

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2152 SCOMM 81: . SPECIAL SESSION (SUBSISTENCE), June 1992/HB 601

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SCOMM 81: SENATE COMMITTEE OF THE WHOLE, 17TH LEGISLATURE,
2ND SPECIAL SESSION (SUBSISTENCE) JUNE 1992 / CONFERENCE
COMMITTEE ON HB 601, 1992

MEMBERSHIP:

SENATE COMMITTEE OF THE WHOLE, JUNE 15-19, 1992:

SENATOR JAY KERTTULA, CHAIR
(ALL 20 SENATORS)

CONFERENCE COMMITTEE ON HB 601, JUNE 21-22, 1992:

SENATOR JAY KERTTULA, CHAIR (SENATE CONFEREES)
SENATOR RICK HALFORD
SENATOR AL ADAMS
REPRESENTATIVE GENE KUBINA, CHAIR (HOUSE CONFEREES)
REPRESENTATIVE GEORGIANA LINCOLN
REPRESENTATIVE MARK HANLEY

The Committee of the Whole was established by voice vote on the floor of the Senate, 6/15/92 (Senate Journal p. 3624) to consider "legislation affecting this special session with regards to subsistence."

Contents: 4 files. 20 cassette tapes are also available for the Senate Committee of the Whole, and 3 tapes for the Conference Committee on HB 601.

Videocassette of Congressmen Don Young and Frank Murkowski addressing the Alaska Legislature on subsistence 6/21/90 is also available.

See also, 1989-90 House Resources and Senate Resources Committee files on "subsistence," SB 484, SB 485 & HB 601.

LIST OF FILES (PAGE 1) MICROFICHE #

1. SUBSISTENCE NOTEBOOK - MATERIALS
DISTRIBUTED TO SENATE COMMITTEE OF
THE WHOLE, 6/17/92 (6/18/92 AM)
2. CSHB 601(JUDICIARY) AM (EFD FLD)
SUBSISTENCE USES/2ND SPECIAL SESSION
3. TRANSCRIPTS - SENATE COMMITTEE OF
THE WHOLE, 17TH LEGISLATURE, 2ND
SPECIAL SESSION, 6/15 - 6/19/92
4. TRANSCRIPT - CONFERENCE COMMITTEE
ON HB 601, 17TH LEGISLATURE, 2ND
SPECIAL SESSION,, 6/21 - 6/22/92

SCOMM

81:1

SUBSISTENCE NOTEBOOKS
As of 6/17/92

ORDER OF INFORMATION

COMPARISONS OF SB 484 & SB 485

GOVERNOR'S OFFICE
SENATOR ADAMS
ADVISORY COUNCIL BILL & ANILCA

SB 484

SECTIONAL ANALYSIS - LEGAL SERVICES
FISCAL NOTES

AMENDMENTS

GOVERNOR'S BACK-UP SB 484

SB 485

FISCAL NOTES
SECTIONAL ANALYSIS - SENATOR ADAMS
SECTIONAL ANALYSIS - LEGAL SERVICES

AMENDMENTS

ANILCA

BOBBY VS. STATE OF ALASKA
KATIE VS. STATE OF ALASKA
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6/14/92 NELSON
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LEGAL OPINIONS

6/16/92 UTERMOL (CONSTITUTIONAL ISSUES - SB484/HB 599)
6/16/92 CHENOWETH
6/16/92 UTERMOL
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HJR 78
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BLUE FOLDER

TESTIMONY/POSITION PAPERS

RACHAEL LEGG
MARIE NEAKOK
MOLLY PEDERSON
ALASKA NATIVE BROTHERHOOD
CORDOVA DISTRICT FISHERMEN UNITED
FISH & GAME FUND
AFN TESTIMONY (JULIE KITKA)
SOUTHEAST ALASKA TRIBAL COUNCIL
TELLER TRADITIONAL COUNCIL
CITY OF KOYUK
CITY OF GOLOVIN
ALASKA CHRISTIAN CONFERENCE
KOKECHIK FISHERMEN'S ASSOCIATION
ERIC FORRER
UKPEAGVIK INUPIAT CORPORATION
ARCTIC SLOPE VILLAGE
ALASKA OUTDOOR COUNCIL
NORTH SLOPE BOROUGH
RESOURCE DEVELOPMENT COUNCIL
DOUGLAS INDIAN ASSOCIATION
KIKIKTAGRUK INUPIAT CORPORATION
ALEUTIANS EAST BOROUGH
UNITED FISHERMEN OF ALASKA
KONIAG, INC.
CARL ROSIER MEMO
CARL ROSIER TESTIMONY
SECRETARY OF INTERIOR LETTER

PINK FOLDER

SUPREME COURT DECISION

*Principal Features of
Advisory Council Bill and ANILCA*

*From the Governors Office
6/17/92*

Advisory Council Bill

ANILCA

<i>1. Eligibility</i>	<i>All residents of Alaska dependent on a subsistence way of life can qualify for subsistence use.</i>	<i>All rural residents are eligible for subsistence use regardless of dependence or use.</i> <i>All urban non-rural residents are conclusively ineligible regardless of dependence or use.</i>
<i>2. Criteria for Eligibility</i>	<i>Closely tailored to the goal of identifying and protecting the subsistence way of life.</i>	<i>Criteria for eligibility "not closely related to the purpose of the Act." Moore, J.</i>
<i>3. Preference</i>	<i>Subsistence use accorded preference over other consumptive uses of fish and game.</i>	<i>Subsistence use accorded preference over other consumptive uses of fish and game.</i>
<i>4. Delineation of Principal Elements</i>	<i>Subsistence use relates to fish and game in rural areas customarily and traditionally taken for subsistence, including customary trade, and</i> <i>customary and traditional is defined;</i> <i>customary trade is defined; and</i> <i>reasonable opportunity for subsistence use is defined.</i>	<i>Subsistence use relates to fish and game customarily and traditionally taken for subsistence including customary trade, but</i> <i>customary and traditional is not defined;</i> <i>customary trade is not defined; and</i> <i>reasonable opportunity for subsistence use is not defined.</i>
<i>5. Customary Trade</i>	<i>Small-scale, person to person trade is protected; large-scale commercial trade is prohibited.</i>	<i>Meaning of customary trade is effectively left to federal courts.</i>
<i>6. Constitutionality</i>	<i>High likelihood of constitutionality under federal and state constitutions because the State of Alaska through its Legislature has a compelling interest in identifying and protecting residents dependent on a subsistence way of life. The bill is closely tailored to that objective.</i>	<i>A central feature of ANILCA, restriction of eligibility to rural residents, violates article VIII, Sections 3, 15 and 17 of the Alaska Constitution.</i>

SUBSISTENCE LEGISLATION - DIFFERENCES BETWEEN ADAMS BILL, GOVERNOR'S BILL, AND BARNES BILL.

ISSUE	BUSH CAUCUS BILL - SB 485	GOVERNOR'S BILL - SB 484	BARNES BILL - HB 600
Constitution	Requires a constitutional amendment to grant authority to pass legislation which is consistent with ANILCA and solves the problems created by <u>McDowell</u> .	Governor asserts his bill does not require a constitutional amendment. Legislative Legal Council believes amendment is necessary because of equal protection and common use clauses.	Probably does not require an amendment to the Alaska Constitution.
ANILCA Compliance	By retaining the three requirements of ANILCA: definition of subsistence, rural priority, and advisory committee/regional council system, bill complies with ANILCA.	Changes definition of subsistence uses, changes allocation priority, and retains advisory committee/regional council system. Does not comply with ANILCA.	Changes definition of subsistence uses, changes allocation priority, and retains advisory committee/regional council system. Does not comply with ANILCA.
Regains State Management	With passage of a constitutional amendment, would put state back in compliance with ANILCA and regain state management authorities.	Does not regain state management because it does not comply with ANILCA. Would require a change by Congress to regain management.	Does not regain state management because it does not comply with ANILCA. Would require a change by Congress to regain management.
Eligible participants	Rural residents who reside in communities which have customary and traditional uses of individual fish stocks and game populations. Urban residents who are part of a group or individually have a nutritional or cultural dependence upon fish and game for subsistence.	Residents of small communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of medium sized communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of large communities must qualify on an individual basis based upon their individual use of fish and game.	Eligibility is impossible to determine. The Board of Game sets eligibility standards for hunting, but Board of Fisheries has no authority similar authority for fishing. Each resident of the state is required to have an individual eligibility determination. Appears to require separate determination for each fish stock or game population an individual wishes to take for subsistence.

Prepared by Senator Adams Office

ISSUE	BUSH CAUCUS BILL - SB 485	GOVERNOR'S BILL - SB 484	BARNES BILL - HB 600
Eligible Fish Stocks and Game Populations	Subsistence uses would apply to any fish stock and game population, whether in rural or urban areas, which are taken for subsistence uses.	Subsistence uses would apply only to fish stocks or game populations which are taken for subsistence uses in rural areas. A person can qualify for subsistence based upon harvests in urban areas, cannot harvest for subsistence in those areas, and must go to rural areas to harvest stocks and populations which may not have been part of this person's harvest pattern. Does not allow subsistence uses to be established on transplanted game populations or new hatchery or enhancement fish stocks until 20 years of use has been established.	The "customary and traditional" definition is ambiguous as to whether subsistence uses apply to particular fish stocks and game populations that have been historically used by residents of rural Alaska or merely describes the generic uses that may be made of fish stocks and game populations taken for subsistence uses.
Customary Trade	Leaves the definition to the boards.	Prohibits customary trade other than from individual to individual. Very vague on how to treat customary trade in furs which is important in ensuring access by trappers to National Park lands.	Leaves the definition to the boards.

ISSUE	BUSH CAUCUS BILL - SB 485	GOVERNOR'S BILL - SB 484	BARNES BILL - HB 600
Regulatory Standard	Provides significant protection to subsistence uses by requiring that regulations be written in a manner consistent with customary and traditional use patterns and which cause the least adverse impact on subsistence users. Requires the boards to provide for subsistence uses when harvestable surpluses exist on fish stocks and game populations subject to subsistence uses.	Provides greater authority to the boards by reducing the obligation to regulate based upon customary and traditional use patterns. Does not include the standard that regulations must cause the least adverse impact on subsistence uses. Provides wide discretion to the boards to determine when to allow subsistence uses even when a harvestable surplus exists.	Though the language is vague, the bill appears to repeal the existing reasonable opportunity standard and require the boards to satisfy subsistence uses.
Priority	First priority is for rural subsistence uses and a secondary priority for urban subsistence uses. Paramount rural priority allows for compliance with ANILCA. Secondary priority for urban subsistence recognizes the importance of subsistence to some urban residents. Recognizes differences between rural and subsistence uses. Subsistence uses are limited to fish stocks and game populations which are customarily and traditionally used by communities. There will be little overlap between which stocks and populations rural and urban subsistence users harvest and the difference in the priority will be insignificant in a practical sense.	Gives equal priority to rural and urban subsistence uses. Urban subsistence users will only be able to participate in rural subsistence opportunities. This will have a practical effect by creating more competition between rural and urban users and will require the boards to institute more "Tier II" situations.	The bill's language is vague in this regard. A literal interpretation is that the boards are required to allocate a portion or all of the harvestable surplus of a stock or population for subsistence use at a level equal to what it would take to satisfy subsistence uses prior to allocating to any other uses.

ISSUE	BUSH CAUCUS BILL - SB 485	GOVERNOR'S BILL - SB 484	BARNES BILL - HB 600
Regulatory System	Creates a Subsistence Board which is made up of nominees from the regional councils. The board is to write subsistence regulations and participate with the existing boards on determinations of sustained yield and the advisory committee system.	Retains existing board structure.	Retains existing board structure.

- Comparison of Subsistence Bills -
prepared by the Governor's Office -6/1/92

A number of legislators have asked for a comparison between the Governor's Subsistence Advisory Council bill and the AFN bill. That side by side comparison is layed out below, but the most important thing to remember when comparing these two bills is that they do not represent the two poles of this issue. The Council bill is already a compromise, much closer to AFN's bill than to the repeal of subsistence or its priority that is the opposite pole and favored by many.

**Governor's Subsistence
 Advisory
 Council Bill
SB 443- HB 552**

**AFN Bill
HB 592**

How was the bill drafted?

HB 552(SB 443) was drafted by the Subsistence Advisory Council which represented all interests and spent over a year in meetings and public hearings. HB 443 is already a compromise between all groups.

The AFN bill was drafted in private with no consultation with other user groups and introduced 2 days prior to the end of the session.

Eligible Users

Areas with communities under 2500?

All residents presumed eligible.

No paperwork or permits.

State may rebut eligibility by proving by clear and convincing evidence (higher than normal standard of proof) in State Superior Court that resident is not a subsistence user.

All residents eligible regardless of dependence or use.

Communities 2500 to 7000?

Residents who sign a statement affirming they meet the criteria are rebuttably presumed to be eligible.

All residents eligible regardless of dependence or use.

Communities over 7000?

Residents who rely on subsistence (whether through choice, necessity, or heritage) and demonstrate so through an application process are eligible.

The bill contains the individual criteria for the board to use.

1. residents who can individually demonstrate they have a nutritional or cultural dependence, and

2. any member of a community (group which can demonstrate a sustained interaction or significant relationship that differentiates members from nonmembers) which has a nutritional or cultural dependence - any member of a Native corporation.

3. regardless of dependence, all rural residents have preference over all urban residents.

No standards that define nutritional or cultural dependence in the bill - the board would have to adopt.

Eligible Fish Stocks and Game Populations?

All fish stocks and game populations that are customarily and traditionally used for subsistence in rural areas of state. E.g. Kenai River Kings would not be subject to subsistence.

All fish stocks and game populations that are taken for subsistence in both rural and urban areas of the state. Ex. Kenai River Kings would be subject to subsistence.

Other parts of the package?

Can stand by itself and fix problems on state and private lands and in navigable waters. To comply with ANILCA would need ANILCA amendment. We have furnished draft language.

Requires constitutional amendment. Unconstitutional if passed without constitutional amendment.

Constitutionality?

Constitutional

Unconstitutional, requires amendment.

ANILCA Compliance?

Probably requires ANILCA amendment

Urban subsistence could be problem.

Regain State Management?

Full package will regain true state management. Bill only will give effective state management on navigable waters and all state and private lands.

Would regain state management in name only. Major decisions still dictated by federal courts.

Regulatory System?

Uses existing board process, but lays out step-by-step guidelines for board action.

Less board discretion than existing statute.

Sets up new subsistence board to make all subsistence decisions and allocations with no countervailing pressure - wide discretion.

Governor could only name members from nominees suggested by regional advisory committees.

Subsistence board would have preeminent authority over all fish and game and over boards of fish and game.

Regulatory Standards?

Boards of Fish and Game required to adopt regs which provide "reasonable opportunity" for subsistence. Statute has detailed definition of reasonable opportunity which includes consideration of customary and traditional patterns and levels of use.

Subsistence board required to provide portion of harvest necessary to "satisfy" subsistence uses. Regs required to provide for customary and traditional uses and practices in manner that will result in the "least adverse impact" upon those uses.

State believes least adverse impact in ANILCA is a land use standard. ANILCA language reads, "...the utilization of public lands in Alaska is

Council Bill
SB 443 - HB 552

AFN Bill
HB 592

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Effect on other uses?

Subsistence has a clear preference over other uses. The bill is drafted to protect subsistence without unnecessarily damaging other uses.

Define Customary and Traditional?

C & T is defined as the noncommercial, long-term, consistent and ongoing dependence on the taking and use of fish and game in a specific area and the use patterns and harvest levels of that fish and game that have been established over at least one preceding generation of users.

Solve Customary Trade Problems?

Yes - protects small scale, person to person, sale of subsistence resources for cash while prohibiting the massive sales through commercial channels recently blessed by federal courts. Protects trapping in National Parks.

Definition of other terms?

Yes - critical terms used in legislation - reasonable opportunity, sustained yield, customary and traditional,

to cause the least adverse impact possible on rural residents who depend on subsistence uses of the resources of such land;"

We believe that the AFN bill sets out a statutory framework that would be the springboard for countless lawsuits and over time seriously and needlessly erode or eliminate many sports and commercial uses.

Though customary and traditional is a key phrase in this bill, it is undefined. This guarantees years of lawsuits.

No - No definition of customary trade. Compliance with ANILCA without amendment would mandate following federal court standards - i.e. massive sales through commercial channels.

No - critical terms used in legislation - satisfy, least adverse impact, sustained yield, customary traditional,

Council Bill
SB 443 - HB 552

AFN Bill
HB 592

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customary trade - are defined

customary trade - are not defined.

Cost?

Fiscal notes estimate the cost as slightly over \$600 thousand the first three years, declining to approximately \$100 thousand a year after that.

Fiscal notes have not been prepared, but it is certain the cost would be significantly higher. HB 592 has all the costs of the Governor's bill plus the cost of a whole new board structure and drafting that seems designed to promote law suits.

Long-term political and judicial stability?

The Governor's bill was drafted as a compromise by representatives of all parties. Special effort was made in drafting to reduce the need or cause of lawsuits.

Drafted as a unilateral effort by one group. Seems designed to provide reasons for lawsuits.

SB 484

DIVISION OF LEGAL SERVICES

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MEMORANDUM

June 16, 1992

SUBJECT: Sectional Summary of SB 484, An Act relating to the taking of fish and game; and providing for an effective date

TO: Senator Jay Kerttula

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of SB 484, An Act relating to the taking of fish and game; and providing for an effective date.

Section 1 of the bill contains the proposed legislative findings, purpose, and intent for the bill.

Section 2 of the bill adds a new section to AS 16.05.

Sec. 16.05.268 provides for subsistence use and allocation of fish and game.

Subsection (a) provides that the Board of Fisheries and the Board of Game shall, after receiving recommendations of the commissioner of fish and game, identify fish stocks and game populations that are customarily and traditionally taken for subsistence in category 1 and category 2 areas of the state. (See subsection (f) for the definition of category 1, 2, and 3 areas.)

Subsection (b) provides that the appropriate board shall determine whether a portion of a stock or population identified in subsection (a) can be harvested consistent with sustained yield principles. If the harvestable portion of the stock or population is sufficient to provide for all consumptive uses of the stock or population, the appropriate board shall provide a reasonable opportunity to participate in subsistence uses of the stock or population and shall provide for other, nonsubsistence consumptive uses of the stock or population. The board may differentiate among consumptive uses of the stock or population, if it is necessary to allocate the harvestable portion of the population.

If the harvestable portion of the stock or population is sufficient to support subsistence uses of the stock or population, but not all other nonsubsistence consumptive uses, the appropriate board shall provide a reasonable opportunity to participate in subsistence activities of the stock or population and may provide for nonsubsistence consumptive uses of the stock or population. If a board does provide for nonsubsistence consumptive uses of the stock or population, the board must adopt regulations differentiating among consumptive uses of the stock or population and granting a preference for subsistence uses of the stock or population.

If the harvestable portion of a stock or population is sufficient to provide only for subsistence uses, the appropriate board shall close the stock or population to nonsubsistence consumptive uses in order to provide a reasonable opportunity for subsistence uses of the stock or population.

If the harvestable portion of the stock or population is not sufficient to provide for use of the stock or population by all subsistence users, the appropriate board shall eliminate all nonsubsistence consumptive uses of the stock or population and distinguish among subsistence users according to these criteria

1. customary and direct dependence on the stock or population for human consumption as a mainstay of life by the subsistence user;
2. proximity of the stock or population to the domicile of the subsistence user;
3. ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

Subsection (c) provides that if a stock or population is not sufficient to provide a reasonable opportunity for all consumptive uses then the Department of Fish and Game shall prepare a plan to facilitate recovery of the stock or population to a level that supports increased consumptive use. The department shall also submit proposals to the appropriate board for necessary regulatory changes.

Subsection (d) establishes a basic definition of "subsistence use area." Subsistence use areas are an important part of the plan for allocation of fish and game resources among persons qualified to engage in subsistence activities under subsection (h) and (i). Subsistence use areas, unless altered by a board under subsection (e), consist of a game management subunit in which fish or game may be taken under subsistence regulations together with the contiguous game management subunits. There are currently 69 game management subunits in the state and thus a possible 69 different subsistence use areas, provided that the boards do not establish separate subsistence use areas for different species of fish and game.

Subsection (e) provides that a board may vary from the subsistence use areas defined for a stock or population under subsection (d), if the board determines that the area defined under subsection (d) is inconsistent with

1. established patterns of taking and use of the stock or population; or
2. the efficiency and economy of effort, cost, and transportation inherent in the customary and traditional taking and use of fish and game for subsistence.

The bill does not define or establish standards for defining "the efficiency and economy of effort, cost, and transportation inherent in the customary and traditional taking and use of fish and game for subsistence."

Subsection (f) defines the category 1, 2, and 3 areas that are used to identify which stocks and populations are used for subsistence under subsection (a) and to determine who is eligible for the community based presumptions established under subsection (h). The boards acting jointly shall divide the state into category 1, 2, and 3 areas according to these definitions.

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

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

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

Subsection (g) lists the socioeconomic characteristics that the boards shall consider in determining whether subsistence is a principal characteristic of the economy, culture, and way of life of an area.

Subsection (h) establishes the requirements that residents of category 1, 2, and 3 areas must satisfy to establish their eligibility to engage in subsistence hunting and fishing in certain subsistence use areas. A person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence hunting and fishing.

A person who resides in a subsistence use area in a category 1 area is presumed to satisfy all eligibility criteria to take fish and game for subsistence use in that subsistence use area without having to establish more than the person's place of residence. The person can engage in subsistence hunting and fishing in that

subsistence use area until it is proven by the state by clear and convincing evidence that the person is not qualified to engage in subsistence hunting and fishing.

A person who resides in a subsistence use area in a category 2 area is presumed to satisfy all eligibility criteria to take fish and game for subsistence use in that subsistence use area and need only sign a document asserting that the person does indeed qualify. The person may engage in subsistence hunting and fishing in that subsistence use area until it is proven by the department by a preponderance of the evidence that the person is not qualified to engage in subsistence activities in that area. If it is proven that the person is not eligible to engage in subsistence hunting and fishing in that area and that the person was aware of the lack of eligibility at the time the person signed the document, the person is potentially subject to criminal prosecution for unsworn falsification under AS 11.56.210.

A person who resides in a category 3 area, or who wants to engage in subsistence hunting and fishing outside of the subsistence use area in which the person resides, must apply for certification from the commissioner of fish and game for the subsistence use area in which the person wishes to use for subsistence activities. Such a person may engage in subsistence hunting and fishing in that subsistence use area only after the person has convinced the commissioner that the person satisfies the eligibility criteria adopted by the joint boards for that area.

Subsection (i) provides that the boards shall jointly establish procedures by which the commissioner of fish and game shall determine whether a person may engage in subsistence activities in a specific subsistence use area. The boards shall also jointly establish a weighted point system consisting of seven different criteria to be used by the commissioner in determining a person's eligibility to engage in subsistence hunting and fishing. The criteria are:

1. the quantity of fish and game consumed by the person in the preceding 12 months; a person must have consumed a minimum of 125 pounds of fish and game to satisfy this criterion;

2. the number of species and groups of species of fish and game from the subsistence use area used by the person in the preceding 12 months; the boards shall jointly determine the minimum number of species and groups of species necessary to satisfy this criterion; the boards may vary the mandatory minimum number and the grouping of species necessary to satisfy this criterion in different geographical regions of the state;

3. the number of days in the preceding 12 months that the person was engaged in the taking of fish and game from the subsistence area or engaged in the processing of fish and game taken in that subsistence use area; the person must have spent at least 30 days in subsistence activities in the subsistence use area in order to satisfy this criterion;

4. the number of months in the preceding 12 months in which the person was engaged in the taking of fish and game in the subsistence use area; the person must have engaged in subsistence hunting and fishing in the subsistence use area during at least four months of the preceding 12 to satisfy this criterion;

5. the number of weeks in the preceding 12 months during which the taking or processing of game was the person's principal work effort; a person may not receive credit for more than 26 weeks;

6. the number of households, other than his/her own, with which the person shared, or from which the person received, fish and game during the preceding 12 months; a person may not receive credit for more than 10 families;

7. whether the person took fish and game in only one subsistence use area.

Three of the criteria (2, 3, and 4) must be satisfied by fishing and hunting activities in a single subsistence use area. Each of these three criteria must be satisfied in the subsistence use area in which a person intends to engage in subsistence hunting or fishing. If these three criteria are not satisfied in the same subsistence use area, the person will not qualify to engage in subsistence hunting and fishing anywhere in the state. The four remaining criteria (1, 5, 6, and 7) can be satisfied by hunting and fishing activities occurring anywhere in the state.

Subsection (j) provides that a person who does not satisfy the mandatory minimums established by (i)(1) - (4) (criteria 1, 2, 3, and 4) does not qualify as a subsistence user.

Subsection (k) provides that the eligibility criteria established under subsection (i) can be satisfied only by hunting and fishing activities that were legal, noncommercial, and characterized by efficiency and economy of effort, cost, and transportation. The eligibility criteria requiring that a person consume a minimum amount and variety of fish and game and the eligibility criteria considering the number of households with which a person has shared fish and game do not consider any amount of fish or game that was purchased for money or other monetary consideration.

The boards shall adopt regulations allowing a person, who cannot satisfy the eligibility criteria established under subsection (i) due to hospitalization, military service, or full-term attendance at an educational institution outside of the relevant subsistence use area, to establish his/her eligibility to engage in subsistence hunting and fishing based on the twelve month preceding the hospitalization, military service, or full-term attendance at an educational institution.

Subsection (l) provides that the commissioner of fish and game shall establish a procedure for expedited review of determinations by the department that a person does not qualify as a subsistence user.

Subsection (m) provides that fish stocks and game populations, or portions of a stock or population, that are not customarily and traditionally taken for subsistence in category 1 and 2 areas may taken only under nonsubsistence regulations.

Subsection (n) provides that the taking and use of fish and game authorized under this section (Sec. 16.05.268) are subject to AS 16.05.831 (prohibiting the waste of salmon), AS 16.30.010 (prohibiting wanton waste of big game and wild fowl), and regulations regarding open and closed areas, seasons, methods and means, marking and identifications requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations.

Subsection (o) defines "reasonable opportunity" and "preceding 12 months" for the purposes of certain subsections of this section.

Sections 3 and 4 of the bill makes technical amendments to AS 16.05.251(d) and 16.05.255(d) to conform to the changes made by this bill.

Section 5 of the bill amends the current definition of "subsistence fishing." The amended definition limits the taking or possession of fisheries resources for subsistence uses to qualified residents of the state who take or possess fisheries resources in a subsistence uses area in accordance with regulations adopted under AS 16.05.268. Rod and reel may not be used to take fisheries resources for subsistence uses.

Section 6 of the bill amends the current definition of "subsistence hunting." The amended definition limits the taking or possession of game for subsistence uses to qualified residents who take or possess game in a subsistence use area in accordance with regulations adopted under AS 16.05.268.

Section 7 of the bill adopts a definition of "subsistence" to replace the former term "subsistence uses." "Subsistence" is the noncommercial, customary and traditional taking in a subsistence use area and the customary and traditional uses of fish and game by a resident for direct noncommercial personal or family consumption as food, clothing, or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for noncommercial sharing; and for barter and customary trade of a portion of fish or game resources harvested primarily for personal or family consumption. The definition of "subsistence" also includes a definition of "family."

A reference to wild, renewable resources contained in the former definition of "subsistence uses" is replaced by a reference to fish and game. A reference to rural area was deleted. Use of fish and game for shelter, fuel, and tools is no longer a subsistence use of those resources.

Section 8 of the bill defines the terms "customary and traditional," "customary trade," "game management unit," and "sustained yield."

"Sustained yield" is the management principle of utilization, development, and maintenance that provides beneficial consumptive uses in perpetuity, subject to preference among beneficial consumptive uses, and that seeks to provide for desired population increases and prevent undesired declines, for the purpose of maintaining healthy self-perpetuating fish stocks or game populations. This definition of "sustained yield" applies only to naturally occurring fish and game resources.

Section 9 of the bill repeals AS 16.05.258 (the current subsistence law) and 16.05.940(26) (definition of "rural").

Section 10 of the bill authorizes the Board of Fisheries, the Board of Game, and the Department of Fish and Game to adopt regulations necessary to implement this Act. This section allows the boards and the department to adopt the necessary regulations even before the current subsistence law (AS 16.05.258) is repealed. Though these regulations may be adopted before the rest of this bill takes effect, the regulations may not be effective until the portions of this bill authorizing those regulations are effective.

Section 11 of the bill provides for the transition between this Act and the current laws regulating subsistence uses of fish and game. It is the stated intent of the legislature that the Board of Fisheries and the Board of Game expeditiously adopt regulations necessary to implement this Act. Regulations adopted by the boards or the Department of Fish and Game before June 1, 1992 continue in effect until this Act takes effect; however, regulations adopted after June 1, 1992 (even, if adopted under the authority of the current subsistence law, AS 16.05.258) may not be inconsistent with the terms of this Act.

Section 12 of the bill provides that the Governor shall review the operation of this Act and the regulations adopted under this Act, by June 1, 1994 and submit the report on the results of the review together with proposed recommendations for statutory changes to the Legislature by September 1, 1994.

Section 13 of the bill provides that sections 10 and 11 take effect immediately under AS 01.10.070(c).

Senator Jay Kerttula
June 16, 1992
Page 8

Section 14 of the bill provides that the remainder of the bill takes effect on the effective date of regulations first adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.

If I may be of further assistance, please advise.

GU:gc
92-411.glc

SENATE BILL NO. 484

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 6/15/92

Referred: Senate Committee on the Whole

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

1 identity for many subsistence users;

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

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

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

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

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

20 (b) It is the purpose of this Act

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

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

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

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

31 (c) It is the intent of the legislature

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

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

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

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

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

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

11 The commissioner shall provide recommendations to the boards concerning the stock and
12 population identifications. The boards shall make identifications required under this subsection
13 after receipt of the commissioner's recommendations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (e) Each board shall consider subsistence use area boundaries described in (d) of this
30 section. Each board shall delineate a different boundary for a particular stock or population if
31 the appropriate board determines that the boundary of a subsistence use area is inconsistent with

1 established patterns of taking and use of that fish stock or game population for subsistence, or
2 is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the
3 customary and traditional taking and use of fish and game for subsistence.

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

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

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

14 (3) category 3, an area that is

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

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

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

23 (1) the social and economic structure;

24 (2) the stability of the economy;

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

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

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

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

31 (7) the seasonal cycle of economic activity;

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

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

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

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

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

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

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

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

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

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

31 (i) The boards shall jointly, by regulation, adopt procedures by which the commissioner

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

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

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

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

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

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

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

28 (7) whether the person's taking of fish and game occurred solely in the
29 subsistence use area.

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

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

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

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

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

19 (o) For purposes of

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

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

27 (B) based on the findings of the appropriate board on each of the
28 following factors:

29 (i) resource population and management objectives;

30 (ii) estimated harvest per unit of effort by participants in the
31 fishery or hunt;

- 1 (iii) patterns and levels of customary and traditional taking and use
2 of the fish or game;
3 (iv) migratory patterns and availability of fish or game;
4 (v) competition for the fish or game from other subsistence and
5 nonsubsistence uses; and
6 (vi) other factors that the appropriate board considers relevant.

7 (2) subsection (i) of this section, "preceding 12 months" means for a person
8 described

9 (A) in (h)(1) of this section, the 12 months preceding the taking of the fish
10 or game resource;

11 (B) in (h)(2) of this section, the 12 months preceding the date of signing
12 of the required statement;

13 (C) in (h)(3) of this section, the 12 months preceding the date of signing
14 the application to the commissioner.

15 * Sec. 3. AS 16.05.251(d) is amended to read:

16 (d) Regulations adopted under (a) of this section must, consistent with sustained yield
17 and the provisions of AS 16.05.268 [AS 16.05.258], provide a fair and reasonable opportunity
18 for the taking of fishery resources by personal use, sport, and commercial fishermen.

19 * Sec. 4. AS 16.05.255(d) is amended to read:

20 (d) Regulations adopted under (a) of this section shall provide that, consistent with the
21 provisions of AS 16.05.268 [AS 16.05.258], the taking of moose, deer, elk, and caribou by
22 residents for personal or family consumption has preference over taking by nonresidents.

23 * Sec. 5. AS 16.05.940(29) is amended to read:

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

29 * Sec. 6. AS 16.05.940(30) is amended to read:

30 (30) "subsistence hunting" means the taking [OF, HUNTING FOR,] or possession,
31 by a qualified resident, of game [BY A RESIDENT DOMICILED] in a subsistence use

1 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for
2 subsistence uses by means defined by the Board of Game;

3 * Sec. 7. AS 16.05.940(31) is amended to read:

4 (31) "subsistence [USES]" means the noncommercial, customary and traditional
5 taking in a subsistence use area of the state, and the customary and traditional uses, of fish
6 and game [WILD, RENEWABLE RESOURCES] by a resident [DOMICILED IN A RURAL
7 AREA OF THE STATE] for direct, noncommercial, personal or family consumption as food,
8 [SHELTER, FUEL,] clothing, [TOOLS,] or transportation, for the mak'ng and selling of
9 handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal
10 or family consumption, for noncommercial sharing, and for barter and [THE] customary trade
11 of a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for
12 personal or family consumption; in this paragraph, "family" means persons related by blood,
13 marriage, or adoption, and a person living in the same household on a permanent basis;

14 * Sec. 8. AS 16.05.940 is amended by adding new paragraphs to read:

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

19 (37) "customary trade" means the limited, noncommercial exchange, for minimal
20 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested
21 primarily for personal or family consumption; "customary trade" does not include sales in
22 commercial channels; the terms of this paragraph do not restrict money sales of furs or
23 furbearers;

24 (38) "game management unit" is the same as an area of the state established as
25 a game management unit by the Board of Game under AS 16.05.255;

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

31 * Sec. 9. AS 16.05.258 and AS 16.05.940(26) are repealed.

1 * Sec. 10. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,
2 Board of Game, and Department of Fish and Game shall adopt regulations necessary to implement the
3 provisions of this Act.

4 * Sec. 11. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the
5 Board of Game expeditiously adopt regulations necessary to implement this Act.

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

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

11 * Sec. 12. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a
12 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature
13 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the
14 governor no later than June 1, 1994.

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

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

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

24 * Sec. 13. Sections 10 and 11 of this Act take effect immediately under AS 01.10.070(c).

25 * Sec. 14. Sections 1 - 9 and 12 of this Act take effect on the effective date of regulations first
26 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.

*THESE FISCAL NOTES ARE FOR INFORMATIONAL
PURPOSES. THE ADMINISTRATION INTENDS TO
ADDRESS FUNDING IN A SUPPLEMENTAL REQUEST
AT THE BEGINNING OF THE NEXT REGULAR
LEGISLATIVE SESSION.*

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSIONBILL NO. Revision Date: Department Affected: Fish and GameTitle: An Act relating to the taking
of fish and game for subsistenceBRU: SubsistenceComponent: SubsistenceSponsor: Rules CommitteeRequestor: COMPONENT SERIAL NO.

4	8	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	229.9	222.4	218.4	193.8	200.3	206.8
TRAVEL	8.5	7.5	6.5	5.5	5.5	5.5
CONTRACTUAL	27.5	25.5	23.5	22.0	22.0	22.0
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	17.0	3.0	3.0	2.5	2.5	2.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	285.4	260.9	253.9	226.3	232.8	239.3

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

GENERAL FUND	285.4	260.9	253.9	226.3	232.8	239.3
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	285.4	260.9	253.9	226.3	232.8	239.3

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME	3.0	3.0	2.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year impact: No impact in FY 92

ANALYSIS: (Attach a separate page if necessary.) See attached analysis.

Prepared By: Robert Bosworth, Director *[Signature]*Phone: 465-4147Division: Division of SubsistenceDate: 2/20/92Approved by Commissioner: *[Signature]*Agency: Department of Fish and GameDate: 2/26/92

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

FISCAL NOTE ANALYSIS: Division of Subsistence

Development of a Subsistence Permitting Program:

OVERVIEW:

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

PROCESS:

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

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

CORE STAFFING:

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

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

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

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

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

SUPPORT STAFF:

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

BUDGET--Division of Subsistence:

FY 93

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

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

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

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

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

FY 94:

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

FY 95:

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

FY 96:

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

FY 97 and FY 98:

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____

Department Affected: Fish and GameTitle: An Act relating to the taking
of fish and gameBRU: BoardsComponent: Board ServicesSponsor: Rules Committee

Requestor: _____

COMPONENT SERIAL NO.

4	8	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	115.0	120.0	125.0	130.0	130.0	130.0
TRAVEL	192.0	199.5	172.0	97.0	97.0	97.0
CONTRACTUAL	100.0	104.0	100.0	57.0	57.0	57.0
SUPPLIES	5.0	5.0	5.0	2.0	2.0	2.0
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	412.0	428.5	402.0	286.0	286.0	286.0

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

GENERAL FUND	412.0	428.5	402.0	286.0	286.0	286.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	412.0	428.5	402.0	286.0	286.0	286.0

POSITIONS:

FULL-TIME						
PART-TIME	2	2	2	2	2	2
TEMPORARY						

Estimate of current year impact: no FY92 fiscal impact.ANALYSIS: (Attach a separate page if necessary.)
see attachedPrepared By: Beverly Reaume *Beverly Reaume*Phone: 465-4110Division: Division of BoardsDate: 6/13/92Approved by Commissioner: *Carl L. Resier*Agency: Department of Fish and GameDate: 6/14/92

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

DIVISION OF BOARDS

ANALYSIS

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

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

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

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

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

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

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

Other items affecting cost estimates:

(1) With the loss of federal funding, Boards Division has eliminated two regional coordinators in the FY93 budget. The cost estimates include reactivation of these two coordinators. The regional coordinators are essential to provide for increased advisory committee meetings. Implementation will add at least one more meeting for each advisory committee. This increase, plus increased board meeting days, are beyond staff's capability to provide adequate support.

(2) If the bill were to bring the state into compliance with ANILCA, we could anticipate that a portion and perhaps all of the estimated costs could come from the federal government.

COSTS - FY93

<u>Personal Services:</u>	115.0
overtime for existing staff	
two regional coordinators	
<u>Travel:</u>	192.0
travel and per diem for board members,	
Boards staff, and advisory committee	
meetings	
<u>Contractual:</u>	100.0
meeting space, printing and postage for	
proposal books, telephone and legal	
notice of meetings	
<u>Supplies:</u>	5.0
office supplies	
TOTAL	<u>412.0</u>

COSTS - FY94:

Personal Services	120.0
Travel	199.5
Contractual	104.0
Supplies	5.0
TOTAL	<u>428.5</u>

COSTS - FY95:

Personal Services	125.0
Travel	172.0
Contractual	100.0
Supplies	5.0

TOTAL	<u>402.0</u>
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COSTS - FUTURE YEARS

Personal Services	130.0
Travel	97.0
Contractual	57.0
Supplies	2.0

TOTAL	<u>286.0</u>
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FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

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

4	9	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

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

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

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

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

GENERAL FUND	116.5	110.0	110.0	63.0	63.0	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

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

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requester, OMB/OSR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

Page 1 of 2

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

AGENCY Department of Law
BRU Legal Services
COMPONENT Operations

FY 93

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

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

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	116.5	110.0	110.0	63.0	63.0	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

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

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

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

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

Request For New Position

AGENCY Department of Law

BRU Legal Services

COMPONENT Operations

FY 93

Page 1 of 2

Revised Date: _____

FISCAL NOTE

Bill No. SB 484

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
Title: An Act relating to the taking of fish BRU: Trial Courts
and game Components: _____
Sponsor: Governor
Requestor: _____ COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	20.0	15.0	10.0	5.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	20.0	15.0	10.0	5.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	20.0	15.0	10.0	5.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	20.0	15.0	10.0	5.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 06/16/92

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 06/16/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court SystemSB 484Analysis

ANALYSIS

This legislation provides a statutory priority for subsistence use of fish and game, relative to other consumptive uses of the state's fish and game resources.

Because of the continuing controversies surrounding this issue, it can be anticipated that the bill will face a vigorous legal challenge if it is enacted. It can also be anticipated that regulations adopted to implement this legislation will face legal challenge.

As drafted, the bill limits participation in a subsistence harvest to persons who meet certain qualifications. The Department of Law has indicated that actions by the state to challenge the presumptive qualifications of specific individuals would be by declaratory judgement brought in superior court.

The fiscal note reflects pro tem judge costs that will be incurred in handling these matters expeditiously.

SB 484

AMENDMENTS

GOVERNOR'S

BACK-UP

SB 484

2nd Special Session
17th Legislative Session

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



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

State of Alaska
Office of the Governor
March 3, 1992

CONTENTS

Documents for the Legislative History of the Governor's Subsistence Advisory Council Bill

- I. Letter of Transmittal***
- II. Questions and Answers on Subsistence***
- III. Introduction***
- IV. "An Act Related to the Taking of Fish and Game; and Providing for an Effective Date"***
- V. Department of Law Sectional Analysis***
- VI. Letter from the Governor to the Subsistence Advisory Council &
Letter from the Subsistence Advisory Council to the Governor***
- VII. Fiscal Notes***
- VIII. Sectional Analysis Appendices***
 - A. Game Management Unit Map***
 - B. Listing of Alaska Communities by Category***
 - C. Sample of Subsistence Harvest Certification for Type II Communities***
 - D. Sample Subsistence Application for Residents of Type III Communities***
 - E. Case studies of qualification under Individual Criteria Application***
 - F. Community size, economy, and number of Subsistence Users***
 - G. Resource diversity of Subsistence Users***
 - H. Bibliography of Subsistence Studies used by the Subsistence Council***

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 15, 1992

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

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the taking of fish and game.

I am introducing this bill to prevent the severe problems we will face with management of all fish and game if we do not resolve our problems with our state subsistence law.

If we fail to fix this problem we will see an ever increasing number of hunts going first into subsistence only status and then into a restricted Tier II mode. In fisheries we will see an elimination or serious erosion of many sport and commercial fishing opportunities. To make matters worse, all of this will happen at the same time we are failing to provide real protection for the true subsistence user.

This bill will not resolve the problems of federal law. No one is more interested than I am in an overall resolution, but it is clear that at this stage there is sharp disagreement on how to do that. I do believe that this bill is a vital first step toward agreement within our state.

The State of Alaska controls almost all of the fish through our ownership of navigable waters, and about half the game. We desperately need to fix, now, what we can for the three-fourths of our fish and game resources that we control. Afterwards, we all need to continue our efforts to solve the rest of the problem.

This bill was drafted by the Governor's Subsistence Advisory Council, in an attempt to reach a consensus approach for Alaska. The members did an outstanding job, spending almost a year in their efforts. This bill is not what any one member of the council, nor I, would have written independently, but I believe it is what I asked the council for: the best possible plan for Alaska.

The Honorable Richard I. Eliason
June 15, 1992
Page 2

The legislation is designed for species protection, to function with a minimum of disruption for users, for ease of administration by the Board of Fisheries and the Board of Game, for management by the Department of Fish and Game, enforceability by the Department of Public Safety, and defensibility in court.

The legislation will reduce the constant barrage of subsistence court cases by making the state's actions more defensible, but much more importantly by laying out clear guidelines for the boards and reducing the problems that caused people to sue.

Unfortunately, some groups have refused any efforts at consensus unless all issues were resolved in a way that met their approval. In a democracy, that cannot work. Painful though it may be, it is now up to the legislature to act.

I realize that the legislature has a constitutional responsibility to consider and, if necessary, amend bills to make them the best possible legislation. Neither I nor the council make any claim that this legislation is perfect, but every word in it has been the subject of hours or days of debate.

A packet of material describing and explaining Senate Bill 443 and House Bill 552, which are fully applicable to this bill, have been provided to the Senate Secretary and Chief Clerk.

Solving subsistence is not an issue of the governor versus the legislature, Republicans against Democrats, or even rural versus urban. This is not an issue where one side will win and the other lose, but rather one where we all act together to solve the problem. If we do not, we have failed Alaska's people.

I ask the legislature to maintain the goal of the advisory council by passing the best possible piece of subsistence legislation, and to act swiftly to solve the subsistence crisis and help heal Alaska.

Sincerely,

A handwritten signature in dark ink, appearing to read "Walter J. Hickel". The signature is fluid and cursive, with the first name "Walter" being the most prominent part.

Walter J. Hickel
Governor



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

QUESTIONS & ANSWERS ON SUBSISTENCE

June 2, 1992

Q - What's the subsistence problem?

A - Unfortunately there is not one subsistence problem, but many. The most commonly known is the conflict between the Alaska's constitution and ANILCA. ANILCA requires a subsistence preference for all "rural" residents. Alaska's Supreme Court ruled that this was both under and over inclusive. That is, there are some urban residents who are subsistence users and not all rural residents are. Federal management of any portion of Alaska is a serious problem, but it is not our most serious problem in managing our fish and game.

Q - So what causes the most problem in managing our fish and game?

A - When the Supreme Court struck "rural" out of our state law, it left us with a law that gives subsistence an absolute priority over all other uses and makes every Alaskan a qualified subsistence user for game on state lands and for almost all fish. This is a lose-lose situation. The priority for true subsistence users is diluted, and the combination of "all Alaskans" plus the absolute priority is soaking up so much of the resource that many commercial and sports fishing and general hunting opportunities will be eliminated or severely restricted. From the standpoint of management of our fish and game this is a greater problem than ANILCA compliance. This can be fixed by a change in state statute.

Q - Are there any other problems?

A - Yes, both ANILCA and our current state law use key terms such as "customary and traditional," "customary trade," and others without any definitions. This has led to a morass of conflicting court decisions that have tied up effective management of fish and game. For example, the lack of definition for customary and traditional has also resulted in almost every fish stock and game population in the state being subject to subsistence, further endangering many commercial and sport uses, and federal courts have blessed large scale sale of fisheries resources through commercial channels under the guise of subsistence "customary trade."

Can we fix all this by passing a law that complies with ANILCA?
There is a slim chance the Council bill may comply, most feel ANILCA
will require either changing ANILCA or amending our constitution.

Can we fix it with a constitutional amendment?

While a constitutional amendment could allow the state to amend its
definition of "rural" in a manner consistent with ANILCA this would not
be state management, but rather state administration as dictated by
Congress. It would not fix any of the problems caused by lack of definitions
above. ANILCA was not intended to be in violation of Alaska's
Constitution and Title 16, section 3202(a) of ANILCA states, "Nothing in this Act
... to amend the Alaska constitution."

Will the Subsistence Advisory Council bill fix?

The Council bill will amend state law to fix the "all Alaskans" problem and
problems caused by lack of definitions. The bill protects subsistence users
in a manner that does not decimate other uses. It will solve these
problems with game on state and private lands and fish in navigable waters. The
bill is a vital first step towards solving the overall problem. The bill
is "the best solution for Alaska" for which the Governor asked the Council

Is it necessary to fix all the problems?

Not all people have different overall solutions; some advocate amending
our constitution, some want to amend just our Constitution, some
want to repeal ANILCA outright or try to have it struck down
entirely. Far there is no consensus in Alaska and we will need to continue to
seek an overall solution. What we can do now is fix our state law.

Can we fix just the state law if we can't fix all the problems?

Yes. A new state law can resolve the problems for almost all fish and
game of the game. It will protect subsistence users while preventing
hunting and sports uses from being seriously eroded. It will dramatically
reduce the number of lawsuits on this issue and provide a model people can live
with if they would be comfortable extending it to the full state at a later
date. To pass a new state law will result in severe damage to commercial
fisheries, as well as to general hunting without offering true subsistence
users the lands and waters meaningful protection.

Q - A special session is very expensive, can't this wait until the next regular session?

A - A special session is expensive, the cost for a five day session is estimated at \$140,000. This cost pales beside the cost of not solving this issue. In the last twelve months alone, the Department of Law has paid over \$800,000 just in attorney's fees to plaintiff's attorneys in subsistence cases. This amount does not include the even greater cost of the state attorneys, Fish & Game employees and others on this issue. Even more important, is the potential damage to our state's economy if we needlessly disrupt or damage commercial fishing, Alaska's largest private employer or sport fishing which is a major tourism draw and an economic force in its own right.

Q - What can I do to help?

A - The Governor's Subsistence Advisory Council bill was crafted to be a just consensus among all groups to protect subsistence while not needlessly damaging other uses. Please support the swift passage of the Council bill without substantive amendments. This is not an issue of the Governor vs. the Legislature, not Republicans vs. Democrats, nor even rural vs. urban. Protecting subsistence in a just manner is not an issue to win or lose, but rather a problem for all of us together to solve.

A Brief Introduction to the Governor's Subsistence Advisory Council Bill

How would the new law work?

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

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

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

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

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

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

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

What are the qualification standards?

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

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

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

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

Where would people be able to subsistence hunt and fish?

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

What are the advantages of this approach?

It protects the resource. It does not divide villages. It protects residents of regional centers from growing out of subsistence, and it allows the small minority of urban residents who are subsistence users to participate. It complies with our constitution. Most importantly, it will protect subsistence and subsistence users while not wiping out other uses. This will reduce the division and political instability that has plagued this issue.

SENATE BILL NO.**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION****BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

Introduced:

Referred:

A BILL**FOR AN ACT ENTITLED**

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

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

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

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

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

1 identity for many subsistence users;

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

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

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

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

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

20 (b) It is the purpose of this Act

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

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

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

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

31 (c) It is the intent of the legislature

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

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

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

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

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

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

11 The commissioner shall provide recommendations to the boards concerning the stock and
12 population identifications. The boards shall make identifications required under this subsection
13 after receipt of the commissioner's recommendations.

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

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

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

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

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

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

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

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

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

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

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

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

9 (B) distinguish among subsistence users, through limitations based on
10 (i) the customary and direct dependence on the fish stock or game
11 population by the subsistence user for human consumption as a mainstay of life;
12 (ii) the proximity of the domicile of the subsistence user to the
13 stock or population; and
14 (iii) the ability of the subsistence user to obtain food if subsistence
15 use is restricted or eliminated.

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

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

29 (e) Each board shall consider subsistence use area boundaries described in (d) of this
30 section. Each board shall delineate a different boundary for a particular stock or population if
31 the appropriate board determines that the boundary of a subsistence use area is inconsistent with

1 established patterns of taking and use of that fish stock or game population for subsistence, or
2 is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the
3 customary and traditional taking and use of fish and game for subsistence.

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

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

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

14 (3) category 3, an area that is

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

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

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

23 (1) the social and economic structure;

24 (2) the stability of the economy;

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

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

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

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

31 (7) the seasonal cycle of economic activity;

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

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

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

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

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

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

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

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

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

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

31 (i) The boards shall jointly, by regulation, adopt procedures by which the commissioner

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

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

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

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

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

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

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

28 (7) whether the person's taking of fish and game occurred solely in the
29 subsistence use area.

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

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

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

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

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

19 (o) For purposes of

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

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

27 (B) based on the findings of the appropriate board on each of the
28 following factors:

- 29 (i) resource population and management objectives;
30 (ii) estimated harvest per unit of effort by participants in the
31 fishery or hunt;

(iii) patterns and levels of customary and traditional taking and use of the fish or game;

(iv) migratory patterns and availability of fish or game;

(v) competition for the fish or game from other subsistence and nonsubsistence uses; and

(vi) other factors that the appropriate board considers relevant.

(2) subsection (i) of this section, "preceding 12 months" means for a person

(A) in (h)(1) of this section, the 12 months preceding the taking of the fish resource;

(B) in (h)(2) of this section, the 12 months preceding the date of signing required statement;

(C) in (h)(3) of this section, the 12 months preceding the date of signing application to the commissioner.

16.251(d) is amended to read:

Regulations adopted under (a) of this section must, consistent with sustained yield principles of AS 16.05.268 [AS 16.05.258], provide a fair and reasonable opportunity of fishery resources by personal use, sport, and commercial fishermen.

16.255(d) is amended to read:

Regulations adopted under (a) of this section shall provide that, consistent with the AS 16.05.268 [AS 16.05.258], the taking of moose, deer, elk, and caribou by personal or family consumption has preference over taking by nonresidents.

16.940(29) is amended to read:

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

16.940(30) is amended to read:

(30) "subsistence hunting" means the taking [OF, HUNTING FOR,] or possession, by a resident, of game [BY A RESIDENT DOMICILED] in a subsistence use

1 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for
2 subsistence uses by means defined by the Board of Game;

3 * Sec. 7. AS 16.05.940(31) is amended to read:

4 (31) "subsistence [USES]" means the noncommercial, customary and traditional
5 taking in a subsistence use area of the state, and the customary and traditional uses, of fish
6 and game [WILD, RENEWABLE RESOURCES] by a resident [DOMICILED IN A RURAL
7 AREA OF THE STATE] for direct, noncommercial, personal or family consumption as food,
8 [SHELTER, FUEL,] clothing, [TOOLS,] or transportation, for the making and selling of
9 handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal
10 or family consumption, for noncommercial sharing, and for barter and [THE] customary trade
11 of a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for
12 personal or family consumption; in this paragraph, "family" means persons related by blood,
13 marriage, or adoption, and a person living in the same household on a permanent basis;

14 * Sec. 8. AS 16.05.940 is amended by adding new paragraphs to read:

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

19 (37) "customary trade" means the limited, noncommercial exchange, for minimal
20 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested
21 primarily for personal or family consumption; "customary trade" does not include sales in
22 commercial channels; the terms of this paragraph do not restrict money sales of furs or
23 furbearers;

24 (38) "game management unit" is the same as an area of the state established as
25 a game management unit by the Board of Game under AS 16.05.255;

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

31 * Sec. 9. AS 16.05.258 and AS 16.05.940(26) are repealed.

1 * **Sec. 10. REGULATIONS.** Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,
2 Board of Game, and Department of Fish and Game shall adopt regulations necessary to implement the
3 provisions of this Act.

4 * **Sec. 11. TRANSITION.** (a) It is the intent of the legislature that the Board of Fisheries and the
5 Board of Game expeditiously adopt regulations necessary to implement this Act.

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

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

11 * **Sec. 12. REVIEW.** (a) The legislature acknowledges and recognizes that this Act deals with a
12 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature
13 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the
14 governor no later than June 1, 1994.

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

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

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

24 * **Sec. 13.** Sections 10 and 11 of this Act take effect immediately under AS 01.10.070(c).

25 * **Sec. 14.** Sections 1 - 9 and 12 of this Act take effect on the effective date of regulations first
26 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.

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GOVERNOR'S SUBSISTENCE BILL
SECTION-BY-SECTION DESCRIPTION
February 21, 1992

Section 1

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

Section 2

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

Proposed AS 16.05.268(a):

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

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

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

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

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

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

Proposed AS 16.05.268(b):

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

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

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

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

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

AS 16.05.268(b) (1):

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

AS 16.05.268(b) (2):

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

AS 16.05.268(b) (3):

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

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AS 16.05.268(b) (4):

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

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

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

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

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

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

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

Proposed AS 16.05.268(c):

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

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

Proposed AS 16.05.268(d):

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

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