objective and to gather the testimony of a broad spectrum of Alaska residents, we would have to be careful not to polarize the issue of subsistence. There was concern that this issue could become identified as a Native versus non-Native issue. It is felt that this was not the case. The testimony, on the whole, was felt to be objective and representative of the feelings of many residents of the State.

There were Native, non-Native, housewives, children, students, health officials, conservationists, environmentalists, businessmen, Fish and Game officials and personnel, retirees, guides, commercial fishermen, sports hunters and fishermen, Native organizations both profit and non-profit representatives, representatives of various State agencies, Vista Volunteers, legislators, city and borough officials, whalers, lawyers, researchers, trappers, school teachers, school board members, air taxi operators, store owners and many others.

The bulk of the testimony centered around the necessity to protect and allow for the continuance of subsistence; to protect and manage the resources; discussion on the allocation and whether priority should be given subsistence versus the sports or commercial users; pros and cons of defining the term "subsistence"; discussion of regionalizing the Fish and Game Boards into regional areas with direct authoritative power rather than only advisory powers; and the funding source and level of the Alaska Department of Fish and Game.

\*\* The 16 moderators at the Alaska Federation of Natives, Inc. Convention represented peoples views throughout Alaska.

Attached to this report is the verbatim hearing testimony, the written testimony submitted to the Committee for the record and the testimony of the Public Hearing of the Draft Environmental Impact Statement Respecting the International Whaling Commissions Deletion of the Native Exemption for the Subsistence Harvest of Bowhead Whales, more commonly known in Alaska as the Whaling hearings. This hearing was held on the same day that the Committee was in Kotzebue. We requested that this testimony be forwarded to be incorporated into our record since it deals with one aspect of a subsistence resource and harvest, though it is governed by and on an international level. There is a possibility that the whalers from the North Slope will challenge the International Whaling Commission's jurisdiction in the matter of subsistence whaling, however.

The method staff used to publicize the meetings and hearings included notifying the newspapers of the area, the radio stations, notices to regional corporations, village councils, city and borough officials, and other legislators in the hearing location and by posting in public places. We feel that the public was well aware of the subsistence issue and that an Interim Committee on Subsistence existed.

Had it been economically feasible, the Committee would have gone to more locations in rural Alaska. We had numerous requests to go to the outlying areas. The hearing locations were chosen geographically based on both urban and rural populations. On a per capita basis, more people turned out in the rural areas. The largest urban hearing was in Fairbanks. It was also the longest hearing, lasting about 4-1/2 hours. The Committee attended the Alaska Federation of Natives, Inc. Annual Convention on

November 12, 1977 and accepted testimony from the Convention regarding subsistence. The theme of the Convention was Subsistence.

It is hoped that you will take the time to read the attached testimony given to this Committee to gain a better insight and understanding of the scope of the problem of subsistence as it relates to residents of this State. This topic will be brought up time and time again in the discussion of land and water use policies, economic growth and development, in planning for the future of the State. It is NOT just one issue, it is a complex entity that necessitates its treatment be as a whole, not in any fragmented, splintered approach. The cultural, economic and legal aspects are all integral parts that are interrelated when speaking to or of the subsistence issue.

The information collected through the hearings and the available current information gathered on the subject of subsistence will be of significant value to any State body that will be charged with undertaking the task of further work in this area. The concensus gathered from the hearings is that subsistence IS an issue, a problem that is of the magnitude worthy of the State's attention. As mentioned before, it is a complex area that will take a lot of concerted effort and time, and undoubtedly, money. Any issue that affects the everyday lives of people is bound to be a tough, touchy, dynamic proposition for any body to tackle. Empathy was expressed by many in the committee's travels that the people did not envy the difficult task the Committee had.

### III. LEGAL ASPECTS RELATING TO SUBSISTENCE ISSUES

#### A. Overview by Joe Guthrie, Staff Attorney

Following is the entire contents of the report to the Committee by Joe Guthrie, Staff Attorney:

## Federal Regulation

The problem of regulating subsistence fishing and hunting now confronting the State legislature and administrative agencies will depend in large measure on whether the federal government undertakes to regulate subsistence on national interest lands. Language to this effect appears in several of the D-2 bills. If such language is enacted, state regulation inconsistent with federal law would be superseded on these national interest lands. In addition, the federal government may have the power to regulate subsistence activities on State-owned land as well, either as a necessary incident of the power to regulate subsistence on adjacent national interest lands, as a derivative of the federal government's treaty power, or as an exercise of power made necessary by the involvement of more than one state. Conceivably, Congress could not only supersede inconsistent state regulation, but also preempt the state from the field of regulation entirely.

Action or inaction on the part of the federal government is significant not only from the standpoint of restriction of the state's role, but also in terms of the substance of the regulations which could be enacted by the federal government vis a vis the state. Under the equal protection language of the fourteenth amendment to the U.S. Constitution and parallel provisions of the Alaska Constitution, the state may be prohibited from granting any preferential hunting and fishing rights on the basis of race (to be discussed below). However, a federal law linking subsistence preferences to racial status might be found to be encompassed by the trust doctrine extant between Indians and the federal government, relieving such a law from the equal protection scrutiny otherwise usually accorded under the fifth amendment to laws making racial classifications. This trust doctrine has developed from two constitutional sources: 1) Congressional power to "regulate" Commerce...with the Indian tribes" and 2) Presidential authority to make treaties, by and with the consent of the Senate. In Morton v. Marconi, 147 US 535(1974) the Supreme Court declined to view a Native hiring and promotion

preference as a racial classification, holding instead that the preference was not granted to Indians as a discrete racial group, but rather as members of quasi-sovereign tribal entities. Thus, viewing the classification as political, the court was able to find the preference reasonably and directly related to a legitimate, non-racially based goal. However, the court expressly based the finding that the preference applied only to members of "federally recognized" tribes. Since there is only one Indian reservation in Alaska, it is arguable whether a court would apply the reasoning of Morton, supra, in reviewing a subsistence preference in favor of Alaska Natives. However, numerous statutes, regulations, cases and a Solicitor General's opinion can be cited to demonstrate that Alaska Natives have long been beneficiaries of the federal trust relationship, and furthermore, that the trust relationship was not ended by ANCSA. Since the trust relationship is still extant, one might argue that a subsistence preference in favor of Natives is encompassed by the trust responsibility. If so, the reasoning of Morton could be applied, allowing a subsistence preference in favor of Natives to be regarded as political and not a racial classification. This follows because all legislation benefiting Natives, including that examined by Morton, supra, derives from the Commerce clause and the trust responsibility developed by the courts.

#### State Legislation and Equal Protection

State legislation creating a subsistence preference would be effective on private and state lands in the absence of conflicting or preempting federal legislation, and on federal lands in the absence of conflicting federal legislation. As stated earlier, a preference linked to racial status would likely be invalidated under the equal protection language of the 14th amendment of the US Constitution and Section I and III of Art. I of the Alaska Constitution. However, the Bakke case, now before the US Supreme Court, may result in dramatic changes in the law of

equal protection. Although the Bakke case and legislation creating a subsistence preference in favor of Natives both involve reverse discrimination, it might be pointed out that such a subsistence preference is not the equivalent of affirmative action, since Natives are already more fully represented in the subsistence way of life than any other group.

Even if the state legislation does not expressly tie subsistence preference to racial status, Natives would surely comprise a large proportion of persons benefited thereby, which could engender a charge of defacto discrimination. A subsistence preference could be drafted which would not be invalidated as defacto legislation if 1) the classification is not a racial classification but a user classification, 2) the classification does not infringe fundamental rights, 3) no discrimination or other disadvantage to any minority group results, and 4) the classification is rationally related to permissible governmental objectives. Kelso argues that the above criteria could be met by a subsistence preference drawn so as to select beneficiaries by reference to a common way of life, economic dependence, and area residence. He maintains that such a preference would be found non-racial because the criteria used to classify privileged users operates without reference to racial factors and reflects significant economic and lifestyle considerations that are only incidentally related to race.<sup>1/</sup>

#### Freedom of Speech and Religion

The equal protection language of the 14th amendment is not the only provision of the US Constitution which might be involved if a subsistence preference were created -- claims of violation of rights under the first amendment of the US Constitution have already arisen in connection with state regulation of subsistence activity.

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<sup>1/</sup> Kelso, Dennis D., Legal Issues in Federal Protection for Subsistence on Proposed National Interest Lands, Friends of the Earth, P.77.

In State of Alaska v. Carlos Frank, no. 75-2729, the defendant, Carlos Frank, was convicted of transporting a moose taken out of season to a funeral potlatch held on the occasion of the death of a friend. Frank is now appealing his conviction to superior court, claiming that his conviction violates his first amendment rights of freedom of speech and freedom of exercise of religion.

In order for a claim of infringement of freedom to exercise religion to prevail, 1) the religious belief must be held in good faith, 2) the conduct being justified must be necessary for the practice of the religion, and 3) there must not be a state interest of sufficient magnitude to override the interest claiming free exercise clause protection.

The district court rules against the defendant on his free exercise of religion claim, holding fresh moose meat not to be essential for a potlatch, although finding a potlatch to be a religious celebration.

The district court rules against the defendant on his freedom of speech claim also. In order for such a claim to prevail, the conduct for which protection is sought must be shown to involve elements of speech. The defendant claimed that the feast itself was a communication, and that the moose which was the center of the feast was a communication expressing reverence for the family, solidarity with the living and honoring the dead. When speech and nonspeech elements (such as transporting a moose) are combined in the same course of conduct, only a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitation of 1st amendment freedoms. However, the district court agreed with the state's contention that the conduct constituting the violation is unrelated to conduct constituting speech within the first amendment, since only transportation of moose is prohibited, not its use at the potlatch; further, even

if the defendant's conduct is related to speech, the interest underlying the regulation is a compelling governmental interest.

#### Preemption of state regulation by ANCSA

In addition to the foregoing, the defendant also argued that ANCSA preempted state regulation of subsistence activities. The court found no such intent in the Act or its legislative history, finding instead an anticipation on the part of Congressmen that the state and federal governments would "take necessary action to protect subsistence needs of Natives". Obviously, the treatment of this issue, as well as the two others, in the appellate courts could have a significant impact on the state's regulation of subsistence.

#### Other State Constitutional Provisions

The Constitution of Alaska provides, "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." (Alas. Const. Art. VIII, sec. 3) The legislature is given authority to provide for "utilization, development, and conservation" of Alaska's natural resources "for the maximum benefits of its people." (Alask. Const. Art. VIII, sec. 2) However, application of this power to certain resources must meet a constitutional standard: "Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses." (Alas. Const. Art. VIII, sec. 4) This language indicated broad legislative power to deal with subsistence resources within the boundaries of maximum benefit for Alaska's people and sustained yield of the resource. Although subsistence resources are reserved to the people in common, the express allowance of preferences among beneficial uses suggests the constitutionality of legislation 1) granting preference to subsistence

users in taking fish and wildlife and 2) requiring the Department of Fish and Game to manage with subsistence as the highest priority.2/

In addition, according to an amicus curiae brief filed in support of the appellants in Alaska v Tanana Valley Sportsman's Association, (No. 3433) the records of the constitutional convention indicate that the language in section 2 was not meant to preclude prioritization. The same brief maintains that the records also indicate that section 3's reservation of wildlife to the people for the common use refers to the legal title of the wildlife and does not prevent allocation of game to certain groups to the exclusion of others as long as the chosen classification system is not capriciously discriminatory.

However, the constitution imposes some limits on the allocation of harvesting privileges. Art. VIII, sec. 17 provides that laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purposes to be served by the law or regulation.

Presumably, a subsistence preference not based on racial criteria would make the classifications between persons which are indicated in light of the objectives which such a law would be designed to attain and not be arbitrary.

Finally, Art. VIII, sec. 3 provides that the legislature may not create or authorize an "exclusive right or special privilege of fishery". Kelso maintains that a subsistence preference would not be an exclusive right of fishery because such a preference would merely establish subsistence as the highest priority use and would generate a management scheme to give effect to that priority. 3/

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2/ Ibid., p 109

3/ Ibid., p 110

The superior court in Tanana Valley Sportsman's Association and Mark Wartes v. State of Alaska, no. 76-1958 invalidated regulations which authorized the issuance in part on the basis of need, of permits allowing the taking of 3,000 caribou. The court held that the Board of Game lacked authority to issue permits on the basis of need in light of the provisions of Art. VIII, secs. 2,3,4, and 17.

The decision is unclear as to whether issuance on the basis of need is defective because of uncontradicted evidence that a hunt is biologically unsound, or rather because no constitutional or statutory authority exists authorizing discrimination between hunter applicants on the basis of need. The opinion itself seems to favor the former interpretation; however, subsequent court approval of redrafted regulations which continue to authorize the taking of 3,000 animals but do not allocate between hunters on the basis of need would indicate that the court found authorization to differentiate between hunters lacking. If so, a statute would be sufficient to provide the necessary authority, unless of course the court meant to say that the language of the constitutional provisions is repugnant to discrimination on the basis of need. This seems unlikely in light of the language of the decision.

#### Conclusion

I think the conclusion most appropriate to this overview is to note the rapid developments in every aspect of this field of law, and to caution any reader that the foregoing information may be obsolete by the time he or she reads it.

(Above paper submitted by Joseph A. Guthrie, Staff Attorney for the Committee)

#### B. How Can and Will the State Protect Subsistence Activities and Resources?

It is imperative that the State exercise its duty to the residents of this State to protect the natural resources "for the common use".

Whether or not there is a prioritization or preference, it is evident that the resources must be protected if there is to be any type of resource allocation.

Avenues the State could take are presented in the recommendations in Section VIII. An immediate and accurate assessment of the fish and game populations, the total number of users in each user classification, and decisions made based upon the above information on how and whether to begin prioritizing or granting any user classification preference would be the next step.

It would be important that this be attacked in an orderly, consistent fashion and not continue with the fragmented methods the State has used in handling subsistence or any other resource use.

An important point to look at is that each of the recommendations made by the Committee focuses on the Alaska Department of Fish and Game in some way. Since the Department is charged with the responsibility of our fish and game resources, it is logical to assume that the Legislature would begin to make an evaluation of the Department's activities to get a clearer picture of what are the priorities and the dimension of the work of the Department. Does it have the necessary fiscal level to adequately perform all the functions it is charged with? Does the Department have adequate personnel in all divisions? Is the Department able to accomplish their goals in a way that provides equal attention to each user group and the resources harvested? Is the composition of the Board of Fish and the Board of Game representative of each user classification? Can regional boards best provide the State with the expertise necessary to protect and manage the resources?

It is evident that there is rapidly increasing pressure upon the resources. A statement from Page 17 of The Summary of the Conference On Taking Fish and Game Resources to Meet Subsistence Needs is simple, but true, "The quickest ways to decimate a resource is to provide easy access to it or to commercialize the resource." This seemingly is happening in this State. With these rapid changes in all areas of the State, (this is often brought to the Committee's attention by the testimony of all rural areas, and especially those easily accessible by highway systems, i.e., Nenana and Glenallen)

We are aware of the political pressures by the special interest groups, the commercial, the sports, the conservationists, the recreation groups. Though there are advocacy groups, determined and concerned individual organizations, there does not appear to be a subsistence type of a following with the exception of RuralCap or the AFN, Inc.. Though these organizations are significant in bringing forth the subsistence issue, it takes tremendous amounts of money to gain the political clout needed. Mainly because of the money factor, those living a subsistence lifestyle are unable to spend much time organizing efforts because they are too busy making a subsistence living.

The crux of the matter is that in order to continue any on-going harvest there needs to be a resource base to draw from to fulfill the needs of the user groups. Protecting and maintaining a resource would be a #1 priority for a subsistence harvest in the estimation of this Committee.

C. Necessity of State Government To Take Action In Developing a Subsistence Position

As it has been emphasized throughout this report, the State of Alaska will find it extremely and absolutely necessary to take a good look at this

issue. Again, there will be challenges through legal actions with the increasing pressures and competing uses upon the fish and game resources.

It cannot be stressed loudly enough, that it is incumbent upon the legislative body to begin to initiate a positive plan of action regarding subsistence. The State has never had a solid plan that could be identified, because policies were so loosely implemented. With sound management and continued availability of the resource base, the residents of this State can expect to enjoy the harvest of resources as they have in the past.

The time has arrived whereby the State of Alaska must begin making solid plans for that resource. It is upon the Legislature and the Administration to work cooperatively on this issue so vital to many Alaskans.

#### IV. CULTURAL ASPECTS IN SUBSISTENCE ISSUE

##### A. Traditional Subsistence Lifestyle

In the forward by Harold Napoleon in the book, Does One Way of Life Have to Die So Another Can Live, he writes "Subsistence is often thought of as a certain kind of hunting and fishing where people go out not for the sport of it, but to get something to eat. But subsistence is really much more. It is not an isolated thing that can be set out and looked at by itself. It is interwoven into every aspect of our lives....Subsistence is really an entire way of Life. (Emphasis added.)

How DO you describe the relationship of the land to your body, your mind, and to your entire perception? Very difficult, even when it is a part of your daily life.

Helen Geisert, in her testimony (see Glenallen Testimony-October 3) said, "I don't call it subsistence, it's our way of life."

Christine Yazzie, on behalf of AHTNA, Inc. testified at the Glenallen hearing (see Glenallen Testimony, October 3, 1977) "We feel that subsistence must be recognized as a major cog in the past, present, and future cycles of our heritage. Subsistence stands today as in the past - our way, our life, our lifestyle.....Many people, I am sure, would like to take the attitude that when the Settlement Act was passed in December 18, 1971, Subsistence was surgically removed from our way of life, cleanly, effortlessly and painlessly, this was not the case."

This aspect of the report is difficult to relate in black and white. How do you portray the feelings, the intenseness, the frustration, the emotions of those people who came before the Committee? It was evident that there is a special, unique relationship with the land and the water; that there is a religious and spiritual feeling present in the relationship; that there is a traditional process of educating the young people to assist them in their pursuit of a subsistence lifestyle; that there is a great amount of pride in the culture and subsistence lifestyle.

Marian Hao describes "Subsistence living as a time of seasons." (see Fairbanks Testimony, October 4, 1977)

The elders and other Native people expressed a special concern about the loss of their culture, the traditions, the language, the changing times. A part of this process of change is in the subsistence lifestyle. Change has been rampant in Alaska with statehood, the passage of the ANCSA, the construction of the pipeline and prospect of yet other pipelines, and snowballing effect of this growth and impact. Those who have been in Alaska for a lifetime, or for a decade or two have seen the sudden change. Pioneers can remember the days gone by. Many Alaska Natives still remember the early '20s when they were granted citizenship.

In order to bring the entire picture of subsistence to the proper perspective, the cultural aspect cannot be ignored. It is necessary to review this consideration to include a segment of the State's population who, in fact and reality, are the majority numbers who are traditional subsistence users, the Alaska Native.

It is no wonder the subsistence issue has been so volatile. It deals with a complexity of issues in terms of the traditional, cultural, the economics, and the legal points of view. It deals with the every day functions in a subsistence lifestyle.

Mark Jacobs, Sr. of Sitka said, "When one is accultured to certain foods, you cannot destroy that appetite, you can only suppress it." (see Anchorage Public Hearing Testimony - November 10, 1977).

Rosita Worl, in her paper Legislative Considerations For the Maintenance of Subsistence states, "...the deep cultural attachment to subsistence overrides economic motives....the cultural values of subsistence are perhaps the most difficult to define.....To ignore the social and cultural aspects of subsistence will facilitate the demise of subsistence. Restrictive and narrowly defined regulations can lead to the extinction of Alaska Native cultures.....The underlying rationale for certain cultural patterns of subsistence behavior is not always consciously or manifestly understood."

Throughout the testimony references have been made to culture, for the concerns for preservations of culture, of which subsistence is a part. Subsistence has been called a way of life, a lifestyle. It refers to education and knowledge passed on and acquired, spiritual practices, a unique relationship with the environment and the seasons. People who live that lifestyle refer to it as part of their cultural heritage. It

is a part of the language, the foods that are eaten, places travelled to and from, it's reflected in the stories, the games and the dances.

The threat of loss of any aspects of a subsistence lifestyle means that a part of the heritage will disappear or be altered. Predominantly involved in this lifestyle are rural Alaska Natives. In the past two decades and more recently, there have been major upheavals (passage of ANCSA, the pipeline, statehood and other happenings) causing real concern for the preservation of the cultures. A way of life is dynamic and changes are constantly in motion. These changes are usually more elusive and subtle than those experienced by the Alaska Native peoples.

The aspect of subsistence certainly cannot be ignored. It can probably best be described as the roots of this issue.

B. Non-Native Participation in Subsistence Lifestyle

As above, the subsistence lifestyle may be referred to as living in a relationship with the land, the sea, the seasons. If you've lived it traditionally, or if you've chosen it as a preference over other lifestyles, as many Alaskans have, you undoubtedly will not want to give it up. The conditions of the traditional and the newcomer to subsistence living are very similar. Many non-Natives live this way either out of choice or necessity. For some traditional users, too, it may be their choice.

The testimony we heard from Native and non-Native subsistence users alike was that race not be made a part of the criteria in determining who is or isn't allowed to use the subsistence resources. There are the pioneers, the trappers, the hunters, miners, the fishermen, and seasonal workers common to the Alaskan population. These people have adapted to a living in tune with the environment. The length or degree of dependency

upon the resources may or may not be as great as the traditional user. Nevertheless, it is a preference or a choice necessitated by where one chooses to live, a way of living made by many, many Alaskans, Native and non-Native alike.

A concensus was reached that the subsistence issue is not a Native versus non-Native issue, regardless of the fact that the majority of the users happen to be Alaska Natives. It is based on the dependency upon the resources by the user.

The non-Native users have similar complaints to those of the traditional user. They range from the use of the high powered rifles; the high speed motorized vehicles, airplanes and boats; the increased pressure from the urban areas; easy access to rural areas via highways, river and by air; all causing an increase in the hunting and fishing pressure on a state-wide basis to a rapidly declining fish and game population.

To many of the non-Native users, subsistence has been their lifestyle. They would like to be able to continue having the choice. There is a definite threat to the ability to continue living attuned to the environment becauser of the above mentioned pressures.

John Schaeffer, President of the NANA Corporation put it bluntly, (see Kotzebue Public Hearing, September 16, 1977) "We have many non-Native subsistence users....We have got to differentiate the subsistence user from the big game trophy hunter.....It is not a matter of regulating color - this is a problem with regulation that people in the State of Alaska have because in the rural area, the greatest user is Native. They tend to look at subsistence use as a Native issue - It is not a Native issue."

What will the criteria be for allowing the continued use of the subsistence resources? Will certain Alaskan residents be denied the ability to use these resources? These are extremely tough questions to answer. Yet, they will have to be addressed.

C. Problems in Defining the Term "Subsistence"

Throughout the testimony received by the Committee, when discussion centered around to define or not to define the term, it seems as if we were spinning wheels. Our task was not an enviable one.

One of the common fears expressed was that when guidelines or regulations are made, would they be too restrictive? Would there be an exclusion of certain people? What would the criteria be? Many Subsistence users are also seasonal workers, or people who work when work is available. The majority of subsistence users are from rural areas where unemployment statistics and cost of living indexes are extremely high. Their dependence upon subsistence resources is of vital importance to their daily welfare when not employed. When they are employed, it limits their capability to harvest the resource. When they are unemployed, they need the subsistence resource to survive because there is no cash income to sustain them. The procurement of the resources for food then becomes their "job".

In defining subsistence, the definition or description, would have to take into consideration the vast differences throughout Alaska. Could one definition satisfy the entire State? Some people felt that an adequate definition could not be coined for the entire State because each area is different. It's possible that a broad, flexible definition could given to subsistence with emphasis on the "description" of the activities.

Should the Legislature create a Board of Subsistence and a Division of Subsistence, the task of defining subsistence could be further researched and would fall into this realm of decision making. This would increase the awareness throughout the State on this issue. This Committee looked at tackling a definition closely. This task is going to have to come with the assistance of the entire Legislature, with continued, comprehensive work by an on-going effort to come up with a workable, applicable definition of the term "subsistence".

The creation of the above mentioned Board and Division of Subsistence would not add another layer to the problem, but would bring to bear the magnitude and importance of the issue to the residents of this State. By providing a mechanism for solution of the subsistence problems in this manner would allow those working on the issue to address it squarely rather than in a fragmented method.

This Committee inquired of the western and midwestern states, Canada, and Hawaii on how subsistence activities are handled in their areas.

In Hawaii, all fishing and hunting laws apply equally with no preferential treatment. Those over 65 are not charged for licenses.

In Washington, there are no state statutes pertaining to subsistence hunting and fishing. Indian tribes can set subsistence fishing within the confines of their respective reservations. In February 1974 the US District Court (Boltd decision) rules that certain treaty Indians were entitled to 50% of the salmon and steelhead runs. Subsequent court orders allow treaty Indians named in the case to take steelhead and salmon unrestricted for subsistence and ceremonial purposes.

Montana has no statutes providing for subsistence hunting and fishing, though there is exception that exempts violations for the purposes of preventing suffering by hunger.

North Dakota does not deal with the issue. Reservation Indians are permitted to hunt and fish on tribal lands without regard for the State hunting and fishing regulations.

Minnesota does not have statutes that apply to subsistence provisions. Likewise for Wisconsin.

In Idaho, there are no state statutes that deal specifically with subsistence hunting and fishing provisions. Indians living within state boundary have guaranteed to them by treaty certain rights which deal with hunting and fishing entered into by the the federal government.

Oregon State does have administrative rules addressing Indian subsistence fishing. Their definition of "subsistence fishing" means taking food fish for Indians' personal use, including the sale or exchange with other treaty Indians, but not for sale or trade with non-Indians.

Oregon's administrative rules also covers Ceremonial Fishing. Rules state notification must be made in advance, specifying amounts needed, the gear to be used, location of storage, exact dates of ceremonial fishing will take place, names of fisherman and helpers, location of the ceremony where fish will be used, and signature of the designated tribal official.

One area that could be researched further, possibly, is to include in the Alaska statute a provision similar to the Oregon administrative rule, to allow the sale or exchange or subsistence products with other subsistence users. Our statute prohibits this sale or barter at the present. It is a known fact there there is bartering taking place. This practice is unlawful. Pete Bobby illustrates in "...A Special Relationship With the Land" on page 3 that, "We had no more food in Lime Village, so I caught a moose.....We shared the moose meat with other people who also needed food. Someone turned me in for killing a moose out of season....and fined me \$50. I thinks it is odd that I hunt my food with moccasins on and am tried for hunting food for my family when they are hungry, and airplanes land all the time right in front of my village, shoot moose and caribou, cut off heads, and take off, leaving the meat behind. State of Alaska says that you cannot give meat away to your friend, yet it is our way of life."

To expand our present definition will have to be done with much scrutiny. It is almost an impossible task, as mentioned before. It should be made broad and flexible. In defining or describing subsistence activities,

we may find it necessary to put the cart before the horse by creating priorities and preferences for the harvest allocations because of the on-going depletion of the resources taking place. This is a political reality staring the State in the face that must be attended.

D. Summary of Subsistence Resource Harvest and Uses

The resource harvest and uses will be touched on lightly in this report, but this should not undermine their importance in the overall picture.

We have available maps and overlays showing subsistence use in over 40 rural villages. This information is valuable in relating to you how much land is utilized in a maintenance of a subsistence lifestyle. Much of this land is in private ownership, on State selected or owned land, or on federal lands. The animals are not cognizant of who that land belongs to and often the user may not even be aware of who owns the land that they are using in pursuit of their livelihood.

It has been pointed out in the testimony of Jonathan Solomon (see Fairbanks Public Hearing, October 4, 1977) that there are definite boundaries of use surrounding neighboring villages. These boundaries were respected by those involved. It is with the accessibility and availability of the urban sports hunters and fishermen to rural Alaska that causes a threat and some animosity on the part of those who are quite dependent upon the fish and game resources for subsistence purposes.

There have been studies, surveys, and a compilation of data by various state and federal agencies, organizations and individuals enumerating subsistence resource harvests. Below are some examples that will interest and may even surprise you.

In a survey by the Associated Village Council Presidents in 1976, an average per family in 47 villages showed that 9,281 pounds of fish, land mammals, sea animals, vegetation and birds

were utilized. Can you imagine 16,659,062 pounds of fish, animals, greens, berries, birds and other products and what this would be equivalent to in store bought products. This was the total amount utilized by the the 47 villages.

In a survey by Art Patterson for the Federal/State Land Use Planning Commission in 1974, entitled Subsistence Harvests in Five Native Regions There is listed below examples of some subsistence products and the estimated quantity used. This will give you an idea of the variety of land and sea animals and other resources used as you move from one area of the State to another, illustrating the vast differences.

In the Doyon Region, the Galena Subregion will be cited, since we held a hearing there on November 21, 1977.

Mammals	745,514 pounds
Fish	1,710,417 pounds
Fowl	39,700 pounds
Berry Products	<u>27,636 pounds</u>
Total Poundage	2,523,267 pounds

Also noted, a considerable amount of timber was used for firewood, homebuilding and other home uses.

Examples of the resources harvest for food are, beaver, caribou, hare, moose, muskrat, porcupine, sheep, crane, ducks, geese, ptarmigan, spruce hen, ling cod, graying, pike, salmon, sheefish, trout, whitefish, blueberries, cranberries, salmonberries and wood products.

The population of the Galena Subregion in 1974 was 1,779 with a Native enrollment of 1,845 according to the BIA Enrollment Office.

It was stated that some of the figures may have been overstated and inconsistent when determining dressed weight or the whole weight of the carcass. Some of the fish catch was used for dog feed. It was also pointed out that some of the figures may be underestimated when compared to previous studies of the area and harvest.

Approximately 1,464 pounds were utilized on a per capita basis using the 1970 population figures.

In the Bering Straits Region, using the 1970 population figures of 4,640 in 17 villages, the survey showed that approximately 1,000 pounds was utilized on a per capita basis.

Mammals	3,060,283	pounds
Fish	719,375	pounds
Fowl	121,889	pounds
Berry/Vegetation	162,930	pounds
Total Poundage	4,064,447	pounds

Examples of resources include, bear, beaver, caribou, reindeer, hare, muskrat, porcupine, squirrel, seal, walrus, whale, burbot, char, flounder, grayling, herring, ling cod, salmon, sheefish, smelt, tomcod, trout, whitefish, crab, shrimp, claims, auk, murre, puffin, crane, ducks, geese, eggs of birds, ptarmigan, spruce hen, blueberries, blackberries, cranberries, salmonberries, fireweed, sourdock, Eskimo potato, celery, onions, rhubarb, willow leaf.

An average whale, 32 feet long weighing 64,000 pounds provided approximately 48,000 pounds of meat for consumption. Species hunted and trapped for fur but not for consumption was also categorized. These animals were used for the furs, for sale, barter, arts and crafts or home use.

A comparison between 3 locations shows that people in Shismaref estimated use on a per capita basis of 2,502#, at Nome about 350# on a per capita basis, and in Golovin about 671# on a per capita basis. This shows to some extent the degree of dependency upon the subsistence resources in the rural areas versus communities have had closer access to stores and commodities.

The last example that will be portrayed is AHTNA, Inc. Region. The population figure used is the 1973 BIA enumeration of 550.

Mammals	291,631	pounds
Fish	264,820	pounds
Fowl	3,315	pounds
Total Poundage	559,766	pounds

About 1,019# was utilized on a per capita basis. This was based on the Native enumeration of the area and does not include the harvest of caribou and moose and fish from outside hunting pressure of non-Native and other Natives who have access by highway to the Ahtna Region from both Anchorage and Fairbanks and Valdez areas.

This sampling gives you an idea of the quantity and the degree of dependency upon the resources of people who rely primarily upon the land and the sea for their daily maintenance.

#### V. ECONOMIC ASPECTS OF SUBSISTENCE

In a follow-up report to the Interim Committee on Subsistence, Hank Cavallera, former Alaska Legal Services attorney presented the Committee with a summary whereby he attempted to put the "subsistence" issue in a proper policy perspective and to discuss some of the basic legal issues surrounding subsistence.

It reviews his presentation at the first meeting of the Committee in Dillingham and a review of his approach to developing a subsistence plan. Mr. Cavallera has done extensive work in the area of subsistence.

Mr. Cavallera's report will be presented in its entirety, rather than fragmenting his presentation into the economic, cultural and legal aspects presented in the outline since it deals with the issue of subsistence as a whole process. Below is the text of Mr. Cavallera's report.

"At the meeting in Dillingham, I attempted to put the "subsistence" issue in a proper policy perspective and to discuss some of the basic legal issues surrounding subsistence.

This report will review the presentation at Dillingham and review an approach to developing a subsistence plan.

#### I. Economic and Cultural Factors

##### A. What is the economic value of "subsistence" to the state's rural residents?

The rural Native economic life is centered on subsistence hunting, fishing, and gathering activities with only limited participation in the cash economy. Alvarado v State, 486 Pzd 894 (Alaska 1971). Fifty percent of the food for three quarters of the Native families in Alaska's small and medium village is acquired through subsistence and 40 percent of such families spend an average of six to seven months a year engaged in subsistence activity of some kind. "In western and northern Alaska, there is generally a greater dependence upon food gathering activities than in other regions."<sup>2</sup>

Although only fragmentary information is available on the magnitude of the subsistence dependence of rural Native people and its dollar worth, a Department of the Interior study of the Socio-economic Considerations of proposed Alaska Wildlife Refuges is helpful in understanding the economic importance of the subsistence harvest to the village economy.<sup>3</sup> The figures summarized below are drawn from that study, indicate the number of pounds of meat, fish, skins, berries, greens, roots and wild vegetable harvested yearly in a particular region and the harvest's Anchorage dollar value replacement cost. The latter figure is extremely conservative since food costs in the bush average much higher than Anchorage, and presupposes the existence of an alternate food supply.<sup>4</sup>

In the majority of villages, fresh meat, fish and produce is unavailable

at any price except through the subsistence harvest:

<u>Year of Study</u>	<u>Region</u>	<u>Native Population</u>	<u>Total Pounds</u>	<u>Dollar Value</u>
1967-72	Bristol Bay 25 Villages	3,694		\$ 1,541,246
1973	Interior 20 Villages	2,391	3,086,419	3,710,753
1972	Kotzebue 10 Villages	3,283	3,970,411	4,730,564
1973	Bethel 4 Villages <sup>5</sup>	1,097	1,063,178	<u>1,184,005</u>
TOTAL		<u>10,465</u>	<u>8,120,008</u>	\$11,166,586

B. The long range prospects of the industrial economy in rural Alaska.

The potential economic growth of rural Alaska is a matter of conjecture. The economic growth that will come will most likely be centered upon natural resource development and to a limited extent, tourism. In many small villages the only full time jobs belong to the teachers.

Economic development in rural Alaska, if centered upon the extraction of natural resources, will require the investment of large amounts of capital that may not be available to Alaska corporations.

The Native corporations themselves, have, out of necessity, invested more in the urban areas of the state than in their respective regions.<sup>6</sup>

C. The interests of the State in subsistence on Federal and State lands.

The State of Alaska, of course, has a stake in what happens to be proposed national interest lands. Further, "states have traditionally had primary control over wildlife within their borders, and federal management of subsistence on the national interest lands threatens to cut back that authority. Since subsistence resources and their habitats extend beyond federal lands, the impact of federal policies will be felt not only on the national interest lands but also on neighboring state and private (Native) lands."

The State also has an interest in subsistence because it may eventually have added social welfare responsibilities to the approximately 60,000 rural Natives of Alaska. The Alaska Native Claims Settlement Act provides as follows:

Congress finds and declares that... (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives... without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating... (a) lengthy wardship or trustship....

Thus, ANCSA is a time delayed "termination" policy. It foresees in the future that Alaska Natives will not enjoy any special privileges from the federal government. If Congress sticks with this stated purpose the State could possibly be faced with added cost in its social services budget by delivering certain programs to Natives that are now primarily paid for by the federal government.

The failure to protect subsistence may also create social costs because subsistence is so closely tied to Native culture.<sup>9</sup>

D. Maintaining subsistence as an opportunity for retaining an unbroken link with the State's and Native's cultural past.

The National Park Service's Subsistence Uses of New National Service Areas in Alaska notes that

Traditional subsistence activities, in addition to supporting the health and welfare of rural people, help to maintain ethnic identity and strong ties with linguistic and cultural ways of great antiquity. The Secretary, therefore, recognizes that the continuance of such harvest of wild food and other biological resources from lands proposed as additions to the National Park System pursuant to (the Alaska Native Claims Settlement Act) is an important opportunity for retaining an unbroken link with the nation's cultural past. Such recognition is supported by the declaration of Congress in the Historic Preservation Act of 1966 (P.L. 89-665), which states in part, "that the historic and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people."<sup>10</sup>

Subsistence provides cultural and psychological values. For example:

(T)he Kobuk people have developed a special attachment to living on and from the land. They opt for a subsistence livelihood, not just because it gives them food they most desire or allows them to live where they most prefer, but also because it permits them to be what they value most as human beings. Their sense of identity as Eskimos is fundamentally dependent upon living as hunters and gatherers. If they lose their subsistence lifestyle, they are no longer "real Eskimos."

This system of values, combined with other elements of personality, economic imperatives, and need for certain kinds of food ties the Kobuk people to their villages and subsistence livelihood. Beyond this, they are emotionally committed to this lifestyle. It gives them satisfactions that they cannot find in other places.<sup>11</sup>

The United States Department of the Interior's report on federal programs and Alaska Natives stated:

The survey of Native Views reported that over three-fourths of Natives living in small and medium sized villages rely on the land around them for their food. If these families, the majority of whom already living on incomes below the poverty level, were to lose access to subsistence resources or their harvesting rights, they could be left economically destitute. In the survey, subsistence activities were overwhelmingly identified as "the old way" which needed to be passed on to children. It was also named as the feature "best liked" in village life.<sup>12</sup>

E. ANCSA Corporations cannot be expected to provide total economic stability in rural Alaska.

Although reasonable minds may differ as to the ultimate economic viability of the ANCSA created regional "profit-making" corporations, ANCSA cannot be expected to offset the increasing diminution of the subsistence harvest. To date, ANCSA and its theoretical benefits have had a de minimuseffect on the rural village economy and the life quality of the average village shareholder. As recently noted by Perry Eaton, vice president of the United Bank of Alaska and a corporate officer of Koniag, Inc. (the ANCSA regional corporation representing the Kodiak area), a number of the regional corporations are in financial trouble, and possibly 65% of the village corporations will be bankrupt within seven years.<sup>13</sup>

The lack of any qualitatively distinctive financial benefit to the average village shareholder is apparent. For example, over the past five years the average village shareholder of the Calista Corporation (of which there are 15,444 scattered throughout the Yukon/Kuskokwim Delta in 56 subsistence dependent villages) has received the following ANCSA mandated distributions of cash:

<u>Year</u>	<u>Amount</u>
1974	\$184.98
1975	92.59
1976	79.03
1977	<u>53.23</u>
Total	\$409.83

In a recent study of the impact of ANCSA on village life commissioned by the Alaska Humanities Forum and the Alaska Native Foundation, Dr. Nancy Davis (a former anthropology professor at the University of Alaska, Anchorage) has accurately characterized the present situation:

How has life changed in small villages? Apparently little, if any, at the end of the first five years. A few more dollars have arrived, but the amounts are not large. One more organization, the "Native Corporation" has been added to the menagerie of externally-introduced institutions. The same individuals who previously were involved in village affairs now make more trips.<sup>14</sup>

It appears to me at the end of the first five years that far more money, more jobs and more people of the non-Native community are involved, and will continue to be involved, than will ever be the case with the Natives. Only a dribble of the billion dollars will reach the Natives of Village Alaska. Many million more will ultimately go to non-Natives as they are charged with trying to make the Land Claims Act work. As one Native reported in near despair in 1976, "those guys (White people) are going to get it all back anyway, so why should we try?" The delay in conveyance, the complexity of "making money", and the fear of taxes are leading some Native persons to consider this Act one more incidence of the American government inadvertently undermining the original inhabitants, this time in a long grueling

process leading to the inevitable failure of impossible concepts of profit-making corporations imposed upon a hunting and fishing population whose cultures have become increasingly fractures, with too little time for creative mending of the new with the old.<sup>15</sup>

Consequently, any analysis of the impact of H.R. 39 and subsistence generally on rural Native village life must be grounded on the realization that subsistence remains the foundation of village culture, the predominate focus of village activity and the mainstay of the village economy.

**F. Native Subsistence Activity was not adequately safeguarded by ANCSA.**

Although ANCSA is commonly identified as an unprecedented expression of Congressional concern for the economic and social well-being of Native people, protection of Native subsistence activity, the life essence of Native culture and economics, was abandoned during the eleventh hour of the legislative dance.

The first major step toward ANCSA was Senate passage of S. 1830 on July 15, 1970. Although the bill provided a grossly inadequate land settlement of only 10 million acres, the importance of Native subsistence activities was at least symbolically recognized and protected. §2(a)(7) of S.1830 articulated a Congressional intent to effectuate a just settlement of Native claims by providing:

Protection of Native subsistence hunting, fishing, trapping, and gathering rights and where it is within the power of the federal government, measures for the conservation of subsistence biotic resources.

§ 20 and 23 authorized the Secretary of the Interior to classify public lands surrounding Native villages as Subsistence Use Units, (hereinafter SUU) and in appropriate instances limit hunting, fishing and trapping to subsistence dependent local residents. However, any actual protection of Native subsistence use which would have been gained by the implementation of §§ 20 and 23 would have been largely illusory. The preservation of subsistence was viewed merely as guaranteed harvesting privileges on land proximate to individual villages, rather than as protection of ecosystems and essential wildlife habitat. The maximum duration of a subsistence priority over sport hunting and fishing in a SUU was limited to four years, and the creation of a SUU did not prevent the disposal of lands within its boundaries under the public land laws.

However, even such an obviously hollow commitment to the preservation of subsistence proved unattractive to a Department of the Interior inclined to exchange raw acreage for subsistence. In a letter to Senator Jackson dated July 25, 1969, accompanying a Department substitute for S. 1830, then Secretary of the Interior and former Alaska Governor Walter Hickel gave the following explanation for the elimination of any reference to the protection of subsistence activities in the administration's bill:

"We believe that the enlarged land area that we are supporting for each listed village will protect the biotic resources of the Natives of those villages."

Unmoved by Secretary Hickel's explanation of Interior's abrogation of S. 1830's limited protection of Native subsistence uses, the Senate passed S. 1830 with its subsistence provisions intact. The Senate Report accompanying S. 1830<sup>16</sup> reiterated an at least theoretical understanding of the threat posed to Native subsistence use by encroaching uncontrolled development and of the relationship between the preservation of subsistence and a just Native claims settlement:

The Alaska Native people as a group are among the most disadvantaged citizens of the United States in terms of income, employment, educational attainment, life expectancy, health, nutrition, housing and every important indicator of social welfare.

Without title to the lands they use and occupy, Alaska Natives are defenseless against character of and sometimes depletes subsistence resources, and against the population influx which disorganizes indigenous ways of life.

....There are millions of acres of land used by, and indispensible to, Natives as wildlife habitat and hunting ranges.

Some of the factors which the Committee considered in arriving at the present land grant provisions of S. 1830 are as follows...  
(5) the need to provide protection for subsistence uses of the land. (Emphasis added).

On January 25, 1971, progress toward a settlement was renewed in the 92nd Congress when Senator Jackson reintroduced M. 1830 as S. 35. On February 17, 1971, Senator Harris introduced S. 835, a bill supported by the Alaska Federation of Natives, which provided a 60 million acre land settlement and a considerably strengthened scheme for the protection of Native subsistence use.

§16 of the Harris bill preserved the right of Native subsistence use of Native, Federal and State land in Alaska for 100 years, and required public certification by the head of each appropriate federal agency that a proposed use of public land detrimental to subsistence was reasonably necessary for the purpose sought to be accomplished and would not unreasonably impair the ability of rural Native people to satisfy their subsistence needs.

On April 19, 1971, S. 1571 was introduced, a Nixon administration substitute, again devoid of any Congressional commitment to the preservation of Native subsistence use or of any protective subsistence management scheme.

On October 20, 1971, the House passed HR 10367, and on November 1, 1971, the Senate passed S. 35 with at least a qualified subsistence protection mechanism intact. The disparities between S. 35 and HR 10367 were successfully resolved by a Conference Committee during the first week of December 14, 1971. ANCSA then passed both houses on December 14, 1971. However, during the Conference Committee negotiations the Congressional finding supporting the preservation of Native subsistence use and its accompanying protective management scheme

inexplicably were struck from the Act. A somewhat cryptic justification for this result was included in the Conference Committee report as the only surviving expression of explicit Congressional concern in ANCSA for the protection of Native subsistence activity:

The Conference Committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives. (Emphasis added).<sup>17</sup>

Reference by the Conference Committee to a state responsibility for the protection of Native subsistence activity is significant. Although the states are ostensibly the owners of wild game within their political boundaries, Geer v. Connecticut<sup>18</sup> the United States may constitutionally exercise authority over game management on federal lands, Kleppe v New Mexico,<sup>19</sup> State of Alaska v Andrus,<sup>20</sup> a result which has led to considerable tension between competing federal and state wildlife management systems, New Mexico State Game Commission v Udall.<sup>21</sup> State concern for the preeminence of its wildlife management prerogative undoubtedly underlies the Conference Committee's relinquishment of direct federal responsibility for the protection of Native subsistence activity, and is consistent with the federal government's pre-statehood and ongoing failure to protect Native subsistence activities from competing state wildlife management priorities.

The state's rationale for such a result was aptly summarized by the Chairman of the Native Land Claims Task Force of the Alaska Chamber of Commerce in testimony before the House Subcommittee on Indian Affairs:

"We also feel that the concept of 'subsistence' lands, as contained in most of the proposed legislation, is unnecessary. Under existing State laws and regulations special subsistence hunting and fishing licenses are available.

The Alaska Department of Fish and Game has the authority to control the types of hunting and fishing allowed in various areas of the State. The needs of the subsistence licensee are thus protected. Under this type of management program no lands need be set aside specifically for this purpose."<sup>22</sup>

As a result of ANCSA's subordination of the federal commitment to the protection of Native subsistence activity to state demands for wildlife management autonomy, primary responsibility for the preservation of subsistence has devolved to the State Department of Fish and Game.

## G. Status of Subsistence

As of this date the State has done little to protect subsistence. The inaction of the State creates a situation in which an adequate resource base may be permanently ruined.<sup>23</sup>

## II. Legal Considerations in Developing a Subsistence Policy Plan

### A. Preferential Hunting and Fishing Rights for Subsistence Purposes

The State under the fourteenth amendment to the US Constitution and parallel provisions of the State constitution is clearly prohibited from initiating any type of preferential hunting and fishing rights for Alaska Natives.

The federal government's power to legislate for the benefit of Alaska Natives on federal lands was discussed in a memorandum by David L. Schooler for the Federal/State Land Use Planning Commission which has been submitted to the Committee. The basic point of the case of Morton v Mancuri is that the federal government can legislate for the members of federal Indian tribes beyond a reservation context as Alaska Natives have received the benefits of other federal legislation all of which comes under the same federal power which is basically the commerce clause and the federal trust responsibility developed by the Courts.

The problem with a federal scheme for protection which would benefit only Alaska Natives is the question of who would manage the resources. If the State managed the resources it may be an unconstitutional use of state personnel and money to manage a plan for the benefit of a group of people based on either their status as members of Indian tribes or as Alaska Natives. The issue recently emerged in the treaty fishing dispute in Washington. The Washington supreme court ruled that the State Department of Fish and Game could not manage the Indians share of the fish allocated under a federal court order. Basically, I believe that the court said this was unconstitutional under the state constitution as a denial of equal protection of the law. (The decision should be reviewed to see if the 14th amendment of the US Constitution was also a basis of the decision). Therefore, any federally mandated subsistence policy on federal lands ultimately would have to be accompanied by federal management.

### B. A State Subsistence Plan

As you know, certain legal issues pertaining to subsistence are now before the Supreme Court of the State (see, Tanana Valley Sportsmen v State). If the court upholds the right of the State to protect subsistence, I would offer the following, subject to further legal analysis, as a method of regulating subsistence. This is offered as a basic beginning point and can be refined as needed. It is also offered subject to further legal analysis.

1. Treat subsistence as economic regulation. Regulation of economic and social issues need only be rational to withstand attacks under the equal protection clause of the constitution, Dandridge v Williams \_\_\_\_\_. U.S. \_\_\_\_\_ (1969).

2. Make a legislative finding that subsistence has been and continues to be an ongoing economic system in the state.
3. Make a legislative finding that there is a lack of alternative sources of income in the small towns and villages.
4. Divide the state into the 13 regional areas or other regional management units. Allow for advisory personnel on subsistence or require that advisory boards of fish and game must include subsistence users.
5. Provide that subject to the requirements of sustained yield management that people who live in communities of less than 1,500 people (my arbitrary figure ) are entitled to subsist under the most generous limits on harvesting of the various resources (zone 1).
6. Provide that people who live in communities from 1,500 to 7,500 are entitled to a more limited harvest of biotic resources (zone 2).
7. Provide that people who live in communities of 7,500 and up are entitled to the least generous rights to harvest biotic resources (zone 3).
8. In making the calculations of what each group is entitled to receive, the ADF&G is going to have to provide the legislature on the harvest by region and species over the last 3 to 4 years to see what the harvest has been in the past. The legislature would then have to make the determination of how to allocate the harvest.

For instance people in zone 1 may be entitled to a percentage of the kill of caribou in the region, and the people residing in zones 2 and 3 would be entitled to a smaller percentage of the kill.

A variation would be to provide that license holders in zone 1 could kill X number of caribou, zone 2 license holders could kill a lesser amount and so on.

As you can see zone 3 people may need to participate in a lottery system to get a tag if the available harvest is down.

I've offered this plan as a starting point for the following reasons:

1. Protects the users who need continued access to resources the most.
2. Protects the resource base because the total harvest must be subject to sustained yield management.
3. It provides flexibility.
4. It's the easiest plan to administer.
5. There is no real need to provide a definition of subsistence.

Above report submitted by Hank Cavallera, Sitka, Alaska

Mr. Cavallera's report was given careful thought. There are points that this Committee has considered and that the Legislature will consider in the future as possible solutions for resolving the subsistence problem. The Committee certainly was looking for a method of administering a flexible subsistence plan that would protect the resource base subject to a sustained yield management that would also protect the users who need continued access to resources the most. These ideas will give the Legislature food for thought so that in time of deliberation on the subsistence issue, it will not have to begin from line one.

A. When and How Does One Translate the Subsistence Lifestyle To a Cash Economy?

It has been said by Mark Jacobs in his testimony to the Committee (see November 10, 1977 Anchorage Public Hearing) "Subsistence Hunting and fishing is something we cherish, there is no monetary value that can be placed on it."

Irene Catalone testified the same evening (see November 10, 1977 Anchorage Public Hearing) "Whether you're out in the village where there is no other economy exists, where it is your job to go out and make a living, which you'll do off the land, fishing, gathering wood, getting your water... it's a full time job making a living out there."

The State knows that there is no stable economic system in most of the rural villages. Without participation in the subsistence economy, many rural Alaskans would not be able to survive.

It would take an economist's expertise to determine what cash value could be fairly placed on a subsistence product and to make a comparison

with cash economy products. Another comparison that would have to be made, too, is to compare the nutritional value of the subsistence product with the store bought product. How does this parallel the cash economy product? What would the cost be to the rural consumer when it is finally received and consumed?

Most subsistence users directly or indirectly participate in a cash economy. The degree of participation may be more or less depending on the dependency upon a subsistence lifestyle. Some may say that subsistence supplements the income of rural Alaskans. It would seem to more accurate to assume that the limited income derived supplements the subsistence lifestyle. The major source of "income" is generally from the subsistence resources for many in rural Alaska.

We would recommend that the proposed Division of Subsistence be put to work performing the necessary research to compile comparative data on the economics of subsistence in order that an accurate and up to date view of this aspect is reported.

B. What Are Alternatives to a Subsistence Lifestyle?

Alternatives to a subsistence lifestyle are few. Welfare, a full cash economy if available. Some who have moved into a semi-subsistence lifestyle by moving more into a cash economy because of necessity are already exercising a sort of alternative. Oftentimes, this is not out of choice, but necessity to help support the participation in the subsistence economy.

Subsistence users adamantly say that welfare is no substitute for their subsistence lifestyle, their way of life. Yet, others say that subsistence users can get food stamps, welfare and use other services. Rural

residents just do not have the access to the services that urban residents have. There aren't eligibility workers, social workers, or the services or commodities available in every village. Often, there may be an area office with one staff member serving 20 or 30 villages.

Joe Clark of Clarks Point said in his testimony to the Committee (see Anchorage Public Hearing, November 10, 1977), "I rely heavily on subsistence, I raised a big family, 11 children, and I'm thankful they are all alive and in good health. And it's mainly because of subsistence that they are.....I could look to our government which is the US Government for help, for food and clothing, if this is the way I wanted to go, but like I said, I am a very proud person..."

The State will have to look at positive alternatives. Is welfare and food stamps a fair comparable alternative? Is it fair to uproot families in the pursuit of employment and a cash economy?

Again, all aspects of the subsistence lifestyle have to be evaluated to arrive at solutions that offer acceptable substitutes or alternatives.

C. Economic Impact on Social Services Should Subsistence Become Prohibited

This is an alternative that, hopefully, the State will never have to address.

Even the present decrease in subsistence has impacted the social services. There is an increase in the use of welfare and other social services in rural areas; there is an increase in health services; an increase in unemployment services; an increase and emphasis on alcohol related services; and in mental health services. The State Legislature created interim committees on alcoholism and unemployment to look at these problems this past interim period. It would be interesting to see the

correlation and to make a comparison of the findings of the other committees that deal with social problems that are not just one problem or issue, but a complexity of problems.

The economic impact on social services will continue to increase and become more burdensome, not only for the State, but for the consumer of these services. These services are not readily available in many villages, as mentioned before, those who need the services sometimes just have to give up because they are unable to either get to the person who can provide the service, or that person is unable to get to him. The best alternative to provide to Alaskan residents is the abundance and continued availability of the natural resources that they are so dependent upon.

#### VI. ADMINISTRATIVE ROLE IN SUBSISTENCE ISSUE

##### A. The Alaska Department of Fish and Game Position Paper On Subsistence

At the August meeting of the Interim Committee on Subsistence, the Commissioner Ron Skoog, newly appointed Commissioner attended and presented the following position paper on subsistence. This paper was prepared in 1973.

#### "SUBSISTENCE"

The Department of Fish and Game's role is to assure a resource base that can be exploited which at necessity, requires our assistance in working with the public and the Board to develop a regulatory framework that meets the legitimate subsistence need of the people.

#### DEFINITION:

1. Subsistence Utilization - the exploitation of renewable resources for individual, family, or local consumption by people whose location, culture, and/or income makes them dependent upon these resources for a substantial part of their food supply.

2. Subsistence - the exploitation of renewable resources for personal use.

PROBLEM:

Subsistence involves:

1. The biological productivity of the exploited resources.
2. The development of a legal framework--constitutional, statutory, and regulatory--under which the exploitation can take place.
3. The political realities of the present situation.

DEPARTMENT STRATEGY:

1. The Department of Fish and Game has and shall continue to recognize legitimate subsistence utilization of resources as a priority use.
2. Regulations governing legitimate subsistence utilization shall continue to be based on the biological productivity of the resource in concert with the public need.
3. The Department must realize that the regional and village corporation have responsibility to insure that subsistence requirements are satisfied to the greatest extent possible by their judicious selection of land under the Alaska Native Land Claims Settlement Act.
  - a. This is based on the fact that the natives have the right to select 40 million acres of land under the act and they have the right to retain that land for their exclusive use within the State's regulatory framework.
  - b. We must recognize, however, the intent of Congress was that subsistence needs shall be met on public lands as well. The Native leaders are aware of this and that is basically what they are fighting for.
  - c. Also, we must recognize that the loss of 40 million acres to public use is not in the public's interest.
4. The Department must immediately open up communications with both the Regional and Village Corporations.
5. The Commissioner's Office must establish the Department "position" to govern the conduct of the liaison group as they meet with the corporation.
  - a. We will not drop on the corporation "en masse" but will instead send out our most knowledgeable one or two people to meet with corporations.
  - b. Our basic position will consist of the following:
    1. Legitimate subsistence utilization will be conducted within the framework of maximum sustained yield.

2. Our past record show that, to date, we have provided for legitimate subsistence use. We do, however, recognize that competition between other users and subsistence is now a real (as opposed to imagined) problem and we are willing to support reasonable regulations that will reduce this conflict.
3. We recognize the native rights as private land owners; however, we must inform them that "exclusive use" will still be subject to state regulation in order to provide for an orderly harvest and adequate reproductive stocks.
4. Exclusive use foreclosed the opportunity for the natives to use these resources in revenue generating programs.

We must meet with the corporations and listen to their position. We should strive to have the define legitimate subsistence use.

Definition from Title 16 16.05.940(17)

"Subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means defined by the Board."

The position paper above outlines what the position of the ADF&G has been on subsistence. This is basically a good working paper that needs to be updated. It is a valid position and could readily and easily be used as a basis for managing the subsistence resources. Under Department strategy, number 1. "The Department of Fish and Game has and shall continue to recognize legitimate subsistence utilization of resources as a priority use." This statement is what this committee would like to come to the forefront. The Department, the Governor's Office have stated this, yet subsistence resources are running far behind in the competition for the resources the users are dependent upon. The commercial, sports and recreation users do have a lot of influence and support backing their efforts to see their needs are met.

It was recognized in 1973, as is at the present time, that there is a definite competition between the other users and subsistence. It is "a real (as opposed to imagined) problem and we are willing to support

reasonable regulation that will reduce this conflict." This is an area where the Department could focus in on. There is a conflict arising that will force the State to act.

The "real" problem is even more real now, with the scores of sports, recreational and commercial users. As you review the regulations, there has been much emphasis placed on providing regulations for the sports and commercial fishing and hunting. That clearly is from the pressure from these users, but there has been a de-emphasis on just what the Department deems a "priority use" of the fish and game, and that is subsistence use. The subsistence aspect has been treated sporadically. The subsistence activities are mentioned briefly within the Commercial fishing regulations. The subsistence harvester would definitely dispute the fact that a subsistence take is not, cannot and never will be the same as a commercial take. These subsistence regulations must be separated from the sports and commercial interests. They are all different.

If number 1 under Department Strategy were being implemented in 1973 and to date, the subsistence "problem" may never have arisen. It has been put on simmer and is now beginning to come to a boil.

The Department, the Governor's Office, and the Legislature must work cooperatively on some alternative solutions, regulations, administration of subsistence. We have had the Alaska Public Forum and the Interim Committee on Subsistence working this year on the subsistence topic because it was pointed out as being a very real concern of the people. The Forum will have an analysis for the Governor and the Legislature and their findings should be looked at along with our recommendations.

It will take a coordinated effort to evaluate all of this information and this effort could be an activity of a committee, though temporary, such as the Interim Committee to continue to evaluate, research and to come up with a permanent, on-going plan for subsistence.

In conclusion, the Governor's Office, the ADF&G, the Legislature must then evaluate strategy, work programs, funding structure and levels and begin looking at prioritizing the allocations of resources seriously and promptly.

B. Funding of the ADF&G and How It Relates to the Protection, Management and Enforcement of Fish and Game Regulations

In order to implement any new directions within the Department of Fish and Game in the management, the research and enforcement areas, the Committee has recommended increased funding in all areas. This is made on the basis of having a sound management system with healthy fish and game populations so that the State can and will continue to satisfy and provide the needs and interests of its residents.

In addition to making recommendations for increased funding, we have included the proposal for a Division of Subsistence. A fiscal note prepared by the ADF&G would provide for a staff of 14 people in regional offices in the amount of \$468.5 for FY 1979 from the General Fund. This is merely a beginning talking paper and would need to be researched, revised and studied indepth.

The Legislature is aware of the snow-balling effect whenever new requests are made and implemented. This will certainly be true here, too, when the services and duties are expanded it will add fiscal increases. Not only the request dealing with added personnel, but for the creation of a whole new division with a new scope and dimension.

This new proposal for a newly created division is brought about by the necessity to pinpoint, to resolve and to act upon a problem that is a statewide concern. We cannot reiterate often enough that a major concern expressed by the residents of this State is that there needs to be resource base with continuing renewal of these resources so that subsistence uses and other uses can be sustained.

**VII. PROPOSED DRAFT LEGISLATION & RESOLUTIONS**

Immediately following this section, are attached copies of the proposed bills and resolutions drawn up by our Staff Attorney, Joe Guthrie.

- 1) For an Act creating a Division of Subsistence Hunting and Fishing.
- 2) For an Act regionalizing the Board of Fish and the Board of Game.
- 3) Resolution to create a State Subsistence Hunting and Fishing Committee.
- 4) Resolution relating to legalizing hunting of migratory birds in the spring time to be presented to the congressional delegation and to the federal government.

(We have requested that our Staff Attorney prepare a proposed bill for the creation of a Board of Subsistence, though this is not attached, it will be included for further review.)

(SEE ATTACHMENTS IMMEDIATELY FOLLOWING THIS PAGE FOR A REVIEW OF THESE PROPOSED PIECES OF LEGISLATION AND RESOLUTIONS.)

BY THE RULES COMMITTEE BY REQUEST  
OF THE LEGISLATIVE COUNCIL (for  
the Interim Committee on Sub-  
sistence Hunting and Fishing)

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating a division of subsistence hunting and  
7 fishing."

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

9 \* Section 1. AS 16.05.090 is amended by adding a new subsection to read:

10 (c) The commissioner shall establish a departmental division of  
11 subsistence hunting and fishing.

12 \* Sec. 2. AS 16.05 is amended by adding new sections to read:

13 Sec. 16.05.093. DIRECTOR OF THE DIVISION OF SUBSISTENCE HUNTING  
14 AND FISHING. The division of subsistence hunting and fishing shall be  
15 administered by a fish and game biologist.

16 Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND  
17 FISHING. The division of subsistence hunting and fishing shall

18 (1) compile existing data, hold hearings, and conduct studies  
19 to gather information on all aspects of the role of subsistence hunting  
20 and fishing in the lives of the residents of the state;

21 (2) quantify the amount, value, and extent of dependence on  
22 food acquired through subsistence hunting and fishing;

23 (3) make information gathered available to the legislature in  
24 a form suitable for use in developing legislation relating to land and  
25 water management;

26 (4) assist the legislature to determine what uses of fish and  
27 game, as well as which users and what methods, should be termed sub-  
28 sistence uses, users, and methods;

29 (5) evaluate the impact of state and federal laws and

1 regulations on subsistence hunting and fishing and, when corrective  
2 action is indicated, make recommendations to the governor and the  
3 legislature;

4 (6) make recommendations to the Board of Game and the Board  
5 of Fisheries regarding adoption, amendment and repeal of regulations  
6 relating to subsistence hunting and fishing.  
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BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
COUNCIL (for the Interim  
Committee on Subsistence  
Hunting and Fishing)

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act regionalizing the Board of Fisheries and the  
7 Board of Game."

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

9 \* Section 1. AS 16.05.221 is repealed and re-enacted to read:

10 Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes  
11 of the conservation and development of the fishery resources of the  
12 state, there are created 12 boards of fisheries, each with jurisdiction  
13 over the area of a regional corporation established under the Alaska  
14 Native Claims Settlement Act. Each board of fisheries is composed of  
15 seven members appointed by the governor, subject to confirmation by a  
16 majority of the members of the legislature in joint session. Each  
17 member appointed must be a resident of that area of the state over which  
18 the board to which he is appointed exercises jurisdiction. Each member  
19 appointed shall be appointed without regard to political affiliation.  
20 The commissioner is not a member of any board of fisheries, but he or  
21 his designee is ex officio secretary to each board.

22 (b) For purposes of the conservation and development of the game  
resources of the state, there are created 12 boards of game, each with  
jurisdiction over the area of a regional corporation established under  
the Alaska Native Claims Settlement Act. Each board of game is composed  
of seven members appointed by the governor, subject to confirmation by a  
majority of the members of the legislature in joint session. Each  
member appointed must be a resident of that area of the state over which  
the board to which he is appointed exercises jurisdiction. Each member

1 appointed shall be appointed without regard to political affiliation.  
2 The commissioner is not a member of any board of game, but he or his  
3 designee is ex officio secretary to each board.

4 \* Sec. 2. AS 16.05.251 is amended to read:

5 Sec. 16.05.251. REGULATIONS OF THE BOARDS OF FISHERIES. Each  
6 board of fisheries [BOARD OF FISHERIES. THE BOARD OF FISHERIES] may for  
7 the area over which the board has jurisdiction make regulations it  
8 considers advisable in accordance with the Administrative Procedure Act  
9 (AS 44.62) for

10 (1) setting apart fish reserve areas, refuges and sanctuaries  
11 in the waters of the state over which it has jurisdiction, subject to  
12 the approval of the legislature;

13 (2) establishment of open and closed seasons and areas for  
14 the taking of fish;

15 (3) setting quotas and bag limits on the taking of fish;

16 (4) establishment of the means and methods employed in the  
17 pursuit, capture and transport of fish;

18 (5) establishment of marking and identification requirements  
19 for means used in pursuit, capture and transport of fish;

20 (6) classifying fish as commercial fish, sport fish or  
21 predators or other categories essential for regulatory purposes;

22 (7) engaging in biological research, watershed and habitat  
23 improvement, fish management, protection, propagation and stocking;

24 (8) investigating and determining the extent and effect of  
25 predation and competition among fish in the state, exercising control  
26 measures considered necessary to the resources of the state;

27 (9) entering into cooperative agreements with educational  
28 institutions and state, federal, or other agencies to promote fish  
29 research, management, education and information and to train persons

BY THE RULES COMMITTEE BY REQUEST  
OF THE LEGISLATIVE COUNCIL (for  
the Interim Committee on Subsistence  
Hunting and Fishing)

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 Relating to the creation of a State

6 Subsistence Hunting and Fishing Committee.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS subsistence hunting and fishing is a means of livelihood to much  
9 of the population of rural and urban Alaska; and

10 WHEREAS the importance of this subject to these Alaskans and to all of  
11 Alaska requires special analysis and study of the subject, the needs of sub-  
12 sistence hunters and fishermen, and potential avenues of legislation relating  
13 to subsistence hunting and fishing; and

14 WHEREAS there is no present agency of the state continuously dedicated to  
15 providing the type of analysis and study necessary to the sensitive and  
16 reasonable treatment of subsistence hunting and fishing;

17 BE IT RESOLVED by the Alaska State Legislature that there is established  
18 a State Subsistence Hunting and Fishing Committee composed of the following  
19 members to identify the problems and suggest further solutions with respect  
20 to subsistence hunting and fishing:

- 21 (1) three members of the senate appointed by the president;  
22 (2) three members of the house appointed by the speaker;  
23 (3) the commissioner of fish and game or his designee; and be it

24 FURTHER RESOLVED that the committee established by this resolution shall  
25 make a final report not later than January 1, 1979 to the governor and to the  
26 Legislative Council on its recommendations with respect to a comprehensive  
27 state policy on subsistence hunting and fishing; and be it

28 FURTHER RESOLVED that, with the consent of the governor, the committee  
29 may apply for federal, state and private financial assistance to undertake

1 and complete its work.

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1 [MEN] for fish management;

2 (10) prohibiting the live capture, possession, transport, or  
3 release of native or exotic fish or their eggs;

4 (11) establishing seasons, areas, quotas and methods of har-  
5 vest for aquatic plants;

6 (12) establishment of the times and dates during which the  
7 issuance of fishing licenses, permits and registrations and the transfer  
8 of permits and registrations between registration areas is allowed; how-  
9 ever, this paragraph does not apply to permits issued or transferred  
10 under ch. 43 of this title.

11 \* Sec. 3. AS 16.05.255 is amended to read:

12 Sec. 16.05.255. REGULATIONS OF THE BOARDS OF GAME. Each board of  
13 game [BOARD OF GAME. THE BOARD OF GAME] may for the area over which the  
14 board has jurisdiction make regulations it considers advisable in  
15 accordance with the Administrative Procedure Act (AS 44.62) for

16 (1) setting apart game reserve areas, refuges and sanctuaries  
17 in the waters or on the lands of the state over which it has jurisdic-  
18 tion, subject to the approval of the legislature;

19 (2) establishment of open and closed seasons and areas for  
20 the taking of game;

21 (3) establishment of the means and methods employed in the  
22 pursuit, capture and transport of game;

23 (4) setting quotas and bag limits on the taking of game;

24 (5) classifying game as game birds, song birds, big game  
25 animals, fur bearing animals, predators or other categories;

26 (6) investigating and determining the extent and effect of  
27 predation and competition among game in the state, exercising control  
28 measures considered necessary to the resources of the state and desig-  
29 nating game management units or parts of game management units in

1 which bounties for predatory animals shall be paid;

2 (7) engaging in biological research, watershed and habitat  
3 improvement, and game management, protection, propagation and stocking;

4 (8) entering into cooperative agreements with educational  
5 institutions and state, federal, or other agencies to promote game  
6 research, management, education, and information and to train persons  
7 [MEN] for game management;

8 (9) prohibiting the live capture, possession, transport, or  
9 release of native or exotic game or their eggs;

10 (10) establishing the times and dates during which the issu-  
11 ance of game licenses, permits and registrations and the transfer of  
12 permits and registrations between registration areas and game management  
13 units or subunits is allowed.

14 \* Sec. 4. AS 16.05.257(a) is amended to read:

15 (a) Each board of game [THE BOARD OF GAME], at its regularly  
16 scheduled annual meeting, may adopt regulations providing for subsistence  
17 hunting in a game management unit or subunit or a portion of a unit or  
18 subunit in the area over which the board exercises jurisdiction upon

19 (1) recommendation of the department, based on biological  
20 evidence;

21 (2) the majority vote of the active local advisory committees  
22 for that game management unit or subunit;

23 (3) the written petition of not less than 100 interested  
24 residents of that game management unit or subunit; or

25 (4) the written petition of not less than 25 interested  
26 residents of an area which is requested for establishment as a sub-  
27 sistence area within a game management unit or subunit.

28 \* Sec. 5. AS 16.05.257(f) is amended to read:

29 (f) Each board of game [THE BOARD OF GAME] at any time may review

1 and change the boundaries of a subsistence area upon

2 (1) the recommendation of the department, based on biological  
3 evidence;

4 (2) the written petition of not less than 25 interested  
5 residents of that area; or

6 (3) the majority vote of the active local advisory committees  
7 for that area.

8 \* Sec. 6. AS 16.05.260 is amended to read:

9 Sec. 16.05.260. ADVISORY COMMITTEES. Each board of fisheries [THE  
10 BOARD OF FISHERIES] and each board of game [THE BOARD OF GAME] may make  
11 regulations it considers [THEY CONSIDER] advisable in accordance with  
12 the Administrative Procedure Act (AS 44.62) establishing, at places in  
13 the state designated by the individual boards, advisory committees to be  
14 composed of persons well informed on the fish or game resources of the  
15 locality. The boards shall set the number and terms of each of the  
16 members of the advisory committees, shall delegate one member of each  
17 committee as chairman, and shall give him authority to hold public  
18 hearings on fish or game matters. Recommendations from the advisory  
19 committees shall be forwarded to the appropriate board for its [THEIR]  
20 consideration but if the boards choose [BOARD OF FISHERIES OR THE BOARD  
21 OF GAME CHOOSES] not to follow the recommendations of the local advisory  
22 committee the appropriate board shall inform the appropriate advisory  
23 committee of this action and state the reasons for not following the  
24 recommendations. The commissioner shall delegate authority to advisory  
25 committees for emergency closures during established seasons. The  
26 commissioner is empowered to set aside and make null and void only  
27 opening of seasons set by the advisory committees under this section.  
28 The appropriate board shall promulgate the necessary regulations govern-  
29 ing these closures.

1 \* Sec. 7. AS 16.05.305 is amended to read:

2       Sec. 16.05.305. CLERICAL ASSISTANCE FOR BOARDS. Each board of  
3 fisheries [THE BOARD OF FISHERIES] and each board of game is [THE BOARD  
4 OF GAME ARE] authorized to hire and set the compensation for one clerical  
5 assistant for each board.

6 \* Sec. 8. AS 16.05.930(d) is amended to read:

7       (d) No nondomestic animals of any species may be transferred or  
8 transported from the state under (a) of this section unless approved by  
9 the appropriate board of game [BOARD OF GAME] in regular or special  
10 meeting. Animals transferred or transported under (a) of this section  
11 shall be animals that are certified by the department to be surplus and  
12 unnecessary to the sustained yield management of the resource. Each  
13 application for a permit under (a) of this section shall be accompanied  
14 by a statement prepared by the Department of Fish and Game examining the  
15 probable environmental impact of the action.

16 \* Sec. 9. AS 16.05.940(1) is amended to read:

17       (1) "a board" or "the board" means either a board of fisheries  
18 [THE BOARD OF FISHERIES] or a board of game [THE BOARD OF GAME];

19 \* Sec. 10. AS 41.99.010 is amended to read:

20       Sec. 41.99.010. GAME MANAGEMENT AND ENFORCEMENT. Nothing in this  
21 title denies the Department of Fish and Game or the boards of fisheries  
22 and game [BOARD OF FISH AND GAME] their management and enforcement  
23 responsibilities related to the fish and game of this state.

24 \* Sec. 11. AS 16.05.300(b) is repealed.  
25  
26  
27  
28  
29

BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
COUNCIL (for the Interim  
Committee on Subsistence  
Hunting and Fishing)

1 IN THE HOUSE

2 HOUSE JOINT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 Relating to legalizing hunting of migra-  
6 tory birds in the springtime.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS hunting of migratory game birds in the pring is prohibited by  
9 the terms of the conventions concluded between the United States and Great  
10 Britain for the protection of migratory birds on August 16, 1916; between the  
11 United States and the United Mexican States for the protection of migratory  
12 birds and game mammals on February 7, 1936; and between the United States and  
13 the Government of Japan for the protection of migratory birds in danger of  
14 extinction and their environment, on March 4, 1972; and

15 WHEREAS many residents of the rural areas of Alaska must rely on wild-  
16 life for food; and

17 WHEREAS the nutritional value of migratory game birds to the rural  
18 residents of Alaska is of particular significance in the springtime due to  
19 the depletion of winter food stocks and because spring thawing conditions  
20 make equivalent substitutes commercially unavailable; and

21 WHEREAS many otherwise law-abiding citizens have been forced to resort  
22 to illegal hunting to provide for the health and well-being of their families;  
23 and

24 WHEREAS the United States and the Soviet Union have completed negotia-  
25 tions on a treaty, now before the Senate for ratification, which leaves  
26 authority to establish those closed seasons necessary for the preservation of  
27 migratory bird stocks to the appropriate authorities in the respective  
28 nations, with provision that if the need arises special agreements may be  
29 negotiated with regard to conservation or hunting of particular species;

1 BE IT RESOLVED by the Alaska State Legislature that it requests the  
2 President of the United States to direct the Department of State to amend  
3 existing treaties to conform to the approach taken in the recent U.S-U.S.S.R.  
4 treaty, thereby allowing rural residents of Alaska to hunt migratory game  
5 birds in the springtime if consistent with the conservation of migratory  
6 game bird stocks.

7 COPIES of this resolution shall be sent to the Honorable Jimmy Carter,  
8 President of the United States; the Honorable Cyrus Vance, Secretary of the  
9 Department of State; and to the Honorable Ted Stevens and the Honorable Mike  
10 Gravel, U.S. Senators, and the Honorable Don Young, U.S. Representative,  
11 members of the Alaska delegation in Congress.

## VIII. COMMITTEE RECOMMENDATIONS TO 1978 ALASKA STATE LEGISLATURE

### A. Review, Develop, and Enact Draft Legislation and Resolutions

You have had an opportunity to look at the draft legislation that was prepared by our legal staff. Please take the time to look closely at these papers and consider them during the next Legislature. The issue of subsistence will be a topic that the Legislature will and must attend to soon. As indicated by the pages and pages of testimony from Alaskan residents from Barrow to Juneau, it is an issue that will be before you with increasing pressures.

This is a topic that is sensitive in the minds and bodies of many, many Alaskans who are cognizant of subsistence because of the threat and effect this has upon their daily lives.

As you review the testimony, you will find that the quality is quite varied. It often reflects the extent of dependency of the user. Some testimony is very biased, subjective, while others look at this issue with great objectivity. On the whole the concern that the State must insure is that subsistence is protected by the protection of the resources.

It will be up to the Legislature to act upon the recommendations of this Committee along with the recommendations of Alaskan residents who testified at the public hearings. It would be ideal if this Committee could have spent more time in more villages. These are the people who do not ordinarily have access to the Legislature. Most rural people were very thankful to the Committee for coming out to the rural areas to hear what they had to say on this issue because they cannot afford to go to the traditional hearing cities and towns. Should the Legislature find it necessary, we would also recommend that more rural villages and towns be visited, if at all possible.

There is yet a tremendous amount of work to be done, research to be compiled, coordinating between federal and state agencies, priorities to be inventoried before the Legislature or the Administration can come to any conclusive, immediate plan in implementing any or all of the proposed recommendations in this section.

B. Review Funding Of ADF&G And Institute a New Funding Level And Policy

In the past, the ADF&G has been characterized by residents as the scapegoat for the shortcomings and deficiencies that have arisen surrounding the fish and game resources.

Some of the reasons for this has been due to the funding level, the management, enforcement and protection problems, the composition of the Board of Fish and Game, the increase of competitive user groups, and the pressure upon the Department from many directions.

In our hearings, this has been brought out many times. The reality of the situation is MONEY. The Department has a broad field of responsibility, a large area to manage, a Division of Commercial Fisheries, a Division of Game, a Division of Sports Fish and a Division of Fisheries Rehabilitation Enhancement and Development. Some of the money is derived from the General Fund, some from the sale of licenses, and some from federal sources. We would like to see the pressure taken off the Department to increase the sale of licenses for receipt of matching federal funding. A solution to this would be for the Legislature to begin appropriating money from the General Fund to the Department that has been heretofore been funded by the proceeds of state and federal taxes and licenses on hunters and fishermen. Jay Hogan of the Fish and Game Department has offered to perform an analysis of the ADF&G

budget indicating those areas which would benefit from an infusion of General Funds.

In the receipt of testimony, it was a consensus from the people, that even with the complaints and inadequacies of the Department, most people would like to see the management capability remain with the State of Alaska, that any preemption by the Federal government would be detrimental to Alaska.

In order for the Governor, the ADF&G, and the Legislature to come to grips with an orderly applicable plan for the State, a good place to begin is within the existing frame work and parameters of the ADF&G, the department responsible for the subsistence resources.

C. Create Division of Subsistence Parallel to the Division of Sports Fisheries and Commercial Fisheries and Division of Game

This Division would have a director with staff to compile data; hold hearings; conduct studies on subsistence activities; quantify amounts and values of subsistence resources; degree of dependency; provide information to the Legislature for use in developing legislation relating to land and water management; to determine what uses of fish and game, as well as which users and methods should be termed subsistence uses, users and methods; evaluate impact of state and federal laws and regulations on subsistence hunting and fishing and; when corrective action is indicated, make recommendations to the Governor and the Legislature.

D. Create a Committee on Subsistence

The resolution that was proposed for creation of a Committee on Subsistence is attached for your review. The intent of this committee

was to be an on-going, permanent committee, however, because the mechanism for creating such a committee with the membership we proposed (which included 3 members of the Senate, 3 members of the House and the Commissioner of ADF&G or his designee) is not provided for in our rules, this type of committee would require a legislative resolution. Thus, we have proposed the resolution for a temporary committee that could be re-created, is necessary to complete the work of the Committee.

We feel that the work of the Interim Committee must be continued. It should not stop now, for it is a dynamic field that needs attention. There is much work to be done to refine the recommendations made by this Committee, other areas that need to be researched. As we stated in our goals section, we were unable to perform many of the tasks we felt were necessary for a well-rounded informative report. These are areas that need to be expanded to provide the Legislature with the best possible information on which to base its decisions.

E. Proposal for Regionalizing Fish and Game Boards

You have reviewed the proposed Act. Basically, it provides for the creation of local, regional boards with authority to make the decisions based on a regional basis. We have proposed the regional boundaries of the Native corporations, since those are boundaries that are already used by many agencies and by the government. These Boards would then have jurisdiction to make regulations for that region. Each regional area would have Advisory Committees to advise them, similar to the local advisory committees now in existence to the Board of Fish and Board of Game.

The Committee has not had the necessary time to go over these proposals with a fine toothed comb. They are basically concepts that are presented to the Legislature to be further reviewed and analyzed. We do not expect them to be implemented immediately, though the urgency is there, but we look toward the entire legislature to begin some serious thought on enacting legislation to permit the working in the subsistence area to go on. It is not a problem that will go away. As long as there are resources, there will subsistence.

#### IX. CONCLUSION

It is a very difficult chore to make any concise brief statements on subsistence in winding down this report. This issue will have to be approached not only as a whole, but each and every facet of the subsistence question must directly and deliberately be considered. This means encompassing the cultural, the legal, the economic and the administrative aspects in the development of a workable plan, program, or policy of subsistence for the State of Alaska.

The State of Alaska must act on subsistence in 1978. Subsistence users are uneasy about the lack of positive direction given to subsistence in the past. Uncertainty must be dispelled by recognizing the need to include subsistence activities in all land and water use policy decisions.

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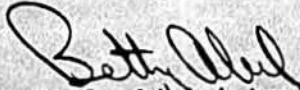
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TO: Sue Johnston, Librarian  
Legislative Reference Library

DATE: October 25, 1979

FILE NO:

TELEPHONE NO:

FROM:   
Betty Abel, Administrative Assistant  
Subsistence Section  
Department of Fish and Game

SUBJECT:

Enclosed are copies of the testimony given at Alaska Public Forum Workshops around the State. The workshops were held by the Interim Committee on Subsistence. These copies are for your files and were given to us by Dave Hoffman from the Interim Committee on Subsistence office. Dave also had tapes the Committee made during discussions on SCS CSHB 960 am S, 1978 establishing the Subsistence Section of the Department of Fish and Game. We are going to have these tapes duplicated onto cassettes and will forward a copy to you for your records.

# STATE OF ALASKA

OFFICE OF THE GOVERNOR  
ALASKA GROWTH POLICY COUNCIL  
ALASKA PUBLIC FORUM

JAY S. HAMMOND, Governor

Phone 276-5262  
Loussac-Sogn Building  
429 D Street, Suite 310  
Anchorage, Alaska 99501

September 5, 1977 COMMISSIONER'S OFFICE

RECEIVED  
SEP 6 1977

Commissioner Skoog  
Department of Fish and Game  
Support Building  
Juneau, Alaska 99801

DEPARTMENT OF FISH AND GAME

Dear Commissioner Skoog:

After what seems like 300 revisions of the subsistence questions by many different people, we feel perhaps the best way to approach this issue in the Public Forum is to leave the questions open-ended (i.e. give no options).

I have certainly appreciated all the help your department has given us in the preparation of questions and background material. I hope that the piece included, which is the rough draft of what will go into the Forum tabloid, covers most of the essential points.

As you well know, it is a complicated issue. I have tried to write it simply enough so that the majority of people will understand.

Very possibly I may have missed some crucial elements. Unfortunately, I can not give you much time for review and critical comments as our time schedule is extraordinarily tight. Following comments from the Growth Policy Council on Wednesday when they meet here to review the questions and background material, we will begin to do the final rewriting and editing of material so it will be ready for the typesetters on Monday.

I will need your comments by Thursday afternoon at the latest. Perhaps you can phone them to me? If comments are extensive and you and members of your department would like to write them out, perhaps someone who is flying to Anchorage Wednesday or Thursday will carry them up. I can pick them up at the airport or wherever.

I'm sorry there is not more time. Believe me, things are like a madhouse up here.

In haste,

*Nan Elliot*

Nan Elliot  
Publication Specialist

9/5/77

## SUBSISTENCE

### The Alaska Public Forum

#### Introduction

One of the most sensitive and controversial issues facing the State in the area of fish and wildlife management is subsistence use of the resources.

At the heart of the dilemma lie these questions:

-----What exactly do people mean when they use the term "subsistence"?

-----Most importantly, recognizing that fish and wildlife are not limitless, and that there may not be enough for everyone, what criteria and management scheme should we use to equitably

determine who may use these resources for subsistence purposes *and what management system should be used to regulate such uses*. There are no easy answers.

In any discussion of hunting and fishing, we must keep one critical element clearly in focus---the protection of healthy populations of fish and wildlife. If we pursue them to extinction, any further discussion will be purely academic.

Under the terms of the Alaska Constitution, these resources are the common property of all Alaska citizens. The responsibility for managing resident populations of fish and wildlife rests with the State.

As Alaska's population grows, pressures on the fish and wildlife resources increase and conflicts over who should be allowed to hunt and fish intensify.

While no one relishes the idea of personal restrictions *in the use of fish & game resources,* this arena, it is unrealistic to expect that today's dependence on the land can continue forever. In short, demand will exceed

supply. The State, as manager, has already begun to assigned <sup>some</sup> priorities for use of the resources. <sup>add</sup>

Governor Hammond recently stated that "To preserve the potential for the subsistence way of life is an extremely high priority of my administration".

In a policy statement in 1973, the Alaska Department of Fish and Game and the Alaska Board of Fish and Game recognized subsistence as the highest priority among <sup>other</sup> consumptive uses (i.e. recreational, commercial) of the resources.

Few people, we imagine, would argue against the State showing preferential treatment <sup>to</sup> the person who relies solely on the land and sea to provide for his or her existence. <sup>noted</sup>

But the issue is far more complicated than that.

There are relatively few examples today in Alaska of "pure" subsistence living. ("Pure subsistence" being defined as total reliance on the land for food, clothing and shelter.) In most cases, modern conveniences and technology have infused such a lifestyle with varying degrees of dependence on a cash-based economy. In addition, recreational, cultural and commercial pursuits overlap with subsistence or are intimately interwoven into one's interpretation of that way of life. While it may be possible to quantify how many pounds of meat and fish are necessary to keep one alive, it is impossible to measure the psychological or spiritual benefits of following such a lifestyle.

Although the administration has assigned subsistence highest priority in the area of fish and wildlife management, there are many who contend that the State has not followed through on that policy.

Indeed, the difficulty lies not in the recognition of the problem but rather the extreme difficulty in determining who the subsistence users are and what program might best be implemented to provide for that use. <sup>*how much of the resource is required,*</sup>

Through the Public Forum process we hope that more people will come to an understanding of the whole issue and perhaps with more minds working on the problem we shall begin to perceive some kind of equitable solution.

### What is Subsistence?

Although there is a State law defining it and several Federal and State policies recognizing it, there is no universally accepted definition for subsistence use of the resources.

In the Alaska Statutes, "subsistence fishing" is defined as "the taking, fishing for, or possession of fish, shellfish or other fishery resources for personal use and not for sale or barter". *the*

*Statute also defines*  
"Subsistence hunting" means "the taking of game animals by a state resident for food or clothing for personal or <sup>*family*</sup> immediate use."

In 1973, the Federal-State Land Use Planning Commission sponsored an informal conference on "Subsistence Uses of Fish and Game in Alaska". The participants concluded that an all-encompassing definition should include (1) to sustain life, (2) for economic benefit, (3) for relaxation and recreation, and (4) to maintain a lifestyle or culture. The majority felt that "to sustain life" should be the highest priority and "to sustain a lifestyle" the second priority.

Some may define subsistence activities as the direct use of fish and wildlife for food, clothing and shelter. Others may include some commercial pursuits, such as the sale of ivory, furs

Still others feel the taking of resources is a vital part of the individual's cultural and historical heritage and involves traditional diet, art, religion.

*Ed. paragraph.*  
(Note: Perhaps here we might list examples of some subsistence uses for the purposes of discussion. i.e. Is the taking of walrus predominantly for the ivory which will provide cash to buy necessities a "subsistence" activity? Is guiding others on hunting and fishing trips "subsistence" activity? Is the taking of a moose or caribou to supplement diet a subsistence activity if one depends mostly on a job for pay?

-----  
In the next decade we may be faced with a question which is at once very difficult and very sad. If there are not enough fish and wildlife for all ~~subsistence~~ purposes, who should be allowed to fish and hunt?

Some people have suggested that it depends on the user's (1) degree of economic dependence, (2) past cultural or historical use, (3) local residency and/or (4) use of traditional versus modern methods and means of harvest.

Degree of economic dependence. Most ~~native~~ peoples ~~as well as other Alaskans~~ living in rural areas spend much of their time hunting, fishing, trapping, berry-picking, and greens gathering. These food sources supply a major portion of their diet. Although commercialization of fish, ivory and fur introduced subsistence people in Alaska years ago to a cash economy <sup>in many villages</sup> in many villages and outposts of the state there still exists a lack of other employment opportunities. This forces <sup>many</sup> ~~most~~ rural Alaskans to depend on food gathering for a significant part of their livelihood.

Cultural or historical use. Activities which sustain life often have roots which go much deeper than that of purely satisfying a physical need. For centuries the Alaska native people lived closely with the land and sea in order to survive. Subsistence

is an intimate part of their culture. Last year during the Public Forum workshop in Bethel the protection of subsistence lifestyle was raised as a vital concern. One young man explained, "The young people who went out to school, like myself, when we couldn't have subsistence foods, sometimes we get up from the table with tears. I mean, you couldn't help that. It is not only to fill yourself, your hungry stomach, but also to fill your being...to have a good feeling, to have mental health and employment. If subsistence is threatened, then you take away all these things".

However, subsistence is not an exclusive ethnic pursuit. Historically, ~~homesteaders and trappers and their families~~ <sup>many Alaskans, regardless of their origins, have</sup> lived predominantly from the land. While their reasons for continuing in such a lifestyle may not be cultural ones, they too have many strong psychological <sup>and</sup> historical ties with the land.

Some believe that only Alaska natives should be allowed to continue subsistence activities. They maintain it is the only possible solution for protecting their heritage and unique cultures. Others feel that qualification as a subsistence user should not be dependent or affected by race or ethnic origin for it would be contrary to the Alaska State Constitution which recognizes all citizens as equal under the law. Furthermore, a "natives only" policy does not address the matter of need which will vary between individuals, communities and geographical areas regardless of ancestry.

#### Local Residency

Many feel that the people who harvest the resources for subsistence purposes should be given first <sup>priority</sup> ~~preference~~ to hunt and fish in the area in which they live. ~~That would~~

~~of residency.~~ <sup>However, residency</sup> Would ~~it~~ be based on a certain number of years? Would it allow subsistence hunting and fishing to newly arrived residents? As communities expand, pressures on existing fish and wildlife in the area needed to support subsistence activities will undoubtedly increase.

Traditional versus modern methods and means of harvest.

Modern technology has changed the pattern of subsistence living. Modern tools, firearms, and transportation methods are becoming increasingly available to the subsistence hunter and fisherman and their families. With this technology available the subsistence user has the capability of taking more animals than his needs may dictate. Thus, his impact upon the fish and wildlife can be much greater now than was possible in the past.

Only a few years ago it was customary for residents of Fairbanks and Anchorage to drive out of the city in the fall to shoot a moose or caribou for the winter. But now, with growing populations, game animals have been so heavily hunted near these urban areas, particularly along the road system, that this is seldom possible. As a result, urban dwellers have sought more remote wildlife using chartered aircraft, off-road vehicles, or riverboats. These modes of travel have also allowed rural Alaskans to range further and take more game than in the past. As a result competition is increasing for often diminishing wildlife resources.

Some people feel that those who use older, more traditional methods and means of harvest - such as travelling by foot or dogsled and using harpoon or bow - should be given a preference in subsistence pursuits. This would limit the take of the resources. Others argue that this option is unrealistic and comparable to asking

the urban dweller to give up his automobile and return to the horse and buggy.

More realistically perhaps, can we distinguish between someone who (hunts subsistence) by snowmachine or someone who charters an airplane to subsistence hunt. Both modes of transportation are modern. ~~But one is more traditionally used for hunting in Alaska.~~

### Management of Fish and Wildlife

*The State* of Alaska is responsible for the management of all resident fish and wildlife. ~~The~~ Management and <sup>the</sup> enforcement of regulations in this area lies with the Department of Fish and Game. <sup>enforcement of these regulations is the primary responsibility of the Dept. of Fish and Game</sup> There are two citizen regulatory boards -- The Alaska Board of Game and the Alaska Board of Fish<sup>eries</sup> -- which are appointed by the Governor. Citizen participation is encouraged and provided through the existing 53 fish and game advisory <sup>committees</sup> boards in the state.

These <sup>committees</sup> boards have increased local involvement in fish and game matters as opposed to the time when no such boards existed. However, lack of funding, formal organization and other frustrations have caused many people to conclude that the present advisory <sup>committee</sup> board system no longer adequately addresses such things as subsistence needs, resource allocation, or stock depletion.

Thus it seems evident that more significant participation at the local level is required. It has been suggested that the State should establish regional fish and game boards which <sup>might</sup> would actually set regulations affecting fish and wildlife management for the region. Final <sup>adoption</sup> review and ~~vote~~ powers would rest with a State Fish and Game Board: Regional subsistence councils with the authority to make initial determinations on all qualified subsistence users have also been suggested.

Another possibility is to legislate specific laws addressing the subsistence question. Many people fear this solution because it does not allow flexibility in accommodating subsistence. As one government official said we cannot "rigidly institutionalize" the term "subsistence" through one piece of legislation. That approach would not truly meet the lifestyle or cultural needs of the majority of Alaskans. What is subsistence to one <sup>person</sup> place or group differs from the meaning or emphasis of another <sup>person</sup> place or group.

The subsistence lifestyle is an evolving, changing way of life, not something cast in concrete. Whatever management structure we adopt should reflect the changing times as well as changing patterns of ~~the animal and marine world~~ <sup>animal distribution, numbers and distribution</sup> and ~~marine world~~.

Additionally, subsistence requirements will not make equal demands on all resources in all areas. Recreational, commercial and other uses are also important and should continue to the extent that they do not truly interfere with or jeopardize ~~the~~ subsistence resource use.

Through the Public Forum process we hope that a discussion of the subsistence issue will not only generate a greater understanding of the complexities of the problem, but supply new ideas or solutions as to how we may best refine our present management system to address this very critical issue.