

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672  
2154 SCOMM 81: . . . SPECIAL SESSION (SUBSISTENCE), June 1992 / HB 601

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

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

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

**BASIC LIST**

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**OTHERS**

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

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

Source: Community Profile Database, Division of Subsistence ADFG

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

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

Source: Community Profile Database, Division of Subsistence ADFG

Community	Region	Big Game	Birds & Eggs	Marine			Non- Salmon Fish	Plants & Berries	Salmon	Small Game/ Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
				Inverte- brates	Marina Mammals								
Trapper Creek	Southcentral	1	0	0	0	2	1	2	0	6	5	4	
Gulkana	Southcentral	2	0	0	0	1	2	2	0	7	5	4	
Lake Louise	Southcentral	1	0	0	0	4	2	0	0	7	5	5	
Siana Homestead N	Southcentral	1	1	0	0	1	2	2	0	7	5	4	
West Glenn Highwa	Southcentral	2	0	0	0	2	2	1	0	7	5	5	
Hurricane-Broad Pas	Southcentral	1	0	0	0	2	3	2	0	8	5	4	
Mantasta Pass	Southcentral	2	1	0	0	1	3	1	0	8	5	5	
Chese	Southcentral	1	1	0	0	3	3	1	0	9	6	6	
Gakona	Southcentral	2	1	0	0	2	2	2	0	9	7	6	
McCarthy Road	Southcentral	2	1	0	0	1	3	1	1	9	6	6	
Mentasta	Southcentral	2	1	0	0	2	3	1	0	9	6	6	
Paxson	Southcentral	2	2	0	0	3	1	1	0	9	8	8	
Sourdough	Southcentral	2	1	0	0	2	2	2	0	9	7	6	
South Wrangell Mou	Southcentral	2	1	0	0	2	3	1	0	9	6	6	
Gold Creek	Southcentral	1	2	0	0	3	3	1	0	10	7	7	
Nabesna Road	Southcentral	3	1	0	0	3	2	1	1	11	9	9	
Chenege Bay	Southcentral	2	1	5	2	3	2	0	0	15	13	13	
San Juan Bay	Southcentral	2	1	2	1	4	1	4		15	14	11	
Port Graham	Southcentral	1	0	5	1	3	3	5	0	18	15	11	
Tatitlek	Southcentral	2	1	2	3	4	2	5	0	19	17	13	
English Bay	Southcentral	2	1	5	1	6	4	5	0	24	20	16	
Sitka	Southeast	0	0	0	0	0	1	0		1	0	0	
Skagway	Southeast	0	0	2	0	1	0	0		3	3	3	
Haines	Southeast	0	0	0	0	2	1	1		4	3	3	
Coffman Cove	Southeast	1	0	2	0	2	1	1		7	6	6	
Tenakee Springs	Southeast	1	0	2	0	2	1	1		7	6	6	
Wrangell	Southeast	1	0	3	0	1	1	1		7	6	6	
Craig	Southeast	1	0	2	0	3	1	1		8	7	7	
Hyder	Southeast	0	0	3	0	2	2	1		8	6	6	
Metlakatla	Southeast	1	0	3	0	1	1	2		8	7	6	
Saxman	Southeast	1	0	1	0	2	2	2		8	6	5	
Gustavus	Southeast	1	0	2	0	2	2	2		9	7	6	

Count of the Resources Used by 50 Percent or More of Sampled Households  
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Source: Community Profile Database, Division of Subsistence ADFG

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

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

Source: Community Profile Database, Division of Subsistence ADFG

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

TABLE 3. COUNT OF RESOURCES USED BY CONSERVATIVE PERCENT OF HOUSEHOLDS

FOR SELECTED SURVEYED ALASKAN COMMUNITIES,  
RESOURCE CATEGORIES COUNTED IN TWO DIFFERENT WAYS

LIST 1. FULL SPECIES LIST AS COLLECTED BY SURVEY (CATEGORIES DIFFER SOMEWHAT BETWEEN COMMUNITIES)

LIST 2. SALMON COMBINED INTO A SINGLE SPECIES, PLANTS REMOVED FROM COUNT

COUNT	KOTZEBUE		KODIAK CITY		SITKA		GALENA		TANANA	
	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2
0	0.0	0.0	0.0	0.0	11.5	22.6	0.0	0.0	0.0	0.0
1	7.1	7.1	0.0	0.6	25.3	34.8	0.0	1.4	6.8	6.8
2	11.6	13.9	1.9	1.9	32.1	46.3	2.7	8.1	6.8	6.8
3	13.9	18.4	1.9	5.2	41.6	58.1	8.1	14.9	6.8	7.8
4	20.6	20.0	3.9	8.4	53.4	64.2	13.5	21.6	6.8	7.8
5	20.6	21.3	7.7	12.9	59.8	71.3	20.3	29.7	7.8	16.5
6	21.3	22.0	11.0	21.3	64.5	78.4	25.7	40.5	22.4	35.1
7	24.3	26.5	15.5	29.0	72.3	81.4	35.1	50.0	29.2	49.7
8	26.5	33.9	20.0	36.1	75.0	86.5	43.2	59.5	42.8	58.4
9	33.9	48.1	25.8	46.5	79.7	89.2	51.4	64.9	43.8	65.2
10	45.9	49.9	33.5	53.5	82.4	91.9	60.8	73.0	51.6	70.4
11	50.3	58.3	38.7	65.8	84.8	93.2	68.9	83.8	62.7	79.2
12	60.6	70.4	48.4	74.8	87.2	96.6	71.6	94.6	66.1	80.1
13	67.5	74.4	54.2	81.9	89.9	98.0	85.1	95.9	69.5	84.4
14	71.5	79.7	65.8	87.7	90.9	98.6	93.2	95.9	78.2	85.4
15	77.0	84.1	71.6	91.0	94.3	98.6	94.6	97.3	81.6	88.2
16	84.1	86.0	79.4	95.5	95.6	99.3	97.3	98.6	84.4	89.1
17	84.9	88.6	83.2	96.8	97.6	99.3	97.3	98.6	87.2	91.9
18	88.2	91.4	87.7	97.4	98.0	99.3	97.3	100.0	89.1	91.9
19	90.3	93.7	92.3	98.1	99.0	99.3	98.6	100.0	89.1	91.9
20	91.4	94.4	94.2	98.1	99.0	99.3	100.0	100.0	91.9	93.8
> 20	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

**FOR SELECTED SURVEYED ALASKAN COMMUNITIES,  
RESOURCE CATEGORIES COUNTED IN TWO DIFFERENT WAYS**

LIST 1. FULL SPECIES LIST AS COLLECTED BY SURVEY (CATEGORIES DIFFER SOMEWHAT BETWEEN COMMUNITIES)

LIST 2. SALMON COMBINED INTO A SINGLE SPECIES. PLANTS REMOVED FROM COUNT

COUNT	TOK	TOK	DOT LAKE	DOT LAKE	NORTHWAY	NORTHWAY	TANACROSS	TANACROSS	TETLIN	TETLIN
	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2
0	5.9	5.9	0.0	0.0	0.0	0.0	3.7	3.7	0.0	0.0
1	14.9	14.9	0.0	0.0	2.2	2.2	3.7	3.7	0.0	0.0
2	20.8	20.8	0.0	13.3	2.2	2.2	3.7	3.7	0.0	0.0
3	22.2	29.0	6.7	20.0	4.4	6.7	3.7	7.4	0.0	0.0
4	29.0	32.4	13.3	20.0	4.4	6.7	3.7	18.5	0.0	10.3
5	32.4	44.3	20.0	20.0	4.4	13.3	11.1	22.2	0.0	10.3
6	38.4	48.7	20.0	33.3	13.3	20.0	14.8	29.6	10.3	25.5
7	42.3	51.4	20.0	33.3	22.2	26.7	22.2	29.6	10.3	60.7
8	50.9	65.7	20.0	40.0	24.4	35.6	29.6	44.4	10.3	60.7
9	56.2	70.5	20.0	46.7	26.7	42.2	33.3	55.6	30.3	70.3
10	60.9	78.2	40.0	66.7	37.8	53.3	40.7	63.0	60.7	75.2
11	65.3	86.6	40.0	80.0	46.7	57.8	44.4	74.4	60.7	85.5
12	72.3	87.5	60.0	93.3	51.1	62.2	55.6	77.8	80.7	85.5
13	78.0	89.4	60.0	93.3	55.6	73.3	66.7	88.9	85.5	90.3
14	78.9	89.8	73.3	100.0	62.2	80.0	74.1	92.6	85.5	95.2
15	82.8	91.6	86.7	100.0	68.9	86.7	85.2	96.3	85.5	95.2
16	89.4	96.4	93.3	100.0	82.2	93.3	88.9	100.0	90.3	100.0
17	89.8	96.4	93.3	100.0	88.9	93.3	88.9	100.0	95.2	100.0
18	90.7	97.3	100.0	100.0	88.9	100.0	92.6	100.0	95.2	100.0
19	91.2	98.6	100.0	100.0	93.3	100.0	100.0	100.0	95.2	100.0
20	93.0	98.6	100.0	100.0	95.6	100.0	100.0	100.0	95.2	100.0
> 20	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0



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

February 1992

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

Basic Listing of Subsistence Studies

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SB 485

SENATE BILL NO. 485

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY SENATORS ADAMS, Hoffman

Introduced: 6/15/92  
Referred: Senate Committee of the Whole

A BILL

FOR AN ACT ENTITLED

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

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

4 \* Section 1. FINDINGS. The legislature finds that

5 (1) the overwhelming majority of residents of rural areas of the state, both  
6 Alaska Natives and non-Natives, rely upon the subsistence use of fish and game for  
7 nutritional, economic, social, and cultural purposes;

8 (2) residents of rural areas of the state have few nutritional and economic  
9 alternatives for maintaining their livelihood other than subsistence uses of fish and wildlife;

10 (3) the state's fish and game are not unlimited and cannot provide for every  
11 desired use, now or in the future; competition for and the level of effort on these resources  
12 have required the legislature to establish a preference for subsistence among the various  
13 beneficial uses of fish and game in the state; and

14 (4) residents of urban areas of the state have nutritional and economic

1 alternatives for maintaining their livelihood other than subsistence uses of fish and wildlife,  
2 though many residents of urban areas do rely upon the taking of fish and wildlife for  
3 nutritional and cultural purposes.

4 \* Sec. 2. AS 16.05.070 is amended to read:

5 Sec. 16.05.070. REGULATIONS AS EVIDENCE. Regulations of the boards  
6 of fisheries and game, of the Subsistence Board, and of the commissioner, including  
7 emergency openings and closures, are admissible as evidence in the courts of the state  
8 in accordance with the Administrative Procedure Act (AS 44.62).

9 \* Sec. 3. AS 16.05.080 is amended to read:

10 Sec. 16.05.080. LIMITATION OF POWER. Nothing in this chapter  
11 authorizes the department, the Subsistence Board, or the boards of fisheries and  
12 game to change the amount of fees or licenses.

13 \* Sec. 4. AS 16.05.094 is amended to read:

14 Sec. 16.05.094. DUTIES OF SECTION OF SUBSISTENCE HUNTING AND  
15 FISHING. The section of subsistence hunting and fishing shall

16 (1) compile existing data and conduct studies to gather information,  
17 including data from subsistence users and urban subsistence users, on all aspects of  
18 the role of subsistence hunting and fishing in the lives of the rural and urban  
19 residents of the state;

20 (2) quantify the amount, nutritional value, and extent of dependence  
21 on food acquired through subsistence hunting and fishing by rural and urban  
22 residents of the state;

23 (3) make information gathered available to the public, appropriate  
24 agencies, and other organized bodies;

25 (4) assist the department, the Subsistence Board, the Board of  
26 Fisheries, and the Board of Game in determining what uses of fish and game, as well  
27 as which users and what methods, should be termed subsistence uses, users, and  
28 methods;

29 (5) evaluate the impact of state and federal laws and regulations on  
30 subsistence hunting and fishing and, when corrective action is indicated, make  
31 recommendations to the department;

1 (6) make recommendations to the Subsistence Board [BOARD OF  
2 GAME AND THE BOARD OF FISHERIES] regarding adoption, amendment, and  
3 repeal of regulations affecting subsistence hunting and fishing and urban subsistence  
4 hunting and fishing;

5 (7) participate with other divisions in the preparation of statewide and  
6 regional management plans so that those plans recognize and incorporate the needs  
7 of rural and urban subsistence users of fish and game.

8 \* Sec. 5. AS 16.05.094 is amended by adding a new subsection to read:

9 (b) The section of subsistence hunting and fishing shall provide staff for the  
10 Subsistence Board.

11 \* Sec. 6. AS 16.05.221 is amended by adding a new subsection to read:

12 (c) There is created the Subsistence Board consisting of one member from  
13 each subsistence region established under AS 16.05.260(b). The regional council of  
14 each subsistence region shall submit the names of three persons to serve on the board  
15 from its respective region. The governor shall appoint members of the board from  
16 among persons nominated by the regional council within 30 days after the governor  
17 receives the list of persons nominated by a regional council to fill a vacancy on the  
18 board. If the governor rejects all persons nominated by a regional council, the  
19 regional council shall submit to the governor a list of three new persons to fill the  
20 vacancy on the board. Persons nominated by a regional council must be subsistence  
21 users and residents of the subsistence region from which they are appointed.  
22 Members of the board shall be appointed to staggered three-year terms, subject to  
23 confirmation by a majority of the members of the legislature in joint session. The  
24 commissioner is not a member of the board, but shall be ex officio secretary.

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

26 Sec. 16.05.231. **AUTHORITY OF SUBSISTENCE BOARD.** (a) The  
27 Subsistence Board shall identify by regulation

28 (1) communities and areas of the state that qualify as rural areas under  
29 this paragraph as follows:

30 (A) a community or area with a population of 2,500 persons  
31 or less is a rural area unless the board determines that the community or area

1 possesses significant characteristics of an urban nature or is a part of an  
2 urbanized area;

3 (B) a community or area with a population of more than 2,500  
4 persons but not more than 7,000 persons shall be classified as a rural area or  
5 urban area according to the characteristics identified under (E) of this  
6 paragraph; the board shall classify communities and areas of more than 2,500  
7 persons but not more than 7,000 persons before classifying other communities  
8 and areas;

9 (C) a community or area with a population of more than 7,000  
10 persons is presumed to be an urban area, unless the board determines that the  
11 community or area should be classified as a rural area because the community  
12 or area possesses significant characteristics of a rural area;

13 (D) the population of a community or area is determined  
14 according to the most recent census conducted by the United States Bureau of  
15 the Census as updated by the Department of Labor;

16 (E) community or area characteristics must be considered in  
17 determining whether the community or area is a rural area or urban area; the  
18 characteristics that may be considered include fish and game use, development  
19 and diversity of the economy, transportation, communication links, community  
20 infrastructure, and educational, cultural, and governmental institutions;

21 (F) communities or areas that are economically, socially, and  
22 communally integrated must be considered in the aggregate;

23 (2) for each rural and urban area of the state,

24 (A) the fish stocks and game populations that are taken for  
25 subsistence uses or urban subsistence uses;

26 (B) the customary and traditional patterns of taking and use of  
27 fish stocks and game populations taken for subsistence uses or urban  
28 subsistence uses;

29 (C) how much of the harvestable portion of a fish stock or  
30 game population identified in (A) of this paragraph is needed to satisfy  
31 subsistence uses and urban subsistence uses of the stock or population;

1 (3) the criteria for identifying those residents who qualify as urban  
2 subsistence users because they

3 (A) are residents of a community or area that has a nutritional  
4 or cultural dependence upon wild renewable resources for urban subsistence  
5 uses; or

6 (B) can individually demonstrate that they have a nutritional  
7 or cultural dependence upon wild renewable resources for urban subsistence  
8 uses.

9 (b) The Subsistence Board shall adopt regulations necessary to provide for  
10 subsistence fishing and hunting and urban subsistence fishing and hunting under this  
11 section and AS 16.05.258.

12 (c) For each fish stock and game population, or portion of a stock or  
13 population, that is taken for subsistence uses and identified under (a)(2) of this  
14 section, and when necessary to implement the provisions of AS 16.05.258(c), the  
15 Subsistence Board shall identify those residents who

16 (1) engage in subsistence uses of the stock or population;

17 (2) have the greatest customary and direct dependence on the  
18 subsistence uses of fish and game as the mainstay of livelihood;

19 (3) live closest to the stock or population; and

20 (4) have the least availability of alternative resources.

21 (d) For each fish stock and game population, or portion of a stock or  
22 population, that is taken for urban subsistence uses, identified under (a)(2) of this  
23 section, and when necessary to implement the provisions of AS 16.05.258(f), the  
24 Subsistence Board shall identify residents who

25 (1) engage in urban subsistence uses of the stock or population;

26 (2) have the greatest customary and direct dependence on the  
27 subsistence uses of fish and wildlife as the mainstay of livelihood;

28 (3) live closest to the stock or population; and

29 (4) have the least availability of alternative resources.

30 (e) In this section, "community" means a group of people who can  
31 demonstrate a sustained interaction or significant relationship that differentiate

1 members of the group from nonmembers; "community" shall be construed in the  
2 context of the history, geography, and cultural organization of the group.

3 \* Sec. 8. AS 16.05.251(a) is amended to read:

4 (a) Subject to the authority of the Subsistence Board under AS 16.05.231  
5 and to AS 16.05.258, the [THE] Board of Fisheries may adopt regulations it  
6 considers advisable in accordance with the Administrative Procedure Act (AS 44.62)  
7 for

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

11 (2) establishing open and closed seasons and areas for the taking of  
12 fish; if consistent with resource conservation and development goals, the board may  
13 adopt regulations establishing restricted seasons and areas necessary for persons 60  
14 years of age and older to participate in sport or [,] personal use [, OR  
15 SUBSISTENCE] fishing;

16 (3) setting quotas, bag limits, harvest levels, and sex and size  
17 limitations on the taking of fish;

18 (4) establishing the means and methods employed in the pursuit,  
19 capture, and transport of fish;

20 (5) establishing marking and identification requirements for means  
21 used in pursuit, capture, and transport of fish;

22 (6) classifying as commercial fish, sport fish, personal use fish,  
23 [SUBSISTENCE FISH,] or predators or other categories essential for regulatory  
24 purposes;

25 (7) watershed and habitat improvement, and management,  
26 conservation, protection, use, disposal, propagation, and stocking of fish;

27 (8) investigating and determining the extent and effect of disease,  
28 predation, and competition among fish in the state, exercising control measures  
29 considered necessary to the resources of the state;

30 (9) prohibiting and regulating the live capture, possession, transport,  
31 or release of native or exotic fish or their eggs;

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(10) establishing seasons, areas, quotas, and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits, and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

(12) regulating commercial, sport, [SUBSISTENCE,] and personal use fishing as needed for the conservation, development, and utilization of fisheries;

(13) requiring, in a fishery, observers on board fishing vessels, as defined in AS 16.05.475(d), that are registered under the laws of the state, as defined in AS 16.05.475(c), after making a written determination that an on-board observer program

(A) is the only practical data-gathering or enforcement mechanism for that fishery;

(B) will not unduly disrupt the fishery;

(C) can be conducted at a reasonable cost; and

(D) can be coordinated with observer programs of other agencies, including the National Marine Fisheries Service, North Pacific Fishery Management Council, and the International Pacific Halibut Commission;

(14) establishing nonexclusive, exclusive, and super exclusive registration and use areas for regulating commercial fishing.

\* Sec. 9. AS 16.05.255(a) is amended to read:

(a) Subject to the authority of the Subsistence Board under AS 16.05.231 and to AS 16.05.258, the [THE] Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart game reserve areas, refuges, and sanctuaries in the water or on the land of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of game;

1 (3) establishing the means and methods employed in the pursuit,  
2 capture, and transport of game, including regulations, consistent with resource  
3 conservation and development goals, establishing means and methods that may be  
4 employed by persons with physical disabilities;

5 (4) setting quotas, bag limits, harvest levels, and sex, age, and size  
6 limitations on the taking of game;

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

9 (6) methods, means, and harvest levels necessary to control predation  
10 and competition among game in the state;

11 (7) watershed and habitat improvement, and management,  
12 conservation, protection, use, disposal, propagation, and stocking of game;

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

15 (9) establishing the times and dates during which the issuance of game  
16 licenses, permits, and registrations and the transfer of permits and registrations  
17 between registration areas and game management units or subunits is allowed;

18 (10) regulating sport hunting [AND SUBSISTENCE HUNTING] as  
19 needed for the conservation, development, and utilization of game.

20 \* Sec. 10. AS 16.05.258 is repealed and reenacted to read:

21 Sec. 16.05.258. SUBSISTENCE AND ALLOCATION OF FISH AND  
22 GAME. (a) A combined board shall determine what portion, if any, of the fish  
23 stocks and game populations identified under AS 16.05.231(a)(2) can be harvested  
24 consistent with sustained yield.

25 (b) The Subsistence Board shall determine how much of the harvestable  
26 portion of a stock or population is needed to satisfy the subsistence uses of the stock  
27 and population.

28 (c) The Subsistence Board shall adopt subsistence fishing and hunting  
29 regulations for each stock and population for which a harvestable portion is  
30 determined to exist under (a) of this section. Regulations adopted by the Subsistence  
31 Board under this subsection shall provide, to the extent consistent with sustained

1 yield, for the customary and traditional uses and practices of residents who engage in  
2 subsistence use in a manner that will result in the least adverse effect upon those uses.  
3 If the harvestable portion of a stock or population is not sufficient to accommodate  
4 all consumptive uses of the stock or population, but is sufficient to accommodate  
5 subsistence uses of the stock or population, then nonwasteful subsistence uses shall  
6 be accorded a preference over other consumptive uses, including urban subsistence  
7 uses, of the stock or population. If it is necessary to restrict subsistence fishing or  
8 subsistence hunting in order to assure sustained yield or to continue subsistence uses  
9 of the stock or population, then the preference for subsistence uses shall be limited,  
10 and the Subsistence Board shall distinguish among subsistence users, by applying the  
11 following criteria:

12 (1) customary and direct dependence on the fish stock or game  
13 population as the mainstay of livelihood;

14 (2) local residency; and

15 (3) availability of alternative resources.

16 (d) The Subsistence Board shall determine how much of the harvestable  
17 portion of a stock or population is needed to provide for the urban subsistence uses  
18 of the stock or population. If the harvestable portion of a stock or population  
19 identified under AS 16.05.231(a)(2) is sufficient to accommodate consumptive uses  
20 in addition to subsistence uses, the Subsistence Board shall adopt regulations  
21 consistent with this section that authorize the taking of the stock or population for  
22 urban subsistence uses. The Board of Fisheries or Board of Game, as appropriate,  
23 may adopt regulations consistent with this section that authorize the taking of the  
24 stock or population for other consumptive uses.

25 (e) Regulations adopted by the Board of Fisheries or the Board of Game  
26 under (d) of this section may not authorize a level of nonsubsistence hunting or  
27 fishing that would deny subsistence users the opportunity to satisfy subsistence uses  
28 or urban subsistence uses due to overcrowding in harvest areas or disruption of stocks  
29 or populations.

30 (f) Regulations adopted under (d) of this section shall provide for the taking  
31 of all, or a portion, of the remainder of the harvestable portion of a stock or

1 population for urban subsistence uses; and that the taking of a stock or population for  
2 urban subsistence uses has a preference over the taking of the stock or population for  
3 nonsubsistence consumptive uses. If the harvestable portion of a stock or population  
4 available for urban subsistence uses is not sufficient to accommodate all urban  
5 subsistence users, the Subsistence Board shall determine which urban subsistence  
6 users may participate in the taking of the stock or population for urban subsistence  
7 uses on the basis of

8 (1) customary and direct dependence on the stock or population as the  
9 mainstay of livelihood;

10 (2) local residency; and

11 (3) availability of alternative resources.

12 (g) Subject to (c) of this section, the taking of fish or game authorized under  
13 this section is subject to reasonable regulation of seasons, catch or bag limits, and  
14 methods and means by the Subsistence Board. The taking and use of fish and game  
15 authorized under this section is subject to AS 16.05.831 and AS 16.30.

16 (h) If the harvestable portion of a stock or population is insufficient to provide  
17 for subsistence uses, urban subsistence uses, and nonsubsistence consumptive uses, the  
18 department and advisory committee members representing affected subsistence users,  
19 urban subsistence users, and nonsubsistence users shall develop a cooperative  
20 management plan to facilitate the recovery of the stock or population to allow for  
21 increased consumptive use of the stock or population. The cooperative management  
22 plan must contain recommendations to the appropriate boards for necessary changes  
23 in regulations. If the subsistence uses or urban subsistence uses of a stock or  
24 population has been eliminated to achieve sustained yield, the Subsistence Board shall  
25 adopt regulations to allow subsistence harvest of the stock or population as soon as  
26 the combined board has determined there is a harvestable portion consistent with  
27 sustained yield.

28 (i) In this section, "combined board" means the Subsistence Board and the  
29 Board of Fisheries, acting jointly, in regard to fishery resources and the Subsistence  
30 Board and the Board of Game, acting jointly, in regard to game resources.

31 \* Sec. 11. AS 16.05.260 is amended to read:

1                   **Sec. 16.05.260. ADVISORY COMMITTEES. The Subsistence Board, the**  
2                   Board of Fisheries, and the Board of Game may adopt regulations they consider  
3                   advisable in accordance with the Administrative Procedure Act (AS 44.62)  
4                   establishing, at places in the state designated by the individual boards, advisory  
5                   committees to be composed of persons well informed on the fish or game resources  
6                   of the locality. The boards shall set the number and terms of each of the members  
7                   of the advisory committees, shall delegate one member of each committee as **chair**  
8                   **[CHAIRMAN]**, and shall give the **chair** **[CHAIRMAN]** authority to hold public  
9                   hearings on fish or game matters. Recommendations from the advisory committees  
10                  shall be forwarded to the appropriate board for their consideration but if **the**  
11                  **Subsistence Board,** the Board of Fisheries, or the Board of Game chooses not to  
12                  follow the recommendations of the local advisory committee the appropriate board  
13                  shall inform the appropriate advisory committee of this action and state the reasons  
14                  for not following the recommendations. The commissioner shall delegate authority  
15                  to advisory committees for emergency closures during established seasons. The  
16                  commissioner is empowered to set aside and make null and void only opening of  
17                  seasons set by the advisory committees under this section. The appropriate board  
18                  shall adopt the necessary regulations governing these closures.

19                  \* **Sec. 12.** AS 16.05.260 is amended by adding new subsections to read:

20                         (b) Board of Fisheries and Board of Game, acting jointly, shall divide the  
21                         state into at least six subsistence regions. The number and boundaries of the regions  
22                         shall be sufficient to assure that regional differences in subsistence uses and urban  
23                         subsistence uses of fish and game are adequately accommodated. The commissioner  
24                         shall establish a regional council in each subsistence region. The membership of each  
25                         regional council consists of the chair, or the chair's designee, of each advisory  
26                         committee within the region.

27                         (c) Each regional council, in consultation with the section of subsistence  
28                         hunting and fishing, shall provide recommendations to the Subsistence Board on the  
29                         identifications and regulations required under AS 16.05.231 and 16.05.258. The  
30                         Subsistence Board shall adopt a recommendation unless the recommendation is not  
31                         supported by substantial evidence presented during the course of its proceedings,

1 violates recognized principles of fish and wildlife conservation, or would be  
2 detrimental to the satisfaction of subsistence needs. If the Subsistence Board does not  
3 follow the recommendation of a regional council, the board shall return the  
4 recommendation with an explanation of its reason for not adopting the  
5 recommendation to the regional council for further consideration.

6 \* Sec. 13. AS 16.05.270 is amended to read:

7 Sec. 16.05.270. DELEGATION OF AUTHORITY TO COMMISSIONER.

8 For the purpose of administering AS 16.05.231, 16.05.251, [AS 16.05.251] and  
9 16.05.255, each board may delegate authority to the commissioner to act in its behalf.  
10 If there is a conflict between the board and the commissioner on proposed regulations,  
11 public hearings shall be held concerning the issues in question. If, after the public  
12 hearings, the board and the commissioner continue to disagree, the issue shall be  
13 certified in writing by the board and the commissioner to the governor who shall  
14 make a decision. The decision of the governor is final.

15 \* Sec. 14. AS 16.05.315 is amended to read:

16 Sec. 16.05.315. JOINT BOARD MEETINGS. The Board of Fisheries and the  
17 Board of Game, the Subsistence Board and the Board of Fisheries, the Subsistence  
18 Board and the Board of Game, or the Subsistence Board, Board of Fisheries, and  
19 the Board of Game may hold a joint meeting upon the call of the commissioner or  
20 a board to resolve any conflicts in regulations of the boards and to consider matters,  
21 as determined by the commissioner or a board, which require the joint consideration  
22 of the [BOTH] boards.

23 \* Sec. 15. AS 16.05.320 is amended to read:

24 Sec. 16.05.320. QUORUM. A majority of the members of a board constitutes  
25 a quorum for the transaction of business, for the performance of any duty, and for the  
26 exercise of any power. However, a majority of the full board membership is required  
27 to carry all motions, regulations, and resolutions. A majority of the members of the  
28 boards convening in a joint meeting [OF FISHERIES AND GAME] constitute a  
29 quorum for the transaction of business in a joint board meeting. A majority of the  
30 membership of the boards is required to carry all joint motions, regulations, and  
31 resolutions of the boards.

1     \* **Sec. 16.** AS 16.05.330(c) is amended to read:

2             (c) The Subsistence Board [OF FISHERIES AND THE BOARD OF GAME]  
3             may adopt regulations providing for the issuance and expiration of subsistence permits  
4             for areas, villages, communities, groups, or individuals as needed for authorizing,  
5             regulating, and monitoring the subsistence harvest of fish and game by subsistence  
6             users or urban subsistence users. The boards shall adopt these regulations when the  
7             subsistence preference requires a reduction in the harvest of a fish stock or game  
8             population by subsistence users, urban subsistence users, or nonsubsistence users.

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

10             (3) "a board" means either the Subsistence Board, the Board of  
11             Fisheries, or the Board of Game;

12     \* **Sec. 18.** AS 16.05.940(26) is repealed and reenacted to read:

13             (26) "rural area" means a community or area of the state classified as  
14             rural by the Subsistence Board;

15     \* **Sec. 19.** AS 16.05.940(29) is repealed and reenacted to read:

16             (29) "subsistence fishing" means the taking of, fishing for, or  
17             possession of fish, shellfish, or other fisheries resources by a resident domiciled in a  
18             rural area of the state for subsistence uses with gill net, seine, fish wheel, long line,  
19             or other means defined by the Subsistence Board;

20     \* **Sec. 20.** AS 16.05.940(30) is repealed and reenacted to read:

21             (30) "subsistence hunting" means the taking of, hunting for, or  
22             possession of game by a resident domiciled in a rural area of the state for subsistence  
23             uses by means defined by the Subsistence Board;

24     \* **Sec. 21.** AS 16.05.940(31) is repealed and reenacted to read:

25             (31) "subsistence uses" means the noncommercial, customary and  
26             traditional uses of wild, renewable resources by a resident domiciled in a rural area  
27             of the state for direct personal or family consumption as food, shelter, fuel, clothing,  
28             tools, or transportation, for the making and selling of handicraft articles out of  
29             nonedible by-products of fish and wildlife resources taken for personal or family  
30             consumption, and for the customary trade, barter, or sharing for personal or family  
31             consumption; in this paragraph, "family" means persons related by blood, marriage,

1 or adoption, and includes a person living in the household on a permanent basis;

2 \* Sec. 22. AS 16.05.940 is amended by adding new paragraphs to read:

3 (36) "urban subsistence fishing" means the taking of, fishing for, or  
4 possession of fish, shellfish, or other fisheries resources by a resident who is  
5 domiciled in an urban area of the state for urban subsistence uses with gill net, seine,  
6 fish wheel, long line, or other means defined by the Subsistence Board;

7 (37) "urban subsistence hunting" means the taking of, hunting for, or  
8 possession of game by a resident who is domiciled in an urban area of the state for  
9 urban subsistence uses;

10 (38) "urban subsistence uses" means the noncommercial, customary,  
11 and traditional uses of wild, renewable resources by a resident of the state who is  
12 domiciled in an urban area for direct personal or family consumption as food, shelter,  
13 fuel, clothing, tools, or transportation, for the making and selling of handicraft articles  
14 out of nonedible by-products of fish and wildlife resources taken for personal or  
15 family consumption, and for the customary trade, barter, or for sharing for personal  
16 or family consumption; in this paragraph, "family" means persons related by blood,  
17 marriage, or adoption, and includes a person living in the household on a permanent  
18 basis;

19 (39) "urban area" means a community or area that has not been  
20 classified as a rural area by the Subsistence Board.

21 \* Sec. 23. AS 16.20.033(f) is amended to read:

22 (f) The department shall allow commercial, sport, and subsistence fishing and  
23 hunting within the Yakataga State Game Refuge under regulations of the Subsistence  
24 Board, the Board of Fisheries, and the Board of Game. The department shall also  
25 permit associated support activities when necessary and consistent with  
26 AS 16.20.010 - 16.20.080 to support fishing and hunting permitted under this section,  
27 including fish buying operations, aircraft support including landing strips, and off-road  
28 vehicle use.

29 \* Sec. 24. AS 16.20.510 is amended to read:

30 Sec. 16.20.510. REGULATIONS. The Subsistence Board, the Board of  
31 Fisheries, and the Board of Game, where appropriate, shall adopt regulations they

1 consider advisable for conservation and protection purposes governing the taking of  
2 fish and game in state fish and game critical habitat areas.

3 \* Sec. 25. AS 41.21.174(b) is amended to read:

4 (b) The Department of Fish and Game is responsible for the management of  
5 fish and game resources in the Shuyak Island State Park, consistent with the sustained  
6 yield principle and the purposes and provisions of this chapter. The Subsistence  
7 Board, the Board of Fisheries, the Board of Game, and the commissioner of fish and  
8 game are responsible for adopting regulations governing uses of fish and game under  
9 [IN ACCORDANCE WITH] AS 16. The fish and game habitat and breeding areas  
10 shall be managed to ensure that the fish and game resources of the park continue on  
11 a sustained yield basis.

12 \* Sec. 26. AS 41.21.176(c) is amended to read:

13 (c) The regulations governing public use of the Shuyak Island State Park shall  
14 provide ample access for legal sport and subsistence hunting and fishing, trapping, and  
15 recreational uses. Except to protect public safety the commissioner may not restrict  
16 the exercise of sport or subsistence fishing or hunting, or trapping permitted under law  
17 or under a regulation of the Subsistence Board, the Board of Fisheries, or the Board  
18 of Game within the Shuyak Island State Park.

19 \* Sec. 27. AS 41.21.183(b) is amended to read:

20 (b) The Department of Fish and Game is responsible for the management of  
21 fish and game resources in the Point Bridget State Park, consistent with the  
22 sustained-yield principle and the purposes and provisions of this chapter. The  
23 Subsistence Board, the Board of Fisheries, the Board of Game, and the commissioner  
24 of fish and game are responsible for adopting regulations governing uses of fish and  
25 game under AS 16. The fish and game habitat and breeding areas shall be managed  
26 to ensure that the fish and game resources of the park continue on a sustained-yield  
27 basis.

28 \* Sec. 28. AS 41.21.302(d) is amended to read:

29 (d) The commissioner may not restrict the exercise of fishing, hunting, or  
30 trapping rights permitted under law or under a regulation of the Subsistence Board,  
31 the Board of Fisheries, or the Board of Game within a marine park unit of the Alaska

1 state park system.

2 \* Sec. 29. AS 41.21.492(b) is amended to read:

3 (b) Nothing in AS 41.21.491 - 41.21.495 affects the responsibilities of

4 (1) the Department of Fish and Game, the Subsistence Board, the  
5 Board of Fisheries, or the Board of Game under AS 16 and AS 41.99.010;

6 (2) the Department of Environmental Conservation under AS 46.03;

7 or

8 (3) state agencies and municipalities under AS 44.19.145(a)(11) and  
9 AS 46.40.100.

10 \* Sec. 30. AS 41.21.504(b) is amended to read:

11 (b) Nothing in AS 41.21.500 - 41.21.514 affects the applicability of

12 (1) AS 41.99.010 and AS 16 regarding the responsibilities of the  
13 Department of Fish and Game, the Subsistence Board, [OR] the Board of Fisheries,  
14 or the Board of Game;

15 (2) AS 46.03 regarding the responsibilities of the Department of  
16 Environmental Conservation; or

17 (3) AS 44.19.145(a)(11) and AS 46.40.100 regarding the  
18 responsibilities of state agencies and municipalities.

19 \* Sec. 31. AS 41.21.616 is amended to read:

20 Sec. 41.21.616. REGULATIONS. The department shall consult with the  
21 Department of Fish and Game, the United States Fish and Wildlife Service, a local  
22 governing body of a municipality, any local fish and game advisory committees, and  
23 the Alaska Chilkat Bald Eagle Preserve Advisory Council established by  
24 AS 41.21.625 before adoption of reasonable regulations governing public use and  
25 protection of the Alaska Chilkat Bald Eagle Preserve. The Department of Fish and  
26 Game shall consult with the department and the Alaska Chilkat Bald Eagle Preserve  
27 Advisory Council in proposing regulations governing fish and game management in  
28 the Alaska Chilkat Bald Eagle Preserve for adoption by the Subsistence Board, the  
29 Board of Fisheries, or the Board of Game. The Department of Fish and Game and  
30 the department shall cooperate with the United States Fish and Wildlife Service in  
31 [ITS] administration of federal law governing the conservation of bald eagles.

1 \* Sec. 32. AS 41.23.030(c) is amended to read:

2 (c) The commissioner may not restrict lawful sport and subsistence fishing,  
3 hunting, or trapping rights allowed under a regulation of the Subsistence Board, the  
4 Board of Fisheries, or the Board of Game within the Nelchina Public Use Area.

5 \* Sec. 33. AS 41.23.110(b) is amended to read:

6 (b) The commissioner of fish and game, the Subsistence Board, the Board  
7 of Fisheries, and the Board of Game are responsible for the management of fish and  
8 game resources and public use of fish and wildlife in the Hatcher Pass Public Use  
9 Area consistent with the purposes of AS 41.23.100.

10 \* Sec. 34. AS 41.23.110(d) is amended to read:

11 (d) The provisions of AS 41.23.100 - 41.23.130 do not restrict a responsibility  
12 within the Hatcher Pass Public Use Area of the commissioner of fish and game, the  
13 Subsistence Board, the Board of Fisheries, the Board of Game, the commissioner of  
14 environmental conservation, or the commissioner of public safety.

15 \* Sec. 35. AS 41.23.120(c) is amended to read:

16 (c) The commissioner may not restrict lawful fishing, hunting, or trapping  
17 rights allowed under a regulation of the Subsistence Board, the Board of Fisheries,  
18 or the Board of Game within the Hatcher Pass Public Use Area.

19 \* Sec. 36. AS 41.23.160(c) is amended to read:

20 (c) The commissioner may not restrict fishing, hunting, or trapping rights  
21 allowed under a regulation of the Subsistence Board, the Board of Fisheries, or the  
22 Board of Game within the Goldstream Public Use Area.

23 \* Sec. 37. AS 41.23.420(d) is amended to read:

24 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of

25 (1) the Department of Fish and Game, the Subsistence Board, the  
26 Board of Fisheries, the Board of Game, or the Big Game Commercial Services Board  
27 under AS 08.54, AS 16, or AS 41.99.010;

28 (2) the Department of Environmental Conservation under AS 46.03;

29 or

30 (3) state agencies and municipalities under AS 44.19.145(a)(11) and  
31 AS 46.40.100.

1 \* Sec. 38. AS 41.99.010 is amended to read:

2 Sec. 41.99.010. GAME MANAGEMENT AND ENFORCEMENT. Nothing  
3 in this title denies the Department of Fish and Game, the Subsistence Board, [OR]  
4 the Board of Fisheries, or [AND] the Board of Game [THEIR] management and  
5 enforcement responsibilities related to the fish and game of this state.

6 \* Sec. 39. AS 44.39.030 is amended to read:

7 Sec. 44.39.030. APPOINTMENT AND TERM OF OFFICE OF  
8 COMMISSIONER. The governor shall appoint the commissioner of fish and game  
9 from a list of qualified persons nominated by the Subsistence Board, the Board of  
10 Fisheries, and the Board of Game meeting in joint session, subject to the right of the  
11 governor to request additional nominations. The appointment shall be confirmed by  
12 a majority of the members of the legislature in joint session. The commissioner of  
13 fish and game serves for a term of five years.

14 \* Sec. 40. AS 44.39.050 is amended to read:

15 Sec. 44.39.050. REMOVAL OF COMMISSIONER. The Subsistence Board,  
16 the Board of Fisheries, or the Board of Game may submit a resolution to the governor  
17 requesting the removal of the commissioner. The resolution shall set out the grounds  
18 for the request and the governor shall give the commissioner and both boards an  
19 opportunity to be heard. The final decision to remove or retain the commissioner shall  
20 be made by the governor.

21 \* Sec. 41. INITIAL APPOINTMENT OF MEMBERS TO THE SUBSISTENCE BOARD.

22 In making the initial appointments to the Subsistence Board created under AS 16.05.221(c),  
23 added by sec. 6 of this Act, the governor shall designate those members of the board that are  
24 appointed to one-year, two-year, and three-year terms.

25 \* Sec. 42. Sections 1 and 6 of this Act, AS 16.05.260(b) added by sec. 12 of this Act, and  
26 sec. 41 of this Act take effect on the effective date of a constitutional amendment relating to  
27 subsistence uses of fish and game that is approved by the voters at the 1992 general election.

28 \* Sec. 43. Except as provided in sec. 42 of this Act, this Act takes effect upon the  
29 convening of the first meeting of the Subsistence Board created under AS 16.05.221(c), added  
30 by sec. 6 of this Act. The commissioner of fish and game shall notify the lieutenant governor  
31 and the revisor of statutes of the date of the first meeting of the Subsistence Board.

**FISCAL NOTE**

(HB 592)

**BILL NO. AFN Bill**

**STATE OF ALASKA  
1992 LEGISLATIVE SESSION**

\*Introduced during 1992 regular session

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

Department Affected: Fish and Game

Title: Subsistence taking of fish and game

BRU: Commercial Fisheries

Component: Commercial Fisheries

Sponsor: House Resources

Requestor: House Resources  
Expenditures/Revenues: (Thousands of Dollars)

COMPONENT SERIAL NO. 

4	5	9
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OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	31.2	32.4	33.7	35.1	36.5	38.0
CONTRACTUAL	1.0	1.0	1.1	1.1	1.2	1.2
SUPPLIES	1.0	1.0	1.1	1.1	1.2	1.2
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>33.2</b>	<b>34.4</b>	<b>35.9</b>	<b>37.3</b>	<b>38.9</b>	<b>40.4</b>

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

GENERAL FUND	33.2	34.4	35.9	37.3	38.9	40.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
<b>TOTAL</b>	<b>33.2</b>	<b>34.4</b>	<b>35.9</b>	<b>37.3</b>	<b>38.9</b>	<b>40.4</b>

**POSITIONS:**

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

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary.)**

Creation of a Subsistence Board will result in about 20 more board meetings days per year in which in which the division will have to participate. Figures reflect 4% increase for inflation.

Prepared By: Bob Clasby

Phone: 465-4210

Division: Commercial Fisheries

Date: 6/14/92

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game

Date: 6/15/92

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

FISCAL NOTE

(HB 592) \*  
BILL NO. AFN

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

\*Introduced during 1992 regular session

Revision Date: \_\_\_\_\_ Department Affected: Fish and Game

Title: An Act Relating to the taking BRU: Subsistence

of fish and game for Subsistence Component: Subsistence

Sponsor: House Resources

Requestor: House Resources 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 FY92.

ANALYSIS: Creates an individual application system for urban residents, with costs similar to the Consensus Bill.

Prepared By: Robert Bosworth  Phone: 465-1147

Division: Division of Subsistence Date: 6/15/92

Approved by Commissioner: Carl L. Resier

Agency: Department of Fish and Game Date: 6/15/92

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

## **FISCAL NOTE ANALYSIS: Division of Subsistence**

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

#### **OVERVIEW:**

The AFN/Bush Caucus subsistence bill creates a new system by which subsistence qualification criteria are applied to individual applicants in the urbanized areas of Alaska. We assume that the implementation of this qualification process will be a procedure identical to that of the Subsistence Council bill. 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. 592\*

\*Introduced during 1992 regular session

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

Department Affected: Fish and Game

Title: An Act relating to the taking

BRU: Boards

of fish and game for subsistence; and

Component: Board Services

Sponsor: House Resources

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	136.8	142.0	147.5	153.0	153.0	153.0
TRAVEL	201.2	194.2	202.7	196.2	196.2	196.2
CONTRACTUAL	140.0	137.0	142.0	139.0	139.0	139.0
SUPPLIES	15.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	25.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>518.0</b>	<b>475.2</b>	<b>494.2</b>	<b>490.2</b>	<b>490.2</b>	<b>490.2</b>

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

GENERAL FUND	518.0	475.2	494.2	490.2	490.2	490.2
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>518.0</b>	<b>475.2</b>	<b>494.2</b>	<b>490.2</b>	<b>490.2</b>	<b>490.2</b>

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	1	1	1	1	1	1
TEMPORARY						

Estimate of current year impact: no fiscal impact in FY92

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

Prepared By: Beverly Reaume *Beverly Reaume*

Phone: 465-4110

Division: Boards of Fisheries and Game

Date: 6/13/92

Approved by Commissioner: *Carl Z. Reiser*

Agency: Department of Fish and Game

Date: 6/15/92

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

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

ANALYSIS

The Subsistence Board meeting independently or with the Board of Fisheries and/or the Board of Game as the Joint Board would require approximately sixty-five days of meetings over a three year period to implement the AFN subsistence bill. After implementation the Subsistence Board would need to meet approximately 15 days a year and approximately five days a year as a joint board. 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 the Board of Fisheries and the Board of Game has 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 subsistence board will have to deal with subsistence issues annually. This will not materially affect the schedules of either the Board of Fisheries or the Board of Game. The items in the proposed legislation requiring the greatest effort on the part of the boards, in descending order, are:

- I. "The Subsistence Boards shall identify by regulation  
(1) communities and areas of the state that qualify as rural areas under this paragraph as follows:  
(A) and (B)..."

15 DAYS

- II "(C) For each fishstock and game population, or portion of a stock or population, that is taken for subsistence uses and identified under (a)(2) of this section, and when necessary to implement the provisions of AS 16.05.258(c), the Subsistence Board shall identify those residents who  
(1) through (4)..."

40 DAYS

- III "(d) For each fish stock and game population, or portion of a stock or population, that is taken for urban subsistence uses, identified under (a) (2) of this section, and when necessary to implement the provisions of AS 16.05.258(f), the Subsistence Board shall identify residents who  
(1) through (4)..."

10 DAYS

NOTES:

(a) The proposed legislature will require action by the Regional Councils which are currently unfunded in the Division of Boards budget. This analysis allows for approximately five meeting days each year.

(b) There will be a substantial increase in Advisory Committee activity during implementation of the plan.

(c) If the bill were to bring the state into compliance with ANILCA, we could anticipate that a portion and perhaps all of the funding required for the Subsistence Board could come from the federal government.

(d) Estimated costs include the re-establishment of two regional coordinators eliminated in the FY93 budget. The regional coordinators are essential to provide for increased advisory committee meetings, reactivation of regional councils, and the need for headquarters staff to support a third board.

ESTIMATED COSTS - FY93

(Subsistence Board - 25 days + Joint Board - 5 days)

<u>Personal Services:</u>	136.8
overtime for existing staff Southeast & Arctic Regional Coordinators	
<u>Travel:</u>	201.2
travel and per diem for board members, Boards staff, advisory committee and regional council members	
<u>Contractual:</u>	140.0
meeting space, printing and postage for proposal books, telephone and legal notice of meetings	
<u>Supplies:</u>	15.0
office supplies	
<u>Equipment:</u>	25.0
sound system, portable computer, printer	
<b>TOTAL</b>	<b><u>518.0</u></b>

**COSTS - FY94:**

(Subsistence Board - 20 days + Joint Board - 5 days)

Personal Services	142.0
Travel	194.2
Contractual	137.0
Supplies	2.0

**TOTAL** 475.2

**COSTS - FY95:**

(Subsistence Board - 20 days + Joint Board - 5 days)

Personal Services	147.5
Travel	202.7
Contractual	142.0
Supplies	2.0

**TOTAL** 494.2

**COSTS - FUTURE YEARS**

(Subsistence Board - 15 days + Joint Board - 5 days)

Personal Services	153.0
Travel	196.2
Contractual	139.0
Supplies	2.0

**TOTAL** 490.2

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 592\*

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

\*Introduced during 1992 regular session

Department Affected: Fish and Game

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

BRU: Wildlife Conservation

Component: Wildlife Conservation

Sponsor: (H) Resources

Requestor: (H) Resources

COMPONENT SERIAL NO. 

4	7	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	0	0	0			
TRAVEL	32.0	33.2	34.6			
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	32.0	33.2	34.6			

CAPITAL	0	0	0			
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REVENUE FUND SOURCE: 1024	0	0	0			
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FUNDING: (Thousands of Dollars)

GENERAL FUND	32.0	33.2	34.6			
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	32.0	33.2	34.6			

POSITIONS:

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

Estimate of current year impact: No FY92 impact.

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared By: Wayne L. Regelin *Wayne Regelin*

Phone: 465-4190

Division: Division of Wildlife Conservation

Date: 6/10/92

Approved by Commissioner: *Carl A. Rosen*

Agency: Department of Fish and Game

Date: 6/15/92

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

DIVISION OF WILDLIFE CONSERVATION  
Fiscal Analysis for Subsistence Management

AFN Bill (HB592)

<u>Personal Services:</u>	<u>FY93</u>	<u>FY94</u>	<u>FY95</u>
diversion of staff time to other tasks (e.g., increased attendance by area biologists at additional advisory committee meetings, board meetings, and in compilation of survey and inventory reports) will result in decreased efforts for game management	0	0	0
 <u>Travel:</u>			
travel and per diem for the director, deputy director, appropriate regional supervisors, management coordinators and area biologists for approximately 65 additional days of Subsistence Board, Board of Game, and Joint Board meetings	27.0	28.1	29.2
travel and per diem for area biologists to attend additional advisory committee meetings held in response to creation of federal subsistence board	5.0	5.2	5.4
<b>TOTAL*</b>	<b>32.0</b>	<b>33.2</b>	<b>34.6</b>

\*In addition to these costs, the department would lose \$160.0 in federal money currently used for salary, travel, and data processing expenses of the division's Federal Subsistence Board Coordinator.

**FISCAL NOTE**

**STATE OF ALASKA**

**BILL NO. HB 592 \***

**1992 LEGISLATIVE SESSION**

\*Introduced during 1992 regular session

Revision Date: \_\_\_\_\_ Department Affected: Public Safety

Title: "An Act relating to the taking of BRU: Fish & Wildlife Protection

fish and game for subsistence. " Component: Enforcement & ISU

Sponsor: House Resources Committee

Requestor: Senator Adams 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	2.1	2.1	2.1	2.1	2.1	2.1
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
FUND SOURCE:						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	2.1	2.1	2.1	2.1	2.1	2.1
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>	<b>2.1</b>

**POSITIONS:**

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

Estimate of current year impact: None

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

Prepared By: Captain Conrad G. Seibel Phone: 269-5509

Division: Fish & Wildlife Protection Date: 6/5/92

Approved by Commissioner: *Richard L. Burton* Richard L. Burton

Agency: Department of Public Safety Date: 6/10/92

Department of Public Safety  
Fiscal Note Analysis - HB 592  
Page 2 of 2

Passage of this bill would establish a Subsistence Board to promulgate regulations pertaining to the subsistence take of fish and game in the state. This fiscal note shows the cost of sending a representative of the Division of Fish and Wildlife Protection to attend the Subsistence Board meetings. Costs were projected for:

2 trips at \$350 each	\$ 700
14 days per diem at \$100	<u>1,400</u>
Total	\$2,100

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 592

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the taking of fish and game for subsistence..."  
Sponsor: House Resources  
Requestor: Senator Adams

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations

COMPONENT SERIAL 

		0	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	85.0	85.0	
TRAVEL	5.0	5.0	5.0	5.0	5.0	
CONTRACTUAL	17.6	17.6	17.6	17.6	17.6	
SUPPLIES	2.4	2.4	2.4	2.4	2.4	
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>116.5</b>	<b>110.0</b>	<b>110.0</b>	<b>110.0</b>	<b>110.0</b>	<b>-0-</b>

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

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Date: June 12, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: June 12, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 592

This bill amends AS 16.05 and AS 16.20 to give subsistence use of fish and game a preference over other consumptive use of the state's fish and game resources. In this respect, the bill is similar to Governor Hickel's subsistence proposal. For instance, both bills use community characteristics in part to determine eligibility, and the bills both recognize an urban as well as a rural need for a subsistence preference, under certain circumstances. HB 592, however, establishes a "Subsistence Board" that would implement and regulate the subsistence uses of fish and game, rather than using the existing frameworks of the Boards of Fish and Game for these purposes.

In any event, either of these approaches will have a fiscal impact for the Department of Law because of the controversies that have historically surrounded and continue to surround subsistence preference laws. It should therefore be expected that this bill will be vigorously challenged in court if it is enacted. Although HB 592 may eliminate many uncertainties that currently involve subsistence, the bill will have a significant, ongoing fiscal impact on our department over the first four of five years of implementation. That is because the department must defend the bill against court challenges, assist the Board of Subsistence 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. Moreover, the bill's establishment of a Subsistence Board as a co-equal to the existing Boards of Fish and Game, will probably result in bureaucratic turf wars as the three boards compete for authority. Consequently, the Department of Law will require the additional services of one attorney at a minimum.

It is important to note that the department has handled 47 litigation matters involving subsistence preference, since the state passed its first subsistence law in 1980. During the past two years, the department has devoted approximately 1,500+ attorney hours each year to handle these matters, several of which are still ongoing. Budget reductions in the coming fiscal year will cause the loss of three of the twelve general fund attorney positions that handle natural resources matters, including subsistence. Thus, it is imperative that a new attorney position be approved to handle the legal work that will be necessary to defend and help carry out the subsistence plan provided in this bill.



**FISCAL NOTE**

**STATE OF ALASKA  
1992 LEGISLATIVE SESSION**

**BILL NO. 592\***

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

\*Introduced during 1992 regular session

Title: An Act Relating to Taking of Fish  
and Game

Department Affected: Fish and Game

BRU: Sport Fish

Sponsor: House Resources

Component: Sport Fisheries

Requestor: House Resources

**COMPONENT SERIAL NO.**

4	6	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	13.5	14.0	14.6	15.2	15.8	16.4
TRAVEL	4.5	4.7	4.9	5.0	5.3	5.5
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>18.0</b>	<b>18.7</b>	<b>19.5</b>	<b>20.2</b>	<b>21.1</b>	<b>21.9</b>

<b>CAPITAL</b>	<b>18.0</b>	<b>18.7</b>	<b>19.5</b>	<b>20.2</b>	<b>21.1</b>	<b>21.9</b>
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	18.0	18.7	19.5	20.2	21.1	21.9
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>18.0</b>	<b>18.7</b>	<b>19.5</b>	<b>20.2</b>	<b>21.1</b>	<b>21.9</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

**ANALYSIS:** (Attach a separate page if necessary.)

It is assumed that this bill will have an effect similar to that of the consensus bill: i.e. state and federal management roles will be clarified and a person's eligibility to participate in subsistence fisheries will be defined. However, a separate board to deal with subsistence issues will add additional staff time and board meeting days at the subsistence board as well as the regular board of fisheries which will be required to modify sport and personal use fish regulations and management policies in response to regulatory actions of the subsistence board. **STAFF ATTENDANCE AND PREPARATION FOR BOARD MEETINGS: 12 extra days for 3-4 staff members = \$18.0**

Prepared By: Rocky Holmes *R. Holmes*

Phone: 465-4180

Division: Division of Sport Fish

Date: 6/15/92

Approved by Commissioner: *Carl F. Rosier*

Agency: Department of Fish and Game

Date: 6/15/92

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

**FISCAL NOTE**

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

Bill No. SB 485

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to subsistence... BRU: Trial Courts  
 Components: \_\_\_\_\_  
 Sponsor: Adams  
 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	15.0	10.0	5.0	2.5	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>15.0</b>	<b>10.0</b>	<b>5.0</b>	<b>2.5</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	15.0	10.0	5.0	2.5	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>15.0</b>	<b>10.0</b>	<b>5.0</b>	<b>2.5</b>	<b>0.0</b>	<b>0.0</b>

**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 *CS* Phone: 264-8228  
 Division: Alaska Court System Date: 06/18/92  
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 06/18/92  
 Agency: Alaska Court System

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

Alaska Court System

SB 485

Analysis

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.

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

## **BILL ANALYSIS**

### **SB 485 - Adams Bill**

The purpose of SB 485 is to develop subsistence legislation which is consistent with ANILCA and which provides for subsistence uses by residents who do not reside in rural Alaska. This legislation accomplishes this purpose by retaining the subsistence priority for rural residents as mandated in ANILCA for rural residents, and then providing a secondary priority for persons who reside outside of rural Alaska (i.e., urban residents).

#### **SECTION 1. FINDINGS**

The bill contains four findings. The findings identify the importance of subsistence to rural and urban residents. They go on to recognize that fish and wildlife resources are not plentiful enough to meet the needs of all users and therefore it is necessary to provide a preference for subsistence uses over other consumptive uses. They conclude with a determination that there greater nutritional and economic alternatives in urban Alaska than in rural areas.

#### **SECTIONS 6 - 7. SUBSISTENCE BOARD**

These sections of the bill create a subsistence board for purposes of making subsistence regulations, including determinations of: what areas of the state are rural; what fish stocks and game populations are the subject of rural subsistence uses; how much of the harvestable portion of the stocks or populations are needed to provide for rural subsistence uses, what stocks and populations are appropriate for urban subsistence uses; which individuals or communities are eligible to participate in "tier II" rural and urban subsistence fisheries and hunts; and seasons, bag limits, and other regulations that may be necessary for the conservation of fish and game.

The determinations made by the Subsistence Board are then used by the Board of Fisheries and the Board of Game to promulgate regulations to nonsubsistence uses of the remaining harvestable surplus.

The federal guidelines are used for purposes of defining rural in state law. By using the federal definition, the requirement in Sec. 805 of ANILCA that the state have a definition of subsistence consistent with the federal definition is satisfied. For those areas which are not rural, the Subsistence Board is to determine which groups and individuals have cultural or economic dependence upon urban subsistence uses and are thereby eligible to participate in these uses.

The Subsistence Board is a new board which is appointed by the Governor based upon a list of three names submitted by each regional council. The Governor must pick off the lists submitted, but may reject a list if there is no name acceptable to him.

## **SECTIONS 2, 3, 4, 5, 8, 9, 11, 13, 14, 15, 16, 23 - 40. - CONFORMING SECTIONS**

These sections conform existing statutes with the substantive changes made in this legislation and there is no substantive impact from these sections.

## **SECTION 10 - SUBSISTENCE ALLOCATION**

Together with Sec. 7, this section provides the substantive provisions for allocating fish and game for rural and urban subsistence uses. The Subsistence Board, together with the existing Boards of Fisheries and Game are to determine what the harvestable surplus is of each fish stock and game population used for subsistence. The Subsistence Board then develops subsistence regulations. This section uses the same method for allocating to rural subsistence uses as is contained in existing state law and satisfies the requirement of ANILCA regarding the priority for subsistence uses by rural residents. In addition, however, the section provides for allocations for urban subsistence uses and gives these uses a secondary priority after rural subsistence uses and before other consumptive uses. Once both rural and urban subsistence uses have been satisfied for those stocks and populations subject to subsistence uses, other consumptive uses are authorized.

## **SECTIONS 11 - 12. - REGIONAL COUNCILS**

This section amends the manner in which advisory committees are established by giving the Subsistence Board authority to act in conjunction with the Board of Fisheries and the Board of Game. The section then creates a regional council system in statute which currently existed only in regulation. The regional councils are to have significant authority in how their recommendations to the Subsistence Board on subsistence determinations and regulations are to be considered. The three part test contained in ANILCA is adopted in this section.

## **SECTIONS 17 - 22. - DEFINITIONS**

These sections contain new definitions for "a board," "rural area", "urban area", "urban subsistence fishing", "urban subsistence hunting", and "urban subsistence uses." The existing definition of "subsistence uses" is maintained for rural subsistence uses, thereby satisfying the third and final requirement of ANILCA. The definition of urban subsistence uses is similar to the definition of subsistence uses (rural). Urban subsistence use is generally equivalent to personal use of fish and game by a state resident, though the personal use category is maintained because there are some fishing activities, such as dip net fisheries to harvest a return of hatchery fish, which would not be considered a subsistence use.

## **SECTIONS 41 - 43. EFFECTIVE DATES**

The effective date of this bill is the date on which a constitutional amendment authorizing rural and urban subsistence uses is approved by the voters.

## DIVISION OF LEGAL SERVICES

### LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

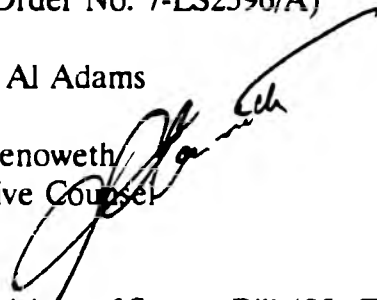
#### MEMORANDUM

June 16, 1992

**SUBJECT:** Senate Bill 485 (Second Special Session), relating to the taking of fish and game resources for subsistence -- sectional analysis (Work Order No. 7-LS2396/A)

**TO:** Senator Al Adams

**FROM:** Jack Chenoweth  
Legislative Counsel



This memo considers the provisions of Senate Bill 485. The bill is a modified version of HB 592 of the regular session, a measure that was identified as the "AFN subsistence bill."

For ease of explanation, I have opted to present this material topically, rather than sequentially.

#### Establishment of subsistence regions and regional councils:

**Bill section 12** adds new subsections to AS 16.05.260. Subsection (b) directs the Board of Fisheries and Board of Game, meeting jointly, to divide the state into at least six subsistence regions, their number and boundaries to be "sufficient to assure that regional differences in subsistence uses and urban subsistence uses of fish and game are adequately accommodated." Thereafter, within each subsistence region established, the commissioner of fish and game is to establish a regional council. The regional council(s) are to be formed from the chair, or the chair's designee, of each existing advisory committee within the subsistence region.

#### Establishment of statewide Subsistence Board; description of its membership:

The subsistence regions described immediately above are the geographical basis for the development of the membership of another board, a Subsistence Board, proposed to be established by **bill section 6**. Under the material added in that section, there would be created a Subsistence Board consisting of "one member from each subsistence region." Regional councils are to forward recommended names to the governor, who is to appoint the members within 30 days. Provision is made for

Senator Al Adams  
June 16, 1992  
Page 2

substitution of nominees in the event the governor fails to make the appointment(s) from the initial list. Persons recommended for appointment "must be subsistence users and residents of the region from which . . . appointed." Subsistence board member appointments made by the governor are subject to confirmation. Members serve overlapping three-year terms.

Subsistence regulatory system:

Once established, then, under subsection (c) of **bill section 12**, the regional councils are to make recommendations to the Subsistence Board in two areas: on the criteria applicable for identification of persons who may qualify as urban subsistence users, and on subsistence fishing and hunting regulations. The bill gives the regional councils' recommendations significant weight for, under that subsection (page 10, beginning at line 27), "the [statewide] Subsistence Board shall adopt a recommendation [of a regional council] unless the recommendation is not supported by substantial evidence . . . , violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs." If the Subsistence Board fails to adopt a council's recommendation, it is to return the recommendation to the council with a statement of its reasons. <sup>1/</sup>

Persons who may qualify for the subsistence preference:

The measure authorizes subsistence uses by both rural and urban residents, roughly distinguishing between "subsistence uses" or "subsistence users" on the one hand and "urban subsistence uses" or "urban subsistence users" respectively. Under **bill section 7**, the Subsistence Board is to

-- identify by regulation communities and areas of the state that qualify as rural areas, distinguishing among communities of less than 2,500 population and those with population between 2,500 and 7,000, and identify by regulation communities and areas of the state that qualify as urban areas, that is, areas with population in excess of 7,000; the measure sets out the specific characteristics that serve as the basis for that identification process;

-- make decisions relating to the fish stocks and populations that may be taken for subsistence uses and urban subsistence uses;

---

<sup>1/</sup> Looking at the language of the bill, it is not clear to me whether the Board has latitude to modify a recommendation brought forward from a regional subsistence board and then to adopt a recommendation as modified; a strict application of the language of the proposed measure would seem to require the statewide Subsistence Board only the choice of adoption or rejection.

-- establish criteria to identify residents who qualify as urban subsistence users through application of the two criteria identified in the measure; and

-- identify residents qualifying for subsistence uses and urban subsistence uses for each fish stock and game population, or portion of stock or population.

Fish stocks and game populations available for subsistence:

The key provision is **bill section 10**, setting out a fish and game allocation system taking into consideration subsistence and urban subsistence uses. If I understand correctly, that allocation system is to operate something like this:

-- Initially, a "combined board"--Subsistence Board plus Fisheries Board for fisheries stocks, and Subsistence Board plus Game Board for game resources--must determine the portion of the fish stocks or game populations available for harvest "consistent with sustained yield";

-- The Subsistence Board alone then determines what portion of the stock or population available for harvest is necessary to satisfy subsistence uses.

-- Under proposed AS 16.05.258(c), when harvestable resources exist, that board then adopts necessary subsistence hunting and fishing regulations for each stock or population. The criterion generally applicable to those regulations is one that recognizes "customary and traditional uses and practices of residents who engage in subsistence use in a manner that will result in the least adverse effect upon those uses." However, if all consumptive uses cannot be accommodated, nonwasteful (rural) subsistence uses are to be given preference over urban subsistence uses. If restriction on fishing or hunting becomes necessary, subsection (c) identifies three criteria by which the board is to distinguish among (rural) subsistence users. Generally, the process of accommodation, relatively rigorous, favors, as may become necessary, (rural) subsistence users over urban subsistence users.

-- Proposed AS 16.05.258(d) recognizes a preference for urban subsistence users when harvestable fisheries stocks or game populations are sufficient to accommodate (rural) subsistence uses plus consumptive uses. Proposed AS 16.05.258(f) confirms that urban subsistence uses are to receive priority over non-subsistence consumptive uses. As with (rural) subsistence uses, if restriction on fishing or hunting becomes necessary to accommodate urban subsistence activities, subsection (f) identifies three criteria by which the board is to distinguish among urban subsistence users.

-- Proposed AS 16.05.258(e) bars the Boards of Fisheries and Game from authorizing a level of nonsubsistence hunting or fishing that would deny satisfaction of authorized subsistence and urban subsistence uses.

-- Proposed AS 16.05.258(g) affirms the ability of the Subsistence Board to regulate the taking of fish stocks and game populations as to seasons, catch or bag limits, and methods and means.

-- In furtherance of restoration of certain stocks and populations, proposed AS 16.05.258(h) sets out a directive for preparation of cooperative management plans to facilitate recovery of those stocks and populations to minimally harvestable numbers.

Relationship of the changes to the current regulatory authority of the Board of Fisheries and the Board of Game:

**Bill section 8** amends AS 16.05.251(a), setting out the responsibilities of the Fisheries Board, by making that board's regulatory decisions subject to authority of the statewide Subsistence Board and by eliminating the Fisheries Board's ability to regulate subsistence fishery activities.

**Bill section 9** amends AS 16.05.255(a), setting out responsibilities of the state's Game Board, in like manner, making that board's regulatory decisions subject to the authority of the statewide Subsistence Board and by eliminating the Game Board's ability to regulate subsistence hunting activities.

**Bill section 16** shifts from the combined Board of Fisheries and Game to the new Subsistence Board the responsibilities for the oversight of the state's existing subsistence permit program and for monitoring subsistence harvest of fish and game resources by subsistence users and urban subsistence users.

Technical and conforming changes:

Among provisions affecting AS 16.05, the state's Fish and Game Code:

**Bill section 1** sets out a series of four findings that relate to or purportedly support the substantive changes of the measure.<sup>2/</sup>

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<sup>2/</sup> Significant, in my judgment, in light of the distinction identified in note 3 below, is the contrast asserted in paragraphs (2) and (4) as regards the availability of economic alternatives to rural and urban residents.

**Bill sections 2 and 3** make technical changes, adding references to "Subsistence Board" in statutes relating to use of regulations as evidence and to limitations on a Title 16 board's ability to change the amount of a license or fee that is set by law.

The material added and deleted in **bill sections 4 and 5** modify the Duties of the Department of Fish & Game's Section of Subsistence Hunting and Fishing (i.e. the Subsistence Division), tying the responsibilities of that unit more closely to the work of the proposed Subsistence Board.

**Bill section 11** affects the statute relating to establishment and operation of Advisory Committees by adding the Subsistence Board to the Board of Fisheries and the Board of Game as an entity that may establish one or more advisory board by regulation.

**Bill section 13** extends the provisions applicable to the Subsistence Board's general authority (enumerated in bill section 7) as an additional general delegation of board authority to the commissioner of fish and game.

**Bill section 14** adds the Subsistence Board to the current statute authorizing joint board meetings, while the change made in **bill section 15** merely rephrases or restates the quorum requirements for joint board meetings, taking into consideration the change made in the preceding bill section.

**Bill sections 17 - 22** add to or revise definitions of terms that are used in AS 16.05, some of which are newly-added by this measure.<sup>3/</sup>

As to the bill sections affecting provisions outside AS 16.05:

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<sup>3/</sup> Interestingly, while the definitions that distinguish between rural and urban elements are, in most cases, parallel and permit members of each group the same use of these resources, the definition of "urban subsistence uses" differs from the definition of "[rural] subsistence uses" in that urban users cannot use wild, renewable resources for commerce in handicraft articles or for customary trade or barter. There may be an inherent equal protection problem in the distinction. As I understand, the provision must pass muster with the "uniform application" section of the Alaska Constitution, article VIII, section 17, under a "strict scrutiny" test. McDowell v. State, 785 P.2d 1 (Alaska 1989), at 10. There is at least a question as to whether place of residence is sufficiently related to a resource allocation or conservation goal or to the purposes for which a person may take fish or wildlife as a basis for determining whether a rural resident may be entitled to assert, while an urban resident may not claim, use of subsistence resources for commerce in handicraft articles or for customary trade or barter.

**Bill section 23** is a conforming change applicable to subsistence taking currently allowed within the Yakataga State Game Refuge: the change recognizes regulations of the Subsistence Board as having applicability for the governance of subsistence activities in this state refuge.

**Bill section 24** is a conforming change applicable to subsistence taking in critical habitat areas.

**Bill sections 25 and 26** make substantially the same changes as regards subsistence activities in the Shuyak Island State Park.

**Bill section 27** makes a corresponding change as regards subsistence activities in Point Bridget State Park.

**Bill section 28** makes a corresponding change as regards subsistence activities in marine park units in the state park system.

**Bill section 29** makes a corresponding change as regards subsistence activities in the Willow Creek state recreation area.

**Bill section 30** makes a corresponding change as regards subsistence activities in the Kenai River Special Management Area.

**Bill section 31** makes a corresponding change regarding subsistence activities in the Alaska Chilkat Bald Eagle Preserve.

**Bill section 32** makes a corresponding change as regards subsistence activities in the Nelchina Public Use Area.

**Bill sections 33, 34 and 35** make a corresponding change as regards subsistence activities in the Hatcher Pass Public Use Area.

**Bill section 36** makes a corresponding change as regards subsistence activities in the Goldstream Public Use Area.

**Bill section 37** makes a corresponding change as regards subsistence activities within an area established as a recreational river.

In the title applicable to management of the state's public resources (AS 41), **bill section 38** adds the Subsistence Board in the general recognition of the power of the boards and the department to manage fish and game in the state.

Senator Al Adams  
June 16, 1992  
Page 7

**Bill section 39** provides that the commissioner of fish and game is jointly nominated by the Subsistence Board, the Board of Fisheries, and the Board of Game.

**Bill section 40** adds the Subsistence Board to the other two boards as a body that may submit a resolution requesting removal of the commissioner of Fish and Game.

Transitional provision:

**Bill section 41** is a transitional provision applicable to the duration of the terms of the initially-appointed members of the Subsistence Board.

Effective date provisions:<sup>4/</sup>

**Bill section 42** keys the effective date of certain key organizational sections of the measure to the voters' adoption of a constitutional amendment "relating to subsistence uses of fish and game" that is approved at the 1992 general election.

**Bill section 43** gives the remainder of the bill--the regulatory and participatory provisions--a later effective date linked to the convening of the first meeting of the Subsistence Board.

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<sup>4/</sup> My view is that these two provisions are substantively important effective date provisions in that they purport to set out a logically phased taking effect of all provisions: the bill's basic organizational provisions are linked to voter adoption of the necessary constitutional amendment, while the regulatory and deliberative provisions follow the coming into effect of the basic organizational provisions. The failure of these effective date sections to gain the required two-thirds vote of each house would leave the coming into effect of the bill extremely muddled.

SB 485

AMENDMENTS

ANILCA

## BOBBY v. STATE OF ALASKA

769

Cite as 718 F.Supp. 766 (D.Alaska 1989)

Plaintiffs seek a declaration that the closed season, bag limit, village harvest quota, and management area restrictions are unlawful. Plaintiffs seek an injunction from the court requiring the State to submit to the court, for approval and incorporation into a final judgment, regulations pertaining to the subsistence uses of moose and caribou by the plaintiffs.

The defendant denies the essential operative allegations of the complaint.

The court has under consideration four motions which will be discussed in the following order:

- I. Defendant's motion for summary judgment, which addresses the principal issues raised by plaintiffs' second amended and supplemental complaint; namely, the regulation of the taking of moose and caribou through the imposition of hunting seasons and bag limits.
- IIA. Plaintiffs' supplemental motion for partial summary judgment on a collateral issue, pertaining to the taking of antlerless moose and the impact of AS 16.05.780 thereon.
- IIB. Defendant's motion to dismiss, also directed at the antlerless moose statute. This motion to dismiss also seeks to carve out of plaintiffs' complaint a challenge to the creation of a management area for Lime Village.
- III. Plaintiffs' motion for partial summary judgment, which puts before the court a second collateral issue concerning the interpretation and application of AS 16.05.259, which statute purports to prohibit persons such as plaintiffs from asserting subsistence priority rights as a defense to state prosecution for the violation of game regulations.

## DISCUSSION

## L

*Regulation of the Taking of  
Moose & Caribou*

The court takes up first the issues which are the primary focus of the case and the State's motion for summary judgment. This motion brings before the court the

contentions of plaintiffs' second amended and supplemental complaint with respect to the imposition of seasons and bag limits on the taking of caribou and moose by the residents of Lime Village (the plaintiffs here). The motion is opposed. Before addressing the substance of these issues, some preliminary comments upon the nature of these proceedings, and in particular the scope and type of judicial proceedings under ANILCA § 807, 16 U.S.C. § 3117, are appropriate.

## A.

*Judicial Enforcement of ANILCA*

Section 805(a)-(c) of ANILCA, 16 U.S.C. § 3115(a)-(c), sets out the basic federal structure for implementation of the subsistence rights created by Title VIII of ANILCA on public lands within the State of Alaska. Prior to ANILCA, management of fish and wildlife on public lands in the State of Alaska had been carried out by the State of Alaska through its Department of Fish & Game. But for the provisions of ANILCA § 805(d), 16 U.S.C. § 3115(d), management of fish and game on federally owned public lands in the State of Alaska would have been given over to the Department of the Interior.

ANILCA § 805(d), 16 U.S.C. § 3115(d), in substance provides that the Secretary will not implement the *federal* subsistence priority program if the State of Alaska, "enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in §§ 3113, 3114, and 3115 of [ANILCA]." ANILCA §§ 803, 804, and 805. The State of Alaska has adopted such a law in Chapter 52, Session Laws of Alaska 1986, AS 16.05.258. Section 6, ch. 52, SLA 1986, AS 16.05.258, sets forth the detailed procedure by which the Board of Game is to allocate fish and game for subsistence uses. Plaintiffs do not challenge the consistency of ch. 52, SLA 1986, with ANILCA.

AS 16.05.258 has at all times here pertinent provided generally that:

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718 FEDERAL SUPPLEMENT

(a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.82) for

.....  
 (2) establishing open and closed seasons and areas for the taking of game;

.....  
 (4) setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game....

Section 6, ch. 52, SLA 1986, AS 16.05.253(f), specifically provides that:

(f) Takings authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means....

Pursuant to the foregoing state authority, the Board of Game has undertaken from time to time the enactment of various regulations pertaining to the taking of moose and caribou by plaintiffs, residents of Lime Village, Alaska.

It is entirely clear that Congress understood that there would be state regulation of subsistence uses and made provision for the same in ANILCA. In this regard, ANILCA § 808(d), 16 U.S.C. § 3115(d), in authorizing state management of subsistence uses, provides in part:

Laws establishing a system of local advisory committees and regional advisory councils consistent with this section [16 U.S.C. § 3115] shall provide that the *State rule-making authority shall consider* the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses.... If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

(Emphasis supplied.) Plaintiffs do not challenge the Board of Game's power to promulgate regulations.

Plaintiffs do challenge the Board of Game's various regulations which establish seasons and bag limits for the taking of moose and caribou. They contend these regulations are "arbitrary, unreasonable,

and unnecessary, and they fail to accord to plaintiff and his class the priority for non-wasteful subsistence uses required by Section 804 [16 U.S.C. § 3114] of ANILCA." Plaintiffs' Second Amended and Supplemental Complaint at 9, ¶ 15.

Section 807(a) of ANILCA, 16 U.S.C. § 3117(a), provides in pertinent part:

Local residents ... aggrieved by a failure of the State ... to provide for the priority for subsistence uses set forth in section 3114 of this title (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 3115(d) of this title) may ... file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority.... In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 3114 of this title; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue.

Defendant does not challenge this court's jurisdiction, nor does it contest this court's authority under ANILCA § 807, 16 U.S.C. § 3117, to invoke the remedy which plaintiffs seek in the event that the Board of Game regulations are found deficient or unlawful. It is therefore this court's duty to determine whether or not the Board of Game has failed to afford subsistence uses of moose and caribou the priority to which these uses are legally entitled and, if so, to require defendant, through its Board of Game, to adopt and to submit new regulations to the court for review.

[1] Section 807 of ANILCA, 16 U.S.C. § 3117, does not prescribe any particular mode of analysis for an inquiry into the consistency of state rulemaking with the State's general law on subsistence. Since both ANILCA § 908(d), 16 U.S.C. § 3115(d), and AS 16.05.253(a) expressly

**BOBBY v. STATE OF ALASKA**

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Cite as 718 F.Supp. 764 (D.Alaska 1989)

wontemplate a formal rulemaking process, and since it is abundantly clear, from the record before the court, that the State of Alaska undertook to employ a formal rule-making process as required by AS 16.05.255(a), the court selects as the appropriate mode or scope of review that employed in analogous federal proceedings for the review of formal rulemaking undertaken by federal agencies.' Thus, "rulemaking must be set aside if arbitrary, capricious, or an abuse of discretion." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-14, 91 S.Ct. 814, 822, 28 L.Ed.2d 136 (1971); *American Tunaboat Association v. Baldrige*, 738 F.2d 1013, 1016 (9th Cir.1984). In the latter case, the Ninth Circuit Court of Appeals elaborated on the scope of review in cases such as this as follows:

Despite the narrow scope of review under this standard and the broad discretion afforded NOAA in administering the MMPA, we affirm the decision of the district court. In doing so, we have in mind the rule that, even though an agency decision may have been supported by substantial evidence, where other evidence in the record detracts from that relied upon by the agency we may properly find the agency rule was arbitrary and capricious.

*Id.* at 1016.

More generally, but also appropriate to this case, Professor Davis in his text addressed the issues which might arise with regard to legislative rulemaking (and plainly the regulations with which we deal are such) as follows:

Whenever a legislative body has delegated power to an agency to make rules having force of law (whether or not the delegation is explicit) the rules the agency makes pursuant to the granted power have the same force as a statute if they are valid, and they are valid if they are

constitutional, within the granted power, and issued pursuant to proper procedure; a court may or more substitute its judgment as to the content of a legislative rule than it may substitute its judgment as to the content of a statute.

K.C. Davis, *Administrative Law & Government* at 119 (2d ed. 1975).

In this case, the challenge is not a constitutional one. Rather, the issues presented here have to do with whether or not the Board of Game regulations imposing seasons and bag limits upon subsistence hunters are or are not "within the grant of power" accorded the Board of Game by Alaska's second subsistence law. *Id.* The case also presents issues of whether or not the Board of Game failed to use proper procedures. The court's point of reference for purposes of evaluating the Board of Game regulations is Alaska's second subsistence law because, as discussed in the above background material, the State's regulatory scheme has "supplanted] the federal regulatory scheme". *Kenaitze Indian Tribe*, at 314. Regulations which are not within such grant are unlawful and must be enjoined as required by ANILCA § 807(a), 16 U.S.C. § 3117(a).

B.

*History of Adoption of Bag Limits & Seasons for Lime Village*

The underpinnings for defendant's motion for summary judgment on the issue of the lawfulness of the Board of Game's regulations pertaining to the taking of moose and caribou by plaintiffs are to be found in state law and the record of proceedings before the Board of Game. There is no disagreement between the parties as regards the makeup of that administrative record which consists of both transcribed Board proceedings and exhibits.<sup>8</sup>

7. The court recognizes that the State does not have the status of a federal agency. *Kenaitze Indian Tribe v. State of Alaska*, 840 F.2d 312, 313-14 (9th Cir.1988). The scope of review here adopted is appropriate to the state's status as a "separate sovereign". *Id.* at 314.

8. During the course of its analysis of the Board of Game proceedings, the court became uncertain as to whether certain of the exhibits before the court were actually before the Board of Game. Since the court's task is to evaluate the work of the Board of Game and the consistency of that work with state law, it is not appropriate (except in unusual circumstances and for

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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

KATIE JOHN, DORIS CHARLES, and )  
MENTASTA VILLAGE COUNCIL, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
STATE OF ALASKA, )  
 )  
Defendant. )

No. A85-698 Civil

ORDER

(Cross-Motions for  
Summary Judgment)

The court now has before it plaintiffs' motion for partial summary judgment and defendant's cross-motion for partial summary judgment. The court has heard oral argument, and these motions are ready for decision.

Plaintiffs have brought the instant suit pursuant to 16 U.S.C. § 3117(a), the Alaska National Interest Lands Conservation Act (ANILCA). Plaintiffs Katie John and Doris Charles live in rural Alaska at Mentasta Village and Dot Lake, Alaska, both of which villages are in the Upper Copper River Valley.

1 Plaintiffs contend that for significant periods of  
2 time, they and their neighbors carried on a subsistence fishery  
3 at the confluence of Tanada Creek and the Copper River. This  
4 site was once the location of a village known as "Batzulnetas".  
5 The village was abandoned in the early 1940's, but a subsistence  
6 fishery was continued at this site until 1964 at which time the  
7 subject portion of the Copper River was closed to subsistence  
8 fishing by the fisheries authorities of the State of Alaska.

9 As contemplated by ANILCA, the State of Alaska has  
10 adopted a law of general applicability with respect to subsis-  
11 tence hunting and fishing.<sup>1</sup> 16 U.S.C. § 3115(d); AS 16.05.258.  
12 By the latter statute, the State of Alaska became entitled to  
13 manage fish and game resources on both state and federal lands on  
14 the condition that subsistence uses be afforded the statutory  
15 priority contemplated by Congress when it adopted ANILCA.  
16 16 U.S.C. § 3114. The somewhat difficult history of Alaska's  
17 endeavors to effect the subsistence priority intended by ANILCA  
18 is set out in detail in this court's memorandum of decision in  
19 Bobby v. State of Alaska, 718 F. Supp. 764 (D. Alaska 1989).

20 At the time this litigation was commenced, state fish  
21 management authorities had adopted regulations which restricted  
22 the Copper River subsistence fishery to areas downstream from the  
23 confluence of the Siana and Copper Rivers. As a consequence, and  
24

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25 <sup>1</sup> But see, McDowell v. State of Alaska, No. 35-0 (Alaska  
26 Sup. Ct. Dec. 22, 1989).

1 over the objections of plaintiffs Katie John and Doris Charles  
2 who had submitted a proposal for a subsistence fishery at this  
3 site, subsistence fishing was not permitted at Batzulnetas.  
4 Thereafter, more or less annually, the plaintiffs' desire for a  
5 subsistence fishery at Batzulnetas was reviewed by the Board of  
6 Fisheries (hereinafter "the Board"). Most recently, a rule-  
7 making hearing was conducted by the Board in 1988. That proceed-  
8 ing resulted in the adoption of a subsistence fishing regulation  
9 which provided, in pertinent part:

10 (1) Salmon, other than chinook salmon,  
11 may be taken in the vicinity of the former  
12 Native village of Batzulnetas under the  
13 following conditions:

14 .....

15 (5) salmon may be taken only from June 1  
16 though September 1 or until the season is  
17 closed by emergency order; fishing periods  
18 are to be established by emergency order and  
19 are two days per week during the month of  
20 June and 3.5 days per week for the remainder  
21 of the season .....

22 5 AAC 01.647(i)(5) (1988).<sup>2</sup>

23 The constraints imposed by subsection 647(i)(5) are now  
24 the focal point of the dispute between the parties. Plaintiffs  
25 had urged the Board to allow fishing seven days a week, and  
26 in lieu of the periodic closures had proposed that they be

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2 The full text of 5 AAC 01.647(i) is set out in Appen-  
dix I.

1 permitted to fish until 3,500 sockeye salmon were taken during  
2 the June through August season.

3 By their first cause of action, plaintiffs contend that  
4 the foregoing regulation fails to afford them the priority with  
5 respect to the taking of fish for subsistence purposes to which  
6 they are entitled under 16 U.S.C. § 3114. Defendant has denied  
7 the substance of this allegation. The court has heretofore con-  
8 sidered and ruled upon plaintiffs' motion for a preliminary  
9 injunction with respect to plaintiffs' first cause of action, and  
10 that motion was granted.

11 Pursuant to ANILCA, 16 U.S.C. § 3117, it is the court's  
12 duty to determine whether or not the Board has failed to afford  
13 plaintiffs the subsistence rights to which they are entitled;  
14 and, if so, the court must call upon the Board to adopt and  
15 submit new regulations for court review. The court addressed the  
16 question of the scope of review to be employed in evaluating  
17 those regulations in Bobby at page 771. The court there held  
18 that it would consider whether state regulations were "constitu-  
19 tional, within the granted power, and issued pursuant to proper  
20 procedure ...." K.C. Davis, Administrative Law & Government at  
21 119 (2d ed. 1975). The court further held that it would set  
22 aside, as arbitrary or capricious, regulations which did not have  
23 adequate evidentiary support. Citizens to Preserve Overton Park,  
24 Inc. v. Volpe, 401 U.S. 402, 413-14 (1971); American Tuna Boat  
25 Association v. Baldrize, 738 F.2d 1013, 1016 (9th Cir. 1984).

26

1           Since writing the Bobby decision, and in conjunction  
2 with the oral argument of this case, the court has achieved an  
3 even clearer perception of the appropriateness of a limited  
4 record review rather than de novo proceedings for the evaluation  
5 of Board regulations impacting the use of wildlife.<sup>3</sup>

6           Firstly, the Board must bring considerable expertise to  
7 the complex fish management questions that come before it. This  
8 court does not have that expertise. While the court is quite  
9 comfortable (and hopes the parties will come to be also) in its  
10 role of the reviewer of agency rule-making employing the test set  
11 out in such authorities as Citizens for Overton Park, American  
12 Tuna Boat Association, and K.C. Davis, Administrative Law &  
13 Government at 119 (2d ed. 1975), the court should not--for lack  
14 of expertise--make the fine, scientific, wildlife management  
15 decisions which are called for by state and federal law. In  
16 short, the fish and game management ought to be done by the fish  
17 and game managers. This court is not qualified to make de novo  
18 decisions in that area.

19           Secondly, plaintiffs do not point to any persuasive  
20 authority to support their argument for de novo review of Board  
21 regulations. No such provision is contained in 16 U.S.C.  
22 § 3117(a). Moreover, the latter statute expressly specifies that  
23 the relief to be afforded plaintiffs in a civil action such as  
24

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25           <sup>3</sup> For the sake of completeness, however, we note that  
26 this court does, and has here carried out a de novo consid-  
eration of legal issues.

1 this against the State of Alaska is a directive that the State  
2 "submit regulations which satisfy the requirements of [16 U.S.C.  
3 § 3114]." Such relief implies clearly a "review" role, not a  
4 redetermination and ruling by this court. It makes no sense for  
5 this court to make a new record of evidence if, as Section 3117  
6 requires, the only relief a plaintiff can obtain from this court  
7 is a remand to the state agency for new rule-making.

8 In considering and granting plaintiffs' motion for a  
9 preliminary injunction, the court identified a controlling issue  
10 not raised by the parties. This issue required the grant of a  
11 preliminary injunction and requires the granting of plaintiffs'  
12 motion for partial summary judgment as to their first cause of  
13 action. The issue so identified and raised has to do with the  
14 requirement that regulations be adopted pursuant to proper proce-  
15 dures. AS 16.05.258<sup>4</sup> requires that the Board employ a specific  
16 mode of analysis in the assessment of subsistence uses of fish  
17 stocks and the allocation of the same to users. The Board is  
18 required to identify fish stocks which are used for subsistence  
19 purposes, to determine what portion of that stock can be har-  
20 vested, and to determine how much of the harvestable portion of  
21 the fish stock is needed to provide a reasonable opportunity for  
22 subsistence uses to be satisfied.

23  
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<sup>4</sup> The full text of this statute is set out in Appen-  
dix II.

1           The Board identified the Tanada Creek sockeye salmon  
2 run as being subject to customary and traditional subsistence  
3 use. However, in dealing with questions of plaintiffs' usage of  
4 the Tanada Creek sockeye salmon stock in March of 1988, the Board  
5 did not have sufficient data to do the required analysis of  
6 plaintiffs' usage of that fish stock, nor did the Board have  
7 sufficient data to do the required analysis with respect to what  
8 quantity of fish were "harvestable". AS 16.05.258(c). While the  
9 Board grappled at great length with the question of how much of  
10 the harvestable portion of the Tanada Creek salmon run was needed  
11 to provide a reasonable opportunity to satisfy the subsistence  
12 uses of those stocks, the Board ultimately made no determination  
13 of plaintiffs' needs or what was harvestable under Section 258.

14           In order for this court to sustain regulations adopted  
15 by the Board in furtherance of rural Alaskans' entitlement to a  
16 subsistence fishery, the court must be in a position to ascertain  
17 by reference to a record and to Board findings that the Board has  
18 followed the statutory procedure for assessing subsistence usage  
19 and allocating fish stocks to that usage. In this case, the  
20 necessary data did not exist. The Board was unable to make the  
21 determinations which the statutory procedure requires. As a  
22 consequence of this deficiency, the court entered its preliminary  
23 injunction requiring that the Board permit a subsistence fishery  
24 in favor of plaintiffs, and requiring that the Board gather the  
25 needed data during 1989. Order of June 6, 1989. For the same  
26 reason, the court must now grant plaintiffs' motion for partial

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

KATIE JOHN, et al.,  
Plaintiffs,

vs.

UNITED STATES OF AMERICA,  
et al.,  
Defendants.

No. A90-484 Civil

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ALASKA LEGAL  
SERVICES CORP.

ARCTIC REGIONAL FISH AND  
GAME COUNCIL, et. al.,

Plaintiffs,

vs.

MANUEL LUJAN, et al.,

Defendants.

No. A90-419 Civil

PRELIMINARY RULING OF JUDGE HOLLAND  
ON CROSS MOTIONS FOR SUMMARY JUDGMENT

DECEMBER 12, 1991

JUDGE HOLLAND:

It certainly won't end the world. It would turn it upside down as far as fish management concerning Alaska. I trust I won't surprise anyone if I tell you that I'm going to take this matter under advisement. Consider it some further. But having said that I do want to share with you some preliminary feelings that I have on the case. In fact, tell you what I tentatively propose to do with this case I emphasize that this is a preliminary tentative view of the matter. I reserve the right to change direction completely in matters of further analysis of the situation. As I see this matter right this minute I believe that the federal government's construction of the term "public lands" was deficient. I'm afraid that the secretary's definition of public lands suffers from the same kind of difficulty that the state's handling of the term "rural" had in the Kenaitze case that some of you are recently familiar with. When that case got to the Circuit court, the state and perhaps in some sense myself were taken to task for I think they call it a wooden definition of the statute the term rural. I say that I think the federal government in this instance is guilty of the same kind of hyper-technical construction of the term public lands. In having said that, you should not jump to the conclusion that that means that I am going to go directly to taking this issue, that I am going to rewrite the secretary's regulation for it. I don't think that's my function. I am not at all sure, despite the difficulty that I have with the definitional process, I am not all convinced that the secretary's

position here (indiscernible) If I have leanings at all, quite frankly, they are leanings in the direction of a belief that the secretary was on the right track in attempting to deal with subsistence on an area basis the problem is that if the definition of the area where this regulation would apply hasn't been satisfactorily justified in my mind. Again, I say I'm concerned that in this instance the secretary may have reached what could be a right answer but for a wrong reason. On faulty premises which I think cannot sustain the regulation. In the technical sense of things I'm saying that tentatively I think the regulation has been adopted arbitrarily for a legally insufficient reason. I'm also stating that it may be possible for the secretary to fix his regulation by some further analysis, by some further public hearings or whatever he is required to do in the process. Tentatively I'm going to remand this matter to the secretary for further review of this regulation and assuming that I do that partial of the remand will be a most serious urging that the secretary must fully consider and then enunciate the policy considerations upon which he makes whatever determination comes out of this remand. Let me very candid with you about what my concern is. I have said before and I will say it again that I believe the Kenaitze case was wrongly decided. I believe it was wrongly decided because parties and I did not adequately provide the appeals court with the material which had it been available might have made the difference in terms of explaining that what is rural in the outskirts of Los Angeles or San Francisco may look highly

urban and very highly industrialized to the State of Alaska. I think we fell down there and we paid the price for it. I'm very concerned that if this case were to go beyond this court in its present (indiscernible) that we would have the same thing all over again. I'm confident that we would have it in appellate court telling the secretary that he was being stingy, that he was being hyper-technical, that if he had good reasons for building the kinds of fences that he did around subsistence that he didn't explain it. And again, my worst (indiscernible) is that we would have a decision that would be, that would dictate some results, that we cannot, could not, alter once they come from an appellate court. I think that at this stage of things we have an opportunity, the secretary has an opportunity, to rethink this matter. When the secretary does that, with hopefully some guidance from me, we may have a different regulation, we may have the same regulation, but hopefully we will have a regulation that is founded upon a somewhat more generous interpretation of the terms public lands and with a more adequate analysis of not just the history that lead to the regulation but also the very difficult policy considerations which are implicated in this regulation. I don't, there is some things that seem to get argued here that I would have thought were beyond any argument, what I started to say and then it waffled over, is that I don't think anybody would disagree that one of the primary goals and purposes of statehood for Alaska was to transfer control over fishing and hunting out of the federal government and into the state authorities. This case, this problem, has the potential for

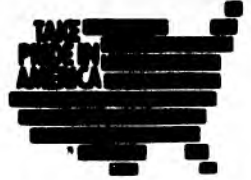
turning that absolutely upside down. By returning for all practical purposes, control over fisheries to the federal government. It gives me a great, great deal of pause to consider upsetting that purpose. Because of a regulation that I think may be proper but has not been adequately justified. Again I say that's what I think about the matter right now, we are going to do our best to reevaluate this position and to give you a written decision on it which will provide some guidance for rural concern in what I believe will be a remand to the secretary for some further consideration. Lest I drag this out any longer let me just say quickly because I skipped past something that I meant to say.

I think its extremely important that the State of Alaska be involved in this process, the regulatory process. I mean no offense to counsel here, but I see different attorneys over and over again representing the state on these subsistence issues. I'm afraid that the state has no corporate memory as far as what has gone on in the subsistence litigation. The lack of that corporate memory is likely to cause difficulty. The state has a very, very, great stake in what is at issue here. And if the state does not come forward with some assistance or the secretary, it reaches all the way back in territorial days. And I mean that literally. If the state does not reach back into its territorial roots on this fisheries issue, and make a record of what has gone on, make a record of how the fisheries of this state were decimated under federal control onca, the state risks having the same thing happen over again. Thank you for your arguments today, ladies and

gentlemen. We'll get you a decision as quickly as we can.



# United States Department of the Interior



## OFFICE OF THE SECRETARY

1689 C Street, Suite 100  
Anchorage, Alaska 99501-5151

June 16, 1992

Honorable Arliss Sturgulewski  
Alaska State Senate  
P.O. Box V, Room 427  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Enclosed are copies of documents which describe the Federal government's positions on the issue of Federal jurisdiction on management of subsistence resources in navigable and non-navigable waters.

The first document is an excerpt from the Federal Regulations which are now published and will be effective on July 1, 1992.

The second document is a copy of a brief filed in pending litigation. The pertinent discussion starts on page 5 of the brief and continues through most of page 11.

Sincerely,

Curtis V. McVee  
Special Assistant to the Secretary

Enclosures

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EXCERPT FROM DOI-DOA PERMANENT/FINAL  
REGULATIONS PUBLISHED 5/29/92 - EFFECTIVE 7/1/92

VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations of this Part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. These regulations do not supersede agency specific regulations.

★ (b) The regulations contained in Subpart D apply on all public lands including all non-navigable waters located on these lands. However, the regulations contained in Subpart D do not authorize any subsistence uses in those National Parks listed in §\_\_\_ .3(a). In the following areas, the regulations in Subpart D apply on all Federal public lands including all waters located on these lands:

(1) the area beginning at a point on the boundary between the United States and Canada, on the divide between the north and south forks of the Firth River, approximate latitude 68° 52'N., longitude 141° 00'W., thence westerly along this divide and the periphery of the watershed northward to the Arctic Ocean, along the crest of portions of the Brooks Range and the DeLong Mountains, to Cape Lisburne;

(2) the area north of 61° north latitude, south of 61° 21' north latitude, west of 163° 40' longitude and east of the Bering Sea shoreline including Hazen Bay;

(3) Nunivak Island and waters of the Bering Sea within one mile of its shorelines;

(4) the area west of the eastern most tip of Unimak Island to the terminus of the Aleutian Islands, except the area between Akutan Pass and Samalga Island;

(5) Simeonof Island and all waters of the Pacific Ocean within one-mile of Simeonof Island;

(6) the Semidi Islands and all waters of the Pacific Ocean

within one mile of each of the Semidi Islands;

(7) Kodiak National Wildlife Refuge;

(8) waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line one-half mile on either side of the mouth of Karluk River, and extending seaward 3000 feet;

(9) all waters of the Pacific Ocean within 1,500 feet seaward of the shoreline of Afognak Island;

(10) Kenai National Wildlife Refuge;

(11) Glacier Bay National Preserve.

(c) The public lands described in §\_\_\_\_.3(b)(1)-(11) remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

§ \_\_\_\_\_.4 Definitions.

The following definitions apply to all regulations contained in this Part.

Agency means a subunit of a cabinet level Department of the Federal government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

ANILCA means the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 94 Stat. 2371, (December 2, 1980) (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in

the owner no property right or title in the corpus of the water flowing in the natural water course, especially where there is a constitutional or statutory provision to the effect that the ownership of public waters is in the state.

78 Am. Jur. 2d, Waters § 318 at 756 (1975):

But while a prior appropriator of the water of a natural stream secures a property right therein, he does not acquire title to the running water, at least, not prior to the actual diversion thereof, unless he is entitled to take and use all of the water of the stream. As stated in some cases, an appropriator of water does not own the corpus of the water, but only its use.

Even if the United States does hold as plaintiffs allege a reserved right to a portion of the waters in the Copper River and Tanada Creek as indicated above, this is a usufructuary right and does not constitute the holding of "title ... which is in the United States...." 16 U.S.C. § 3102(2). Therefore, the reserved water right held by the United States does not, for purposes of 16 U.S.C. §§ 3113, 3114, transform that water column into public land for purposes of Title VIII of ANILCA, 16 U.S.C. § 3111-3126. Consequently, to the extent that plaintiffs' First and Second Causes of Action are based on the allegation that the water column constitutes public land, plaintiffs have failed to state a claim upon which relief can be granted.

C. The Navigational Servitude Does  
Not Transform The Copper River  
And Tanada Creek Into Public Land

In the Complaint ¶15 at 9-10, plaintiffs allege:

15. The Copper River and Tanada Creek also qualify as public lands because the United States has interests in waters,

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including, but not limited to, navigational servitudes. The United States also has an interest in the waters of the Copper River and Tanada Creek based on the Magnuson Fishery Conservation and Management Act, the Clean Water Act, and the Alaska Allotment Act.

This court has already determined that the United States "does not hold title to the navigational servitude" and therefore that "servitude is not public land within the meaning of ANILCA." City of Angoon v. Donald Hodel, No. A83-234 Civil (D. Alaska, Memorandum and Order on Subsistence and Trust Responsibility Issues filed October 17, 1985 at 15-16) (copy attached hereto as Exhibit No. 1), affirmed, 803 F.2d 1016, 1027-28 n. 6 (9th Cir. 1986).

Nothing in the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq., creates or confers any title in the United States to the waters of the Copper River or Tanada Creek. That Act relates generally to a fishery conservation zone, the inner boundary of which is the seaward boundary of any coastal state and extending outward two hundred nautical miles. 16 U.S.C. § 1811; United States v. Tsuda Maru, 470 F.3upp. 1223, 1224 (D. Alaska 1979); State v. F/V Baranof, 677 P.2d 1245, 1248-49 (Alaska 1984), cert. denied, 469 U.S. 823 (1984). See also 16 U.S.C. § 1801(b).

The Clean Water Act, 33 U.S.C. § 1251 et seq., also does not create any title in the United States to the waters of the Copper River or Tanada Creek. While the Clean Water Act regulates the discharge of pollutants to the waters of the United States, 33 U.S.C. §§ 1311, 1362(7), 1362(12), that is a regula-

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