

SCOMM

81:1

**SUBSISTENCE NOTEBOOKS
As of 6/17/92**

ORDER OF INFORMATION

COMPARISONS OF SB 484 & SB 485

**GOVERNOR'S OFFICE
SENATOR ADAMS
ADVISORY COUNCIL BILL & ANILCA**

SB 484

**SECTIONAL ANALYSIS - LEGAL SERVICES
FISCAL NOTES**

AMENDMENTS

GOVERNOR'S BACK-UP SB 484

SB 485

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

AMENDMENTS

ANILCA

**BOBBY VS. STATE OF ALASKA
KATIE VS. STATE OF ALASKA
KATIE VS. UNITED STATES OF AMERICA
MCVEE LETTER (U.S. DEPT. INTERIOR)
MURKOWSKI LETTER
FEDERAL REGULATIONS**

AG OPINIONS

**3/27/92 NELSON
6/12/92 NELSON
6/14/92 NELSON
6/18/92 NELSON**

LEGAL OPINIONS

6/16/92 UTERMOLÉ (CONSTITUTIONAL ISSUES - SB484/HB 599)
6/16/92 CHENOWETH
6/16/92 UTERMOLÉ
6/15/92 UTERMOLÉ
6/12/92 UTERMOLÉ
3/25/92 UTERMOLÉ
3/16/92 UTERMOLÉ

CONSTITUTIONAL AMENDMENTS

SJR 56
CSSJR 86(RES) AM
SJR 50
SJR 49
HJR 86
HJR 79
HJR 78
HJR 77

BLUE FOLDER

TESTIMONY/POSITION PAPERS

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

PINK FOLDER

SUPREME COURT DECISION

*Principal Features of
Advisory Council Bill and ANILCA*

*From the Governors Office
6/17/92*

Advisory Council Bill

ANILCA

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

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

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

Prepared by Senator Adams Office

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

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

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

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

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

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

**AFN Bill
HB 592**

How was the bill drafted?

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

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

Eligible Users

Areas with communities under 2500?

All residents presumed eligible.

No paperwork or permits.

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

All residents eligible regardless of dependence or use.

Communities 2500 to 7000?

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

All residents eligible regardless of dependence or use.

Communities over 7000?

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

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

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

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

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

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

Eligible Fish Stocks and Game Populations?

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

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

Other parts of the package?

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

Requires constitutional amendment. Unconstitutional if passed without constitutional amendment.

Constitutionality?

Constitutional

Unconstitutional, requires amendment.

ANILCA Compliance?

Probably requires ANILCA amendment

Urban subsistence could be problem.

Regain State Management?

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

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

Regulatory System?

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

Less board discretion than existing statute.

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

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

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

Regulatory Standards?

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

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

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

Effect on other uses?

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

Define Customary and Traditional?

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

Solve Customary Trade Problems?

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

Definition of other terms?

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

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

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

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

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

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

customary trade - are defined

customary trade - are not defined.

Cost?

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

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

Long-term political and judicial stability?

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

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

SB 484

**DIVISION OF LEGAL SERVICES
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: Sectional Summary of SB 484, An Act relating to the taking of fish and game; and providing for an effective date

TO: Senator Jay Kerttula

FROM: George Utermohle *GU*
Legislative Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Jay Kerttula
June 16, 1992
Page 8

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

If I may be of further assistance, please advise.

GU:gc
92-411.glc

SENATE BILL NO. 484**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION****BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****Introduced: 6/15/92****Referred: Senate Committee on the Whole****A BILL****FOR AN ACT ENTITLED**

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

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

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

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

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

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

1 identity for many subsistence users;

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

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

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

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

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

20 (b) It is the purpose of this Act

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

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

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

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

31 (c) It is the intent of the legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (3) category 3, an area that is

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

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

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

23 (1) the social and economic structure;

24 (2) the stability of the economy;

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

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

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

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

31 (7) the seasonal cycle of economic activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (o) For purposes of

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

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

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

29 (i) resource population and management objectives;

30 (ii) estimated harvest per unit of effort by participants in the

31 fishery or hunt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO.

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: Rules Committee

Requestor: COMPONENT SERIAL NO.

4	8	3
---	---	---

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No impact in FY 92

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

Prepared By: Robert Bosworth, Director *[Signature]* Phone: 465-4147

Division: Division of Subsistence Date: 2/20/92

Approved by Commissioner: *[Signature]*

Agency: Department of Fish and Game Date: 2/26/92

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

Development of a Subsistence Permitting Program:

OVERVIEW:

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

PROCESS:

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

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

CORE STAFFING:

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

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

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

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

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

SUPPORT STAFF:

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

BUDGET--Division of Subsistence:

FY 93

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

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

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

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

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

FY 94:

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

FY 95:

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

FY 96:

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

FY 97 and FY 98:

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____

Department Affected: Fish and Game

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

BRU: Boards

Component: Board Services

Sponsor: Rules Committee

Requestor: _____

COMPONENT SERIAL NO.

4	8	2
---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: no FY92 fiscal impact.

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

Prepared By: Beverly Reame *Beverly Reame*

Phone: 465-4110

Division: Division of Boards

Date: 6/13/92

Approved by Commissioner: *Carl R. Rosier*

Agency: Department of Fish and Game

Date: 6/14/92

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

DIVISION OF BOARDS

ANALYSIS

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

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

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

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

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

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

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

Other items affecting cost estimates:

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

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

COSTS - FY93

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

COSTS - FY94:

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

COSTS - FY95:

Personal Services	125.0
Travel	172.0
Contractual	100.0
Supplies	5.0

TOTAL **402.0**

COSTS - FUTURE YEARS

Personal Services	130.0
Travel	97.0
Contractual	57.0
Supplies	2.0

TOTAL **286.0**

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

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

4	9	0
---	---	---

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

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
-------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

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

		9	3
--	--	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

Richard I. Pegues

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

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

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

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

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

**Request For
New Position**

AGENCY Department of Law
 BRU Legal Services
 COMPONENT Operations

FY 93

Page 1 of 2
 Revised Date: _____

FISCAL NOTE

Bill No. SB 484

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

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

000	000	000	768
-----	-----	-----	-----

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

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

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 06/16/92

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CS* Date: 06/16/92
 Agency: Alaska Court System

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

Alaska Court System
SB 484
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.

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

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

SB 484

AMENDMENTS

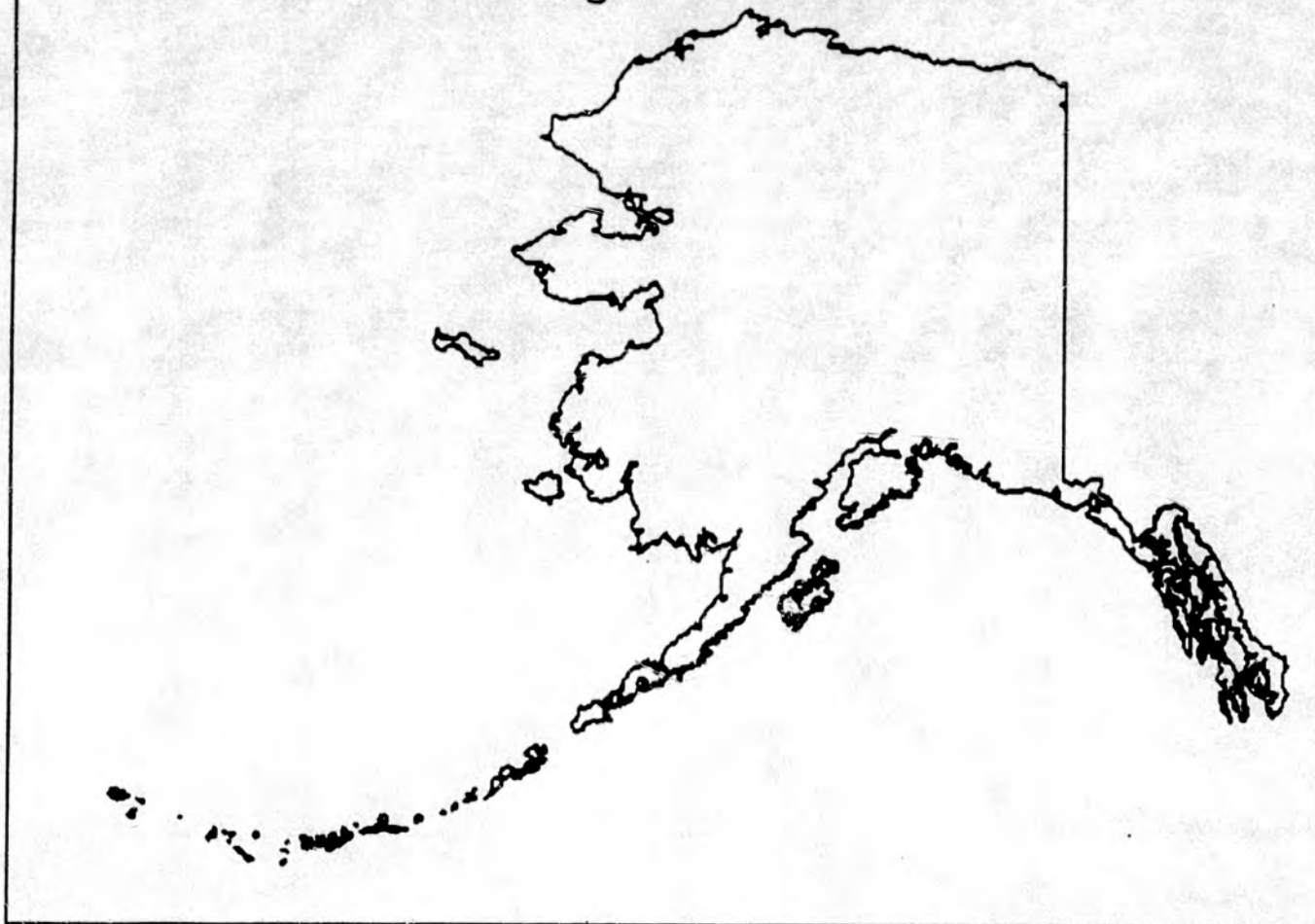
GOVERNOR'S

BACK-UP

SB 484

2nd Special Session
17th Legislative Session

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



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

State of Alaska
Office of the Governor
March 3, 1992

CONTENTS

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

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 15, 1992

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

Dear President Eliason:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Walter J. Hickel
Governor



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

QUESTIONS & ANSWERS ON SUBSISTENCE

June 2, 1992

Q - What's the subsistence problem?

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

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

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

Q - Are there any other problems?

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

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

Can we fix it with a constitutional amendment?

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

Will the Subsistence Advisory Council bill fix?

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

Is it necessary to fix all the problems?

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

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

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

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

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

Q - What can I do to help?

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

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

How would the new law work?

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

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

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

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

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

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

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

What are the qualification standards?

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

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

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

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

Where would people be able to subsistence hunt and fish?

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

What are the advantages of this approach?

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

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

1 identity for many subsistence users:

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

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

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

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

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

20 (b) It is the purpose of this Act

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

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

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

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

31 (c) It is the intent of the legislature

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

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

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

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

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

8 The Board of Fisheries and the Board of Game shall identify the fish stocks and game
9 populations, or portions of stocks or populations, that are customarily and traditionally taken for
10 subsistence in the areas of the state identified by the boards under (f)(1) and (2) of this section.
11 The commissioner shall provide recommendations to the boards concerning the stock and
12 population identifications. The boards shall make identifications required under this subsection
13 after receipt of the commissioner's recommendations.

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

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

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

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

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

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

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

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

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

G

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (3) category 3, an area that is

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

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

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

23 (1) the social and economic structure;

24 (2) the stability of the economy;

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

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

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

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

31 (7) the seasonal cycle of economic activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (o) For purposes of

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

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

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

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

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

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

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

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

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

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

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

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

16.251(d) is amended to read:

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

16.255(d) is amended to read:

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

16.940(29) is amended to read:

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

16.940(30) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1

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

Section 1

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

Section 2

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

Proposed AS 16.05.268(a):

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

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

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

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

V

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

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

Proposed AS 16.05.268(b):

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

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

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

v

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

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

AS 16.05.268(b) (1):

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

AS 16.05.268(b) (2):

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

AS 16.05.268(b) (3):

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

AS 16.05.268(b)(4):

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

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

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

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

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

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

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

Proposed AS 16.05.268(c):

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

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

Proposed AS 16.05.268(d):

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

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

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

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

Proposed AS 16.05.268(e):

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

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

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

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

AS 16.05.268(f):

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

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

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

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

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

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

Proposed AS 16.05.268(g):

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

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

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

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

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

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

Proposed AS 16.05.268(h):

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

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

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

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

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

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

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

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

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

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

Proposed AS 16.05.268(i):

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

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

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

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

The statute contemplates that a person living in a subsec. (f)(3) community who wishes to subsistence hunt or fish will apply for qualification, and the application will be evaluated by the Department of Fish and Game. It is anticipated that a person living in a subsec. (f)(2) community who wishes to subsistence hunt or fish will be provided a form to use to calculate the person's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed AS 16.05.268(j):

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

Proposed AS 16.05.268(k):

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

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

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

Proposed AS 16.05.268(l):

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

Proposed AS 16.05.268(m):

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

Proposed AS 16.05.268(n):

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

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

Proposed AS 16.05.268 (o):

Paragraph (1):

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

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

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

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

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

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

Paragraph (2):

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

Sections 3 and 4:

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

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

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

Section 5:

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

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

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

Section 6:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7:
(Repealers)

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

Sections 8, 9, 11, and 12:

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

Section 10:

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 6, 1992

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

Dear Mitch,

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

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

In about a week and a half, I will introduce legislation you have helped to draft. As we conclude the Council's deliberations and begin the legislative process, I hope each of you will continue to be involved, both individually and on behalf of the interests you have so ably represented. I appreciate the Council's willingness to reassemble, if necessary, as we continue through the process and in two years to review how the law has functioned. Passage of subsistence legislation continues as a top priority for me. I want you and Kathleen to join me for a great party at the signing ceremony.

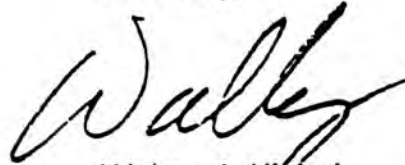
I know that there are parts of the draft that each Council member would do differently if it were left to him alone. Each of you will have to deal with friends and associates who will feel you should have prevailed on every point. I also understand that while some members were nominated by specific groups,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

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

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

With warm regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Wally". The signature is fluid and cursive, with a large initial "W" and a long, sweeping tail.

Walter J. Hickel
Governor

A similar letter was
sent to each member.

February 6, 1992

The Honorable Walter J. Hickel
Office of the Governor
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Hickel:

Throughout our deliberations, you have profusely praised our hard work, spirit of compromise, and personal sacrifices. We sincerely appreciate that praise and recognition, and we take pride in our work, imperfect though it may be.

Now it is our turn. We cannot bask in this high praise by ourselves. It is very clear to us, as we hope it will become to all Alaskans and others, that whatever contribution we will have made to resolving the subsistence issue could not have been done without you. Your unflagging determination to find a solution and your unfailing support of our work have turned despair to hope, and hope to the real possibility of a solution. Thank you for your support, and for your patience.

Our thanks would be incomplete without including McKie Campbell. Without him our work would also be incomplete. We might still be debating philosophies but for McKie's thorough attention to every aspect of the task and to facilitating productive discussions of innumerable sensitive, difficult issues. Few people have the skills and tenacity to bring such a process to conclusion.

We also thank Lance Nelson for his "sustained yield" of legal advice, and Jackie Brown for her expert, invaluable support.

Governor, thank you again and good luck in the next phase of your efforts to bring subsistence to resolution.

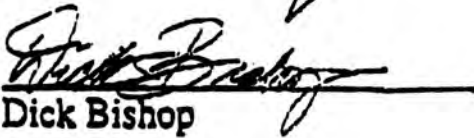
The Honorable Walter J. Hickel
February 6, 1992
Page 2

Sincerely,

Governor's Subsistence Advisory Council




Governor Jay Hammond



Dick Bishop



Matthew Iya



John J. Burns



Theo Matthews



Mitch Demientieff



Byron Mallott



Eric Forrer

Gene Peltola was not present at the
Gene Peltola meeting

GOVERNOR'S SUBSISTENCE ADVISOR COUNCIL

Mr. Dick Bishop
1555 Gus's Grind, Fairbanks, AK 99709
Phone: 455-6151 Fax # 451-2858

Mr. John James Burns
P.O. Box 83570, Fairbanks, AK 99708
Phone: 479-0204/2671 Fax: 479-4293/call before sending

Mr. Mitch Demientieff
P.O. Box 249, Nenana, AK 99760
Phone: HM 832-5521 WK 832-5461 Fax: 832-1077

Mr. Eric Forrer
P.O. Box 34383, Juneau, AK 99803
Phone: 789-2024/5237 Fax: 789-4146

The Honorable Jay S. Hammond
Port Alsworth, AK 99653
Phone: 781-2235 Fax: 781-2215 (Call 781-2211)

Mr. Matthew Iya
P.O. Box 948, Nome, AK 99762
Phone: 443-5682 Fax: 443-3708

Mr. Byron Mallott
102 Cordova Street, Juneau, AK 99801
Phone: WK 586-1512 HM 586-6937 Fax: 586-9214

Mr. Theo Matthews
P.O. Box 4649, Kenai, AK 99611
Phone: 283-3600/283-9540 Fax: 283-3306

Mr. Gene Peltola
P.O. Box 528, Bethel, AK 99559
Phone: 543-3321 Fax: 543-5277

Mr. McKie Campbell
P.O. Box 110001, Juneau, AK 99811-0001
Phone: 465-3500 Fax: 465-3454

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

FISCAL NOTE

BILL NO. ___

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Revision Date: _____

Department Affected: Fish and Game

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

BRU: Subsistence

Component: Subsistence

Sponsor: Rules Committee

Requestor: _____

COMPONENT SERIAL NO. 4 8 3

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No impact in FY 92

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

Prepared By: Robert Bosworth, Director *RHB*

Phone: 465-4147

Division: Division of Subsistence

Date: 2/20/92

Approved by Commissioner: *Carol P...*

Agency: Department of Fish and Game

Date: 2/26/92

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

PROCESS:

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

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

CORE STAFFING:

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

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

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

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

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

SUPPORT STAFF:

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

BUDGET--Division of Subsistence:

FY 93

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

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

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

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

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

FY 94:

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

FY 95:

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

FY 96:

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

FY 97 and FY 98:

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO.

Revision Date:

Department Affected: Fish and Game

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

BRU: Boards

Component: Board Services

Sponsor: Rules Committee

Requestor:

COMPONENT SERIAL NO.

4	8	2
---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: no FY92 fiscal impact

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

Prepared By: Beverly Reaume *Beverly Reaume*

Phone: 465-4110

Division: Division of Boards

Date: 6/13/92

Approved by Commissioner: *Carl Z. Rosier*

Agency: Department of Fish and Game

Date: 6/14/92

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

DIVISION OF BOARDS

ANALYSIS

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

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

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

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

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

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

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

Other items affecting cost estimates:

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

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

COSTS - FY93

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

COSTS - FY94:

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

COSTS - FY95:

Personal Services	125.0
Travel	172.0
Contractual	100.0
Supplies	5.0

TOTAL **402.0**

COSTS - FUTURE YEARS

Personal Services	130.0
Travel	97.0
Contractual	57.0
Supplies	2.0

TOTAL **286.0**

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

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

4	9	0
---	---	---

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

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
-------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

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

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

BILL NO. _____

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

		9	3
--	--	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

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

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

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

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

Request For New Position

AGENCY Department of Law

BRU Legal Services

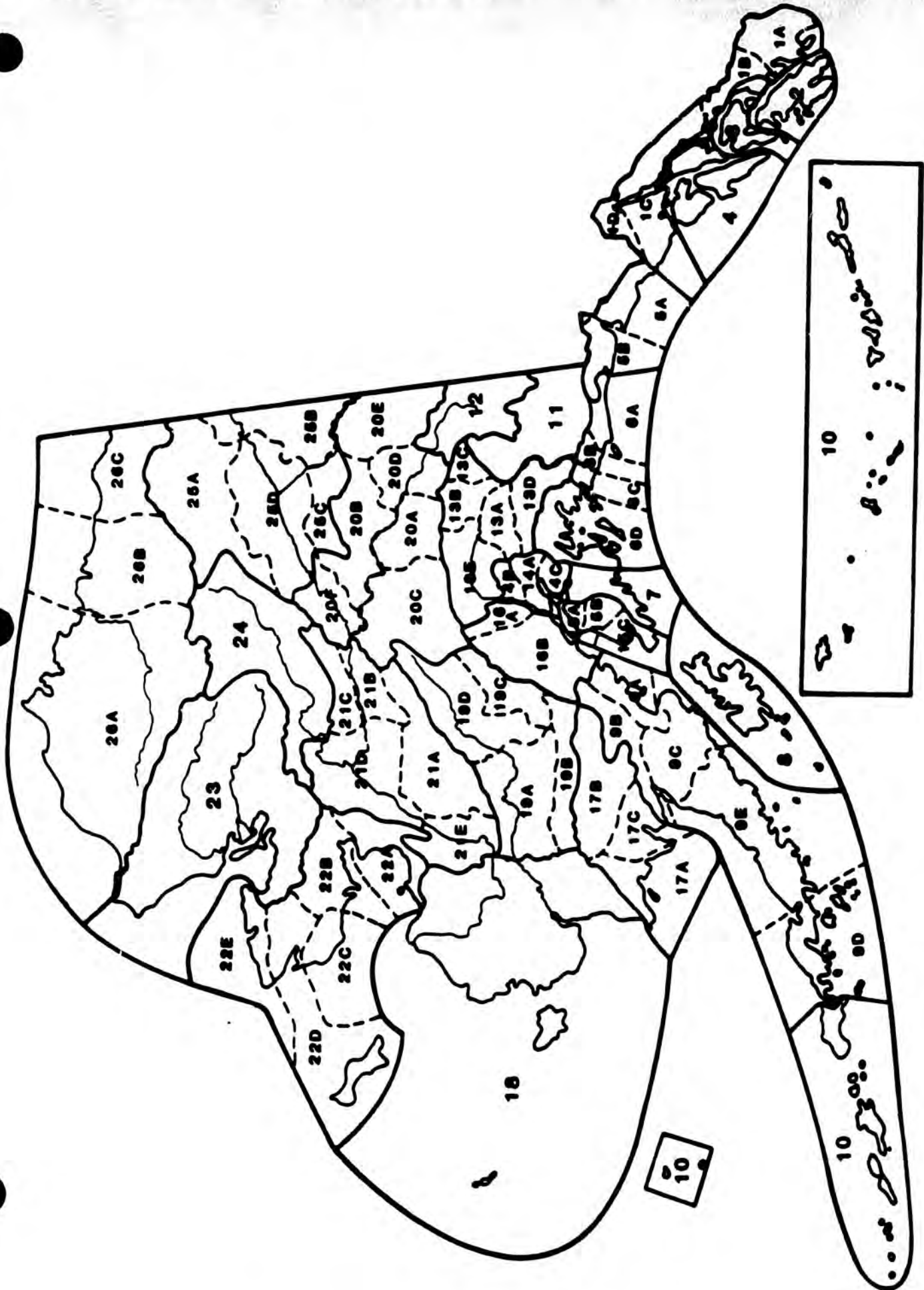
COMPONENT Operations

FY 93

Page 1 of 2

Revised Date: _____

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



GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX B

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

February 1992

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

Three Types of Communities and Areas

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

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

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

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

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

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

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

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

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

Assumptions for the Preliminary Listing

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

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

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

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

The Preliminary Listing

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

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

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

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

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Balance of Bristol Bay Census Area	3	100.00	Southwest	Rural
Portage Creek	5	60.00	Southwest	Rural
Solomon	6	100.00	Arctic	Rural
Ugashik	7	85.70	Southwest	Rural
Council	8	62.50	Arctic	Rural
Balance of Lower Kuskokwim Census	10	40.00	Western	Rural
Telida	11	90.90	Interior	Rural
Balance of Barrow-Point Hope Census	13	7.70	Arctic	Rural
Balance of Wade Hampton Census Sub	17	70.60	Western	Rural
Balance of Angoon Census Sub-Area	19	0.00	Southeast	Rural
Balance of Outer Ketchikan Census Su	21	9.50	Southeast	Rural
Gakona	25	0.00	Southcentral	Rural
McCarthy	25	4.00	Southcentral	Rural
Port Clarence	26	0.00	Arctic	Rural
Paxson	30	0.00	Southcentral	Rural
Paxson-Sourdough	30	0.00	Southcentral	Rural
Alatna	31	93.60	Interior	Rural
Balance of Lake and Peninsula Borough	31	16.10	Southwest	Rural
Lake Minchumina	32	18.80	Interior	Rural
Balance of Dillingham Census Area	32	31.25	Southwest	Rural
Igiugig	33	78.80	Southwest	Rural
Evansville	33	57.60	Interior	Rural
Wiseman	33	15.20	Interior	Rural
Eagle Village	35	80.00	Interior	Rural
Nikolski	35	82.85	Southwest	Rural
Ivanof Bay	35	94.30	Southwest	Rural
Bettles	36	22.20	Interior	Rural
Meyers Chuck	37	10.80	Southeast	Rural
Mendaltna	37	5.40	Southcentral	Rural
Takotna	38	44.70	Interior	Rural
Chase	38	0.00	Southcentral	Rural
Tonsina	38	18.40	Southcentral	Rural
Point Baker	39	0.00	Southeast	Rural
Birch Creek	42	90.50	Interior	Rural
Pedro Bay	42	90.50	Southwest	Rural
Lime Village	42	95.24	Western	Rural
Annette	43	16.30	Southeast	Rural
Healy Lake	47	85.10	Interior	Rural
Chitina	49	46.90	Southcentral	Rural
Stony River	51	88.24	Western	Rural
Central	52	1.90	Interior	Rural
Red Devil	53	50.94	Western	Rural
Chignik Lagoon	53	56.60	Southwest	Rural
Pilot Point	53	84.90	Southwest	Rural
Hughes	54	92.60	Interior	Rural
Kasaan	54	53.70	Southeast	Rural
Port Alsworth	55	1.80	Southwest	Rural
Balance of McGrath-Holy Cross Census	56	10.70	Interior	Rural
Ferry	56	12.50	Interior	Rural
Elfin Cove	57	1.80	Southeast	Rural
Oscarville	57	91.22	Western	Rural
Clark's Point	60	88.30	Southwest	Rural
Chistochina	60	61.70	Southcentral	Rural
Game Creek Census Designated Place	61	0.00	Southeast	Rural
Port Protection	62	1.60	Southeast	Rural
Slana	63	6.40	Southcentral	Rural
Platinum	64	92.18	Western	Rural
Twin Hills	66	92.40	Southwest	Rural

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
False Pass	68	76.47	Southwest	Rural
Rampart	68	94.10	Interior	Rural
Kobuk	69	89.90	Arctic	Rural
Chiniak	69	5.80	Southwest	Rural
Bettles/Evansville	69	39.10	Interior	Rural
Dot Lake	70	54.29	Interior	Rural
Balance of Aniak Census Sub-Area	71	63.38	Western	Rural
Karluk	71	91.50	Southwest	Rural
Circle	73	86.30	Interior	Rural
Whale Pass	75	2.70	Southeast	Rural
Ekwok	77	87.00	Southwest	Rural
Akhiok	77	93.50	Southwest	Rural
Anvik	82	91.50	Interior	Rural
Nelson Lagoon	83	80.72	Southwest	Rural
Skwentna	85	1.20	Southcentral	Rural
Edna Bay	86	0.00	Southeast	Rural
Balance of Prince William Sound Censu	86	0.00	Southcentral	Rural
Tetlin	87	95.40	Interior	Rural
Balance of Wrangell Census Sub-Area	87	11.50	Southeast	Rural
Northway Junction	88	70.50	Interior	Rural
Chalkyitsik	90	92.20	Interior	Rural
Balance of Yukon Flats Census Sub-Ar	91	38.50	Interior	Rural
Balance of Nome Census Area	92	46.74	Arctic	Rural
Iliamna	94	65.90	Southwest	Rural
Chenega Bay	94	69.20	Southcentral	Rural
Tenakee Springs	94	9.60	Southeast	Rural
Arctic Village	96	93.80	Interior	Rural
Mentasta Lake	96	72.90	Southcentral	Rural
Manley Hot Springs	96	14.60	Interior	Rural
Chuathbaluk	97	89.69	Western	Rural
Atka	98	92.85	Southwest	Rural
Hyder	99	1.00	Southeast	Rural
Lignite	99	0.00	Interior	Rural
Stevens Village	102	91.20	Interior	Rural
Beaver	103	95.20	Interior	Rural
Gulkana	103	59.20	Southcentral	Rural
Levelock	105	82.90	Southwest	Rural
Sleetmute	106	86.79	Western	Rural
Crooked Creek	106	90.56	Western	Rural
Tenacross	106	94.30	Interior	Rural
Dry Creek	106	0.00	Interior	Rural
Perryville	108	94.40	Southwest	Rural
Nikolai	109	88.90	Interior	Rural
Sheldon Point	109	92.70	Western	Rural
Hollis	111	2.70	Southeast	Rural
Northway Village	113	94.70	Interior	Rural
Port Alexander	119	2.50	Southeast	Rural
Port Heiden	119	72.30	Southwest	Rural
Tatitlek	119	86.60	Southcentral	Rural
Balance of Northwest Arctic Borough	122	67.20	Arctic	Rural
Egegik	122	70.50	Southwest	Rural
Northway	123	64.20	Interior	Rural
Koyukuk	126	97.60	Interior	Rural
Golovin	127	92.90	Arctic	Rural
Klukwan	129	86.80	Southeast	Rural
Chignik Lake	133	91.80	Southwest	Rural
Pitka's Point	135	95.60	Western	Rural
South Naknek	136	79.40	Southwest	Rural

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

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

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Kwigillingok	278	94.98	Western	Rural
Old Harbor	284	88.70	Southwest	Rural
Akiak	285	97.19	Western	Rural
Lower Kalskag	291	98.28	Western	Rural
Kongiganak	294	97.28	Western	Rural
Saint Michael	295	91.20	Arctic	Rural
Tuntutuliak	300	96.86	Western	Rural
Ambler	311	89.70	Arctic	Rural
Balance of Hoonah-Yakutat Census Su	311	15.40	Southeast	Rural
Tununak	316	96.20	Western	Rural
Seldovia	316	15.20	Southcentral	Rural
Kivalina	317	97.50	Arctic	Rural
Napakiaik	318	94.34	Western	Rural
Buckland	318	94.90	Arctic	Rural
Chefornak	320	97.50	Western	Rural
Napaakiaik	328	94.82	Western	Rural
Noatak	333	96.70	Arctic	Rural
Scammon Bay	343	96.50	Western	Rural
Tanana	345	78.30	Interior	Rural
Nuiqsut	354	92.70	Arctic	Rural
Tuluksak	358	95.53	Western	Rural
Nulato	359	96.90	Interior	Rural
Nunapitchuk	378	97.09	Western	Rural
Hydaburg	384	89.10	Southeast	Rural
Kiana	385	93.50	Arctic	Rural
Manokotak	385	95.60	Southwest	Rural
New Stuyahok	391	95.90	Southwest	Rural
Nenana	393	47.80	Interior	Rural
Stebbins	400	94.80	Arctic	Rural
Toksook Bay	420	95.48	Western	Rural
Kenny Lake	423	9.70	Southcentral	Rural
Kasigluk	425	95.29	Western	Rural
Saint Marys (Andreafsky)	441	82.90	Western	Rural
Balance of Prince of Wales Census Sub	442	7.00	Southeast	Rural
Copper Center	449	34.50	Southcentral	Rural
Glennallen	451	6.70	Southcentral	Rural
King Cove	451	39.25	Southwest	Rural
Shishmaref	456	94.50	Arctic	Rural
Kotlik	461	96.90	Western	Rural
Pilot Station	463	95.00	Western	Rural
Kipnuk	470	97.45	Western	Rural
Akiachek	483	95.03	Western	Rural
Healy	487	1.40	Interior	Rural
Wainwright	492	94.30	Arctic	Rural
Quinhagak	501	93.81	Western	Rural
Balance of Copper River Census Sub-A	504	0.90	Southcentral	Rural
Savoonga	519	95.20	Arctic	Rural
Gambell	525	96.20	Arctic	Rural
McGrath	528	46.90	Interior	Rural
Noorvik	531	93.80	Arctic	Rural
Yakutat	534	55.10	Southeast	Rural
Aniak	540	70.74	Western	Rural
Alakanuk	544	95.80	Western	Rural
Kwethluk	558	96.42	Western	Rural
Thorne Bay	569	1.20	Southeast	Rural
Naknek	575	41.00	Southwest	Rural
Fort Yukon	580	85.00	Interior	Rural
Balance of Koyukuk-Middle Yukon Cen	589	11.60	Interior	Rural

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

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

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

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

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

Place Name	1990 Population	Percent Native	Region	Old Rural Status
Amchitka	25	8.00	Southwest	Rural
Deadhorse	26	11.50	Arctic	Rural
Alcan	27	0.00	Interior	Rural
Circle Hot Springs Station	29	0.00	Interior	Rural
Port Alice	30	6.70	Southeast	Rural
Balance of Aleutians West Census Area	33	20.00	Southwest	Rural
Prudhoe Bay	47	8.50	Arctic	Urban
Dora Bay	57	3.50	Southeast	Rural
Freshwater Bay	68	10.30	Southeast	Rural
Saint John's Harbor	69	1.50	Southeast	Rural
Naukati Bay	93	1.10	Southeast	Rural
Balance of Prudhoe Bay-Kaktovik Census Area	101	8.90	Arctic	Rural
Rowan Bay	133	6.80	Southeast	Rural
Polk Inlet	135	13.30	Southeast	Rural
LaBouchere Bay	149	1.30	Southeast	Rural
Cube Cove	156	5.80	Southeast	Rural
Whitestone Logging Camp	164	3.70	Southeast	Rural
Hobart Bay	187	6.40	Southeast	Rural
Long Island	198	4.50	Southeast	Rural
Whittier	243	12.40	Southcentral	Urban
Shemya Station Census Designated Place	664	0.45	Southwest	Rural
Seward Area	3357	13.89	Southcentral	Urban
Delta Area	4008	2.79	Interior	Urban
Valdez	4068	5.90	Southcentral	Urban
Adak Station	4633	1.20	Southwest	Rural
Sitka	8588	20.90	Southeast	Rural
Kodiak City Area	12230	10.45	Southwest	Rural
Ketchikan Area	13828	13.73	Southeast	Urban
Juneau	26751	12.90	Southeast	Urban
Kenai Peninsula Area	36651	7.35	Southcentral	Urban
Matsu Area	39415	4.91	Southcentral	Urban
Fairbanks North Star Borough	77720	6.80	Interior	Urban
Anchorage	226338	6.44	Southcentral	Urban

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

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

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX C

The following illustrates an example of an application for a subsistence permit for applicants from Type 2 communities.

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

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

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

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

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

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

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

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

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

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

CERTIFICATION

Signature of Applicant _____

Signature of Witness _____

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

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

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

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

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

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

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX D
The following illustrates an example of an application for a subsistence permit for applicants from Type 3 communities.

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

Preamble

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

D

**STATE OF ALASKA
SUBSISTENCE HARVEST PERM/T APPLICATION
(PAGE 2)**

A. Background Questions

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

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

B. Instructions for Questions C1 through C8

While answering Questions C1 through C8 below:

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

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

C. Qualifying Questions

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

Pounds ____

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

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

Number of types of fish and game: ____ types

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

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

Yes ____
No ____

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

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

Days ____

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

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

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

Months _____

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

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

Weeks _____

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

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

Number of households _____

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

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

Yes _____

No _____

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

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

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

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

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

D. Worksheets: Supporting Documentation

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

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

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

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

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

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

_____ Number of lbs of fish and game you consumed

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

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

_____ Types of fish and game

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

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

_____ Number of different dates

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

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

_____ Number of different months

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

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

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

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

_____ Number of different households

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

NOTIFICATION OF POSSIBLE ADDITIONAL MATERIALS

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

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

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

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

CERTIFICATION

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

Signature of Applicant _____

Signature of Witness _____

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX E

APPLICANT CASE EXAMPLES SUBSISTENCE PERMIT APPLICATIONS AND SCORES

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

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

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

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

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

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

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

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

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

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

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

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

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

Case 1 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

Case 2 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

Criterion	Minimum	Applicant		Applicant	
		Answer	Formula	Score	Percent
A. Quantity of fish and game consumed	125	90	/ 10 =	9	9%
B. Number of species used	6	6	x 3 =	18	17%
C. Days spent taking or processing	30	40	/ 1 =	40	38%
D. No. of months when taking occurred	4	5	x 2 =	10	10%
E. Weeks when taking fish/game was main work	0	2	x 1 =	2	2%
F. Households receiving or giving	0	10	x 2 =	20	19%
G. Taking was in subsistence use area? y=5, n=0	0	5	x 1 =	5	5%
TOTAL				104	100%

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

Case 3 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

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

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

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

Case 4 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

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

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

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

Case 5 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

Case 6 Assumptions

To score this case, the following assumptions were made:

- (1) the applicant's household used 7 resource categories with the following weights: silver salmon (72), halibut (150), clams (?), cockles (?), mussels (?), crab (?), shrimp (?) (categories not counted included: trout because it was taken with inefficient rod and reel gear; greens and berries because they are not fish and game)
- (2) the applicant consumed about 110 lbs personally, as the total household harvest weighed about 220 lbs, or about 110 lbs per member
- (3) 20 days were spent taking or processing (10 days fishing, 10 days gathering)
- (4) the harvest occurred in 6 different months
- (5) there were 0 weeks where taking fish and game was the main activity
- (6) the applicant shared with 4 households
- (7) all taking occurred locally

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

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

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

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

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

Case 7 Assumptions

To score this case, the following assumptions were made:

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

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

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

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

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

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

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

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

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

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

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

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

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

Case 8 Assumptions

To score this case, the following assumptions were made:

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

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX F

COMMUNITY SIZE, ECONOMY, AND NUMBER OF SUBSISTENCE USERS

February 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Communities > 7,000 People

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

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

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

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

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

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

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

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

References

General

Schroeder, Robert F., David B. Andersen, Rob Bosworth, Judith M. Morris, and John M. Wright

1987 Subsistence in Alaska: Arctic, Interior, Southcentral, Southwest, and Western Regional Summaries. Technical Paper No. 150, Division of Subsistence Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J.

1987 The Super-household: Specialization in Subsistence Economies. Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. and Robert G. Bosworth

1990 Subsistence in Alaska: A Summary. Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. and Linda J. Ellanna (comp.)
1983 Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. and Robert J. Walker
1987 Subsistence Economies in Alaska: Productivity, Geography, and Development Impacts. Arctic Anthropology 24(2):56-81.

Small Communities

Subsistence Harvests for Kaktovik. Community Profile Database, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Fall, James A., Dan J. Foster, and Ronald T. Stanek
1984 The Use of Fish and Wildlife Resources in Tyonek, Alaska. Technical Paper No. 105, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Leghorn, Ken and Matt Kookesh
1986 Timber Management and Fish and Wildlife Utilization in Tenakee Springs, Alaska. Technical Paper No. 138, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Schichnes, Janet C. and Molly B. Chythlook
1988 Wild Resource Uses in Manokotak, Southwest Alaska. Technical Paper No. 152, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Sumida, Valerie A. and David B. Andersen
1990 Patterns of Fish and Wildlife Use for Subsistence in Fort Yukon, Alaska. Technical Paper No. 179, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Mid-Sized Communities

1986 Subsistence Harvests for Kotzebue. Community Profile Database, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Ellanna, Linda J.
1983 Nome: Resource Uses in a Middle-Size Regional Center of Northwestern Alaska, p. 85-123 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Fall, James A., Janet Schichnes, Molly Chythlook, and Robert J. Walker
1986 Patterns of Wild Resource Use in Dillingham: Hunting and Fishing in an Alaskan Regional Center. Technical Paper No. 135, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Stratton, Lee
1989 Resource Uses in Cordova, A Coastal Community of Southcentral Alaska. Technical Paper No. 153, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Game, Juneau.

Smythe, Charles E.

1988 Harvest and Use of Fish and Wildlife by Residents of Petersburg, Alaska. Technical Paper No. 164, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. et al.

1986 The Role of Fish and Wildlife in the Economies of Barrow, Bethel, Dillingham, Kotzebue, and Nome. Technical Paper No. 154, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Communities > 7,000 people

1982 Subsistence Harvests of Kodiak City. Community Profile Database, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Caulfield, Richard

1983 Tanana River Fishery: Resource Use Near a Large Interior City, pp. 10-28 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Georgette, Susan

1983 Kenai: Resource Uses in a Middle-Sized, Industrial-Based, Road Connected Community of the Kenai Peninsula Borough, p. 135-153 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Gmelch, George, Sharon Bohn Gmelch, and Richard Nelson

1984 Sitka: Resource Use in a Small Alaska City. Technical Paper No. 90, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Kodiak Island Native Association

1983 Kodiak Island Area Local Fish and Game Resource Guide. Kodiak, Alaska.

Mills, Michael J.

1990 Harvest and Participation in Alaska Sport Fisheries During 1989. Fishery Data Series No. 90-44. Division of Sport Fish, Alaska Department of Fish and Game, Anchorage.

Reed, Carolyn E.

1983 "Homer: Resource Uses in a Middle-Size, Road-Connected Community of the Kenai Peninsula Borough", p. 154-169 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Reed, Carolyn E.

1985 The Role of Wild Resource Use in Communities of the Central Kenai Peninsula and Kachemak Bay, Alaska. Technical Paper No. 106, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Schroeder, Robert F.

1983 "Sitka: Resource Uses in a Large, Non-Road Connected Community of Southeast Alaska", p. 219-247 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Schroeder, Robert F., David B. Andersen, Rob Bosworth, Judith M. Morris, and John M. Wright

1987 "Subsistence and Other Local Uses of Resources in the Upper Cook Inlet/Susitna Basin Subregion" and "Subsistence and Other Local Uses of Resources in the Lower Cook Inlet/Kenai Peninsula Subregion", p. 528-585 in Subsistence in Alaska: Arctic, Interior, Southcentral, Southwest, and Western Regional Summaries. Technical Paper No. 150, Division of Subsistence Alaska Department of Fish and Game, Juneau.

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX G

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

February 1992

Resource Diversity

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

Threshold Levels

The Governor's subsistence bill recommends that the Boards of Fisheries and Game establish threshold levels of resource diversity for subsistence users. This means that applicants for a subsistence permit with resource diversity counts below a certain number would not qualify as subsistence users. The threshold level would be set to meet certain standards: a large majority of residents in communities with populations of less than 2,500 people should be above the threshold; a majority of residents in communities with populations of 2,500 to 7,000 people should be above the threshold; and a small minority of residents in communities with greater than 7,000 people should be above the threshold. The threshold levels also could be specific to particular regions, to deal with variability in species availability between regions.

Measures of resource diversity by the Division of Subsistence, Alaska Department of Fish and Game are summarized in another report (**Resource Diversity As A Characteristic of Subsistence Uses**, by Robert J. Wolfe, Division of Subsistence, Alaska Department of Fish and Game, Juneau, 1992). Tables 2 and 3 derive from that report.

Table 2 presents a measure of resource diversity at the community level. It counts the resource categories used by 50 percent or more of sampled households in particular communities where the Division has conducted research. It illustrates that at the community level, the diversity of resources varies substantially by place and area. For instance, there were six resources used by 50 percent or more of sampled households in Kotzebue in 1987 (1990 population, 2,751 people). By comparison, there were 13 resources used by 50 percent or more of sampled households in Point Lay, and only 2 resources used by 50 percent or more of sampled households in Anderson. In general, this community-level data supports the assertion that resource diversity increases in smaller communities with subsistence-cash economies. As shown in Table 2, most small communities with subsistence-cash economies have community-level counts greater than 6 resources. However, a few are near or below that level, such as Haines (4), Tok (4), Copper Center (6), Gulkana (7), Chignik Bay (7), Galena (9), and Tanana (9) (see Table 2 for the complete list).

Table 3 presents a measure of resource diversity at the household level. It counts the percent of households using a certain number of resources for 15 selected communities where data are available. Resource categories are counted in two different ways in Table 3. The first list is full species list, while the second removes "plants" and "berries" and combines all salmon

G

species into a single category (the issue of counting resource categories is discussed below). As shown in Table 3, resource diversity at the household level (as measured by the first list) differs substantially between households within a community. For example, in Tanana, 7.8 percent of households used 5 or fewer resources, 51.6 percent of households used 10 or fewer resources, and 81.6 percent used 15 or fewer resources. By comparison, in Kotzebue, 20.6 percent of households used 5 or fewer resources, 45.9 percent used 10 or fewer resources, and 77.0 percent used 15 or fewer resources. As a third comparison, in Copper Center, 31.9 percent of households used 5 or fewer resources, 70.7 percent of households used 10 or fewer resources, and 93.1 percent used 15 or fewer resources.

The data in Tables 2 and 3 are similar to the types of information that the Boards of Fisheries and Game would be provided as they established minimum thresholds and scoring systems for this subsistence user criterion. For instance, if the Boards established a minimum threshold level of 6 for households in the northwest arctic region, then about 79 percent of Kotzebue households look like they exceed that level, according to Table 3 (that is, about 21 percent of Kotzebue households reported using 5 or fewer resources). The data in Tables 2 and 3 suggest that the Boards may want to consider establishing region-specific threshold levels. Region-specific thresholds may provide more sensitive measures of resource diversity than a statewide standard, because they would factor in differences in the availability of resources between areas of the state.

Basic Resource Lists

Measuring resource diversity is affected by the way resources are counted, as shown by comparing household frequencies in the first list with the second list in Table 3. To measure the resource diversity of a subsistence applicant, the Alaska Boards of Fisheries and Game must develop a systematic method for counting resource categories used by an applicant. As part of this method, the Boards must identify a standard list of resource categories for counting.

Table 1 is an example of a list of basic resource categories that might be considered by the Boards. The basic list contains about 90 different categories of wild resources which are commonly reported used within particular Alaska communities, according to Division of Subsistence surveys. Table 1 also lists about 115 other subsistence resource categories which are not included in the basic list, either because they are subsumed under a more general resource category or because the Boards may not choose to count the category for the purpose of measuring resource diversity.

As shown in Table 1, over two dozen species of migratory birds have been grouped into the general categories of "ducks" and "geese" in the basic list. Several varieties of shellfish have been grouped into the general categories of "clams", "cockles", and "crabs" in the basic list. A number of freshwater and saltwater fish species which are less commonly used are grouped into "other non-salmon fish" (including fish such as sturgeon, sea perch, shark, and needlefish). Trout are not included in the basic list because the Boards do not recognize them as subsistence species for most areas of the state.

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
Chum Salmon	
Coho Salmon	
Chinook Salmon	
Pink Salmon	
Sockeye Salmon	
Salmon Roe	
Blackfish	
Burbot	
Cisco	
Grayling	
Pike	
Sheefish	
Sucker	
Whitefish, Broad	
Whitefish, Alaska-Humpback-Lake	
Whitefish, Round	
Black Cod-Sablefish	
Lingcod	
Tom Cod	
Pacific Cod-Gray Cod	
Halibut	
Herring	
Herring Roe on Kelp, Hemlock, Eelgrass	
Rockfish	
Red Snapper (Yelloweye Rockfish)	
Sculpin	
Smelt	
Eulachon (Hooligan)	
Arctic Char	
Dolly Varden	
Other Non-salmon Fish	
	Capelin
	Green Sturgeon
	White Sturgeon
	Whiting
	Flounder
	Sole
	Herring Sack Roe
	Blue Rockfish
	Sea Bass
	Sea Perch
	Surf Smelt
	Rainbow Smelt
	Greenling
	Wolf Eel
	Blenny Eel
	Lamprey Eel
	Dogfish
	Shark
	Pollock
	Skates
	Silver Hake
	Black Bass
	Blue Fin
	Tuna/Mackerel
	Needlefish
	Cutthroat Trout
	Lake Trout
	Rainbow Trout
	Steelhead

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
Black Bear	
Brown Bear	
Caribou	
Deer	
Goat	
Moose	
Muskox	
Sheep	
Arctic Fox	
Red or Cross Fox	
Beaver	
Coyote	
Arctic Hare	
Snowshoe Hare	
Land Otter	
Lynx	
Marmot	
Marten	
Mink	
Muskrat	
Porcupine	
Weasel	
Wolf	
Wolverine	
Tree Squirrel	
Park Squirrel (ground)	
Ermine	
Belukha	
Bowhead	
Bearded Seal	
Fur Seal	
Harbor Seal	
Ringed Seal	
Spotted Seal	
Seal Oil	
Walrus	
Polar Bear	
Sea Lion	
Sea Otter	
	Gray Whale
	Black Fin Whale
	Ribbon Seal
	Porpoise/Dolphin
Grouse	
Ptarmigan	
Ducks	
Geese	
Swan	
Crane	
Bird Eggs	
	Snowy Owl
	Eider
	Scoter
	Harlequin
	Goldeneye
	Bufflehead
	Merganser
	Scaup
	Mallard
	Pintail

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
	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

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST

OTHERS

Pinkneck Clams
Horse Clams (Gaper)
Dungeness Crab
King Crab
Tanner Crab
Opis Crabs
Hair Crab
Box Crab
Basket Cockles
Heart Cockles
Geoducks
Blue Mussels
Snails
Limpets
Squid
Oyster
Whelk
Berries
Plants/Greens/Mushrooms
Black Seaweed
Sea Ribbons
Bull Kelp

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	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
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
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	0	6	5	3
Chignik Bay	Southwest	1	0	2	0	1	1	2	0	7	6	5
Egegik	Southwest	1	2	0	0	0	1	3	0	7	6	4
Kodiak City	Southwest	1	0	5	0	1	0	2	0	9	9	8
Chinak	Southwest	1	0	3	0	3	0	3	0	10	10	8
Nelson Lagoon	Southwest	1	3	2	0	1	1	2	0	10	9	8
Port Haiden	Southwest	1	3	1	0	1	1	3	0	10	9	7
Port Lions	Southwest	1	1	4	0	2	0	3	0	11	11	9
Levelock	Southwest	2	5	0	1	3	2	0	0	13	11	11
Aktok	Southwest	1	3	5	2	1	0	3	0	15	15	13
Chignik Lagoon	Southwest	2	3	2	0	2	2	4	0	15	13	10
Ekwok	Southwest	2	0	0	0	6	1	4	2	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 RESOURCES

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

1991 Division of Subsistence, Alaska Department of Fish and Game, Abstracts, Technical Paper Series. Division of Subsistence, Alaska Department of Fish and Game, Juneau, Alaska, November 1991.

General

Schroeder, Robert F., David B. Andersen, Rob Bosworth, Judith M. Morris, and John M. Wright

1987 Subsistence in Alaska: Arctic, Interior, Southcentral, Southwest, and Western Regional Summaries. Technical Paper No. 150, Division of Subsistence Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J.

1987 The Super-household: Specialization in Subsistence Economies. Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. and Robert G. Bosworth

1990 Subsistence in Alaska: A Summary. Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. and Linda J. Ellanna (comp.)

1983 Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. and Robert J. Walker

1987 Subsistence Economies in Alaska: Productivity, Geography, and Development Impacts. Arctic Anthropology 24(2):56-81.

Fall, James A., Dan J. Foster, and Ronald T. Stanek
1984 The Use of Fish and Wildlife Resources in Tyonek, Alaska. Technical Paper No. 105, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Leghorn, Ken and Matt Kookesh
1986 Timber Management and Fish and Wildlife Utilization in Tenakee Springs, Alaska. Technical Paper No. 138, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Schichnes, Janet C. and Molly B. Chythlook
1988 Wild Resource Uses in Manokotak, Southwest Alaska. Technical Paper No. 152, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Sumida, Valerie A. and David B. Andersen
1990 Patterns of Fish and Wildlife Use for Subsistence in Fort Yukon, Alaska. Technical Paper No. 179, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Studies of Mid-Sized Communities

1986 Subsistence Harvests for Kotzebue. Community Profile Database, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Ellanna, Linda J.
1983 Nome: Resource Uses in a Middle-Size Regional Center of Northwestern Alaska, p. 85-123 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Fall, James A., Janet Schichnes, Molly Chythlook, and Robert J. Walker
1986 Patterns of Wild Resource Use in Dillingham: Hunting and Fishing in an Alaskan Regional Center. Technical Paper No. 135, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Stratton, Lee
1989 Resource Uses in Cordova, A Coastal Community of Southcentral Alaska. Technical Paper No. 153, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Smythe, Charles E.
1988 Harvest and Use of Fish and Wildlife by Residents of Petersburg, Alaska. Technical Paper No. 164, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Wolfe, Robert J. et al.
1986 The Role of Fish and Wildlife in the Economies of Barrow, Bethel, Dillingham, Kotzebue, and Nome. Technical Paper No. 154, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Studies of Large Communities > 7,000 People

1982 Subsistence Harvests of Kodiak City. Community Profile Database, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Caulfield, Richard

1983 Tanana River Fishery: Resource Use Near a Large Interior City, pp. 10-28 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Georgette, Susan

1983 Kenai: Resource Uses in a Middle-Sized, Industrial-Based, Road Connected Community of the Kenai Peninsula Borough, p. 135-153 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Gmelch, George, Sharon Bohm Gmelch, and Richard Nelson

1984 Sitka: Resource Use in a Small Alaska City. Technical Paper No. 90, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Kodiak Island Native Association

1983 Kodiak Island Area Local Fish and Game Resource Guide. Kodiak, Alaska.

Mills, Michael J.

1990 Harvest and Participation in Alaska Sport Fisheries During 1989. Fishery Data Series No. 90-44. Division of Sport Fish, Alaska Department of Fish and Game, Anchorage.

Reed, Carolyn E.

1983 "Homer: Resource Uses in a Middle-Size, Road-Connected Community of the Kenai Peninsula Borough", p. 154-169 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Reed, Carolyn E.

1985 The Role of Wild Resource Use in Communities of the Central Kenai Peninsula and Kachemak Bay, Alaska. Technical Paper No. 106, Division of Subsistence Alaska Department of Fish and Game, Juneau.

Schroeder, Robert F.

1983 "Sitka: Resource Uses in a Large, Non-Road Connected Community of Southeast Alaska", p. 219-247 in Wolfe, Robert J. and Linda J. Ellanna (comp.) Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities. Technical Paper No. 61, Division of Subsistence, Alaska Department of Fish and Game, Juneau.

Schroeder, Robert F., David B. Andersen, Rob Bosworth, Judith M. Morris, and John M. Wright

1987 "Subsistence and Other Local Uses of Resources in the Upper Cook Inlet/Susitna Basin Subregion" and "Subsistence and Other Local Uses of Resources in the Lower Cook Inlet/Kenai Peninsula Subregion", p. 528-585 in Subsistence in Alaska: Arctic, Interior, Southcentral, Southwest, and Western Regional Summaries. Technical Paper No. 150, Division of Subsistence Alaska Department of Fish and Game, Juneau.

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;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(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
---	---	---

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
TOTAL OPERATING	33.2	34.4	35.9	37.3	38.9	40.4

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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
TOTAL	33.2	34.4	35.9	37.3	38.9	40.4

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
---	---	---

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

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
---	---	---

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						
TOTAL OPERATING	518.0	475.2	494.2	490.2	490.2	490.2

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	518.0	475.2	494.2	490.2	490.2	490.2
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	518.0	475.2	494.2	490.2	490.2	490.2

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	
TOTAL	<u>518.0</u>

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
---	---	---

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			
---------	---	---	---	--	--	--

REVENUE FUND SOURCE: 1024	0	0	0			
------------------------------	---	---	---	--	--	--

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. 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 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
 TOTAL*	32.0	33.2	34.6

*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
---	---	---

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						
TOTAL OPERATING	2.1	2.1	2.1	2.1	2.1	2.1

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

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:						
TOTAL	2.1	2.1	2.1	2.1	2.1	2.1

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
--	--	---	---

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						
TOTAL OPERATING	116.5	110.0	110.0	110.0	110.0	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	116.5	110.0	110.0	110.0	110.0	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

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.

Richard I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Date: June 12, 1992

Richard I. Peques / FRL

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: June 12, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

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.

Position Title Attorney IV		No. of Positions 1	Range / Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7 through 15
TYPE OF EXPENDITURE		AMOUNT		
Salary		64,056		
Benefits		20,969		
Premium Pay				
Other				
Total Personal Services		85,025		
Travel		5,000		
Contractual		17,600		
Commodities		2,400		
Equipment		6,500		
Other				
Total Cost		116,525		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		116,525		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
Justification Implementation of the subsistence preference law contained in HB 592 will require the full-time services of an attorney to handle: (1) court challenges of the law; (2) drafting and reviewing of a substantial body of regulations; and (3) representation of ADF&G and the Subsistence Board in disputes resulting from adverse preference qualification determinations. All of this work will require journey-level services of an Attorney IV.				

Request For New Position

AGENCY DEPARTMENT OF LAW

BRU Legal Services

COMPONENT Operations

FY 93

Page 1 of 1

Revised Date: _____

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
---	---	---

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
TOTAL OPERATING	18.0	18.7	19.5	20.2	21.1	21.9

CAPITAL	18.0	18.7	19.5	20.2	21.1	21.9
----------------	-------------	-------------	-------------	-------------	-------------	-------------

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

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:						
TOTAL	18.0	18.7	19.5	20.2	21.1	21.9

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

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						
TOTAL OPERATING	15.0	10.0	5.0	2.5	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	15.0	10.0	5.0	2.5	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	15.0	10.0	5.0	2.5	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *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 are 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

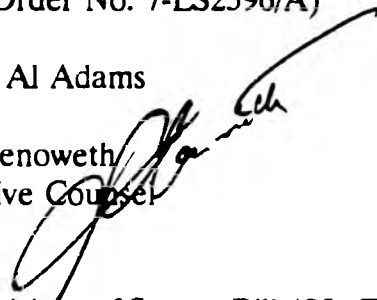
MEMORANDUM

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. ^{1/}

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;

^{1/} 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. ^{2/}

^{2/} 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.^{3/}

As to the bill sections affecting provisions outside AS 16.05:

^{3/} 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:^{4/}

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.

JBC:mi
92-100.mai

^{4/} 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:

770

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

771

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.⁸

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

extra copy
EILED *file*

JAN 19 1990

JAN 19 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

(Handwritten signature/initials)
Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KATIE JOHN, DORIS CHARLES, and)	
MENTASTA VILLAGE COUNCIL,)	No. A85-698 Civil
)	
Plaintiffs,)	
)	
vs.)	
)	
STATE OF ALASKA,)	<u>ORDER</u>
)	
Defendant.)	(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.¹ 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

25 ¹ 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).²

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

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.³

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

25 ³ 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 16.05.258⁴ 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

24

25

26

⁴ 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

RECEIVED

FEB 18 1992

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

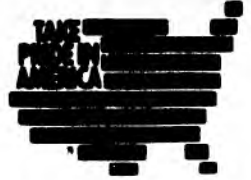
turning that absolutely upside down. By returning for all practical purposes, control over fisheries to the federal government. It gives me a great, great deal of pause to consider upsetting that purpose. Because of a regulation that I think may be proper but has not been adequately justified. Again 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

117
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,

MOTION TO
DISMISS

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-

MOTION TO
DISMISS

tion which governs the discharges themselves and is not an indication of title. In fact, the Clean Water Act, 33 U.S.C. § 1251(g), was specifically not intended to abrogate or supersede the authority of the separate states over the allocation of waters within the states.^{4/}

Nothing in the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed with savings clause, 43 U.S.C. § 1617(e), confers or vests title in the United States to the waters of the Copper River or Tanada Creek, or otherwise changes the general rule that no one holds a title interest in the water column of those streams.

Accordingly, to the extent that plaintiffs allege in their First and Second Causes of Action that the waters of either or both the Copper River or Tanada Creek are public lands for purposes of the subsistence use priority (i.e., contend that the United States holds title to these waters), plaintiffs have failed to state a claim upon which relief can be granted.

I. **PLAINTIFFS' CLAIM THAT THE COPPER RIVER AND TANADA CREEK ARE NOT NAVIGABLE MUST BE DISMISSED FOR FAILURE TO JOIN AN INDISPENSABLE PARTY-THE STATE OF ALASKA**

As alleged in the Complaint ¶17 at 10, the Federal Subsistence Board has determined that both the Copper River and Tanada Creek are "navigable in the vicinity of Batzulnetas." Plaintiffs then allege, id. at 11: "On information and belief,

^{4/} The ownership of ground and surface waters is determined according to state law. Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664, 677 (D. Alaska 1979).

neither the Copper River nor Tanaja Creek are navigable waters in the vicinity of Batzulnetas." The significance of navigability is set forth in State of Alaska v. Ahtna, Inc., 891 F.2d 1401, 1404 (9th Cir. 1989), cert. denied sub. nom., 110 S.Ct. 1949 (1990), and Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664, 677 (D. Alaska 1979). If these waters are navigable, the lands thereunder have generally been conveyed to the state.^{5/} Those lands are thus not public lands as defined in 16 U.S.C. § 3102(3). Therefore, to the extent that plaintiffs seek a determination that these waters are not navigable, plaintiffs are contending that the State of Alaska does not have title to the lands under those waters.

For the reasons set forth below, the State of Alaska should be deemed an indispensable party to this action. Plaintiffs should be required to join the State of Alaska as a party to this action. If they fail to join the State, this action should be dismissed.

Rule 19(a), Federal Rules of Civil Procedure, describes the class of persons who are considered necessary to the maintenance of any suit. It states in relevant part:

(a) Persons to be Joined if Feasible: A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the

^{5/} Excepted from such a conveyance are lands reserved or retained by the United States at the time the State entered the union. United States v. City of Anchorage, 437 F.2d 1081, 1084 (9th Cir. 1971); United States v. State of Alaska, 423 F.2d 764, 767-68 (9th Cir. 1970), cert. denied, 400 U.S. 967 (1970).

MOTION TO
DISMISS

action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

See also Puvallup Indian Tribe v. Port of Tacoma; 717 F.2d 1251, 1255 (9th Cir. 1983), cert. denied, 465 U.S. 1049, reh'g denied, 466 U.S. 954 (1984).

If joinder is not feasible, the court is to determine "whether in equity or good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." Rule 19(b). In making this determination, the court is to consider, id.:

[F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

The State of Alaska clearly has an interest relating to the subject matter of this action which would likely be impaired or impeded by the State's absence. If the waters involved are navigable, the State has a claim of title to the lands under the waters.

MOTION TO
DISMISS

By contending that the waters involved are not navigable, plaintiffs are also contending that the State has no title or interest in those lands. Thus, the State clearly has an interest in the land involved, which can be adversely affected by this action. That interest clearly could be impaired if the court should determine that the Copper River and Tanada Creek were not navigable at the location involved herein.

The United States also faces a substantial risk of incurring inconsistent obligations if the State of Alaska is not joined as a party to this action. Should the court determine in this case that the waters involved herein were not navigable, that same issue could be relitigated by the State in a quiet title action brought by the State pursuant to 28 U.S.C. § 2409a. If not made a party to this action, the State would not be bound by any of the determinations made in this case. That leaves the possibility that the State could obtain decisions that would be different from and contrary to those which might be entered in this case. Nevertheless, any judgment entered in this case which would reverse the determination that the waters involved were navigable would be inconsistent with and place a cloud over any claim of title by the State to these lands. Certainly while the State of Alaska would not be technically bound by that judgment, as a practical matter, its interests would be substantially impaired by such a determination.

There would also appear to be no means by which any relief could be fashioned in this case which could lessen or

MOTION TO
DISMISS

avoid the prejudice which might be suffered by either the United States or the State of Alaska. On the issue of whether the waters involved are or are not navigable, any ruling that the waters were not navigable would prejudice the interests of the State of Alaska.

Joinder has generally been required in situations like those presented in this case. Joinder of absent landowners is required in a quiet title action. United States v. Wood, 466 F.2d 1385, 1388-89 (9th Cir. 1972); McShan v. Sherrill, 283 F.2d 462, 463-64 (9th Cir. 1960). Similarly, holders of interests in federal mineral leases are parties necessary to the maintenance of a suit designed to undue those agreements. Sierra Club v. Hathaway, 579 F.2d 1162, 1166 (9th Cir. 1978); Lomavaktewa v. Hathaway, 520 F.2d 1324 (9th Cir. 1975), cert. denied sub nom., Susenkewa v. Kleppe, 425 U.S. 903 (1976).

In Puyallup Indian Tribe v. Port of Tacoma, joinder of the State of Washington was not required in a quiet title action. The Ninth Circuit explicitly distinguished that case from the situation present herein, however. The court noted that action was essentially one to eject the Port of Tacoma from possession and did not affect the right of the State to claim title in itself. 717 F.2d at 1255. The Ninth Circuit specifically noted that joinder of an absent party is required if the judgment would cast a cloud on the absent party's title. 717 F.2d at 1256 n.4. Here the judgment that the waters involved were not navigable

MOTION TO
DISMISS

would effect just such a cloud on any claim of title by the State of Alaska.

Accordingly, the State of Alaska should be deemed a party whose presence is necessary for any adjudication of the navigability of the Copper River and Tanada Creek. If plaintiffs fail to join the State, this claim should be dismissed for failure to join that party.

**III. PLAINTIFFS' THIRD CAUSE OF ACTION
MUST BE DISMISSED FOR FAILURE
TO EXHAUST REMEDIES.**

Plaintiffs' Third Cause of Action is entirely separate and distinct from their first two causes of action. In paragraphs 24 and 25 of their Complaint, plaintiffs allege:

24. On information and belief, the Defendants, through the National Park Service, have precluded plaintiffs from obtaining reasonable access to Batzulnetas via the Batzulnetas trail. This action was taken on the ground that no deviation from the existing Batzulnetas trail may be made no matter how adverse trail conditions may be. This is in spite of the defendants' duty to manage the Park in such a manner as to cause the least possible adverse impact on subsistence uses and as required by §§ 811 and 1101(a) of ANILCA; 16 U.S.C. §§ 3121, 3170.

25. Defendants' refusal to allow reasonable access to Batzulnetas is inconsistent with ANILCA's mandate favoring access and is thus unlawful and is contrary to the Alaska Allotment Act.

**A. Access To The Batzulnetas Site For
Subsistence Purposes Is Not Restricted**

As will be shown below, ANILCA and the regulations implementing it only potentially limit plaintiffs' surface access to Batzulnetas if plaintiffs seek to use motorized access for

**MOTION TO
DISMISS**

recreational purposes. Since plaintiffs allege that they have been precluded "from obtaining reasonable access to Batzulnetas via the Batzulnetas trail", Complaint ¶24, it is surface access that is at issue herein.^{6/}

The Wrangell-St. Elias National Park and Preserve was established by ANILCA on December 2, 1980. 16 U.S.C. § 410hh(9). In so doing, Congress provided that: "Subsistence uses by local residents shall be permitted in the park, where such uses are traditional, in accordance with the provisions of subchapter II of chapter 51 [16 U.S.C. §§ 3101-26] of this title."^{7/} Id. Accord 36 C.F.R. § 13.41. Pursuant to 16 U.S.C. § 3121(a), "rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on public lands." The Secretary is also to "permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such

^{6/} The use of aircraft for access for the purpose of taking fish and wildlife for subsistence purposes is prohibited, 43 C.F.R. § 36.11(f)(1), except as provided in 36 C.F.R. § 13.45.

^{7/} Pursuant to regulations issued by the Park Service, subsistence uses are allowed by local rural residents who has his or her permanent home within a designated resident zone or has been issued a subsistence use permit. 36 C.F.R. § 13.42(a), (b). The communities within the resident zone for the Wrangell-St. Elias National Park and Preserve are listed in 36 C.F.R. § 13.73(a). Any person whose permanent home is not within the defined resident zone may apply for a subsistence permit pursuant to 36 C.F.R. § 13.44.

The phrase "local rural residents" is defined to include both those whose permanent homes are within the defined resident zone and those individuals granted a subsistence permit pursuant to 36 C.F.R. § 13.44. 36 C.F.R. § 13.42(a).

MOTION TO
DISMISS

purposes by local residents, subject to reasonable regulations."

16 U.S.C. § 3121(h).

The regulations issued by the Park Service specifically provide:

Notwithstanding any other provision of this chapter, the use of snowmobiles, motor-boats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.

36 C.F.R. § 13.46(a). Thus all forms of surface access are authorized if the means was "traditionally employed." The Park Service has determined that off-road vehicles were traditionally employed for subsistence uses in the Wrangell-St. Elias National Park and Preserve. Declaration of Jay F. Wells ¶ 5, attached as Exhibit No. 2 hereto. Thus motorized access to the Batzulnetas site via the Batzulnetas trail by all terrain vehicles is authorized for subsistence purposes. Id.

In addition to the access provided for subsistence purposes, to the extent the individual named plaintiffs hold allotments within the park, Complaint ¶¶ 4-5, these allotments constitute what are known as inholdings within the Park.^{8/} Adequate and feasible access to these inholdings is guaranteed by 16 U.S.C. § 3170(b).^{9/} If adequate and feasible access to these

^{8/} "Inholding" is defined in 43 C.F.R. § 36.10(a)(3).

^{9/} "Adequate and feasible access" is defined in 43 C.F.R. § 36.10(a)(1).

MOTION TO
DISMISS

inholdings is not otherwise provided, application can be made for a right-of-way permit for access. 43 C.F.R. § 36.10(b).

B. Plaintiffs' Third Cause Of Action Is Both Premature And/Or Fails To State A Claim Upon Which Relief Can Be Granted.

As indicated in the Declaration of Jay F. Wells ¶ 5, motorized access for subsistence purposes to the Batzulnetas site via the Batzulnetas trail is authorized. The Batzulnetas trail is in fact the only reasonable access route to the Batzulnetas site. Id. ¶ 8. Further, as indicated in Mr. Well's declaration, no application has been made for access to the Batzulnetas site via a route other than the Batzulnetas trail or which requests to deviate from the Batzulnetas trail in accessing the Batzulnetas site. Id.

Therefore, to the extent that plaintiffs contend that they do not have adequate access to the Batzulnetas site, that action fails to state a claim upon which relief can be granted in that ANILCA and its implementing regulations provide adequate access for subsistence purposes to the Batzulnetas site. To the extent that plaintiffs alleged that access to the Batzulnetas site is inadequate because "no deviation from the existing Batzulnetas trail" is permitted, plaintiffs action is premature because no request has been made to deviate from that trail.^{10/}

^{10/} To the extent that access may be sought to inholdings pursuant to 43 C.F.R. § 36.10, that claim is also premature as no application for such an access permit has been made. Declaration of Jay F. Wells ¶ 9.

Mt. Adams Veneer Co. v. United States, 896 F.2d 339, 343 (9th Cir. 1990): "Under the ripeness doctrine, an agency must have taken 'final' action before judicial review is appropriate."

CONCLUSION

For the foregoing reasons, plaintiffs' Complaint must be dismissed in its entirety.

RESPECTFULLY SUBMITTED this 28TH day of January, 1991
at Anchorage, Alaska.

Dean K. Dunsmore

DEAN K. DUNSMORE

Attorney for Defendants

MOTION TO
DISMISS

Environment & Natural Resources Division
Room 217
222 West Seventh Avenue #69
Anchorage, Alaska 99513
(907) 271-5452

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KATIE JOHN, DORIS CHARLES,
and MENTASTA VILLAGE COUNCIL,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
MANUEL LUJAN, in his official
capacity as Secretary of the
United States Department of the
Interior and CLAYTON K. YEUTER,
in his official capacity as
Secretary of Agriculture,

Defendants.

Case No. A90-484 Civil

BRIEF IN SUPPORT OF
MOTION TO DISMISS

STATEMENT

Plaintiffs, in their Complaint for Declaratory and Injunctive Relief (Complaint) filed December 6, 1990, present what they have denominated as three separate causes of action. For the reasons which will be stated herein, each of those cause of action fails to state a claim upon which relief can be granted, or in the situation of the Third Cause of Action is also not ripe for judicial review. The First and Second Causes of Action must also be dismissed for failure to join an indispensable party--the State of Alaska.

MOTION TO
DISMISS

Each of the specific causes of action will be discussed in more detail in the argument which follows. The essence of plaintiffs' alleged causes of action is that the actions of the defendants have failed to provide plaintiffs with the subsistence use priority required by 16 U.S.C. §§ 3113, 3114, at a site within the exterior boundaries of the Wrangell-St. Elias National Park and Preserve referred to as the Batzulnetas. Complaint ¶2. The first and second causes of action allege that the Copper River and Tanada Creek are public lands (Complaint ¶15) and thus subject to the subsistence priority set forth in 16 U.S.C. §§ 3113, 3114.^{1/} The third cause of action alleges that plaintiffs have been denied reasonable access to the Batzulnetas.

ARGUMENT

I. THE FIRST AND SECOND CAUSES OF ACTION MUST BE DISMISSED AS THE COPPER RIVER AND TANADA CREEK ARE NOT PUBLIC LANDS FOR SUBSISTENCE PURPOSES

There is no dispute that lands owned by the United States excepting those set forth in 16 U.S.C. § 3102(3)(A), (B), and (C), which are within the exterior boundaries of the Wrangell-St. Elias National Park and Preserve are public lands as defined in the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3102(3). The allegation in plaintiffs' first and second causes of action is, however, that the waters which flow in the Copper River and Tanada Creek at their con-

^{1/} The subsistence use priority was enacted as part of Title VIII of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub. L. No. 96-489, 94 Stat. 2371, 2422-30, which is codified as Subchapter II of Chapter 51 of Title 43 of the United States Code at 43 U.S.C. § 3111-3126.

MOTION TO
DISMISS

fluence at Batzulnetas are themselves public lands for purposes of 16 U.S.C. §§ 3113, 3114, irrespective of who owns the beds of those waters. Plaintiffs contend that these waters are public lands for purposes of the subsistence use priority because either the United States or the individual plaintiffs have a reserved right to at least a portion of those waters or they are public lands as a result of the navigational servitude retained by the United States.^{2/} For the reasons which follow, that allegation must be rejected as a matter of law, and plaintiffs' first and second causes of action dismissed accordingly.

A. ANILCA's Subsistence Use Priority
Extends Only To Public Lands AS
Defined In The Statute

The starting point in this inquiry must be the language of the statute. Blum v. Stenson, 465 U.S. 886, 896 (1984); United States v. Hoflin, 880 F.2d 1033, 1037 (9th Cir. 1989). If a statute is not ambiguous, the plain language of the statute is controlling. United States v. Hoflin. Absent clearly expressed legislative intent to the contrary, the language of the statute should be regarded as conclusive. Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). When the statutory language is clear, only the most extraordinary showing of contrary intent justifies altering the plain meaning of a statute. Garcia v. United States, 469 U.S. 70, 75 (1984). As the

^{2/} Plaintiffs also allege that "neither the Copper River nor Tanada Creek are navigable waters in the vicinity of Batzulnetas." Complaint ¶17 at 11. For the reasons stated in part II infra, this court must dismiss any claim based on this allegation for failure to join an indispensable party, the State of Alaska.

court of appeals has most recently restated in Pyramid Lake Paiute Tribe v. United States Department of the Navy, 898 F.2d 1410, 1417 (9th Cir. 1990):

In construing a statute, this court first looks to the plain meaning of the language in question. If the language is unambiguous, its plain meaning controls unless Congress has "clearly expressed" a contrary legislative intent. (Citations omitted.)

In this instance there can be no dispute that the applicable language is that found in Section 804 of ANILCA, 16 U.S.C. § 3114, which provides as follows:

Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources. (Emphasis added.)

The crucial phrase in this provision is "public lands". If the waters involved herein are not "public lands", then the subsistence use priority set forth in 16 U.S.C. §§ 3313, 3314 does not apply. The phrase "public lands" is specifically defined in ANILCA. 16 U.S.C. § 3102(3). This definition is arrived at through a three step process.

MOTION TO
DISMISS

First, Congress defined the term "land" to mean "lands, waters, and interests therein." 16 U.S.C. § 3102(1). The word lands thus includes for purposes of ANILCA waters and interests therein. However, Congress did not stop there but proceeded to define the phrase "federal lands" in 16 U.S.C. § 3102(2), to mean "lands the title to which is in the United States after December 2, 1980." (Emphasis Added) Thus the waters and interests therein that are involved herein are "federal lands" only if the United States holds "title" to those interests.

Finally, Congress proceeded to define the crucial phrase "public lands" by referencing the definition of "federal lands." 16 U.S.C. § 3102(3):

The term "public lands" means land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except--

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

In so defining these terms, Congress was also very explicit that

MOTION TO
DISMISS

these definitions were to be applicable to the entirety of ANILCA except for Titles IX and XIV thereof. 16 U.S.C. § 3102:

As used in this Act (except that in titles IX and XIV the following terms shall have the same meaning as they have in the Alaska Native Claims Settlement Act, and the Alaska Statehood Act)--....

As clearly set forth in 16 U.S.C. § 3102(3), for the waters or interests therein involved in plaintiffs' first and second causes of action to qualify as public land for purposes of ANILCA (except in Titles IX and XIV which are not involved herein), the United States must hold the title to those waters or interests therein.

It must also be remembered that it was Congress which defined and limited the scope of the subsistence use priority on public lands in Alaska. Congress having done so, this court may not exceed those limitations. Kidd v. United States Department of the Interior, 756 F.2d 1410, 1412 (9th Cir. 1985): "Congress' constitutional power over the administration and disposition of the public lands is without limitation. Once Congress has acted in that regard, both the courts and the executive agencies have no choice but to follow strictly the dictates of such statutes. (Emphasis added.)" Even if what Congress has so provided appears to be inappropriate, the court must accept what Congress has enacted. Id.:

Although in this case, the statutory requirement borders on nonsense, we cannot ignore history or write around the statutory requirement. We are bound by the plain language of the statute....

MOTION TO
DISMISS

B. The United States Does Not
Hold Title To The Waters Involved.

The reserved water rights doctrine arises out of the appropriations system for water use that came to be adopted in the western United States where water was often a scarce commodity. Arizona v. California, 373 U.S. 546, 555-56 (1963), 460 U.S. 605, 620 (1983). The appropriation system is essentially one in which priority of use is given to the first party who actually puts and continues to use the water for some beneficial purpose. Id. 373 U.S. at 555. Alaska has generally adopted an appropriative system of water distribution. Paug-Vik, Inc. v. Wardy Cove Packing Co., 633 P.2d 1015, 1019-20 (Alaska 1981).

Within this appropriation system, the federal reserved water rights doctrine operates to reserve for the United States (but does not quantify) as of the time of a specific reservation involved the amount of appurtenant water then unappropriated necessary for the purposes for which the reservation was made. United States v. New Mexico, 438 U.S. 696, 698-700 (1978); Capraert v. United States, 426 U.S. 128, 138-41 (1976); Arizona v. California, 373 U.S. at 595-97. It is thus within the context of appropriative water rights system that the court must determine whether the United States holds title to the reserved water which plaintiffs allege the United States holds to the waters of the Copper River and Tanada Creek at the Batzulnetas..

There is no dispute that water rights when acquired by appropriation are interests in property. However, the interest acquired is merely a usufructuary right to use the water so long

MOTION TO
DISMISS

as it is put to beneficial use, and is not a title interest.

Yellen v. Hickel, 352 F. Supp. 1300, 1306-07 (S.D. Calif.

1972):^{3/}

A water right is not as inviolable as a fee simple in land. The holder of a water right does not own any water, he merely holds a right to the "use" of that water. The use of the water, can be, and most always is, subject to state and federally imposed conditions.

* * *

An appropriative water right is a usufructuary right. The holder of the right has the privilege of enjoying a thing (water) the property of which is vested in another (the State). Holders of land patents, on the other hand, have fee simple titles vested in them.

Accord United States v. Tilley, 124 F.2d 850, 861 (8th Cir.

1942), cert. denied sub nom., Scott v. United States, 316 U.S.

691 (1942); Mitchell Irrigation Dist[ri]ct v. Sharp, 121 F.2d

964, 967 (10th Cir. 1941), cert. denied, 314 U.S. 667 (1941);

Ronzio v. Denver & R.G.W. Ry. Co., 116 F.2d 604, 605-06 (10th

Cir. 1940); Rank v. Krug, 90 F. Supp. 773, 787 (S.D. Calif.

1950): "Such water rights are 'usufructuary and consist not so

much of the fluid itself as the advantages of its uses'." The

general rule is also recognized by the treatise writers. 93

C.J.S., Waters § 181 at 944-95 (1956):

[I]t is a well settled general rule that a water right or the right of an appropriator is simply a usufructuary right which gives

^{3/} Alaska water law is in accord with the similar law adopted by the Pacific coast states. Paug-vik, Inc. v. Wards Cove Packing Co., 633 P.2d at 1019.

MOTION TO
DISMISS

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:

SELECT COMMITTEE ON INTELLIGENCE (VICE CHAIRMAN)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
VETERANS' AFFAIRS
SELECT COMMITTEE ON INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-0202
(202) 224-6868

June 17, 1992

Honorable Dick Eliason
President of Alaska State Senate
Room 111
State Capitol
Juneau, Alaska 99801-1182

Dear President Eliason:

As the special session of the Alaska Legislature begins this week to once again address the vexing issue of subsistence, I want to take this opportunity to make available to you my view of the current situation and potential problems associated with continued federal management of fish and game on federal lands in Alaska.

My recent conversations with Secretary Lujan have confirmed that the legislative proposal prepared by the Governor's Subsistence Advisory Council does not comply with Title 8 of ANILCA. It is clear that if the Legislature successfully passed this legislation federal management of subsistence under ANILCA would remain. It is also clear from my recent discussions with Secretary Lujan that final regulations setting in motion permanent federal management of subsistence will become effective July 1 and that this effective date can not be temporarily postponed or delayed under any circumstances.

However, these permanent federal regulations provide for a process which allows the State to petition the Secretary of the Interior to review and certify a new state management program which complies with the requirements of ANILCA and thereby enables Alaska to resume management responsibility on federal lands. Therefore, if the objective is to as soon as possible return fish and game management on federal lands to the State of Alaska, the only course of action is for the State to enact a new subsistence law which can be certified by the Secretary as complying with the requirements of ANILCA. All Alaskans have much at risk under permanent federal management and therefore I recommend that this course of action be followed providing Alaskans the opportunity to replace federal management and law with state authority over fish and game on federal lands.

There are many potential problems associated with continued permanent federal management. First, we do not yet know what the outcome of the navigable waters lawsuits in federal court will be. If the court rules that the federal government must regulate subsistence in the state's navigable waters, we will be in for a very difficult time indeed. Federal fish management will be a set back that cuts deeply into the heart of statehood.

Second, we are now blessed with an Administration in Washington which is on our side and a Secretary of the Interior who is receptive to state management. I believe the Administration will treat Alaska fairly when it petitions under the new regulations for certification of the new Alaska program for compliance with ANILCA. I can not say if this will be the case under another Administration.

222 WEST 7TH AVENUE, BOX 1
ANCHORAGE, AK 99512-7570
(907) 271-3735

101 12TH AVENUE, BOX 7
FAIRBANKS, AK 99701-8278
(907) 458-0233

P.O. BOX 21847
JUNEAU, AK 99802-1847
(907) 586-7400

130 TRADING BAY ROAD, SUITE 380
EKNAL, AK 99611-7718
(907) 282-8808

108 MAIN STREET
KETCHIKAN, AK 99901-6489
(907) 225-8880

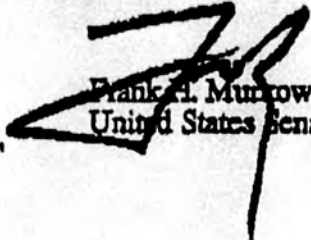
Page 2
June 17, 1992
President Eliason

Third, as you well know, once the federal government gets into something, it is difficult to get it out. The institutional fortitude and resistance to state authority of the federal bureaucracy is legendary, and once federal jobs and budgets are institutionalized they will not be easily removed. Further, I am concerned that the longer federal bureaucrats manage fish and game on federal public lands, the more an outside constituency of special interest groups will grow for their continued management, and the harder it will be to shed ourselves of the federal managers and their support groups.

I urge you, and through you, the legislature, to pursue a course of action which will lead to the earliest possible removal of federal fish and game management from federal lands in Alaska. We should not invite the dangers associated with continued federal management.

Sincerely,

000



Frank R. Murkowski
United States Senator

cc: Governor Hickel

Mr. Tolson		7/1/92
Mr. DeLoach		7/1/92
Mr. Mohr		7/1/92
Mr. Bishop		7/1/92
Mr. Casper		7/1/92
Mr. Callahan		7/1/92
Mr. Conrad		7/1/92
Mr. Felt		7/1/92
Mr. Gale		7/1/92
Mr. Rosen		7/1/92
Mr. Sullivan		7/1/92
Mr. Tavel		7/1/92
Mr. Trotter		7/1/92
Tele. Room		7/1/92
Miss Holmes		7/1/92
Miss Gandy		7/1/92

2/1/92

1/1/92

(2) Subdistrict 6-B, from the downstream end of Crescent Island to three miles upstream of the mouth of the Totchaket Slough, where salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(xxvii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5-8, salmon may not be taken from 6 pm. Sunday until 6 pm. Tuesday;

(C) In Subdistrict 6-A and 6-B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6 p.m. Wednesday until 6 p.m. Friday.

(xxviii) In Subdistrict 6-C and that portion of the Tanana River drainage upstream to the mouth of the Salcha River, salmon may not be taken following the closure of the commercial salmon fishing season from 6 p.m. Monday until 6 pm. Friday.

(xxix) Adjustments may have to be made to the subsistence salmon fishing seasons and fishing periods to protect healthy populations.

(xxx) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15 through April 14.

(xxxi) An Alaska Commercial Fisheries Entry Commission salmon permit holder registered for the set net only locations may not use drift gill nets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xxxii) Commercial salmon fisherman who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(xxxiii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(xxxiv) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than six inch mesh after a date specified by emergency order issued between July 10 and July 31.

(xxxv) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4-A, upstream from the mouth of Stink Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(xxxvi) In Subdistricts 5-A, 5-B, 5-C, and that portion of Subdistrict 5-D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period unless the dorsal fin has been immediately removed from the salmon. A person may not sell or purchase salmon from which the dorsal fin has been removed.

(xxxvii) In addition to the subsistence fishing permit conditions, permits issued for the taking of salmon in Subdistricts 6-A and 6-B must also contain the following requirements:

(A) Salmon may be taken only by set gill net or fishwheel. No household may operate more than one fishwheel.

(B) Each person subsistence fishing shall keep accurate daily records of his/her catch, the number of fish taken by species, location and date of the catch, and other information that the Alaska Department of Fish and Game may require for management or conservation purposes.

(C) In that portion of Subdistrict 6-B three miles or more upstream of the mouth of Totchaket Slough, each permittee shall report the number of salmon taken to the Alaska Department of Fish and Game once each week, or as specified on the permit. In the remainder of Subdistrict 6-B and in Subdistrict 6-A, each permittee shall report the total number of salmon taken to the Alaska Department of Fish and Game no later than October 31.

(xxxviii) Subsistence fishermen taking salmon in Subdistrict 6-C shall report their salmon catches at designated Alaska Department of Fish and Game check stations by the end of each weekly fishing period. Immediately after salmon have been taken, catches must be recorded on a harvest form provided by the department.

(xxxix) The annual possession limit for the holder of a Subdistrict 6-C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15 and 75 chum and coho salmon for periods after August 15.

(xl) Subsistence salmon harvest limits in Subdistrict 6-C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15. When either the king or chum salmon harvest limit for periods before August 16 has been taken, the subsistence salmon fishing season in Subdistrict 6-C will close. A later season will open after August 15 to allow the taking of the harvest limit for periods after August 15. If the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15.

(xli) Subsistence salmon fishing seasons and weekly fishing periods for Subdistrict 6-C are as follows:

(A) Salmon may be taken at any time except salmon may not be taken for 24 hours before the opening and after the closing of the commercial salmon fishing seasons and during closed weekly commercial salmon fishing periods;

(B) Weekly subsistence salmon fishing periods that follow closures of the commercial salmon fishing seasons will be established by emergency order;

(C) The annual harvest limit for the holder of a Subdistrict 6-A or 6-B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15. Upon request, permits for additional salmon may be issued by the department.

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods are as specified in 5 Alaska Administrative Code 05.367.

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(F) In Subdistrict 6-B from the downstream end of Crescent Island to a line three miles upstream from the mouth of the Totchaket Slough, the open subsistence salmon fishing periods are from 6 p.m. Friday through 6 p.m. Wednesday.

(4) Kuskokwim Area Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters on Nunivak Island and within one mile of its shorelines and all waters within the Old Kuskokwim Wildlife Refuge as defined by boundaries established prior to 1959. In the remainder of the Kuskokwim area

(19) Southeastern Alaska Area. At this time, Federal subsistence fishing**regulations only apply to non-navigable waters on Federal lands in the****Southeastern Alaska Area, with the exception of Glacier Bay National Park which is closed to the subsistence uses.****(i) Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska Area at any time.****(ii) Salmon, trout, char and herring spawn on kelp may be taken only under authority of a subsistence fishing permit.****(iii) No person may possess subsistence-taken and sport-taken salmon on the same day.****(iv) The Alaska Department of Fish and Game shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.****(v) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.****(vi) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.****(vii) Coho salmon may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.****(viii) Fish may be taken by gear previously listed except as may be restricted under the terms of a subsistence fishing permit and except as follows:****(A) In District 13, Redoubt Bay, gillnet or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;****(B) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the terminus to one mile upstream of Wells Bridge;****(C) Beach seines and gaffs only may be used to take coho salmon during the season and including coho salmon which may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.****(ix) The following waters are closed to subsistence salmon fishing: in District 15, saltwaters of Lynn Canal including Chilkat, Chilkoot and Lutak Inlets, during the closed period of the commercial salmon net fishery in the****district, except that salmon may be taken in saltwaters of Lutak Inlet on the Saturday before any period that the commercial salmon net fishery is open in the inlet to the terminus of the Chilkoot River.****(x) Permits will not be issued for taking chinook or coho salmon, except for coho salmon as provided in Salt Lake and Mitchell Bay from August 1 through October 31, but chinook or coho salmon taken incidentally by gear operated under terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report any chinook or coho salmon taken in this manner on his or her permit calendar.****(xi) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.****(xii) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.****(xiii) Before July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay only by residents of Angoon. On and after July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay by residents of both Angoon and Sitka.****(xiv) Subsistence salmon fishing permits for the fishery provided for Salt Lake and Mitchell Bay will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.****(xv) In the waters of the Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.****(xvi) Finfish may be taken for subsistence purposes only as provided in this section:****(A) Klukwan. Only those residents domiciled west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River may take herring, herring spawn, and bottomfish in waters of Section 15-A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding****waters of Taiya Inlet north of the latitude of the tip of Taiya Point.****(B) Haines. Only those residents domiciled in the City and Borough of Haines, excluding residents domiciled in the village of Klukwan and in the drainage of Excursion Inlet, may take herring, herring spawn, and bottomfish in waters of Section 15-A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet north of the latitude of the tip of Taiya Point.****(C) Hoonah. Only those residents domiciled in the City of Hoonah and in Chichagof Island drainage on the eastern shore of Port Frederick from Gartina Creek to Point Sophia may take herring, herring spawn, and bottomfish in waters of District 14 east of the longitude of Point Dundas; and salmon, smelt, and dolly varden char in waters of section 14-B and 14-C, in District 13 in waters along the western shore of Yakobi Island east of a line from Cape Spencer Light to Surge Bay Light, and in District 12 in waters of Basket Bay inside a line from 57°39'50" N. lat., 134°53'12" W. long. to 57°39'17" N. lat., 134°53'53" W. long.****(D) Angoon. Only those residents domiciled in the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island, may take herring, herring spawn, and bottomfish in waters of District 12 between the latitude of Parker Point and the latitude of Point Caution, and in Section 13-C east of the longitude of Point Elizabeth; and salmon and dolly varden char in waters of District 12 south of a line from Fishery Point to South Passage Point and north of the latitude of Point Caution and in waters of Section 13-C east of the longitude of Point Elizabeth.****(E) Sitka. Only those residents of the City and Borough of Sitka domiciled in drainage which empty into Section 13-B north of the latitude of Dorothy Narrows, except those domiciled in the U.S. Coast Guard base on Japonski Island, may take herring and herring spawn in waters of Section 13-B north of the latitude of Aspid Cape; and sockeye salmon in waters of Section 13-A south of the latitude of Cape Edward, in waters of Section 13-B north of the latitude of Redfish Cape, and in waters of Section 13-C.****(F) Kake. Only those residents domiciled in the City of Kake and in**

managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial plans; and

(4) unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

SEC. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

43 USC 1601
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

SEC. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

Ante. p. 2377.

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

DEFINITIONS

Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

16 USC 3113.

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

PREFERENCE FOR SUBSISTENCE USES

Sec. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

16 USC 3114.

Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

Sec. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

Implementation

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

Reimbursement to States.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

Report to Congress.

FEDERAL MONITORING

Sec. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as

Report to congressional committees.
16 USC 3116.

he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

JUDICIAL ENFORCEMENT

Civil actions.
16 USC 3117.

SEC. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Hearing.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

SEC. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or

Subsistence
hunting pro-
gram.

investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

Program and
recommendation
implementation.

COOPERATIVE AGREEMENTS

SEC. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title.

16 USC 3119.

SUBSISTENCE AND LAND USE DECISIONS

SEC. 810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

16 USC 3120.

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

Hearing.

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Notice and hearings.

42 USC 4332.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

48 USC note prec. 21.

43 USC 1601 note.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

ACCESS

16 USC 3121.

Sec. 811. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

RESEARCH

16 USC 3122.

Sec. 812. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submission to Speaker of House and President of Senate.
16 USC 3123.

Sec. 813. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

- (1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;
- (2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;
- (3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;

(4) the role of subsistence uses in the economy and culture of rural Alaska;

(5) comments on the Secretary's report by the State, the local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 803, and other appropriate persons and organizations;

(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and

(7) such other recommendations the Secretary deems appropriate.

A notice of the report shall be published in the Federal Register and the report shall be made available to the public.

Publication in
Federal Register

REGULATIONS

SEC. 814. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

16 USC 3124.

LIMITATIONS, SAVINGS CLAUSES

SEC. 815. Nothing in this title shall be construed as—

16 USC 3125.

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-ij), the National Park Service Organic Act (39 Stat. 535, 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal

Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777K), or any amendments to any one or more of such Acts.

CLOSURE TO SUBSISTENCE USES

16 USC 1129

Sec. 816. (a) All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence uses and sport fishing shall be authorized in such areas by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

Publication in
Federal Register

TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

43 USC 1631

43 USC 1601
note.

Sec. 901. (a) Notwithstanding any other provision of law, the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to the Alaska Native Claims Settlement Act or this Act, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to judicial determination unless a civil action is filed in the United States District Court within five years after the date of execution of the interim conveyance if the interim conveyance was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the interim conveyance was executed on or before the date of enactment of this Act. If a parcel of submerged land was conveyed by a patent rather than an interim conveyance, the civil action described in the preceding sentence shall be filed within five years after the date of execution of the patent if the patent was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the patent was executed on or before the date of enactment of this Act. The civil action described in this

AG

OPINIONS

MEMORANDUM

State of Alaska

Department of Law

TO McKie Campbell
Office of the Governor

DATE June 14, 1992

FILE NO.

TEL NO 276-3550

SUBJECT Potential Impact of
Subsistence Bill on Current
and Recent Subsistence
Litigation

FROM Lance B. Nelson ^{BN}
Assistant Attorney General
Natural Resources-Anchorage

Several legislators have asked about how the subsistence legislation introduced by the governor would impact recent cases of subsistence litigation. I will use the most recent summary of subsistence and state-federal lawsuits to explain the impact. A copy of Assistant Attorney General Sarah E. Gay's April 15, 1992 is attached for your reference.

1. Bobby v. State: The new legislation would not have any actual impact on this case since it has already been decided (except for attorney fees appeal); however, it is very likely that had the new legislation been law at the time, that the Board of Game's decision would have been more easily defended, both because the board would have had better statutory guidance and the court would have less discretion.

2. Peninsula Marketing Ass'n v. State: The legal and factual subsistence issues in this case are nearly identical to those raised in the recent Elim case. The basic challenge is to the allowance of any mixed-stock fisheries. A ruling favorable to plaintiffs could potentially devastate commercial fisheries across the state and would probably even wreak havoc upon the management of subsistence fisheries. The new bill would probably help guard against such challenges.

3. Payton v. State: While this case has also run its course, the new bill would probably have had an affirmative impact because the board would have had clearer guidance and its decision would have been even more defensible.

4. Morry v. State: The new bill would have a very clear impact on this case. The "all-Alaska" issue would disappear. The other part of the court's ruling defining "reasonable opportunity" to require "least adverse impact" on the customary and traditional character of hunting would be overruled by the new legislation. That ruling was unreasonable and should be overruled.

5. Tanana Fish and Game Association v. State: The plaintiffs' arguments in this case would be precluded by the new bill. The new bill defines customary trade to prevent commercial

fishing under the guise of subsistence, which is exactly what the plaintiffs are arguing for in this case.

6. John v. State: The new bill would have no actual impact on this case because it has been resolved. The issues would have been clarified by the new bill and the court should reach a more conclusion more favorable to the state in a similar future decision. However, we have very little faith in future decisions of the federal district court.

7. Kitka v. State: The new bill would provide better guidance, in clearer standards, to the Board of Fisheries.

8. Kwethluk IRA Council v. State: Although this case would not be impacted because it has already been resolved, the decision against the Board of Game might have been precluded by the new definition of "sustained yield" in the new bill.

9. Coy v. State: The new bill should make the board's decision more defensible. The new statutory definition of "reasonable opportunity" would clarify the board's duty and prevent this kind of challenge.

10. Ketzler v. State: This case is almost identical to Coy and the same comments apply.

11. Interior Fish and Wildlife Ass'n v. State: The arguments in this case are "off the wall", but the new bill would make the board decisions even easier to defend.

12. Nanana v. State: The issues in this case boil down to the same arguments as in Interior Fish.

13. Sorenson v. State: The new bill would drastically reduce the number of Tier II hunts around the state and eliminate lawsuits like this one.

14. Kluti Kash v. State: This case involves a Federal vs. State territorial management issue and the new bill won't affect the outcome unless it leads to resolution of the ANILCA conflict and subsequent elimination of these kinds of issues.

15. John v. U.S.: Same basic issue as Kluti Kash, but fish at stake.

16. Sleetmute v. State: Under the new bill, it is likely that the board's decision would have been more satisfactory to the plaintiffs and more easily defended against challenges.

17. Sumner Strait Advisory Committee v. State: The new bill would probably strengthen the board's decision.

18. United Cook Inlet Drift Ass'n v. State: This case would go away under the new bill. First of all, there would not be any subsistence fishery in the Kenai/Soldotna area, and second, the "all-Alaskan" policy would disappear under the new bill.

19. Kluti Kaah v. State: In this case, the board would have had much better statutory guidance in determining "reasonable opportunity" under the new bill. The result would have been a more defensible decision and less likelihood of lawsuits after the decision.

20. Kluti Kaah Appeal: The supreme court has since reversed Judge Katz' decision on preliminary injunction. There will be no impact on this particular appeal.

21. Cantwell v. State: Same as Kluti Kaah No. 19 above.

22. Ketzler v. State (Federal Court): Related to John No. 15 and Kluti Kaah No. 14 above.

23. Kenaitze Indian Tribe v. State: This is another "all-Alaskan" case that would go away under the new bill.

24. U.S. v. Didrickson: The new law would eliminate these blatant "commercial" subsistence fishing ventures.

25. Native Village of Tooksook Bay v. State: While some of the issues have been mooted by the Board of Fisheries' decision on reconsideration, the mixed stock vs. subsistence issue is still technically alive (although it now appears that there is a strong herring run in the plaintiff communities this year. The new bill would make the board decision more defensible.

26. Shepherd v. State: No impact on this case.

27. Native Village of Elim v. State: We were successful in obtaining a denial of injunctive relief after a long hearing this past week. While we won this round, it would have been much easier under the new bill.

The rest of the case on the list do not deal with subsistence.

MEMORANDUM

State of A
DepartmentTo: Honorable Carl Rosier
Commissioner

DATE: June 12, 1992

Alaska Department of Fish and Game TEL NO: 661-92-0716

TEL NO: 269-5241

SUBJECT: Concerns re constitutional
subsistence provisions;
ANILCA amendment

FROM:

Lance B. Nelson *
Cheri L. Jacobus *
Assistant Attorneys General - Anchorage

In a memorandum dated April 30, 1992, you requested an opinion on the impact of a subsistence preference amendment to the Alaska Constitution. Since that time your department has also raised the question of an appropriate amendment to the subsistence provisions of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. Sections 3111 -- 3126. This opinion addresses those concerns. Because of time pressures it is not as comprehensive as we would have liked, but we hope it will be of some help.

There have been various proposals¹ put forward for an amendment to the state constitution that would enshrine a subsistence preference for the taking of fish and game. In reviewing these, written comments from fish and game attorneys in the Department of Law were solicited. Uniformly, the attorneys expressed concern that these constitutional amendments may eliminate the legislature's flexibility to respond to evolving public needs and priorities. A constitutional amendment creating a subsistence

¹ For example:

"Subsistence uses are given priority over all other consumptive uses."

or

"The subsistence use of fish and game shall be accorded a preference among beneficial uses."

or

"The Legislature shall provide for the identification of fish stocks and game populations subject to subsistence use and for the preference of subsistence use over other consumptive uses of those stocks and populations."

Commissioner Rosier
Department of Fish and Game
A.G. File No. 661-92-0716

June 12, 1992
Page 2

preference would effectively transfer significant legislative power from the legislature to the courts. In addition, the majority of these proposals have the potential to obstruct future development of other resources, such as lumber, minerals, oil, and gas. *

On the other hand, if every proviso necessary to preserve legislative discretion is included in a proposed constitutional amendment, the amendment may only authorize what the legislature already has the power to do.² It is inappropriate to use the state constitution to legislate.

In addition, the scenarios being proposed uniformly tie the effective date of the amendment to passage of an amendment to ANILCA which would establish Alaska's statutory scheme as complying with the requirements of ANILCA.³ There does not appear to be any case law directly on point that would establish the legal effectiveness of such an approach. However, the more significant legal effect of compliance with ANILCA is that it would bring Alaska's fish and game regulations into federal court oversight pursuant to section 807 of ANILCA. *

² The following language has been suggested:

"Consistent with the sustained yield principle, the legislature shall/may provide for the subsistence uses of fish and wildlife. The legislature shall provide for the identification of fish stocks and game populations to be subject to subsistence uses, and may provide the exemption of fish stocks and game populations from subsistence uses. In determining participation in subsistence use of fish and wildlife, the legislature may distinguish among residents on the basis of use of fish and wildlife, direct dependence on the resource, proximity to the resource, availability of alternative resources, and presumptions based on community characteristics."

³ "This amendment to the Alaska State Constitution shall take effect when the U.S. Congress amends Title VIII of ANILCA to specify that Alaska Session Law XX, 1992, complies with the requirements of Title VIII."

Commissioner Rosier
Department of Fish and Game
A.G. File No. 661-92-0716

June 12, 1992
Page 3

* Finally, fish and game attorneys in our department are extremely dissatisfied with federal court decisions on subsistence regulations. It is, therefore, not appropriate to merely return to compliance with ANILCA. Section 807 of ANILCA should also be changed as part of any constitution/ANILCA resolution. Failure to make this part of a package that includes a constitutional amendment would be a fatal flaw.

* 1. Inhibition of development of other resources. There is a risk that a subsistence preference enshrined in the constitution would be interpreted to inhibit or prevent development of other resources, such as logging, mining, oil, etc. Even though the amendment does not purport to give subsistence a preference over uses of other resources, the fact that it is expressly mentioned in the constitution as a constitutionally preferred use while other uses are not may have an adverse impact on other resource development. As the supreme court stated in Owsichuk v. State, 763 P.2d 488, 492 (Alaska 1988):

[S]ince the right of common use is guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state.

(Emphasis added.) Once a highly important interest has been expressed in the constitution, the state would have to demonstrate a compelling state interest before it could infringe on that right, even if there is clear general authority in the constitution for the legislature to address other resources and uses.

In McDowell v. State, 785 P.2d 1, 10-12 (Alaska 1989), the court indicated that, where constitutional rights are implicated, legislation would be subjected to close scrutiny even if the legislation implements authority clearly delegated to the legislature by another constitutional provision. The courts may decide that, in some cases, the express constitutional right to subsistence hunt and fish outweighs otherwise authorized development that might adversely affect those subsistence uses. By elevating subsistence uses to a constitutional right, the supreme court could find that the state would have to demonstrate a compelling state interest before it could infringe on that right. In other words, all other resource development could be held captive to subsistence much the same as section 810 of ANILCA has impacted federal decisions. As explained below, court interpretations of constitutional provisions are not easily corrected.

2. Federal court oversight. It is of significant concern that section 807 of ANILCA provides that anyone dissatisfied with

Commissioner Rosier
Department of Fish and Game
A.G. File No. 661-92-0716

June 12, 1992
Page 4

state subsistence regulations may bring an action in the federal district court to obtain, among other things, injunctive relief⁴ to provide for a particular subsistence use. This particular provision raises traditional Eleventh Amendment⁵ issues and clearly implicates the state's sovereign right to resist suits by its citizens in federal court. The state's actual experience as a defendant in federal court has been awful.

For example, the federal court has ruled that any limitations on traditional use patterns are unreasonable and has struck down seasons and bag limits in certain areas. This has directly implicated the state's continued ability to manage fish and game effectively. It has ruled that "customary trade" includes some rather straightforward commercial practices. It has ordered hunts in areas where the Alaska Board of Game had previously ruled the game was so depleted that no hunting should be allowed, to ensure the biological viability of the herd and to allow the herd to be restored. Finally, the review standard applied by the federal court to the regulations the Alaska Boards of Fish and Game enact is significantly different from that applied by the state courts. The state courts are constrained from substituting their judgement for that of the boards. On the other hand, the federal courts do not give great weight to the boards' decisions and frequently judge the correctness of those board decisions.

As long as the state was in compliance with ANILCA (prior to McDowell), the federal court relied on section 807 to justify its direct review and interpretation of state law and its failure to defer to state court interpretation of state law.⁶ Based on those interpretations, the federal court would then order preliminary relief. As a result, so long as the state was in compliance with ANILCA, each aggrieved litigant had two potential tribunals - state

⁴ In addition, unlike litigants in other federal litigation, section 807 specifically provides attorneys fees to the litigant. The fees obtained by litigants in federal courts have been extraordinarily high.

⁵ The Eleventh Amendment protects the state from being forced into federal court without its consent to be sued. This amendment has been successfully raised as a defensive measure in numerous suits and is a basic attribute of state sovereignty.

⁶ The traditional rule has always been that the federal court would defer to the state judiciary for interpretations of state law. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); Murdock v. Memphis, 87 U.S. (20 Wall.) 590 (1874).

Commissioner Rosier
Department of Fish and Game
A.G. File No. 661-92-0715

June 12, 1992
Page 5

and federal court. The aggrieved subsistence user could and did file litigation in both the federal court and in the state court. In the past, when the state was in compliance with the requirements of ANILCA, there were inconsistent rulings; some state court judges incorrectly assumed the state court was bound by the federal court interpretations of state law and rulings.

A return to compliance with ANILCA without amending section 807 would reopen state law to federal review and would again create the potential for inconsistent rulings. Submitting state fish and game regulations and laws for federal review, interpretation, and oversight is a clear sovereignty issue.

Therefore, this office recommends that, at a minimum, any amendments to ANILCA include removing the state from federal court oversight, at least to the extent that the federal court's role be limited to whether state law complied with ANILCA. No preliminary or injunctive relief should be authorized. This is necessary to ensure that state fish and game management is retained by the state and that its sovereign interests are protected. Attached is a proposed amendment to accomplish that.

3. Court interpretation of constitutional provisions. A constitutional preference rather than a statutory one means that the court would have a fairly free hand in its interpretations. The court's role in statutory interpretation is to carry out the intent of the legislature. Otherwise, the court would violate the separation-of-powers doctrine. Furthermore, when a court's interpretation of a statute conflicts with legislative intent, the court's interpretation can be corrected by legislative amendment of the statute. Correction of a court interpretation of a constitutional provision is extremely difficult to attain. Amendments require a two-thirds vote of each house and a majority popular vote at a bi-annual general election. Alaska Const. article XIII, § 1.

4. Subsistence defense in criminal prosecutions. Currently, under the ruling in State v. Eluska, 724 P.2d 514 (Alaska 1986), and AS 16.05.259, a subsistence hunter or fisher who violates subsistence regulations may not claim a defect in the regulation as a defense, because there is no constitutional or statutory right to hunt or fish absent a specific and-express statute or regulation. This ruling has been held inapplicable to defenses based on constitutional rights. Hebert v. State, 803 P.2d 863 (Alaska 1990). Therefore, the benefit of the Eluska decision and AS 16.05.259 will be probably be lost to the state with a constitutional preference in place.

Commissioner Rosier
Department of Fish and Game
A.G. File No. 661-92-0716

June 12, 1992
Page 6

5. Blanket application to all fish and game. There is a consensus in the administration that it is critical for the legislature to be able to exclude certain fish and game from application of the subsistence preference. The current bill exempts urban fish and game and requires an affirmative finding that the stock or population is subject to subsistence use before the statutory preference applies.

A constitutional amendment which simply states that subsistence is the preferred use of fish and game would preclude the legislature from excluding any particular fish stock or game population from the preference, including fish and game in urban areas, hatchery stocks, bison, musk ox, rainbow trout, etc.

If the amendment contains a provision that the legislature may exempt certain stocks from subsistence use, there will be an assumption that all stocks are subject to the subsistence preference unless expressly exempted by the legislature. If there is a provision that the legislature must identify which fish and game is subject to subsistence, the likely interpretation would be that the legislature's role is simply that of a factfinder, and once the legislature determines that a stock has been subject to subsistence use, the preference attaches forever. Unless we are satisfied with these interpretations, it is imperative that the legislature's authority be clearly spelled out in the language of the amendment. A provision for designation of subsistence stocks followed by the power to exempt any particular stock would be much better than either provision by itself.

CJ/LBN:sso

cc: McKie Campbell
Governor's Office

PROPOSED AMENDMENT TO SECTION 807 OF ANILCA, 16 U.S.C. § 3117

§ 3117. Judicial enforcement

- (a) Exhaustion of administrative remedies; civil action; parties; preliminary injunctive relief; other relief; costs and attorney's fees

Local residents and other persons and organizations aggrieved by a failure of [the State or] the Federal Government to provide for the priority for subsistence uses set forth in section 3114 of this title [for 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, upon exhaustion of any [State or] Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. [In a civil action filed against the State, the Secretary may be joined as a party to such action.] The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. [In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 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.] Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Subsection (c) should be repealed.

[(c) Section as sole Federal judicial remedy

This section is the sole Federal judicial remedy created by this subchapter for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 3114 of this title.]

A new Subsection (c) should be adopted.

(c) Federal Court Review of State Law for Compliance with the purposes of ANILCA.

Local residents and other persons and organizations may challenge the Secretary's determination that the State has fulfilled the requirements of section 3115(d) of this title and may file a civil action in the United States District Court for the District of Alaska for a declaratory judgment.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 27, 1992

WALTER J. HICKEL, GOVERNOR

REPLY TO:

- 1031 W 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697
- KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317
- P.O. BOX K - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

The Honorable Lyman F. Hoffman
Senate Bush Caucus Chair
P.O. Box V
Juneau, Alaska 99811

The Honorable Georgianna Lincoln
House Bush Caucus Chair
P.O. Box V
Juneau, Alaska 99811

Re: Subsistence Legislation, Senate Bill 443, House
Bill 552

Dear Senator Hoffman and Representative Lincoln:

In your letter of March 16, 1992 to Attorney General Cole, you raised several concerns about the constitutionality of the provisions of the subsistence legislation drafted by the Governor's Subsistence Advisory Council and introduced by Governor Hickel as Senate Bill 443 and House Bill 552. Attorney General Cole asked me to respond to your letter.

Our department has reviewed the fish and game subsistence bill and it is our opinion that the bill is consistent with the constitutions of the United States and the State of Alaska. We do not believe that a constitutional amendment will be necessary to implement the provisions of this bill. The bill does raise several possible constitutional issues that have not been fully resolved by the courts, but we are prepared to fully defend the bill and expect favorable results. We have briefly analyzed below what are likely to be the most controversial issues, including those raised in your letter.

Community-Based Presumptions

One potential issue is whether the presumptions based on where a user lives, as outlined in the proposed AS 16.05.268(h), are consistent with the Alaska Constitution's provisions for equal access to fish and game. We believe that they are.

In subsections (f), (g), and (h), the new subsistence statute establishes presumptions based on community characteristics.

Under subsection (f), every area and community in the state will be classified into one of three categories.¹ Small communities that are subsistence dependent will be in category 1. Medium sized communities that are subsistence dependent will be in category 2. All other communities, large cities and suburbs or smaller and medium sized communities that are not subsistence dependent, will be in category 3. Subsection (g) lists factors the boards will use to determine subsistence dependence.²

¹ Subsection (f) states:

(f) The boards shall, by regulation, for the state, jointly identify and delineate areas, using game management units, portions of game management units, or communities, into the following categories:

(1) category 1, an area where the human population of each community in the area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area;

(2) category 2, an area that consists of a single community that has a human population of 2,500 to 6,999, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community;

(3) category 3, an area that
(A) is an urban area or a single community where the human population is 7,000 or greater; or

(B) is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community.

² Subsection (g) states:

(g) In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area under (f) of this section, the boards shall jointly consider the relative importance of subsistence compared to the totality of the following socio-economic characteristics of the area:

(1) the social and economic structure;

(2) the stability of the economy;

(3) the extent and kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;

(4) the amount and distribution of cash income among those domiciled in the area;

Subsection (h) establishes administrative presumptions about the qualifications of individuals living in the communities in the categories.³ Only those who qualify under the individual

(3) the extent and kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;

(4) the amount and distribution of cash income among those domiciled in the area;

(5) the cost and availability of goods and services to those domiciled in the area;

(6) the variety of fish and wildlife species used by those domiciled in the area;

(7) the seasonal cycle of economic activity;

(8) the percentage of those domiciled in the area participating in hunting and fishing activities or using wild fish and game;

(9) the harvest levels of fish and game by those domiciled in the area;

(10) the cultural, social, and economic values associated with the taking and use of fish and game;

(11) the geographic locations where those domiciled in the area hunt and fish;

(12) the extent of sharing and exchange of fish and game by those domiciled in the area;

(13) additional similar factors the boards establish in regulation to be relevant to their determinations under this subsection.

³ Subsection (h) states:

(h) Participation in a subsistence harvest in a subsistence use area is limited to persons whose taking and use of fish and game in that subsistence use area meets the requirements for qualification under (i) of this section, with the following presumptions and requirements:

(1) a person who is domiciled in the subsistence use area in an area identified under (f)(1) of this section, and who intends to take fish for game for subsistence purposes is presumed to meet the requirements for qualification under (i) of this section for that subsistence use area; this presumption may be rebutted only by clear and convincing evidence, and the boards may not require a permit or filing of a statement affirming that the person meets the requirements for qualification under (i) of this section;

(2) a person who is domiciled in the subsistence

requirements in (i) are authorized to subsistence hunt and fish, but (h) establishes presumptions about individual users based on where they live. Those who live in category 1 areas are presumed to individually qualify for subsistence hunting and fishing for the subsistence use area in which they live, but not for any other subsistence use area. They will not be required to submit any application or signed statement before hunting or fishing. The presumption is not conclusive and can be challenged by the state, but they will be allowed to subsistence hunt and fish in the subsistence area in which they live unless and until the state demonstrates, by clear and convincing evidence, that they are not qualified.

Those persons living in category 2 communities who choose to subsistence hunt and fish must first sign a statement in a form to be supplied by the department averring that they meet the individual qualifications standards of (i). Once they sign such a statement they are rebuttably presumed to qualify to subsistence hunt and fish in the subsistence use area in which they live, but not any other subsistence use area. Signing a false statement subjects the signer to prosecution for unsworn falsification. This presumption can be rebutted by the normal civil evidentiary standard: proof by a preponderance of the evidence.

Those persons living in category 3 communities, which will be larger cities or urban areas, smaller communities that do not have a demonstrated dependence on subsistence, or communities outside the subsistence use area, will qualify to subsistence hunt and fish under an individual application procedure outlined in subsection (i). They may not subsistence hunt or fish until their application is approved by the department.

use area in an area identified under (f)(2) of this section, and who intends to take fish or game for subsistence purposes is rebuttably presumed to meet the requirements for qualification under (i) of this section for that subsistence use area upon that person's signing a statement affirming that the person meets those requirements; the department may rebut this presumption by a preponderance of the evidence that the person does not meet those qualification requirements;

(3) a person domiciled in an area identified under (f)(3) of this section or who is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery or hunt in that subsistence use area only upon certification by the commissioner that the person meets the requirements for qualification under (i) of this section.

This system of differing presumptions amounts to an administrative scheme to focus the state's efforts to weed out unqualified users onto those areas where most of the unqualified reside. Based on the information presented to the legislature, use of the three sets of standards will result in identifying, under (f)(1), communities or areas with a large majority of residents that would individually qualify as subsistence users in the subsistence use area in which they live; under (f)(2), communities with a majority of qualified subsistence users; and under (f)(3), communities with a very a small minority of qualifying individuals. Communities outside the subsistence use area are also expected to have very few people who would qualify. It is expected that the legislature will make statutory findings based upon this information.

The presumptions in this statute are reasonable and have a strong factual basis. The presumptions will not exclude any qualified subsistence user from access to fish and game. Residence in a particular community or state does not determine a person's qualification to subsistence hunt and fish; it does, however, determine the amount of administrative paperwork the person will be required to submit. It will impose a higher administrative burden on those users who are domiciled in areas that have been determined to have no significant dependence on subsistence; but the status of the community will not be determinative of whether an individual finally qualifies as a subsistence user.

While there is some difference in treatment of the individual based on community standards, the actual access to fish and game for subsistence is equal. No qualified user will be excluded. All those who actually and substantially rely on subsistence uses of fish and game in a particular area will receive the subsistence preference. All those who are similarly situated with respect to the fish and game resources in an area are given equal opportunity to take that fish and game.

The legislation generally requires that qualifying dependence be current. This will mean that some people that have had reliance in the past, but have not recently relied on fish and game in a subsistence use area, will not qualify for the preference. This does not present a constitutional problem. The situations of these people with respect to the fish and game are not similar to the situation of those who have a current reliance. See Article VIII, section 17 of the Alaska Constitution. Of course, once the past user demonstrates a current reliance, he qualifies for the preference.

We believe that this statutory scheme satisfies the concerns expressed in McDowell v. State, 785 P.2d 1 (Alaska 1989). In that case, the supreme court of Alaska held that qualification for a subsistence preference based conclusively and solely on an individual's residence in a rural area violated the provisions of the

Alaska Constitution requiring equal access to natural resources. In Part A of the decision, three justices of the Alaska Supreme Court ruled that sections 3, 15, and 17 of article VIII of the Alaska Constitution⁴ prohibited the grant of exclusive or special privileges based on the characteristics of the community in which a user resides. Id. at 9.

We think that the new subsistence legislation is consistent with the principles laid out in the McDowell decision. The critical right in McDowell was the "equal right to participate in [hunts and] fisheries, regardless of where one resides." Id. Under the new subsistence legislation, the right to participate in subsistence hunts and fisheries is the same for all people who actually and substantially rely on fish and game for subsistence purposes. The differentiation in treatment based on residence does not involve the right to hunt or fish; no qualified person will be excluded. The only difference in treatment comes in the extent of paperwork required of residents in different kinds of communities.

The McDowell decision also found fault in the old law because it limited admission to a user group based on residence. 785

⁴ Section 3 of article VIII of the Alaska Constitution provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 15 of article VIII provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 17 of article VIII provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

P.2d at 8. With the new legislation, admission to the subsistence user group is not limited by residence.

Section 17 of article VIII of the Alaska constitution requires equal treatment of "all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." Under the new legislation, all those who actually and substantially rely on the fish and game in an area will qualify for the subsistence preference. In McDowell, that was not the case. Urban users were excluded even though their reliance on fish and game may have been as substantial as that of rural users.

The difference in paperwork requirements for residents of different kinds of communities does not violate the equal access provisions. First of all, the paperwork requirements are not determinative of access to fish and game. Nor are any of the requirements so burdensome as to be an effective obstacle to access. The right affected by the discrimination under the new law is not the right of access to fish and game as was the case in McDowell and Owsichek v. State, 763 P.2d 488 (Alaska 1988), but only the right to equal treatment under the law common to all equal protection issues. An individual's right to equal paperwork requirements is certainly not as important as the equal right to take fish and game, and is probably not an "important" interest in the context of equal protection analysis.

The Alaska courts use a "uniform-balancing" test for reviewing equal protection challenges under the state constitution. The "uniform balancing" test places a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved. Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984). The minimum burden that the state must meet is the substantial relationship test: the state must show that the classification is reasonable and not arbitrary and is based on some ground of difference having a fair and substantial relation to the object of the legislation. State v. Ensearch Alaska Construction, Inc., 787 P.2d 624, 632 n.12 (Alaska 1990). In this case the right to equal paperwork, unlike the right to access to fish and game, is probably not an important individual right. The classification would, therefore, only have to meet the substantial relationship test.

The classification for purposes of paperwork requirements based on residence meets the substantial relationship test. The requirements are more burdensome for category 2 residents than category 1 residents and more burdensome for category 3 residents than the other two categories. But this graduated burden is fairly and substantially related to the purpose of the requirements: to direct the state's enforcement resources to those areas representing the biggest threat to the goal of preferring only actual and

substantial reliance. The lighter burden on category 1 residents is based on the fact that a large majority will qualify. The heavier burden on category 2 residents is based on the fact that a high percentage of category 2 residents are not qualified. The even heavier burden on category 3 residents and residents of communities outside the subsistence use area is directly related to the fact that an extremely high percentage of category 3 residents are certainly not qualified. A tougher standard for category 2 and 3 residents will result in preventing the highest number of unqualified persons from subsistence hunting and fishing. The discrimination in the paperwork requirements bears a fair and substantial relationship to the object of the requirements: preventing subsistence hunting and fishing by the most clearly unqualified users. We, therefore, believe that these provisions would pass constitutional muster should the bill become law.

Limitations to Subsistence Use Areas

Under the provisions of the bill, the entire state would be divided up into subsistence use areas. Every fish stock and game population would be within a subsistence use area. There is no danger that someone would be precluded from subsistence use of fish or game because it was not within a subsistence use area. It is true that fish and game within a category 3 community located in a particular subsistence use area would not be subject to the subsistence preference. Section 2, Line 11, SB 443. That was also the case with the 1986 subsistence law. AS 16.05.258(a) states:

The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence in each rural area identified by the boards.

(Emphasis added). The McDowell court did not strike down this provision; it struck down the priority to rural users, not the limitation of the subsistence preference to rural animals.⁵ The

⁵ Upon remand of the McDowell case, superior court judge Beverly Cutler, in ruling on the question of severability, did state, in an unfortunate diversion from the issues:

The parties do not address whether the boards now should identify any such stocks or populations anywhere in the state, not merely in rural areas. That the boards should make these determinations anywhere in the state appears to be a logical result of the supreme court's holding in McDowell

Alaska Supreme Court has never required that regulation of seasons, bag limits, methods and means, etc., be uniform for every species throughout the state. There is no constitutional requirement that if a particular kind of use is allowed in one area of the state, the same kind of use must be allowed in all other areas. This point was later clarified by the court in Gilbert v. State, Dep't of Fish and Game, 803 P.2d 391, 398-99 (Alaska 1990).

What the constitution does require is that if a use is allowed, all persons that are similarly situated with respect to the resource and the purpose of the law be treated equally. Article VIII, section 17 of the Alaska Constitution. Gilbert, 803 P.2d at 399. There is no requirement of equal treatment of resources, rather than users of those resources.

There is also no constitutional requirement that once a person qualifies for a subsistence use in one area, she be entitled to a subsistence preference in another area. A person reliant on fish and game in Area A must be treated the same as all others similarly reliant on Area A fish and game; but that person need not be treated the same with respect to fish and game in Area B. Only those who have similar reliance on Area B fish and game must receive equal treatment. The new bill is not significantly different from the 1986 subsistence bill in this respect. Under that law, only residents of communities that had demonstrated customary and traditional uses of a particular fish stock or game population were granted a subsistence preference. See former 5 AAC 99.010 and 5 AAC 99.025. There was no statewide subsistence preference. Nor is there a statewide preference under the federal ANILCA regulations. Temporary Subsistence Management Regulations For Federal Public Lands In Alaska (1991-92). A statewide subsistence preference in state law would, itself, create a conflict between state law and ANILCA.

The Governor's Subsistence Advisory Council did not intend to prefer the reliance of a user who, for example, might take red salmon on the Copper River, king salmon on the Kenai River, chum salmon on the Tanana River, moose in the Innoko River area, deer on Kodiak Island, and caribou on the North Slope. In the advisory

McDowell v. State, Memorandum of Decision Severing Unconstitutional Portions of Statute from Remainder of Statute at 8 (Alaska Super. Ct. June 20, 1990). The obvious reason that the parties did not address the issue on remand is because it was not an issue on appeal. We do not believe that the Alaska Supreme Court would agree with Judge Cutler's ruling on this issue. See Gilbert v. State Dep't of Fish and Game, 803 P.2d 391, 398-99 (Alaska 1990).

council's eyes, that kind of reliance was not as deserving of a preference to fish and game in one of those areas as hunting and fishing that is concentrated in that area. It seems obvious that in deciding who should have a preference in a particular area, the user that gets all or most of his fish and game from the area should rank higher than one who gets only a smaller portion from that particular area. We believe the courts would decide that these two users are not similarly situated with respect to the resource and the purpose of the law. See article VIII, section 17 of the Alaska Constitution. We also believe that, as between a person who has demonstrated reliance on fish and game in Area A and one who has such reliance in another area that is suffering from shortages of fish and game, the person with demonstrated reliance in Area A may be properly preferred over the other user because they are not similarly situated with respect to the resource in Area A and the purpose of the bill.⁶

The Twelve Month Qualification Period

Under the proposed AS 16.05.268(i) and (o), qualifying activity must occur within the preceding twelve months. While it may be technically possible to qualify in as little as four months (taking fish or game in four different months is the longest determinative durational minimum requirement, proposed AS 16.04.268(i)(4)), it is generally anticipated that many users will require closer to the full twelve-month period to qualify. This provision does not create constitutional problems.

At first blush, the twelve-month provision might seem to create a durational residency problem. It does not. Several points must be kept very clear. Under this bill, residence in a particular area is never required for qualification. Residence in the subsistence use area is not required. To the extent that the user's presence, as opposed to residence, in the area is required, those requirements meet "durational residency" standards. Hicklin v. Orbeck, 565 P.2d 159, 162-65 (Alaska 1977) rev'd on other grounds, 437 U.S. 518 (1978).

The twelve-month period is closely related to the patterns of use and fish and game in Alaska and is the only reasonable period for the demonstrations of actual and substantial reliance on fish and game. The goal of the legislation is to give a preference to those who currently, actually, and substantially rely on fish and game in particular areas of the state. It is not the goal to give

⁶ This is the situation posed by George Utermohle of the Legislative Legal Affairs Agency in his March 16, 1992 letter to Senator Lyman Hoffman at page 5, note 7.

There must necessarily be some kind of test to identify actual and substantial reliance on that fish and game. To avoid spurious claims of reliance based on very short-term or only sporadic use, some time requirements are necessarily included. In deciding what time period would make the most sense, the advisory council looked at the patterns of fish and game use in Alaska. Most uses are seasonal. For example, salmon are generally only available during a certain time-span during the year. With game, hunting is generally limited to one or two seasons to get the best quality of meat or to avoid interference with species reproduction. In any case, patterns of use are tied to yearly cycles. If the qualifying time was less than the preceding 12 months, persons in certain areas might be disadvantaged because of the seasonal availability of fish and game. If the time period was longer than twelve month you would expect to see duplication of activity which would be less probative of current reliance. The twelve-month period is obviously the most appropriate for this particular test. It is necessary to identify the kind of use of fish and game the bill is intended to prefer. It is the "least drastic means" to achieve the ends of the statute. Hicklin, 565 P.2d at 165. It is a necessary test of bona fide reliance.

Certainly, the twelve-month provisions, as explained above, meet substantive due process standards that legislative enactments be reasonable and not arbitrary. Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971).

Tier II Criteria

In the proposed AS 16.05.268(b)(4)(B), subsistence use of game populations or fish stocks insufficient to provide for all subsistence uses would be authorized by ranking users by applying three criteria. One of the criteria would be "the proximity of the domicile of the subsistence user to the stock or population". Proposed AS 16.05.268(b)(4)(B)(ii); SB 443, Section 2 at page 4, lines 14-15. The question of the constitutionality of this provision was raised at one meeting of the Senate Resources Committee. We believe that the provision is probably constitutional.

First, it should be noted that the current subsistence law contains a very similar provision expressed simply as "local residency". AS 16.05.258(c)(2). This phrase has been interpreted by the Joint Boards of Fish and Game to mean that those who "live closest to the resource" would be given maximum protection. 5 AAC 99.010(f)(1). "Local residency" is also the language used in ANILCA. 16 U.S.C. Sec. 3114(2). The language of the new legislation is not intended to represent a change from existing law or from ANILCA, but is intended to more clearly state how "local

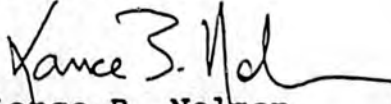
ANILCA. 16 U.S.C. Sec. 3114(2). The language of the new legislation is not intended to represent a change from existing law or from ANILCA, but is intended to more clearly state how "local residency" will be measured. If the Tier II provision of the subsistence legislation did not contain a "local residency/proximity to the resource" criterion it would be in conflict with Section 804 of ANILCA, 16 U.S.C. Sec. 3114(2).

While the Alaska Supreme Court ruled in McDowell that the subsistence preference could not be awarded on the basis of the characteristics of the community in which an individual user resided, there is nothing in that opinion to indicate that the location of an individual's residence in relation to the fish or game could not be a constitutional criterion, especially in the times of extreme shortages envisioned under the Tier II provisions. Upon remand of that case to the superior court, Judge Beverly Cutler ruled that the Tier II provisions did not violate the standards in McDowell.⁷ When there is not enough fish or game to satisfy all qualified subsistence users, further ranking of these users becomes mandatory. Assuming that two users are equal as to the two other criteria of dependence and the ability to obtain other food, it would seem that proximity to the resource would not be an unreasonable way to distinguish between the two otherwise similar users.

If you have further questions about issues raised by the subsistence legislation, we would be happy to discuss these matters with you at your convenience.

CHARLES E. COLE
ATTORNEY GENERAL

By:


Lance B. Nelson
Assistant Attorney General

⁷ Judge Cutler ruled that the Tier II "local residency" criterion did not violate the supreme court's holding in McDowell. McDowell v. State, Memorandum of Decision Severing Unconstitutional Portions of Statute from Remainder of Statute at 7 (Alaska Super. Ct. June 20, 1990).

TO: McKie Campbell
Office of the Governor

DATE: June 18, 1992

FILE NO:

TEL. NO: 269-5240

SUBJECT: Concerns re: Judicial
Enforcement Provisions of
ANILCA's Sec. 807

FROM: Lance B. Nelson *LBN*
Assistant Attorney General
Natural Resources-Anchorage

During the current special session on subsistence, we have had several inquiries from legislators about the role of the federal courts in ruling on the validity of state fish and game regulations under the Alaska National Interest Lands Conservation Act ("ANILCA"). In this memorandum I will address that role and our serious concerns about federal judicial enforcement.

Under the provisions of ANILCA, the Secretary of the Interior must provide a priority to rural Alaskans for the taking of fish and game for subsistence on federal public lands in Alaska. Sections 802 -- 804 of ANILCA, 16 U.S.C. Secs. 3112 -- 3114. However, if the State of Alaska passes a law that establishes this same rural preference on all land (not only federal public land) in the state, the Secretary may not adopt his own regulations, and the state regulations will apply. Section 805(d) of ANILCA, 16 U.S.C. Sec. 3115(d). While these sections appear to give the state power to manage fish and game for subsistence on all lands in Alaska, that power is subject to the mandates of ANILCA. While the role of the Secretary of the Interior becomes fairly passive while the state is in compliance with these sections, the role of the federal courts becomes very intrusive into the day-to-day management decisions of the state.

Under Section 807 of ANILCA, 16 U.S.C. Sec. 3117, the federal district courts have the power to hear and rule on challenges to any fish and game regulation. Section 807 states, in pertinent part:

(a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 3114 [Sec. 804] 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) [Sec. 805(d)] of this title) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States

District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 3114 [Sec. 804] 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 regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Under this section, the federal district courts have the power to review any and all regulations that affect subsistence use of fish and game anywhere in the state. The discretionary powers of the court are extremely broad. If they are not satisfied that a particular aspect of a regulation is consistent with the state subsistence law or ANILCA, they may order the Board of Fisheries or the Board of Game to change that regulation. If the new regulation is not satisfactory to the court, then the court may invalidate the regulation and order the board to make more changes, and this process may go on as long until the court is content. If the state or the plaintiff is unhappy with the federal district court's decision, they may appeal the decision to the Ninth Circuit Court of Appeals.

While the federal district court judges are all Alaskans, unlike state court judges, they are appointed for life terms and are not ever subject to confirmation votes by the people of Alaska. If the district court decisions are appealed, the appeals will be decided by circuit court judges of the Ninth Circuit. The chance of getting the Supreme Court of the United States to review a Ninth Circuit decision are very remote, so the Ninth Circuit will generally be the final arbiter of the validity of state fish and game regulations in Alaska. The Ninth Circuit is based in San Francisco, California. Only one of the 28 judges of the Ninth Circuit is from Alaska; 14 are from California, 3 are from Washington, 3 from Arizona, 3 from Nevada, 2 from Oregon, and 2 from Idaho.

The two major subsistence law decisions that have been

issued by the Ninth Circuit have both been authored by Alex Kozinski of Pasadena, California. U.S. v. Alexander, 938 F.2d 942 (9th Cir. 1991); Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir. 1988), reh'g and reh'g en banc denied, Jan. 4, 1989, cert. denied, 491 U.S. 905 (1989). I have attached copies of both decisions for your review. No Alaskan judge was ever on the panel. On the Kenaitze decision, the other two judges besides Kozinski were from San Diego and San Francisco. On the Alexander decision, the other two judges were from Portland, Oregon and Los Angeles. There is no requirement that circuit court judges ever have to set foot in Alaska before ruling on appeals from Alaska.

A couple of examples from these two decisions illustrate the attitude and understanding of the Ninth Circuit on Alaskan issues. In the Kenaitze decision, Judge Kozinski, in deciding what the term "rural" meant in relation to subsistence use, wrote:

The term rural is not difficult to understand; it is not a term of art. It is a standard word in the English language commonly understood to refer to areas of the country that are sparsely populated, where the economy centers on agriculture or ranching.

860 F.2d at 316-17. The Alexander decision is filled with cavalier puns about fishing and sarcastic comments about the efforts of the prosecution.¹ Both of these decisions reject the notion of giving the slightest deference to state legislature or agency interpretations of law. Kenaitze, 860 F.2d at 315-16; Alexander, 938 F.2d at 946 n.6. Both of these decisions reflect condescending and patronizing treatment of what are, to Alaskans, critically important issues, issues about which the judges obviously know very little.

While Section 807 of ANILCA did not rule out regulatory challenges in state courts, after decisions like Kenaitze, the federal courts quickly became the forum of choice of for subsistence plaintiffs. Furthermore, while state courts have issued some decisions that have been less than well reasoned, we have been able to obtain reversals in the Alaska Supreme Court on some of these decisions and we at least know these issues are being decided by Alaskan judges who stand for confirmation votes on a regular basis. Even if state courts come up with different decisions on similar facts, the federal courts are not expected to defer to state court decisions since they claim to be interpreting the requirements of ANILCA, a federal law.

¹ Judge Fernandez did, however, file a dissenting opinion that set the facts straight. 938 F.2d at 949-51.

In summary, it is clear that state compliance with ANILCA, as it now stands, means that state legislative and regulatory decisions will be subject to review, interpretation, and revision by the federal judges over whom the state has no control or influence. While the state is out of compliance with ANILCA as it now stands, it does not have the power to regulate subsistence uses of fish and game on federal public lands. On the other hand, the state is free from interference from the federal courts with the regulatory authority it does have. State regulatory decisions may still be challenged under state law in state courts, but are not subject to any federal court oversight at all.

LEGAL

OPINIONS

MEMORANDUM

June 16, 1992

SUBJECT: Constitutional issues raised by the Governor's subsistence bill (SB 484/HB 599)

TO: Senator Jay Kerttula

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether the Governor's subsistence bill (SB 484/HB 599) is consistent with the Alaska Constitution.

SHORT ANSWER

One, SB 484/HB 599 provides for the establishment of dozens of subsistence use areas. The mandatory minimum eligibility standards for subsistence hunting and fishing proposed by SB 4484/HB 599 establish each subsistence use area as a separate use area and limit admission to the user group for that area to only those persons who have a history of recent and extensive use in the area. The mandatory minimum eligibility standards pose a significant infringement on the open access values of the Alaska Constitution. There is a substantial risk that the mandatory minimum eligibility standards are unconstitutional, however the risk of unconstitutionality of these provisions can be overcome by amending the constitution to permit the establishment of such user groups.

Two, under SB 484/HB 599, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into fish and game user groups, they may inhibit equal and open access to fish and game resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

Three, numerous provisions of SB 484/HB 599 establish fixed standards or criteria to determine whether a person is eligible to engage in subsistence hunting and fishing or establish the conditions under which the person may apply for subsistence privileges or may engage in subsistence hunting and fishing. Each of these provisions

is potentially subject to challenge on equal protection grounds by a person who is adversely affected by that standard or criteria. The legislature can enhance the ability of the state to defend SB 484/HB 599 against such challenge^{1/} by developing a record of careful consideration of each element of the bill to demonstrate that the element was adopted for specific reasons and not arbitrarily, and by paying particular attention to the goal that the legislature is seeking to achieve in each element of the bill and the means that it chooses to achieve the goal.

DISCUSSION

SB 484/HB 599 relates to the subsistence use and allocation of fish and game resources. The bill establishes an intricate system for controlling entry into subsistence user groups and for limiting the activities of those user groups to certain areas of the state. The bill provides that persons with a recent history of dependence on and use of fish and game resources will be able to continue their subsistence activities while leaving an opportunity for new persons to qualify for subsistence activities. Minimizing the administrative burden on the individual subsistence user and the Department of Fish and Game is also an important element of the bill.

The bill provides for subsistence use of fish and game resources under the legislature's authority to provide for the utilization, development, and conservation of natural resources.^{1/} Subsistence is not a constitutionally mandated or protected use of fish and game resources. As a statutorily created use of fish and game resources, any system for management of subsistence use or for allocation of fish and game for subsistence use must be consistent with the Alaska Constitution. Of particular relevance to the subsistence use of fish and game are the "open access" provisions of the Alaska Constitution: common use section^{2/}, no exclusive right of fishery clause^{3/}, and uniform application section^{4/}. Although the ramifications of

^{1/} Article VIII, sec. 2:

GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

^{2/} Article VIII, sec. 3:

COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

^{3/} Article VIII, sec. 15, in relevant part:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. . . .

these provisions are varied, they share at least one meaning: exclusive or special privileges to take fish and game are prohibited. The no exclusive right of fishery clause states this explicitly with regard to fisheries. The proceedings of the Alaska Constitutional Convention show that this same meaning was intended with respect to fish and game under the common use section and the uniform application section. McDowell v. State, 785 P.2d 1, 6 (Alaska 1989).

The bill avoids creating an obviously closed class of subsistence users like the rural resident preference that the Alaska Supreme Court struck down in McDowell. Instead, the bill establishes a system in which any person may engage in subsistence use of fish and game provided that the person satisfies the prescribed eligibility criteria.

ELIGIBILITY CRITERIA FOR SUBSISTENCE

SB 484/HB 599 proposes seven fundamental considerations for determining who is eligible to engage in subsistence hunting and fishing. SB 484/HB 599, Sec. 2, Sec. 16.05.268(i); page 6, line 31 - page 7, line 29. The Board of Fisheries and the Board of Game are to jointly establish the actual criteria and a concomitant point system for determining eligibility based on the seven fundamental considerations. Though the boards jointly develop the actual eligibility criteria, four of the fundamental considerations in SB 484/HB 599 are in fact specific mandatory minimum standards that a person must satisfy in order to qualify for subsistence hunting and fishing:

(1) the quantity of fish and game consumed by the person in the preceding 12 months, with a mandatory minimum of 125 pounds consumed in that period;

(2) the number of species and groups of species of fish and game from the subsistence [use] area used by the person in the preceding 12 months, with a mandatory minimum number of species, or groups of species, as determined jointly by the boards by regulation; the mandatory minimum number, and any grouping of species, may vary by geographical region of the state, based on the diversity of species in a region;

(3) the number of days in the preceding 12 months that the person engaged in the taking of fish or game in the subsistence use area, or the processing of that fish or game, with a mandatory minimum of 30 days in that period;

^{4/}(...continued)

^{4/} Article VIII, sec. 17:

UNIFORM APPLICATION. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

(4) the number of months in the preceding 12 months in which the person engaged in the taking of fish or game in the subsistence use area, with a mandatory minimum of four months in that period;

SB 484/HB 599, Sec. 2, Sec. 16.05.268(i)(1) - (4); page 7, lines 9 - 21.

Notably, three of the four mandatory standards (Sec. 16.05.268(i)(2) - (4)) set specific minimum requirements on the number of species of fish and game consumed and the number of days and months engaged in hunting and fishing activities (at least a total of 30 days during any four months) and requires that each of the three standards be satisfied in a single subsistence use area during the preceding 12 months.^{5/} Once an applicant for subsistence privileges satisfies these mandatory minimum standards in a subsistence use area and the other criteria adopted by the boards, the applicant is then eligible to participate in subsistence hunting and fishing in that subsistence use area. If an applicant wants to engage in subsistence hunting and fishing in an additional subsistence use area or to move subsistence activities to a new subsistence use area, the applicant must then satisfy the three mandatory standards in the new area as well as the other criteria established by the boards. The applicant can satisfy the three mandatory standards in the new subsistence use area by engaging in sport or personal use fishing or sport hunting in the area, taking the prescribed number of species in the area, and spending the required amount of time fishing and hunting in the area or processing fish and game taken in the area.

By combining standards for eligibility to engage in subsistence hunting and fishing with a requirement that the standards be satisfied in the subsistence use area in which the applicant wishes to use for subsistence hunting and fishing, the three mandatory standards establish each subsistence use area as a separate subsistence hunting and fishing area open only to certain persons and closed to all others. In fact the standards establish separate user groups for each subsistence use area and then limit admission to the user group to those persons who have a history of recent and extensive use in the area. An otherwise qualified subsistence user does not have the freedom to choose which subsistence use area the person will hunt or fish in. The person is confined to that subsistence use area in which he has established the requisite history of use.^{6/} All other persons are barred from using the area for

^{5/} A subsistence use area is the subunit of a game management unit together with the contiguous game management subunits, unless a board describes a different subsistence use area for a particular fish stock or game population. SB 484/HB 599, Sec. 2, Sec. 16.05.268(d) and (e). There are currently 69 game management subunits in the state and thus a possible 69 different subsistence use areas.

^{6/} For example, a subsistence user in Kotzebue who moves to Tok must continue to return to Kotzebue to engage in subsistence hunting and fishing, until the user establishes the prerequisite
(continued...)

subsistence hunting and fishing. Each subsistence use area becomes an exclusive use area open for subsistence use by only a few eligible persons and as such confers a "special privilege" to use the fish and game in the area on those persons.

A system for determining eligibility for engaging in subsistence hunting and fishing which opens participation for some and closes participation for others "will necessarily create tension with article VIII." McDowell, 785 P.2d at 9. Limits on admission to user groups are subject to scrutiny under the article VIII equal access provisions (State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichek v. State, 763 P.2d 488, 492 (Alaska 1988)), because the provisions of article VIII were intended to guarantee the broadest possible access to and use of fish and game (Owsichek, 763 P.2d at 492 - 93) and to prohibit exclusive or special privileges to take fish and game (McDowell, 785 P.2d at 6). "The history of the common use clauses, . . . , reveals anti-monopoly intent to prevent 'exclusive grants' and 'special privilege[s],' wholly apart from the limits imposed by other constitutional provisions." Owsichek, 763 P.2d at 496.

In Owsichek, the Alaska Supreme Court struck down exclusive guide areas and joint use areas, because these areas were grants of monopolies or special privileges based on a guide's previous use, occupancy, and investment in the area. "To grant such a special privilege based on seniority runs counter to the notion of 'common use'." Owsichek, 763 P.2d at 496. In McDowell, the Alaska Supreme Court struck down the rural residency requirement for subsistence because it amounted to an exclusive or special privilege prohibited by the open access provisions of the Alaska Constitution. McDowell, 785 P.2d at 9. In lieu of the rural residency requirement for determining eligibility for subsistence use of fish and game, SB 484/HB 599 uses the three mandatory minimum requirements to require recent and extensive use in the subsistence use area as a precondition for eligibility. Just as the rural residency requirement precluded nonrural residents from engaging in subsistence activities, the recent and substantial use requirement of SB 484/HB 599 precludes all other persons who are similarly situated but who do not have a recent and substantial history of use in the area from engaging in subsistence hunting and fishing in the subsistence use area. The fact that any nonrural resident could move to a rural area and thus qualify for subsistence was ineffective in saving the former rural residency requirement from

②(...continued)

history of use in the Tok area. (This assumes that the state does not deny the person's right to continue to engage in subsistence hunting and fishing in the Kotzebue area, because travelling from Tok to Kotzebue no longer satisfies the economical and efficient requirement for subsistence activities.)

For example, if a tier I subsistence user is closed out of his/her area because of a resource shortage that user may not move his/her subsistence activities to another subsistence use area, even though the person has a continuing need to engage in subsistence hunting and fishing.

invalidity. McDowell, 785 P.2d at 7. Likewise, the ability of an otherwise qualified person to establish a history of recent and extensive use of a new or an additional subsistence use area does not prevent the requirement for such a history of use as, a condition precedent to use of the new area, from being an excessive infringement on open access provisions of the Alaska Constitution.

Review of the three mandatory standards according to the equal protection analysis applied under the uniform application section requires the following procedure. First, the three mandatory standards must have a legitimate purpose. The purposes of SB 484/HB 599 that seem relevant to the mandatory standards are protection of healthy fish stocks and game populations and allowing participation in the subsistence taking of fish and game by those who actually and substantially depend on subsistence use of fish and game. SB 484/HB 599, Section 1(b). These purposes are legitimate purposes. Owsichek, 763 P.2d at 496 - 97; McDowell, 785 P.2d at 13 (concurring opinion). Second, the importance of the individual interest involved must be determined. The individual interest in equal access to fish and game is a highly important interest running to each person within the state. McDowell, 785 P.2d at 10; Owsichek, 763 P.2d at 492 n. 10. Third, the importance of the state's purpose must be balanced against the individual interest involved. McDowell, 785 P.2d at 10. The state's purpose must be at least important to overcome the highly important individual interest at stake. Fourth, the means to further the important state purpose must be carefully drawn and designed for the "least possible infringement on article VIII's open access values." McDowell, 785 P.2d at 10.

Assuming that the state's purpose underlying the three mandatory standards is sufficiently important to countervail the highly important individual interest at stake, it would appear that the means chosen to achieve the state's purpose is not the least possible infringement on open access to fish and game resources. The three mandatory standards allow otherwise qualified individuals to engage in subsistence hunting and fishing in only those subsistence use areas where the individual has a history of recent and extensive use. The remaining dozens of subsistence use areas are closed to this individual.

In my opinion, there is a substantial and unnecessary risk that the three mandatory standards contained in SB 484/HB 599 are an impermissible infringement on open access to fish and game resources and thus would violate the open access provisions of the Alaska Constitution.

It is the creation of dozens of separate, albeit overlapping, subsistence use areas that are each subject to distinct area specific criteria for access that infringes upon the open access provisions of article VIII. Those persons who ultimately qualify for subsistence hunting and fishing privileges in a subsistence use area receive a "special privilege" that is denied to all other persons. Those persons who are not qualified for subsistence hunting and fishing in the area are denied access to the user group

for that subsistence use area because they have not established the requisite history of use.

The utilization of past use or activities in an area, as criteria for granting or denying access to fish and game resources has been rejected by the Alaska courts in Owsichek (guide exclusive use and joint use areas) and in Bozanich v. Noerenberg, (Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971; state may not bar entry into a salmon net fishery by requiring prior experience in that fishery).

The primary shortcoming of the three mandatory standards is that they combine determinations on access to a user group with determinations on allocation of the fish and game resource. The Alaska Supreme Court is supportive of the state's power to allocate fish and game resources under the sustained yield section of the Alaska Constitution^{7/} (Gilbert v. State Department of Fish and Game, 803 P.2d 391 (Alaska 1990); Meier v. State, Board of Fisheries, 739 P.2d 172 (Alaska 1987)), provided that the allocations are not arbitrary and unreasonable and are consistent with and reasonably necessary to the conservation and development of fish and game resources (Gilbert, 803 P.2d at 399; Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897, 903 (Alaska 1981)). However, the authority to make allocation decisions does not imply a power to limit admission to a user group. State v. Hebert, 803 P.2d 863, 866; (Alaska 1990) McDowell, 785 P.2d at 7 - 8;^{8/}

The access and allocation determinations could be separated by eliminating the requirement that the three mandatory standards be satisfied in a single subsistence use area. If the two determinations were separated, a fundamental weakness of SB 484/HB 599 would be avoided and SB 484/HB 599 would better withstand challenges under article VIII of the Alaska Constitution. SB 484/HB 599 can be

^{7/} Article VIII, sec. 4:

SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

^{8/} The requirement that a person must engage in subsistence activities in a specific subsistence use area is somewhat analogous to the superexclusive fishing districts established by the Board of Fisheries for the Bering Sea herring sac roe fisheries. The board established two superexclusive herring sac roe fishing districts. If a fisherman chose to fish in either of these fisheries, the fisherman could not fish in any other herring sac roe fishing districts. The Alaska Supreme Court upheld the use of the superexclusive use fisheries for the purpose of allocating the harvest of herring between competing groups of commercial fisherman. State v. Hebert, 803 P.2d 863 (Alaska 1990). The court found that superexclusive fishing districts were consistent with the Alaska Constitution because they did not limit admission to a user group; the fisherman was free to choose which fishing district to fish in. Hebert, 803 P.2d at 866.

amended to include criteria for determining where qualified subsistence users may engage in subsistence hunting and fishing or for establishing procedures for allocating fish and game resources among subsistence users. Prior use of a subsistence use area for the taking of fish and wildlife could be among the factors used to determine where a person may engage in subsistence fishing and hunting.

The risk of unconstitutionality can also be avoided by passage of a constitutional amendment authorizing the establishment of separate subsistence use areas in the state and the imposition of restrictions on the subsistence use of fish and game in those areas based on dependence on and prior use of that fish and game.

COMMUNITY BASED PRESUMPTIONS

Though the criteria for establishing eligibility to engage in subsistence activities are relatively uniform, SB 484/HB 599 provides that the proof necessary satisfy the criteria varies significantly depending on where a person lives.

A person who resides in a subsistence use area in a category 1 area^{9/} is presumed to satisfy all eligibility criteria to take fish and game for subsistence use in that subsistence use area without having to establish more than the person's place of residence. The person can engage in subsistence activities in the subsistence use area in which he/she resides until it is proven by clear and convincing evidence that the person is not qualified to engage in subsistence. SB 484/HB 599, Sec. 2, Sec. 16.05.268(h)(1); page 6, lines 14 - 19.

A person who resides in a subsistence use area in a category 2 area^{10/} is presumed to satisfy all eligibility criteria to take fish and game for subsistence use in that subsistence use area and need only sign a document asserting that the person does indeed qualify. SB 484/HB 599, Sec. 2, Sec. 16.05.268(h)(2); page 6, lines 20 - 26. The person may engage in subsistence activities in that subsistence use area until it

^{9/} A category 1 area is an area where the human population of each community in the area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area. SB 484/HB 599, Sec. 2, Sec. 16.05.268(f)(1); page 5, lines 7 - 9.

^{10/} A category 2 area is an area that consists of a single community that has a human population of 2,500 to 6,999, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community. SB 484/HB 599, Sec. 2, Sec. 16.05.268(f)(2); page 5, lines 10 - 13.

is proven by a preponderance of the evidence that the person is not qualified to engage in subsistence activities in that area.^{11/}

A person who resides in a category 3 area^{12/}, or who wants to engage in subsistence activities outside of the subsistence use area in which the person resides, must apply for certification for the desired subsistence use area from the commissioner of fish and game. The person may engage in subsistence activities in that subsistence use area only after the person has convinced the commissioner of fish and game that the person satisfies the eligibility criteria adopted by the joint boards for that area. SB 484/HB 599, Sec. 2, Sec. 16.05.268(h)(3), page 6, lines 27 - 30.

Under SB 484/HB 599, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into the class of subsistence users, they may inhibit equal and open access to subsistence resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

The rural preference of the former subsistence law was struck down in part because it was an "extremely crude" method to provide for the need to engage in subsistence activities. McDowell, 785 P.2d at 10. The classification scheme inherent in the category 1, 2, and 3 areas is subject to similar criticism. Residents in category 1 areas are presumed to qualify for subsistence activities regardless of their individual characteristics. Even those unqualified residents of a category 1 area who engage in subsistence are not penalized or sanctioned for their activities. An unqualified resident of a category 2 area is at least potentially subject to criminal prosecution for falsely alleging his/her qualifications. It is only the residents of a category 3 area that are evaluated on their individual qualifications. The category 1, 2, and 3 area concept is not the "classification scheme employing individual characteristics" which the McDowell court proposed as being "less invasive of Article VIII open access values." McDowell, 785 P.2d at 11. The category 1, 2, and 3 area concept classifies persons as a group based on where they live in the state.

^{11/} If it is proven that the resident of a category 2 area is not eligible to engage in subsistence activities in the area in which the person resides and that the person was aware of the lack of eligibility at the time the person signed the document, the person is potentially subject to criminal prosecution for unsworn falsification under AS 11.56.210.

^{12/} A category 3 area is an area that is
(A) an urban area or a single community where the human population is 7,000 or greater; or
(B) an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. SB 484/HB 599, Sec. 2, Sec. 16.05.268(f)(3); page 5, lines 14 - 18.

The purpose for this burden on equal access to fish and game resources under article VIII must be, at the minimum, an important purpose. McDowell, 785 P.2d at 10.

The state's purpose in establishing the variable burden for establishing eligibility to engage in subsistence hunting and fishing activities is to simplify the state's task of determining who is eligible to engage in subsistence activities (in essence, promote administrative convenience)^{13/} and "to direct the state's enforcement resources to those areas representing the biggest threat to the goal of preferring only actual and substantial reliance."^{14/} Though administrative convenience is a legitimate purpose for legislation, it is generally not an important purpose. See, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980); Deubelbeiss v. Commercial Fisheries Entry Commission, 689 P.2d 487, 489 (Alaska 1984). Conservation of the state's limited fish and wildlife law enforcement resources is probably a more important purpose than administrative convenience and probably would be accorded more weight in balancing against an individual's interest in equal access to fish and game for subsistence uses.

Assuming that the court does find the purpose behind the category 1, 2, and 3 area classification system to be important, it is then necessary to establish that the classification system is "designed for the least possible infringement on article VIII's open access values." McDowell 785 P.2d at 10. Though the classification system may be better than the rural-urban distinction made by the former law, it is not the system based on individual characteristics that the Alaska Supreme Court was looking for. In light of the purpose of the uniform application clause "to exclude an especially privileged status for any person in the use of natural resources subject to disposition by the state"^{15/} it is possible that the courts will require less disparity among residents of the state based on their place of residence than provided in SB 4484/HB 599.

A challenge to the category 1, 2, and 3 areas classification system under the uniform application section may result in an adverse decision from the courts because the system places different burdens on residents of the state based on where they live and not on their individual qualifications to engage in subsistence hunting and fishing. A system that required all residents to establish their eligibility to engage in subsistence

^{13/} Section-By-Section Description of the Governor's Subsistence Bill, dated February 21, 1992, pp. 10 - 11.

^{14/} Letter from the Alaska Department of Law to Senator Hoffman and Representative Lincoln, dated March 27, 1992, at pp. 7 - 8.

^{15/} Owsichek, 763 P.2d at 498 n. 17; quoting 6 Proceedings of the Alaska Constitutional Convention, app. V, at 99 (Commentary); emphasis added by court.

in the same manner or that gave all residents the benefit of the same presumptions would provide fewer grounds for judicial challenge and be less susceptible to unanticipated judicial constructions.

OTHER ISSUES

In addition to the specific issues discussed above, several provisions of SB 484/HB 599 may generate challenges on equal protection grounds. Any provision of the bill that establishes a fixed standard or criteria to determine whether a person is eligible to engage in subsistence hunting and fishing or establishes the conditions under which the person may apply for subsistence privileges or may engage in subsistence hunting and fishing is potentially subject to challenge by a person who is adversely affected by that standard or criteria. For the most part, these challenges will be based on either the state equal protection clause (article I, sec. 1) or the state uniform application section (article VIII, sec. 17).

In order to survive such challenges, the state must be able to show that the standard or criteria is reasonable and not arbitrary, bears an appropriate relationship to a sufficiently important state purpose, and bears an appropriate nexus to the state purpose. The ability of the state to make such showings is dependent in large part upon the extent of review and consideration that the legislature accords to each of the standards and criteria. A record of careful consideration of each element of SB 484/HB 599 will provide the evidence necessary to establish that an element was adopted for specific reasons and not arbitrarily. It is also important that the legislature pay particular attention to the goals that it is seeking to achieve in each element of the bill and the means that it chooses to achieve the goal. The closer the relationship between the goal and the means chosen to achieve it, the greater is the likelihood that element of the bill will survive scrutiny under the equal protection clause or the uniform application section.

If I may be of further assistance, please advise.

GU:lmb
92-136.lmb

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 Jalmar Kerttula

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

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. ^{1/}

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;

^{1/} 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. ^{2/}

^{2/} 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.^{3/}

As to the bill sections affecting provisions outside AS 16.05:

^{3/} 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.

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:^{4/}

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.

JBC:mi
92-101.mai

^{4/} 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.

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: Constitutionality of SB 485, an Act relating to the taking of fish and game for subsistence; and providing for a effective date

TO: Senator Jay Kerttula

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your query as to whether SB 485 is consistent with the Alaska Constitution.

SHORT ANSWER

The rural and urban subsistence uses of fish and game proposed by SB 485 are unconstitutional because they establish closed subsistence users groups that are incompatible with the open access provisions of article VIII of the Alaska Constitution. This defect can be cured by amending the Alaska Constitution to authorize rural and urban subsistence uses of fish and game.

DISCUSSION

SB 485 authorizes subsistence uses of fish and game and establishes a preference for those uses over other consumptive uses. The bill recognizes two kinds of subsistence uses of fish and game: rural subsistence uses and urban subsistence uses. Rural subsistence uses, described in the bill as "subsistence uses", are reserved to rural residents of the state. Urban subsistence uses are a new category of subsistence uses that is reserved for urban residents of the state. Rural subsistence uses of fish and game have a priority over urban subsistence uses.

Because entry into both the rural subsistence user group and the urban subsistence user group is determined by a person's place of residence in the state, the two user groups are not consistent with the open access provisions of the Alaska Constitution:

common use section^{1/}, no exclusive right of fishery clause^{2/}, and uniform application section^{3/}. The rural subsistence user group is the same as that struck down by the Alaska Supreme Court in McDowell, because it violated the open access provisions of the constitution by creating a closed class of users. McDowell v. State, 785 P.2d 1 (Alaska 1989). The court found that "residency criterion . . . which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional." Id. at 9. The urban subsistence user group is likewise unconstitutional because membership in the group is limited to urban residents.

In order to validly use rural and urban residency as a criterion for determining who may engage in rural subsistence uses and urban subsistence uses, it will be necessary to amend the Alaska Constitution accordingly. A constitutional amendment similar to that proposed by HJR 77, HJR 78, HJR 79, SJR 49, or SJR 50 (Seventeenth Legislature) would allow the legislature to enact the rural subsistence and urban subsistence provisions of the proposed legislation.

If I may be of further assistance, please advise.

GU:gc:lmb
92-134.lmb

^{1/} Article VIII, sec. 3:

COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

^{2/} Article VIII, sec. 15, in relevant part:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. . . .

^{3/} Article VIII, sec. 17:

UNIFORM APPLICATION. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

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 15, 1992

SUBJECT: Constitutionality of SB 485, an Act relating to the taking of fish and game for subsistence; and providing for a effective date

TO: Senator Al Adams

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your query as to whether SB 485 is consistent with the Alaska Constitution.

SHORT ANSWER

The rural and urban subsistence uses of fish and game proposed by SB 485 are unconstitutional because they establish closed subsistence users groups that are incompatible with the open access provisions of article VIII of the Alaska Constitution. This defect can be cured by amending the Alaska Constitution to authorize rural and urban subsistence uses of fish and game.

DISCUSSION

SB 485 authorizes subsistence uses of fish and game and establishes a preference for those uses over other consumptive uses. The bill recognizes two kinds of subsistence uses of fish and game: rural subsistence uses and urban subsistence uses. Rural subsistence uses, described in the bill as "subsistence uses", are reserved to rural residents of the state. Urban subsistence uses are a new category of subsistence uses that is reserved for urban residents of the state. Rural subsistence uses of fish and game have a priority over urban subsistence uses.

Because entry into both the rural subsistence user group and the urban subsistence user group is determined by a person's place of residence in the state, the two user groups are not consistent with the open access provisions of the Alaska Constitution:

common use section^{1/}, no exclusive right of fishery clause^{2/}, and uniform application section^{3/}. The rural subsistence user group is the same as that struck down by the Alaska Supreme Court in McDowell, because it violated the open access provisions of the constitution by creating a closed class of users. McDowell v. State, 785 P.2d 1 (Alaska 1989). The court found that "residency criterion . . . which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional." Id. at 9. The urban subsistence user group is likewise unconstitutional because membership in the group is limited to urban residents.

In order to validly use rural and urban residency as a criterion for determining who may engage in rural subsistence uses and urban subsistence uses, it will be necessary to amend the Alaska Constitution accordingly. A constitutional amendment similar to that proposed by HJR 77, HJR 78, HJR 79, SJR 49, or SJR 50 (Seventeenth Legislature) would allow the legislature to enact the rural subsistence and urban subsistence provisions of the proposed legislation.

If I may be of further assistance, please advise.

GU:gc
92-409.glc

^{1/} Article VIII, sec. 3:

COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

^{2/} Article VIII, sec. 15, in relevant part:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. . . .

^{3/} Article VIII, sec. 17:

UNIFORM APPLICATION. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

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 12, 1992

SUBJECT: Letter of the Department of Law Regarding
Subsistence Legislation: SB 443, HB 552
(Work Order No. 7-LS2386)

TO: Representative Dave Donley
ATTN: Laurie Otto

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your request for my comments on a letter from the Alaska Department of Law to Senator Hoffman and Representative Lincoln regarding subsistence legislation (SB 443 and HB 552) dated March 27, 1992. Cited as Letter.

The Letter discussed the following issues that had been raised by the Governor's subsistence legislation (SB 443 and HB 552): community-based presumptions, limitations to subsistence use areas, the twelve month qualification period, and tier II criteria. This memorandum addresses each of these issues in the same order as presented in the letter.

COMMUNITY-BASED PRESUMPTIONS

In Section 2 of the Governor's subsistence bills, sec. 16.05.268(f), (g), and (h) establish a system for determining how a person establishes his/her qualifications to engage in subsistence hunting and fishing activities.^{1/}

^{1/} Subsection (h)(1) provides that a person who resides in a category 1 area and who intends to engage in subsistence activities in the subsistence use area in which the person resides is presumed to be qualified to engage in subsistence activities in that subsistence use area. Such a person may engage in subsistence activities in that subsistence unit without signing a document asserting that the person is qualified to do so and without having to obtain a permit.

Subsection (h)(2) provides that a person who resides in a category 2 area and who intends to engage in subsistence activities in the subsistence use area in which the person resides must sign a statement
(continued...)

Under subsection (h) the extent of the burden on the privilege of engaging in subsistence activities varies substantially depending on where a person resides. The Department of Law finds this variable burden on access to subsistence hunting and fishing to be consistent with the principles laid out in the McDowell decision, because the variable burden does not preclude any qualified person from engaging in subsistence activities and does not limit access to the subsistence user group based on a person's place of residence. The Department of Law also concludes that the burdens imposed under subsection (h) are not determinative of access to fish and game, thus do not violate the equal access provisions of Article VIII of the Alaska Constitution. Therefore, the procedure established by subsection (h) is subject to review only under the equal protection clause of the Alaska Constitution. Article I, sec. 1. The Department of Law finds that under state equal protection standards the variable burden imposed by subsection (h) is constitutional.

I agree with the Department of Law that the provisions of subsection (h) are not inconsistent with the principles of the McDowell decision. I would also agree with the Department of Law that the procedure imposed by subsection (h) would probably satisfy state equal protection standards. However, I am less certain than the Department of Law that the uniform application section of the Alaska Constitution (article VIII, sec. 17) does not apply.

The uniform application section provides that: "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." It seems that burdens placed on access to a subsistence user group such as those imposed by subsection (h) relate to the use of natural resources and thus would be subject to the requirement that laws governing the use of natural resources "apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law". Id. The uniform application section protects a person from "legislation which burdens the equal access clauses of article VIII . . ." McDowell, 785 P.2d 1, 10 (Alaska 1989).

U(...continued)

asserting that the person is qualified to engage in subsistence activities according to the criteria set out in subsection (i). The person must sign this statement before engaging in subsistence activities in the subsistence use area.

Subsection (h)(3) provides that a person who resides in a category 3 area, or a person who resides in a category 1 or 2 area but who intends to engage in subsistence activities in a subsistence use area in which the person does not reside, must demonstrate to the commissioner of fish and game that the person is qualified to engage subsistence activities in the desired subsistence use area according to the criteria set out in subsection (i). Until the commissioner certifies that the person is qualified to engage in subsistence activities in that subsistence use area, the person may not do so.

Analysis of legislation under the uniform application section is analogous to equal protection analysis, but "may require 'more stringent review' of a statute than does the equal protection clause in cases involving natural resources." Owsichek v. State, 763 P.2d 488, 498 n. 17 (Alaska 1988); quoting Gilman v. Martin, 662 P.2d 120, 126 (Alaska 1983). To satisfy the uniform application section:

one, the law creating non-uniform standards must have a legitimate purpose;

two, the individual interest in use or disposal of natural resources must be identified;

three, once the legitimate purpose is established the state's interest in achieving its purpose must be weighed against the individual interest involved;

four, the means chosen to achieve the state's purpose must be carefully drawn and designed for the least possible infringement on article VIII's open access values.

Gilbert v. State, 803 P.2d 391, 399 (Alaska 1990); McDowell, 785 P.2d at 10; Owsichek, 763 P.2d at 492 and 496 - 497.

The state's purpose in establishing the variable burden for establishing eligibility to engage in subsistence hunting and fishing activities is to simplify the state's task of determining who is eligible to engage in subsistence activities (in essence, promote administrative convenience)^{2/} and "to direct the state's enforcement resources to those areas representing the biggest threat to the goal of preferring only actual and substantial reliance."^{3/}

The individual interest at stake under subsection (h) is equal access to fish and game for subsistence uses on equal terms with other persons. "The individual interest in equal access to fish and game resources is a 'highly important interest running to each person within the state'". Gilbert, 803 P.2d at 399; quoting McDowell, 785 P.2d at 10.

The state's legitimate purpose in enacting subsection (h) must be weighed against the individual's interest in equal access to fish and wildlife for subsistence uses on equal terms with other persons. Though administrative convenience is a legitimate purpose for legislation, it is generally not an important purpose. See, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980); Deubelbeiss v. Commercial Fisheries Entry Commission, 689 P.2d 487, 489 (Alaska 1984). Conservation of the state's limited fish and wildlife law enforcement resources is

^{2/} Section-By-Section Description of the Governor's Subsistence Bill, pp. 10 - 11.

^{3/} Letter, at pp. 7 - 8.

probably a more important purpose than administrative convenience and probably would be accorded more weight in balancing against an individual's interest in equal access to fish and game for subsistence uses.

The procedure established by subsection (h) does not seem to be carefully drawn and designed for the least possible infringement on open access to state natural resources. Residents of category 1 areas are presumed to be qualified to engage in subsistence activities in their subsistence use area. These persons do not have to establish, or even assert, their eligibility to engage in subsistence activities. Arguably residents of a category 1 area who are not eligible to engage in subsistence activities in their subsistence use area may still engage in those activities until the state rebuts the presumption that they are eligible. Based on the Section-By-Section Description of SB 443/HB 552 and the ambiguous language of SB 443/HB 553, it is not clear that the state could criminally prosecute an ineligible person who resides in a category 1 area for engaging in unauthorized subsistence hunting and fishing in the subsistence use area in which the person resides.

On the other hand, a person who resides in a category 2 area may engage in subsistence hunting and fishing in the subsistence use area in which the person lives only after completing a form, under penalty of unsworn falsification, asserting the person's eligibility. Likewise, a resident of a category 3 area, or a resident of a category 1 or 2 area who wants to engage in subsistence activities outside of the subsistence use area in which the person resides, must complete a detailed application and then be certified by the commissioner of fish and game before engaging in subsistence hunting and fishing activities.

Assuming that it is correct, that the greatest number of unqualified persons who may attempt to engage in unauthorized subsistence activities reside in category 3 areas and that it more efficient to concentrate the state's limited fish and wildlife enforcement efforts on excluding these persons from subsistence hunting and fishing activities, then why are residents of category 1 and 2 areas (where persons are more likely to be eligible to engage in subsistence activities), who want to engage in subsistence activities in a subsistence use area outside of the area where they reside, subjected to the same application and certification procedure as residents of a category 3 area? Requiring residents of category 1 and 2 areas to complete an application and be certified to engage in subsistence hunting and fishing in a subsistence area outside of the area where they reside does not seem to be related to the goal of excluding ineligible residents of category 3 area from subsistence activities. This requirement seems intended to discourage those persons residing in category 1 and 2 areas from attempting to engage in subsistence activities outside of the subsistence use area in which they live.

Representative Dave Donley
June 12, 1992
Page 5

The Alaska Supreme Court has not addressed a case -- such as that posed by subsection (h) -- where access to fish and game resources was burdened, but not closed, by a statute or regulation. If the court should ever address the issues raised by subsection (h), the outcome will depend on how the court balances the state and private interests involved, how much the court is willing to accept deviations from equal treatment of persons in regard to access to fish and game resources based on a person's place of residency in the state, and how close the relationship between the state's purpose and the means chosen to achieve the purpose must be. Given that the court may subject these issues to a higher degree of scrutiny than under standard equal protection, the risk that the subsection (h) will be found to be unconstitutional is greater than under the equal protection clause.

LIMITATIONS TO SUBSISTENCE USE AREAS

The Department of Law finds that the Alaska Supreme Court has never required that regulations be uniform for every fish and game species in the state and that the Alaska Constitution does not require that a particular use of fish or game be allowed throughout the state if it is allowed any where in the state. I agree with the Department of Law that there is no requirement of equal treatment of resources rather than resource users.

The Department of Law also finds that the constitution does not require that a person be eligible to engage in subsistence activities in one area merely because the person is qualified to engage in subsistence activities in an other area. I would agree with this statement for the most part.

What the constitution does require is that all similarly situated persons be entitled to participate in the same fish and game user groups (article VIII, sec. 17) and that the criteria for participation in a user group not create exclusive or special privileges (Owsichek, 763 P.2d at 496). Limits on admission to user groups are subject to scrutiny under the article VIII equal access provisions (State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichek, 763 P.2d at 492), because the provisions of article VIII were intended to guarantee the broadest possible access to and use of fish and game (Owsichek, 763 P.2d at 492 - 93) and to prohibit exclusive or special privileges to take fish and game (McDowell, 785 P.2d at 6). "The history of the common use clauses, . . . , reveals anti-monopoly intent to prevent 'exclusive grants' and 'special privilege[s],' wholly apart from the limits imposed by other constitutional provisions." Owsichek, 763 P.2d at 496.

In McDowell, the Alaska Supreme Court struck down the rural residency requirement for subsistence because it amounted to an exclusive or special privilege prohibited by the open access provisions of the Alaska Constitution. McDowell, 785 P.2d at 9. Rural residency was determined to be an invalid criteria for determining who may participate in the subsistence user group, though the court did leave open the

Representative Dave Donley
June 12, 1992
Page 6

possibility that residency in some form may be used as a criteria for allocating scarce resources among members of the user group. In Owsichek, the Alaska Supreme Court struck down exclusive guide areas and joint use areas, because these areas were grants of monopolies or special privileges based on a guide's previous use, occupancy, and investment in the area. "To grant such a special privilege based on seniority runs counter to the notion of 'common use'." Owsichek, 763 P.2d at 496. The facts underlying the decision in Owsichek are closer to the situation addressed by SB 443/HB 552, because those bills use past use and harvests in a area as a measure of reliance or dependence on the resources of that area. According to the Owsichek decision, the proposed subsistence user groups based on past use and harvests of a particular area bestow unconstitutional exclusive or special privileges upon the members of the user group. The utilization of past use or activities in an area, as criteria for determining access to fish and game user groups was also rejected in Bozanich v. Noerenberg (Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971). In Bozanich, the state attempted to limit access into a salmon net fishery by requiring prior experience in that fishery.

I do agree with the Department of Law that between a person who harvests all of his/her subsistence resources from a single subsistence use area and a person who does not rely as heavily on resources from the area, that the person with the greater dependence on the area should be preferred in the use of the resources of the area. However, I would qualify my agreement by saying that any preference accorded to the person with a greater dependence on the area would be generally limited to times when fish or game resources are not adequate to satisfy all members of the user group for that area.

I cannot say as a matter of constitutional law that in times of locally scarce resources the state may not prefer a person with a history of use of fish and game in a specific area over a person who has a true need to use fish or game in the area, but does not have an established history of use of fish and game in the area. It is within the discretion of the legislature to establish policies for allocations of fish and game resources in those situations, provided that the policies do not limit admission to a user group. State v. Hebert, 803 P.2d 863, 866 (Alaska 1990).

THE TWELVE MONTH QUALIFICATION PERIOD

The Department of Law found that the twelve month period used to determine eligibility to engage in subsistence activities does not create constitutional problems under the state or federal constitutions. I concur with the opinion of the Department of Law.

Representative Dave Donley
June 12, 1992
Page 7

TIER II CRITERIA

The Department of Law found that the "Tier II" criteria which considers the proximity of a person's domicile to subsistence resources in making allocations of those resources is probably constitutional. I concur with the opinion of the Department of Law.

If I may be of further assistance, please advise.

GU:lmb
92-130.lmb

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 25, 1992

SUBJECT: Constitutionality of the Governor's subsistence bill (SB 443)
TO: Senator Sam Cotten
FROM: George Utermohle
Legislative Counsel

You have asked for my professional opinion as to whether the Governor's subsistence bill (SB 443) is unconstitutional.

I have read the materials distributed by the Governor's Office and the Department of Law regarding the constitutionality of SB 443. The materials make reasonable arguments in favor of the constitutionality of SB 443, however on some issues I have reached different conclusions.

For the reasons expressed in my memorandum to Senator Lloyd Jones which was distributed to the Senate Resources Committee, I do believe that the mandatory criteria (SB 443; Sec. 2, Sec. 16.05.268(i)(2) - (4); page 7, lines 14 - 24) which tie eligibility for subsistence hunting and fishing to specific subsistence management areas create separate use areas available to narrowly defined user groups and that these user groups are closed classes prohibited by the open access provisions of the Alaska Constitution. In my opinion the creation of these closed user groups is unconstitutional under the Alaska Constitution.

Also for the reasons stated in my memorandum, I have concerns about whether the presumptions (SB 443; Sec. 2, Sec. 16.05.268(h); page 6, line 14 through page 7, line 2) which vary the burden of establishing eligibility for subsistence hunting and fishing according to where a person lives in the state is consistent with the open (and equal) access provisions of the Alaska Constitution. My inability to reach a firm conclusion on this issue in my own mind is due to the undeveloped state of constitutional law arising under the uniform application section (article VIII, sec. 17) of the Alaska Constitution. The only instances where this section has been construed by the Alaska Supreme Court involved closed classes of user groups or regulations which the court found to be allocations of resources rather than constraints on access to user groups.

Senator Sam Cotten

March 25, 1992

Page 2

The court has not addressed a case -- such as that posed by the presumptions of eligibility in SB 443 -- where access to resources was burdened, but not closed, by a statute or regulation. If the court ever reaches the issue of the presumptions, the outcome will depend upon how the court balances the state and private interests involved and upon how much the court is willing to accept deviations from equal treatment of residents in regard to access to fish and game resources based on the person's place of residency in the state.

If I can provide you with further information on issues attendant to the Governor's subsistence bills or on other issues, please contact me.

GU:pl

92-202.plm

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

March 16, 1992

SUBJECT: Constitutional issues raised by the Governor's Subsistence Bill.
(SB 443)

TO: Senator Lyman Hoffman

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether SB 443, the Governor's subsistence bill, is consistent with the Alaska Constitution?

SHORT ANSWER

One, SB 443 provides for the establishment of dozens of subsistence use areas. The mandatory minimum eligibility standards for subsistence proposed by SB 443 establish each subsistence use area as a separate use area and limit admission to the user group for that area to only those persons who have an extensive history of use in the area. The mandatory minimum eligibility standards pose a significant infringement on the open access values of the Alaska Constitution. There is a substantial risk that the mandatory minimum eligibility standards are unconstitutional.

Two, under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into fish and game user groups, they may inhibit equal and open access to fish and game resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

Three, the title of SB 443 fails to fully express the contents of the bill and should be amended accordingly.

DISCUSSION

This memorandum addresses the constitutional issues raised by SB 443.^{1/} SB 443 relates to the subsistence use and allocation of fish and game resources. The bill establishes an intricate system for controlling entry into subsistence user groups and distributing the activities of those user groups throughout the state. The bill provides that persons with a history of dependence on and use of fish and game resources will be able to continue their subsistence activities while leaving an opportunity for new persons to qualify for subsistence activities. Minimizing the administrative burden on the individual subsistence user and the Department of Fish and Game is also an important element of the bill.

The bill provides for subsistence use of fish and game resources under the legislature's authority to provide for the utilization, development, and conservation of natural resources.^{2/} Subsistence is not a constitutionally mandated or protected use of fish and game resources. As a statutorily created use of fish and game resources, any system for management of subsistence use and allocation of fish and game for subsistence use must be consistent with the Alaska Constitution. Of particular relevance to the subsistence use of fish and game are the "open access" provisions of the Alaska Constitution: common use section^{3/}, no exclusive right of fishery clause^{4/}, and uniform application section^{5/}. Although the ramifications of

^{1/} This memorandum does not address issues of statutory construction or legislative draftsmanship that do not implicate the Alaska Constitution. Those issues can be addressed later, if you wish.

^{2/} Article VIII, sec. 2:

General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

^{3/} Article VIII, sec. 3:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

^{4/} Article VIII, sec. 15, in relevant part:

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

these provisions are varied, they share at least one meaning: exclusive or special privileges to take fish and game are prohibited. The no exclusive right of fishery clause states this explicitly with regard to fisheries. The proceedings of the Alaska Constitutional Convention show that this same meaning was intended with respect to fish and game under the common use section and the uniform application section. McDowell v. State, 785 P.2d 1 (Alaska 1989).

The bill avoids creating an obviously closed class of subsistence users like the rural resident preference that the Alaska Supreme Court struck down in McDowell. Instead, the bill establishes a system in which any person, ostensibly, may engage in subsistence use of fish and game provided that the person satisfies the prescribed eligibility criteria.

ELIGIBILITY CRITERIA FOR SUBSISTENCE

SB 443 proposes seven fundamental considerations for determining who is eligible to engage in subsistence hunting and fishing. SB 443, Sec. 2; Sec. 16.05.268(i); page 7, line 3 - page 8, line 1. The Board of Fisheries and the Board of Game are to jointly establish the actual criteria and a concomitant point system for determining eligibility based on the fundamental considerations. Though the boards jointly develop the actual eligibility criteria, four of the fundamental considerations in SB 443 are in fact specific mandatory minimum standards that a person must satisfy in order to qualify for subsistence hunting and fishing:

- (1) the quantity of fish and game consumed by the person in the preceding 12 months, with a mandatory minimum of 125 pounds consumed in that period;
- (2) the number of species and groups of species of fish and game from the subsistence [use] area consumed by the person in the preceding 12 months, with a mandatory minimum number of species, or groups of species, as determined jointly by the boards by regulation; the mandatory minimum number, and any grouping of species, may vary by geographical region of the state, based on the diversity of species in a region;
- (3) the number of days in the preceding 12 months that the person engaged in the taking of fish or game in the subsistence use

§ (...continued)

§ Article VIII, sec. 17:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

area, or the processing of that fish or game, with a mandatory minimum of 30 days in that period;

(4) the number of months in the preceding 12 months in which the person engaged in the taking of fish or game in the subsistence use area, with a mandatory minimum of four months in that period;

SB 443, Sec. 2, Sec. 16.05.268(i)(1) - (4); page 7, lines 12 - 24.

Notably three of the four mandatory standards (Sec. 16.05.268(i)(2) - (4)) set specific minimum requirements on the number of species of fish and game consumed and the number of days and months engaged in hunting and fishing activities (at least a total of 30 days during any four months) and requires that each of the three standards be satisfied in a single subsistence use area during the preceding 12 months.^{9/} Once an applicant for subsistence privileges satisfies these mandatory minimum standards in a subsistence use area and the other criteria adopted by the boards, the applicant is then eligible to participate in subsistence hunting and fishing in that subsistence use area. If an applicant wants to engage in subsistence hunting and fishing in an additional subsistence use area or to move subsistence activities to a new subsistence use area, the applicant must then satisfy the three mandatory standards in the new area as well as the other criteria established by the boards. The applicant can satisfy the three mandatory standards in the new subsistence use area by engaging in sport or personal use fishing or sport hunting in the area, taking the prescribed number of species in the area, spending the required amount of time fishing and hunting in the area or processing fish and game taken in the area.

By combining standards for eligibility to engage in subsistence hunting and fishing with a requirement that the standards be satisfied in the subsistence use area in which the applicant wishes to use for subsistence hunting and fishing, the three mandatory standards establish each subsistence use area as a separate subsistence hunting and fishing area open only to certain persons and closed to all others. In fact the standards establish separate user groups for each subsistence use area and then limits admission to the user group to those persons who have a history of recent and extensive use in the area. An otherwise qualified subsistence user does not have the freedom to choose which subsistence use area the person will hunt or fish in. The

^{9/} A subsistence use area is the subunit of a game management unit together with the contiguous game management subunits, unless a board describes a different subsistence use area for a particular fish stock or game population. SB 443, Sec. 2, Sec. 16.05.268(d) and (e). There are currently 69 game management subunits in the state and thus a possible 69 different subsistence use areas. The actual number of subsistence use areas will probably be less because certain areas (urban areas) are closed to subsistence use of fish and game and subsistence use areas may not be established for those areas. See, SB 443, Sec. 2, Sec. 16.05.268(a).

person is confined to that subsistence use area in which he has established the requisite history of use.^{7/} All other persons are barred from using the area for subsistence hunting and fishing. Each subsistence use area becomes an exclusive use area open to use by only a few eligible persons and as such confers a "special privilege" to use the fish and game in the area on those persons.

A system for determining eligibility for engaging in subsistence hunting and fishing which opens participation for some and closes participation for others "will necessarily create tension with article VIII." McDowell, 785 P.2d at 9. Limits on admission to user groups are subject to scrutiny under the article VIII equal access provisions (State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichek v. State, 763 P.2d 488, 492 (Alaska 1988)), because the provisions of article VIII were intended to guarantee the broadest possible access to and use of fish and game (Owsichek, 763 P.2d at 492 - 93) and to prohibit exclusive or special privileges to take fish and game (McDowell, 785 P.2d at 6). "The history of the common use clauses, . . . , reveals anti-monopoly intent to prevent 'exclusive grants' and 'special privilege[s],' wholly apart from the limits imposed by other constitutional provisions." Owsichek, 763 P.2d at 496.

In Owsichek, the Alaska Supreme Court struck down exclusive guide areas and joint use areas, because these areas were grants of monopolies or special privileges based on a guides previous use, occupancy, and investment in the area. "To grant such a special privilege based on seniority runs counter to the notion of 'common use'." Owsichek, 763 P.2d at 496. In McDowell, the Alaska Supreme Court struck down the rural residency requirement for subsistence because it amounted to an exclusive or special privilege prohibited by the open access provisions of the Alaska Constitution. McDowell, 785 P.2d at 9. In lieu of the rural residency requirement for determining eligibility for subsistence use of fish and game, SB 443 uses the three mandatory minimum requirements to require recent and extensive use in the subsistence use area as a precondition for eligibility. Just as the rural residency requirement precluded nonrural residents from engaging in subsistence activities, the

^{7/} For example, a subsistence user in Kotzebue who moves to Tok must continue to return to Kotzebue to engage in subsistence hunting and fishing, until the user establishes the prerequisite history of use in the Tok area. (This assumes that the state does not deny the person's right to continue to engage in subsistence hunting and fishing in the Kotzebue area, because travelling from Tok to Kotzebue no longer satisfies the economical and efficient requirement for subsistence activities.)

For example, if a tier I subsistence user is closed out of his/her area because of a resource shortage that user may not move his/her subsistence activities to another subsistence use area, even though the person has a continuing need to engage in subsistence hunting and fishing.

recent and substantial use requirement of SB 443 precludes all other persons who are similarly situated but who do not have a recent and substantial history of use in the area from engaging in subsistence hunting and fishing in the subsistence use area. The fact that any nonrural resident could move to a rural area and thus qualify for subsistence was ineffective in saving the former rural residency requirement from invalidity. McDowell, 785 P.2d at 7. Likewise the ability of an otherwise qualified person to establish a recent and substantial history of use, of a new or an additional subsistence use area does not prevent the requirement for such a history of use as a condition precedent to use of the new area, from being an excessive infringement on open access provisions of the Alaska Constitution.

Review of the three mandatory standards according to equal protection analysis under the uniform application section requires the following procedure. First, the three mandatory standards must have a legitimate purpose. The purposes of SB 443 that seem relevant to the mandatory standards are protection of healthy fish stocks and game populations and allowing participation in the subsistence taking of fish and game by those who actually and substantially depend on subsistence use of fish and game. SB 443, Section 1(b). These purposes are legitimate purposes. Owsichuk, 763 P.2d at 496 - 97; McDowell, 785 P.2d at 13 (concurring opinion). Second, the importance of the individual interest involved must be determined. The individual interest in equal access to fish and game is a highly important interest running to each person within the state. McDowell, 785 P.2d at 10; Owsichuk, 763 P.2d at 492 n. 10. Third, the importance of the state's purpose must be balanced against the individual interest involved. McDowell, 785 P.2d at 10. The state's purpose must be at least important to overcome the highly important individual interest at stake. Fourth, the means to further the important state purpose must be carefully drawn and designed for the "least possible infringement on article VIII's open access values." McDowell, 785 P.2d at 10.

Assuming that the state's purpose underlying the three mandatory standards is sufficiently important to countervail the highly important individual interest at stake, it would appear that the means chosen to achieve the state's purpose is not the least possible infringement on open access to fish and game resources. The three mandatory standards allow otherwise qualified individuals to engage in subsistence hunting and fishing in only those subsistence use areas where the individual has a recent and extensive history of use. The remaining dozens of subsistence use areas are closed to this individual.^{8/}

^{8/} This result is intentional. The Section-By-Section Description of the Governor's Subsistence Bill, dated February 21, 1992, states at page 11:

(continued...)

Senator Lyman Hoffman

March 16, 1992

Page 7

In my opinion, there is a substantial and unnecessary risk that the three mandatory standards contained in SB 443 are an impermissible infringement on open access to fish and game resources and thus would violate the open access provisions of the Alaska Constitution.

It is the creation of dozens of separate, albeit slightly overlapping, subsistence use areas that are each subject to distinct area specific criteria for access that infringes upon the open access provisions of article VIII. Those persons who ultimately qualify for subsistence hunting and fishing privileges in a subsistence use area receive a "special privilege" that is denied to all other persons. Those persons who are not qualified for subsistence hunting and fishing in the area are denied access to the user group for that subsistence use area because they have not established the requisite history of use.

The utilization of past use or activities in an area, as criteria for granting or denying access to fish and game resources has been rejected by the Alaska courts in Owsick (guide exclusive use and joint use areas) and in Bozanich v. Noerenberg, (Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971; state may not bar entry into a salmon net fishery by requiring prior experience in that fishery).

The primary shortcoming of the three mandatory standards is that they combine determinations on access to a user group with determinations on allocation of the fish and game resource. The Alaska Supreme Court is supportive of the state's power to allocate fish and game resources under the sustained yield section of the Alaska Constitution^{2/} (Gilbert v. State Department of Fish and Game, 803 P.2d 391 (Alaska 1990); Meier v. State, Board of Fisheries, 739 P.2d 172 (Alaska 1987)), provided that the allocations are not arbitrary and unreasonable and are consistent with and reasonably necessary to the conservation and development of fish and game resources (Gilbert, 803 P.2d at 399; Kenai Peninsula Fisherman's Cooperative Association, Inc.

^{2/}(...continued)

The statute does not provide for qualification on a statewide basis; hunting and fishing in one subsistence area will not qualify the user to subsistence hunt and fish in another area. While it may be technically possible for a person to qualify in more than one subsistence use area under this subsection [SB 443, Sec. 2, Sec. 16.05.268(i)], it is generally contemplated that the vast majority of users will qualify for only one area.

^{2/} Article VIII, sec. 4:

Sustained Yield. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

v. State, 628 P.2d 897, 903 (Alaska 1981)). However, the authority to make allocation decisions does not imply a power to limit admission to a user group. State v. Hebert, 803 P.2d 863, 866; (Alaska 1990) McDowell, 785 P.2d at 7 - 8;^{10/}

The two determinations could be separated by eliminating the requirement that the three mandatory standards be satisfied in a single subsistence use area. If the two determinations were separated a fundamental weakness of SB 443 would be avoided and SB 443 would better withstand challenges under article VIII of the Alaska Constitution. SB 443 can be amended to include criteria for determining where qualified subsistence users may engage in subsistence hunting and fishing or for establishing procedures for allocating fish and game resources among subsistence users. Prior use of a subsistence use area for the taking of fish and wildlife could be among the factors used to determine where a person may engage in subsistence fishing and hunting.

PROOF OF ELIGIBILITY

Though the criteria for establishing eligibility to engage in subsistence activities are relatively uniform, SB 443 provides that the proof necessary satisfy the criteria varies significantly depending on where a person lives.

A person who lives in a category 1 area^{11/} is presumed to satisfy all eligibility criteria without having to establish more than the person's place of residence. The person may engage in subsistence activities until it is proven by clear and convincing evidence that the person is not qualified to engage in subsistence. SB 443, Sec. 2, Sec. 16.05.268(h)(1); page 6, lines 17 - 22.

^{10/} The requirement that a person must engage in subsistence activities in a specific subsistence use area is somewhat analogous to the superexclusive fishing districts established by the Board of Fisheries for the Bering Sea herring sac roe fisheries. The board established two superexclusive herring sac roe fishing districts. If a fisherman chose to fish in either of these fisheries, the fisherman could not fish in any other herring sac roe fishing districts. The Alaska Supreme Court upheld the use of the superexclusive use fisheries for the purpose of allocating the harvest of herring between competing groups of commercial fisherman. State v. Hebert, 803 P.2d 863 (Alaska 1990). The court found that superexclusive fishing districts were consistent with the Alaska Constitution because it did not limit admission to a user group, because the fisherman was free to choose which fishing district to fish in. Hebert, 803 P.2d at 866.

^{11/} A category 1 area is an area where the human population of each community in the area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area. SB 443, Sec. 2, Sec. 16.05.268(f)(1); page 5, lines 9 - 11.

A person who resides in a category 2 area^{12/} is presumed to satisfy all eligibility criteria and need only sign a document affirming that the person does indeed qualify. SB 443, Sec. 2, Sec. 16.05.268(h)(2); page 6, lines 23 - 29. The person may engage in subsistence activities until it is proven by a preponderance of the evidence that the person is not qualified to engage in subsistence.^{13/}

A person who resides in a category 3 area^{14/} may engage in subsistence activities only after the person has convinced the commissioner of fish and game that the person satisfies the eligibility criteria adopted by the joint boards. SB 443, Sec. 2, Sec. 16.05.268(h)(3), page 6, line 30 through page 7, line 2.

Under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into the class of subsistence users, they may inhibit equal and open access to subsistence resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

The rural preference of the former subsistence law was struck down in part because it was an "extremely crude" method to provide for the need to engage in subsistence activities. McDowell, 785 P.2d at 10. The classification scheme inherent in the category 1, 2, and 3 areas is subject to similar criticism. Residents in category 1 areas are presumed to qualify for subsistence activities regardless of their individual characteristics. Even those unqualified residents of a category 1 area who engage in subsistence are not penalized or sanctioned for their activities. An unqualified resident of a category 2 area is at least potentially subject to criminal prosecution for falsely alleging their qualifications. It is only the residents of a category 3 area that

^{12/} A category 2 area is an area that consists of a single community that has a human population of 2,500 to 6,999, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community. SB 443, Sec. 2, Sec. 16.05.268(f)(2); page 5, lines 12 - 15.

^{13/} If it is proven that the person is not qualified for subsistence and that the person was aware of the lack of qualifications, the person is potentially subject to criminal prosecution for unsworn falsification under AS 11.56.210.

^{14/} A category 3 area is an area that is
(A) an urban area or a single community where the human population is 7,000 or greater; or
(B) an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. SB 443, Sec. 2, Sec. 16.05.268(f)(3); page 5, lines 16 - 21.

are evaluated on their individual qualifications. The category 1, 2, and 3 area concept is not the "classification scheme employing individual characteristics" which the McDowell court proposed as being "less invasive of Article VIII open access values." McDowell, 785 P.2d at 11. The category 1, 2, and 3 area concept classifies persons as a group based on where they live in the state.

The purpose for this burden on equal access to fish and game resources under article VIII must be, at the minimum, an important purpose. McDowell, 785 P.2d at 10.

According to the Section-By-Section Description of the Governor's Subsistence Bill,^{15/} the primary purpose of the category 1, 2, and 3 areas is to simplify the task of determining who is eligible to engage in subsistence activities. This purpose amounts to promoting administrative convenience. Administrative convenience is generally accepted as legitimate purpose for legislation and regulations but is not necessarily an important purpose. See, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980); Deubelbeiss v. Commercial Fisheries Entry Commission, 689 P.2d 487, 489 (Alaska 1984). Administrative convenience may not be sufficient to justify the burdens imposed by the category 1, 2, and 3 area classification system.

Assuming that the court does find administrative convenience or some other purpose behind the category 1, 2, and 3 area classification system to be important, it is then necessary to establish that the classification system is "designed for the least possible infringement on article VIII's open access values." McDowell 785 P.2d at 10. Though the classification system may be better than the rural-urban distinction made by the former law, it is not the system based on individual characteristics that the Alaska Supreme Court was looking for. In light of the purpose of the uniform application clause "to exclude an especially privileged status for any person in the use of natural resources subject to disposition by the state"^{16/} it is possible that the courts will require less disparity among residents of the state based on their place of residence than provided in SB 443.

A challenge to the category 1, 2, and 3 areas classification system on equal protection grounds under the uniform application section may result in an adverse decision from the courts because the system places different burdens on residents of the state based on where they live and not on their individual qualifications to engage in subsistence

^{15/} Page 10 - 11.

^{16/} Owsichuk, 763 P.2d at 498 n. 17; quoting 6 Proceedings of the Alaska Constitutional Convention, app. V, at 99 (Commentary); emphasis added by court.

Senator Lyman Hoffman
March 16, 1992
Page 11

hunting and fishing. A system that required all residents to establish their eligibility to engage in subsistence in the same manner or that gave all residents the benefit of the same presumptions would provide fewer grounds for judicial challenge and be less susceptible to unanticipated judicial constructions.

TITLE OF SB 443

According to the title of SB 443, the bill relates "to the taking of fish and game for subsistence." However two provisions of the bill define the terms "game management unit" and "sustained yield". SB 443, Sec. 6, Sec. 16.05.940(38) and (39), page 10, lines 17 - 23. These newly defined terms are intended to apply to sport hunting and to commercial, sport, and personal use fishing. To the extent that these newly defined terms apply to more than subsistence, the terms are outside of the title of the bill. Article II, section 13 of the Alaska Constitution requires that the subject of each bill be expressed in its title. The purpose of this provision is to give the legislature and the people fair notice as to the contents of the bill. Without mentioning in the bill title that the bill is defining "sustained yield" and "game management unit", the legislature and the people are not aware that those terms are being defined for purposes not related to subsistence. It is unlikely that a court would declare the entire bill unconstitutional for the failure to express the entire contents of the bill in the title. A court is more likely to find the bill constitutional, but to limit the application of the terms "game management unit" and "sustained yield" to the subsistence context.

The title problem is easily corrected by adding the phrase "defining 'sustained yield' and 'game management unit;'" to the title.

If I may be of further assistance, please advise.

GU:pl
92-176.plm

CONSTITUTIONAL AMENDMENTS

CONSTITUTIONAL AMENDMENTS

BILL #	DATE	SPONSOR
SJR 57	(INFORMATIONAL)	SENATE FINANCE
CSHJR 86	(INFORMATIONAL)	LINCOLN
SJR 56	(INFORMATIONAL)	HOFFMAN
CSSJR 86 (RES) AM	(INFORMATIONAL)	RESOURCES
SJR 50	2/18/92	ADAMS
SJR 49	2/18/92	HOFFMAN
HJR 86	6/15/92	LINCOLN
HJR 79	2/18/92	LINCOLN
HJR 78	2/18/92	IVAN
HJR 77	2/18/92	MACCLEAN

SENATE JOINT RESOLUTION NO. ~~56~~ 57

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence uses of fish and wildlife by Alaska residents; and providing for an
3 effective date for the amendment.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. The
8 legislature may grant a preference to and among Alaska residents in the taking of fish
9 and wildlife, consistent with the sustained yield principle, for subsistence uses on the
10 basis of one or more of the following: community or area characteristics, geography,
11 customary and traditional use, direct dependence, local residence, or the availability
12 of alternative resources.

13 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
14 section to read:

15 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.

16 Section 19 of Article VIII, regarding subsistence uses of fish and game, takes effect

1 immediately upon certification of the election returns by the lieutenant governor.
2 * Sec. 3. The amendment proposed by this resolution shall be placed before the voters of
3 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
4 State of Alaska, and the election laws of the state.

7-LS2405M ✓
Cook
6/18/92

PROPOSED CONSTITUTIONAL AMENDMENT FOR
HOUSE RULES

CS FOR HOUSE JOINT RESOLUTION NO. 86 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson, Ivan

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence users of fish and wildlife by residents, and establishing an effective
3 date for the amendment.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USERS OF FISH AND WILDLIFE. The
8 legislature may by law grant a preference to and between residents in the taking of
9 fish and wildlife for subsistence uses based on criteria consistent with the equal
10 protection requirements of the Constitution of the United States and the sustained
11 yield principle.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
13 section to read:

14 SECTION 29. APPLICATION AND EFFECTIVE DATE OF SUBSISTENCE
15 AMENDMENT. (a) Section 19 of Article VIII, regarding subsistence users of fish
16 and wildlife, has precedence over any inconsistent provisions of Sections 3 (common

1 use), 15 (no exclusive right of fishery), and 17 (uniform application) of Article VIII
2 and Section 1 (equal protection) of Article I.

3 (b) Section 19 of Article VIII, regarding subsistence users of fish and wildlife,
4 takes effect immediately upon certification of the election returns by the lieutenant
5 governor.

6 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
7 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
8 the State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 56

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY SENATORS HOFFMAN, Adams, Duncan, Zharoff

Introduced:

Referred:

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence uses of fish and wildlife by residents, and establishing an effective
3 date for the amendment.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent
8 with the sustained yield principle, the legislature shall grant a preference to and
9 among residents in the taking of fish and wildlife for subsistence uses on the basis of
10 one or more of the following: customary and traditional use, cultural tradition, direct
11 dependence, local residence, or the availability of alternative resources.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
13 section to read:

14 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.
15 Section 19 of Article VIII, regarding subsistence uses of fish and wildlife, takes effect
16 immediately upon certification of the election returns by the lieutenant governor.

1 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
2 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
3 the State of Alaska, and the election laws of the state.

2nd Draft —

Proposed for House Rules

7-LS2405P

CS FOR HOUSE JOINT RESOLUTION NO. 86 (RULES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson, Ivan, Foster

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence users of fish and wildlife by residents, and establishing an effective
3 date for the amendment.

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USERS OF FISH AND WILDLIFE. The
8 legislature may by law grant a preference to and between residents in the taking of
9 fish and wildlife for subsistence uses based on criteria consistent with the equal
10 protection requirements of the Constitution of the United States and the sustained
11 yield principle.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
13 section to read:

14 SECTION 29. APPLICATION AND EFFECTIVE DATE OF SUBSISTENCE
15 AMENDMENT. (a) Section 19 of Article VIII, regarding subsistence users of fish
16 and wildlife, has precedence over any inconsistent provisions of Sections 3 (common

1 use), 15 (no exclusive right of fishery), and 17 (uniform application) of Article VIII
2 and Section 1 (equal protection) of Article I.

3 (b) Section 19 of Article VIII, regarding subsistence users of fish and wildlife,
4 takes effect immediately upon certification of the election returns by the lieutenant
5 governor.

6 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
7 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
8 the State of Alaska, and the election laws of the state.

Amended: 6/28/90
Offered: 6/26/90
Referred: Rules

60065srD

James Shute

Original sponsor(s): Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE JOINT RESOLUTION NO. 86 (Resources) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SPECIAL SESSION
5 Proposing amendments to the Constitution
6 of the State of Alaska relating to
7 subsistence uses of fish and wildlife by
8 Alaska residents in order to retain
9 management of those resources by the
10 State of Alaska; and providing for an
11 effective date.
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
13 * Section 1. Article VIII, Constitution of the State of Alaska, is
14 amended by adding a new section to read:
15 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent
16 with the sustained yield principle, the legislature may grant a pref-
17 erence to and among Alaska residents in the taking of fish and game
18 for subsistence uses on the basis of community or area characteris-
19 tics, geography, customary and traditional use, direct dependence,
20 local residence, or the availability of alternative resources.
21 * Sec. 2. In addition to authorizing the legislature to enact laws
22 granting a preference for subsistence uses, the amendment proposed in
23 sec. 1 of this resolution (1) validates, ratifies, and reinstates state
24 subsistence laws, including the definitions and subsistence preference for
25 rural residents in ch. 52, SLA 1986, that are consistent with federal laws
26 relating to subsistence uses, and (2) enables the state to retain managa-
27 ment of fish and wildlife on federal land.
28 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended
29 by adding a new section to read:

1 SECTION 29. EFFECTIVE DATE AND RECONSIDERATION OF SUBSISTENCE
2 AMENDMENT. (a) Section 19 of Article VIII, regarding subsistence
3 uses of fish and game, takes effect: immediately upon certification of
4 the election returns by the lieutenant governor.

5 (b) The lieutenant governor shall place the following propo-
6 sition on the ballot at the general election in 1992: "Shall Section
7 19 of Article VIII of the Alaska Constitution, regarding subsistence,
8 be retained?" If a majority of the votes is in the negative, that
9 section is repealed.

10 * Sec. 4. The amendments proposed in secs. 1 and 3 of this resolution,
11 and the effect of the amendment proposed in sec. 1 of this resolution, as
12 set out in sec. 2 of this resolution, shall be placed before the voters of
13 the state as one ballot proposition at the next general election in con-
14 formity with art. XIII, sec. 1, Constitution of the State of Alaska, and
15 the election laws of the state.

SENATE JOINT RESOLUTION NO. 50
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR ADAMS

Introduced: 2/18/92
Referred: Resources, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to subsistence
2 use of fish and wildlife by residents and establishing an effective date for the amendment."

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section
5 to read:

6 SECTION 19. SUBSISTENCE USE OF FISH AND WILDLIFE. Subsistence use shall
7 be the priority beneficial use of fish and wildlife resources belonging to the State. Consistent
8 with the sustained yield principle, the legislature may grant a preference to and among residents
9 in the taking of fish and wildlife for subsistence uses on the basis of rural residency, community
10 or area characteristics, geography, customary and traditional use, direct dependence, local
11 residence, or the availability of alternative resources.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
13 read:

14 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT. Section 19 of
15 Article VIII, regarding subsistence use of fish and wildlife, takes effect immediately upon
16 certification of the election returns by the lieutenant governor.

1 * **Sec. 3.** In addition to authorizing the legislature to enact laws granting a preference for subsistence
2 uses, the amendment proposed in sec. 1 of this resolution enables the state to regain management of fish
3 and wildlife on federal land and validates, ratifies, and reinstates state subsistence laws, including the
4 provisions of ch. 52, SLA 1986, that are consistent with federal laws relating to subsistence uses.

5 * **Sec. 4.** The amendments proposed in secs. 1 and 2 of this resolution, and the effect of the
6 amendment proposed in sec. 1 of this resolution, as set out in sec. 3 of this resolution, shall be placed
7 before the voters of the state as one ballot proposition at the next general election in conformity with
8 art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 49
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR HOFFMAN

Introduced: 2/18/92
Referred: Resources, Judiciary, Finance

A RESOLUTION

1 **Proposing amendments to the Constitution of the State of Alaska relating to subsistence**
2 **uses of fish and wildlife by residents, and establishing an effective date for the**
3 **amendment."**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** Article VIII, Constitution of the State of Alaska, is amended by adding a new section
6 to read:

7 **SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE.** Consistent with the
8 sustained yield principle, the legislature shall grant a preference to and among residents in the
9 taking of fish and wildlife for subsistence uses on the basis of customary and traditional use,
10 cultural tradition, direct dependence, local residence, or the availability of alternative resources.

11 * **Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to
12 read:

13 **SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.** Section 19 of
14 Article VIII, regarding subsistence uses of fish and wildlife, takes effect immediately upon
15 certification of the election returns by the lieutenant governor.

16 * **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state

1 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
2 the election laws of the state.

HOUSE JOINT RESOLUTION NO. 86
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson

Introduced: 6/15/92

Referred: State Affairs, Judiciary

A RESOLUTION

1 **Proposing an amendment to the Constitution of the State of Alaska relating to**
2 **subsistence uses of fish and wildlife by residents, and establishing an effective**
3 **date for the amendment.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new**
6 **section to read:**

7 **SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent**
8 **with the sustained yield principle, the legislature shall grant a preference to and**
9 **among residents in the taking of fish and wildlife for subsistence uses on the basis of**
10 **one or more of the following: customary and traditional use, cultural tradition, direct**
11 **dependence, local residence, or the availability of alternative resources.**

12 *** Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new**
13 **section to read:**

14 **SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.**
15 **Section 19 of Article VIII, regarding subsistence uses of fish and wildlife, takes effect**
16 **immediately upon certification of the election returns by the lieutenant governor.**

1 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
2 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
3 the State of Alaska, and the election laws of the state.

HOUSE JOINT RESOLUTION NO. 79
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE LINCOLN

Introduced: 2/18/92

Referred: Resources, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to subsistence
2 uses of fish and wildlife by residents, and establishing an effective date for the
3 amendment.

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** Article VIII, Constitution of the State of Alaska, is amended by adding a new section
6 to read:

7 **SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE.** Consistent with the
8 sustained yield principle, the legislature shall grant a preference to and among residents in the
9 taking of fish and wildlife for subsistence uses on the basis of customary and traditional use,
10 cultural tradition, direct dependence, local residence, or the availability of alternative resources.

11 * **Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to
12 read:

13 **SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.** Section 19 of
14 Article VIII, regarding subsistence uses of fish and wildlife, takes effect immediately upon
15 certification of the election returns by the lieutenant governor.

16 * **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state

1 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
2 the election laws of the state.

HOUSE JOINT RESOLUTION NO. 78
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced: 2/18/92

Referred: Resources, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to subsistence
2 uses of fish and wildlife by Alaska residents; and providing for an effective date."

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** Article VIII, Constitution of the State of Alaska, is amended by adding a new section
5 to read:

6 **SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE.** Consistent with the
7 sustained yield principle, the legislature may grant a preference to and among Alaska residents
8 in the taking of fish and wildlife for subsistence uses on the basis of community or area
9 characteristics, geography, customary and traditional use, direct dependence, local residence, or
10 the availability of alternative resources.

11 * **Sec. 2.** In addition to authorizing the legislature to enact laws granting a preference for subsistence
12 uses, the amendment proposed in sec. 1 of this resolution validates, ratifies, and reinstates state
13 subsistence laws, including the definitions and subsistence preference for rural residents in ch. 52, SLA
14 1986, that were struck down by or as the result of the decision of the Alaska Supreme Court in
15 McDowell v. State, 785 P.2d 1 (Alaska 1989), and that are consistent with federal laws relating to
16 subsistence uses.

1 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
2 read:

3 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT. Section 19 of
4 Article VIII, regarding subsistence uses of fish and game, takes effect immediately upon
5 certification of the election returns by the lieutenant governor.

6 * Sec. 4. The amendments proposed in secs. 1 and 3 of this resolution, and the effect of the
7 amendment proposed in sec. 1 of this resolution, as set out in sec. 2 of this resolution, shall be placed
8 before the voters of the state as one ballot proposition at the next general election in conformity with
9 art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

HOUSE JOINT RESOLUTION NO. 77

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE MACLEAN

Introduced: 2/18/92

Referred: Resources, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to subsistence
2 use of fish and wildlife by residents and establishing an effective date for the amendment."

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section
5 to read:

6 SECTION 19. SUBSISTENCE USE OF FISH AND WILDLIFE. Subsistence use shall
7 be the priority beneficial use of fish and wildlife resources belonging to the State. Consistent
8 with the sustained yield principle, the legislature may grant a preference to and among residents
9 in the taking of fish and wildlife for subsistence uses on the basis of rural residency, community
10 or area characteristics, geography, customary and traditional use, direct dependence, local
11 residence, or the availability of alternative resources.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
13 read:

14 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT. Section 19 of
15 Article VIII, regarding subsistence use of fish and wildlife, takes effect immediately upon
16 certification of the election returns by the lieutenant governor.

17 * Sec. 3. In addition to authorizing the legislature to enact laws granting a preference for subsistence

1 uses, the amendment proposed in sec. 1 of this resolution enables the state to regain management of fish
2 and wildlife on federal land and validates, ratifies, and reinstates state subsistence laws, including the
3 provisions of ch. 52, SLA 1986, that are consistent with federal laws relating to subsistence uses.

4 * Sec. 4. The amendments proposed in secs. 1 and 2 of this resolution, and the effect of the
5 amendment proposed in sec. 1 of this resolution, as set out in sec. 3 of this resolution, shall be placed
6 before the voters of the state as one ballot proposition at the next general election in conformity with
7 art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

• (FROM
BLUE FOLDER)

TESTIMONY/

POSITION

• PAPERS

*Authorized for distribution
by Senator Kesttala*

"The Indians, with their Aboriginal Rights, are a Federal Problem.
We have no control over it and we cannot dispose of it and we have
nothing to say about it. Whatever happens to Alaska it will still be
a Federal Problem."

HEARINGS ON ALASKA STATEHOOD, Committee on Interior and Insular Affairs,
U.S. Senate, 81st Congress, Second Session, April 24-29, 1950, p. 293."



“Subsistence fishing is about living and sharing of food with family and friends in rural Alaska. It is a lifestyle that has been with us for many untold centuries.

Please do not cut the lifeline of our people by not passing a constitutional ballot measure for compliance to ANILCA! We need your help!”

John Alexie of Kwethluk, Alaska

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099



"MY NAME IS JOHNNY GUY OF KWETHLUK, A VILLAGE IN WESTERN ALASKA. I AM A SIXTY SEVEN YEAR OLD WORLD WAR II VETERAN. I HAVE NO RUNNING WATER, OR SEWAGE SYSTEM AND NO INCOME TO SUPPORT ME. THE PICTURE YOU SEE IS INSIDE MY HOME TAKEN BY BURT NEIMEYER OF ANCHORAGE.

LIKE MANY FAMILIES IN RURAL ALASKA, MY RELATIVES GATHER FOOD FROM THE WATERS AND LAND FOR SURVIVAL. SUBSISTENCE IS ABOUT SURVIVAL OF OUR YUPIK PEOPLE.

I NEED YOUR HELP SO OUR PEOPLE WILL SURVIVE IN RURAL ALASKA! PLEASE PASS A SUBSISTENCE BILL THAT INCLUDES A CONSTITUTIONAL BALLOT MEASURE FOR COMPLIANCE TO ANILCA FOR ALL ALASKANS TO VOTE THIS FALL."

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099



“Subsistence is important to the future of my great-grandchildren I am holding in this picture by Burt Neimeyer. I am now living away from my relatives at Our Lady Of Compassion Care Center in Anchorage in a different world. Please do not take away subsistence away from us.

Please help the future generation of my people be self sufficient. Please support a subsistence bill which requires a constitutional amendment for all Alaskans to vote by ballot.”

Elvira Cowack of Kwethluk, Alaska.

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099



"My Name is Evan Kopuk of Kwethluk, Alaska. I am 91 years old. I am cutting wood to heat my house. I have worked hard all my life to feed my family and relatives in my village. Subsistence is the only way of life that supported my family for many years.

Please do not cut the way of life, as I am cutting this log, on subsistence. Please support a subsistence bill to comply to Title VIII of ANILCA for all Alaskans to vote."

Evan Kopuk of Kwethluk, Alaska.

Photo by Burt Neimeyer

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099

My name is Rachel Legg, I am 9
years old. I think that the
Tlingits should be able
to hunt their food.

Because we are all different
and we have our ways, the
Tlingits and all other
Native people have special
ways, everybody has
different ways, we do to
it's like we have a rule
between all of our people
that we have to find our
own food, in the wild
and there was a rule
that we can only ~~hunt~~ ^{hunt}
meat. They made a promise
through all these people

that they would hunt ~~the~~ ^{most}
of their food. Then we go
and make a rule that
we have to be a ~~special~~
special person - that is
commercial or something,
like that. That hurts
people makes them die.
I might be wrong about
some things in this but
this is what I think, I ~~do~~ ^{say}
this because we are all
people who are different
and God made it that
way. ~~I~~ Thank you

Testimony provided by Rachel Legg of Juwan
subsistence, 9189 James Blvd, Juwan, Ak. 99501

JUNE 17, 1992

MARIE NEAKOK
P. O. BOX 195
BARROW, ALASKA 99723

MY NAME IS MARIE NEAKOK AND I WAS RAISED IN BARROW AND WAS BORN ALONG THE COLVILLE RIVER. MY HUSBAND IS A SUBSISTENCE HUNTER, SO I PREPARE ALL THE FOOD HE CATCHES.

I JUST WANTED TO TELL YOU ABOUT THE PROBLEMS WE'VE HAD THAT HAS TO DO WITH OUR SUBSISTENCE WAY OF LIFE. ONE EXAMPLE IS THAT ONE TIME THEY GAVE US A SEASON TO HUNT DUCKS AND THAT WAS NOT EVEN THE SEASON THAT THE DUCKS CAME TO OUR VILLAGE. THAT SHOWS HOW IGNORANT THE OUTSIDERS ARE OF OUR LIFESTYLE.

ANOTHER EXAMPLE IS THAT WE HAVE TO ABIDE BY THE QUOTA ON THE WHALES. WE HAVE ABIDE BY IT EVEN THOUGH IT HURT OUR LIFESTYLE. WE HAVE TO DEPEND ON THE ICE CONDITIONS WHICH WAS NOT VERY GOOD THIS YEAR. ONE OF THE VILLAGE HAS NOT EVEN CATCH A WHALE THIS YEAR.

THESE ARE THE KINDS OF THINGS THAT HURT OUR LIFESTYLE. SUBSISTENCE WAY OF LIFE IS OUR LIFESTYLE. OUR SEA IS OUR GARDEN LIKE A FARM IS YOUR GARDEN.

OUR ANCESTERS HAVE TAUGHT US TO SHARE OUR HARVEST, NOT ONLY WITHIN OUR VILLAGE BUT WITH OTHER VILLAGES ALSO. WE INUPIAT PEOPLE ARE PEOPLE WHO SHARE, SHARE, SHARE. LIKE ANOTHER EXAMPLE, DURING THANKSGIVING, CHRISTMAS, AND BLANKET TOSS, ALL THE FOOD THAT IS CAUGHT DURING THE YEAR, ALONG WITH THE WHALE, IS

SHARED AMONG ALL THE PEOPLE, NATIVE AND NON-NATIVE
ALIKE. THAT IS OUR LIFESTYLE.

I APPRECIATE THE TIME TO TESTIFY. I SUPPORT THE BUSH
CAUCUS BILL UNANIMOUSLY AND OPPOSE THE GOVERNOR'S
BILL.

MOLLY PEDERSON
P.O. BOX 184
BARROW, ALASKA 99723

JUNE 17, 1992

MY NAME IS MOLLY PEDERSON. I WAS BORN AND RAISED IN BARROW, ALASKA AND MAKE MY LIVING THERE. I APPRECIATE THE OPPORTUNITY TO SPEAK ON THE SUBSISTANCE ISSUE. PLEASE UNDERSTAND THAT THIS ISSUE IS THE VERY LIVELIHOOD OF THE FIRST PEOPLES OF ALASKA. WE HAVE ALWAYS ACCOMMODATED THE VISITORS TO ALASKA AND IN SOME AREAS WE HAVE BEEN HURT.BECAUSE OF IT. FOR INSTANCE THE NATIVE LANGUAGES OF ALASKA WERE PUT ASIDE TO ACCOMMODATE THE ENGLISH LANGUAGE. IF THIS SUBSISTANCE ISSUE IS NOT PUT RIGHT OUR VERY LIVES AND THE WAY OF LIFE OF OUR CHILDREN AND GRANDCHILDREN WILL NOT EVEN BE DISTINGUISHABLE AS NATIVES OF OUR BEAUTIFUL LAND. IN CLOSING I WOULD LIKE TO STRESS HOW IMPORTANT IT IS FOR US, THE FIRST PEOPLES OF ALASKA, TO BE GIVEN THE CHANCE TO DECIDE OUR FATE BY VOTING ON THE CONSTITUTIONAL AMENDMENT. I SUPPORT THE BUSH CAUCUS VERSION OF THE SUBSISTANCE BILL WHICH HAS SUPPORT FROM ALL PARTS OF THE STATE. QUYANAQPAK.

SUBSISTENCE

My name is Albert Kookesh, Grand President of Alaska Native Brotherhood. I am also a commercial fisherman. The ANB speaks for 16,000 Nativtses that live in Southeast Alaska and also members in Anchorage. We appreciate this opportunity to speak on an issue that could mean the end of a way of life for the Alaska Native, if not handled properly.

The Department of Fish and Game provided us with the following figures. We asked for information on the total number of salmon caught in Southeast Alaska last summer, which is 1991. They indicated that their records show the following by user groups: **44,355 by subsistence users; 257,595 by Sports Fishermen;** and **68,986,295 by Commercial Fisherman.**

Compared to the Commercial Fishing numbers, 44,355 seems hardly anything to worry about. It amazes us that the State of Alaska and the Federal Government would spent so much time and money to satisfy a few people who say that subsistence users depletes the salmon stock and that it is only for Native People. It also amazes us that some of the Commercial Fisherman organizations are opposing Subsistence.

In order for the State of Alaska to regain the Subsistence management, we feel that the State Legislature should do two things while they are in this special session. They are:

- (1) Adopt a resolution that would request the Secretary of Interior to hold off assuming the management of subsistence on a permanent basis.
- (2) Start the process for a Subsistence constitutional amendment vote in November, using the wording that is already being proposed to you.

Article VIII, Section 15, entitled, **No Exclusive Right of Fishery**, states "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State."

As you can see precedence has already been set in this article. In the early 1970s, a proposal was advanced to limit the number of fishermen that could participate in a fishery, primarily as a way of increasing fishermen's incomes. This is the system of limited entry we have today, and because it creates a special "privilege of fishery," a constitutional amendment was necessary to allow its adoption. Our

guess at this time that more than half of these permits now belong to people who do not reside in Alaska. In addition, aquaculture is also mentioned in the amendment so private associations may possess the right to harvest the fish they produce.

I. Subsistence							
A. 1991 Personal Use/Subsistence Salmon Catch by Species							
Area	# Permits	Chinook	Sockeye	Coho	Pink	Chum	Total
"Haines "	905	54	9,267	105	144	6	799
"Juneau "	364	23	3,292	267	187	9	1,230
"Ketchikan "	1,210	60	14,450	68	1,044	14	44,355
"Petersburg"	265	0	1,599	172	0		0
"Sitka "	849	4	7,802	4	161	1	0
"Wrangell "	153	57	517	3	69		0
"Yakutat "	59	61	896	213	1		0
Totals	3,805	259	37,823	832	1,606	30	44,355
<i>Source: ADF&G, Commercial Fisheries Permit Records</i>							
B. 1987 Subsistence Salmon Harvest (Rural Communities only)							
		Chinook	Sockeye	Coho	Pink	Chum	Total
		2,088	2,394	2,090	2,352	594	9,518
<i>Source: TRUCS (Tongass Resource Cooperative Survey)</i>							
<i>Note: Includes subsistence salmon caught by both commercial and non-commercial gear</i>							
II. 1991 Sport Fish Salmon Catch by Species							
		Chinook	Sockeye	Coho	Pink	Chum	Total
		60,492	8,715	123,936	57,859	5,593	257,595
<i>Source: ADF&G, Sport fish Records</i>							
III. 1991 Commercial Salmon Harvest by Species							
		Chinook	Sockeye	Coho	Pink	Chum	Total
		305,235	2,051,782	2,897,853	60,778,130	2,953,295	68,986,295
<i>Source: ADF&G, Commercial Fisheries Permit Records</i>							

SUBSISTENCE TESTIMONY

Mr. Chairman and Committee members, my name is Ron Williams, Executive Committee member for the Grand Camp of the Alaska Native Brotherhood. I appreciate the opportunity to say a few words on the subsistence issue.

During the territorial days of Alaska the salmon industry was very powerful in Washington, D.C. They had fish traps that fished 24 hours a day for seven days a week. In Icy Straits alone, there were 23 of these fish traps.

In 1921, the Alaska Native Brotherhood decided that these fish traps were damaging the salmon stock in Southeast Alaska, so they went to Washington, D.C. to see what can be done about eliminating these traps. They ran into a stone wall. Every after that until Statehood the ANB did everything possible to eliminate these traps. The only concession they got was to move the traps that were closest to the Salmon streams further away.

When the cry came to make Alaska a State, along came the word that we could eliminate those fish traps, so the Alaska Native Brotherhood supported that effort. We felt that it was in the best interest of the Citizens of Alaska to manage their own resources. Of course we know that the fish traps were finally eliminated, but not before the salmon stocks became very depressed.

Also, during the same period, the Federal Government offered a bounty on harbor seals. These seals are a main source of food for our people. Literally thousands of these seals were slaughtered.

To top everything off, the Federal Government put bounty on the Bald Eagle for \$2.00 a pair of claws. Also thousands of these birds were killed. The Bald Eagle as you are aware is our National Bird and appears on our national emblems.

The Alaska Native Brotherhood favors State Management. We do not want to go through another period like I just described. We urge you to start the process of the Constitutional amendment for subsistence.

Fish & Game Fund

P.O. Box 100099 * Anchorage, Alaska 99510-0099 * (907) 279-5516

Juneau Delegation

June 1992

Members

Azachorok, Inc.
Mt. Village, Ak

Eokarmuit
Corporation
Akiak, Ak.

Qemirtalek
Coast
Corporation
Kongignak, Ak.

Iqfjousaq
Company, Inc.
Eek, Ak.

Nunapitchuk,
Limited
Nunapitchuk, Ak.

Calista
Corporation
Bethel, Ak.

Qanirtuuq, Inc.
Quinhagak, Ak.

Emmonak
Corporation
Emmonak, Ak.

Kwethluk,
Incorporated
Kwethluk, Ak.

Pilot
Station,
Incorporated
Pilot Station, Ak.

Napaskiak
Corporation
Napaskiak, Ak.

Nyac
Corporation
Anchorage, Ak.

Napaskiak:	Steven Maxie Huey Larson
Mt. Village:	Felix Hess
Kwethluk:	Max Angellan
Quinhagak:	Pauline Small
Eek:	Steven White
Emmonak:	Martin B. Moore
Akiak:	John Jasper Sam Jackson
Kongiganak:	Alexie Lewis
Calista Corp:	Felix Hess

The Political Arm of the village corporations of western Alaska

Paid for by Fish & Game Fund, P.O. Box 100099, Anchorage, Alaska 99510-0099

Trustees: Moses Strauss, Chairman; Alexie Lewis, Vice Chairman; Felix Hess, Secretary; Matthew Nicolai, Treasurer; Johnny T. Hawk; George Gardner

Fish and Game Fund

P. O. Box 100099 Anchorage, Alaska 99510-0099 (907) 279-5516

Members

Azachorok, Inc.
Mt. Village, AK

Kokarmult
Corp.
Akiak, AK

Qemirtalek
Coast
Corporation
Kongiganak, AK

Iqiljouaq
Company, Inc.
Eek, AK

Nunapitchuk,
Ltd.
Nunapitchuk, AK

Callsta Corp.
Anchorage, AK

Qanirtuuq, Inc.
Quinhagak, AK

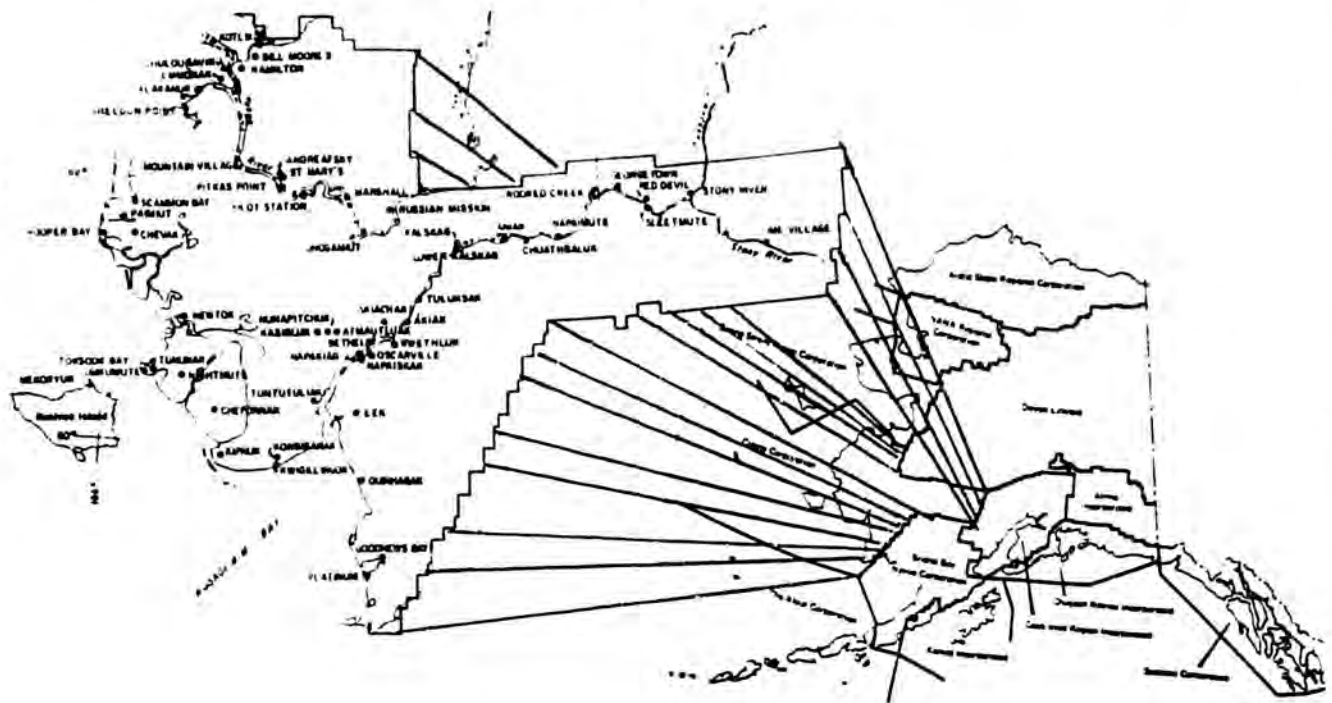
Emmonak Corp.
Emmonak, AK

Kwethluk, Inc.
Kwethluk, AK

Pilot Station, Inc.
Pilot Station, AK

Napaskiak Corp.
Napaskiak, AK

NYAC Corporation
Anchorage, AK



Background Information

The Fish & Game Fund was established August, 1990 as a political action committee for southwest Alaska that encompasses 56 villages in the Calista/AVCP region.

Tribal and Traditional Governments within the Calista/AVCP region are restricted from campaign contributions and other political actions either because of their non-profit or tribal status. The private village corporations have thus had to pick up this responsibility.

Goals and Objectives

There are five goals and objectives for which the Fish & Game Fund was organized:

1. Protect subsistence rights of Natives.
2. Protect surface lands owned by the village corporations.
3. Aid membership with political lobbying.
4. Educate the general public of village lifestyles.
5. Encourage and sponsor new ideas that benefit Natives.

Village corporations in the Calista/AVCP region represent a landmass larger than the states of Massachusetts and Delaware combined.

THE POLITICAL ARM OF THE VILLAGE CORPORATIONS OF WESTERN ALASKA

Paid for by Fish and Game Fund, P. O. Box 100099, Anchorage, Alaska 99510-0099
Trustees: Moses Strauss, Chairman; Alexie Lewis, Vice Chairman; Felix Hess, Secretary
Matthew Nicolai, Treasurer; Johnny T. Hawk; George B. Gardner

Fish & Game Fund on Subsistence

June 1992

The U.S. Congress understood during the write up of ANILCA it " expects both the Secretary of Interior and the State of Alaska to take any action necessary to protect the subsistence needs of the Natives."

Alaska National Interests Land Conservation Act (ANILCA) has been termed as "Indian Law" under federal courts. In the consideration of this issue, the federal government has a trust responsibility toward Alaska Natives.

The legal bases are clearly set out in section 801(4) of ANILCA as the basis of its authority to enact sections dealing with the Alaska Native subsistence uses:

"The Congress finds and declares that (4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents."

The federal government is fulfilling its obligation to protect subsistence on behalf of Alaska Natives by developing a criteria to takeover management of federal lands on July 1, 1992.

Subsistence issue is not a republican or democratic issue. It is an Alaskan issue. Alaskans have been told by Congress ANILCA will not be amended without Alaska Natives involvement. Alaska Natives do not want to see ANILCA amended!

The Alaska Legislature has the power to re-write or amend language of Governor Hickel's Subsistence Bill for compliance to Title VIII of ANILCA for Alaskans to vote this fall. This will stop the federal governments process of takeover of management of public lands.

Please take the necessary step and pass a subsistence bill for compliance to Title VIII of ANILCA for ALL ALASKANS to vote this fall.

AFN TESTIMONY (JULIE KITKA): SENATE COMMITTEE OF THE WHOLE
(JUNE 15, 1992)

MISTER CHAIRMAN, MEMBERS OF THE ALASKA STATE SENATE, LADIES
AND GENTLEMEN:

FOR THE RECORD, MY NAME IS JULIE KITKA, AND I AM HONORED TO
TESTIFY HERE TODAY IN MY CAPACITY AS PRESIDENT OF THE ALASKA
FEDERATION OF NATIVES.

IN ORDER TO PUT THIS SPECIAL SESSION OF THE ALASKA
LEGISLATURE INTO PERSPECTIVE, PLEASE CONSIDER AN INTERESTING
EVENT WHICH OCCURRED LAST WEEK. DESPITE 18 MONTHS OF EFFORT
BY THE GOVERNOR'S OFFICE TO MOLD PUBLIC OPINION ON THE
SUBSISTENCE ISSUE, AND IN DIRECT RESPONSE TO GOVERNOR
HICKEL'S CALL FOR THIS SPECIAL SESSION THREE WEEKS AGO,
74.3% OF ALASKANS SAMPLED IN A STATEWIDE PUBLIC OPINION POLL
STATED THAT SUBSISTENCE SHOULD BE SOLVED BY A VOTE OF THE
PEOPLE, NOT BY LEGISLATIVE ACTION IN JUNEAU AND WASHINGTON,
D.C. THREE-QUARTERS OF THIS STATE'S ELECTORATE FEEL THAT
NONE OF US SHOULD HAVE BEEN REQUIRED TO BE HERE TODAY -- AND
THAT THEY OUGHT TO BE ALLOWED INTO THE PROCESS.
NONETHELESS, HERE WE ARE -- BECAUSE GOVERNOR HICKEL IS
DETERMINED NOT TO LISTEN TO THE PEOPLE.

AND THAT FACT, MR. CHAIRMAN, IS THE REAL REASON WHY
THOUSANDS OF ALASKA NATIVES HAVE RECENTLY BECOME SO
CONCERNED, AND SO PERSONALLY INVOLVED, IN THE QUESTION NOW
PENDING BEFORE THE LEGISLATURE. WE ARE CONVINCED THAT OUR
STATE, UNDER THE CURRENT ADMINISTRATION, IS ON THE WRONG
TRACK REGARDING SUBSISTENCE -- AND THAT THE GOVERNOR'S
PROPOSED "SOLUTION", IF ENACTED, WILL BE A TRAGIC ERROR.

WHY? BECAUSE OF THE PERVASIVE "REACH" OF THE ISSUE ITSELF -
- ITS FUNDAMENTAL EFFECT ON HUMAN ECONOMIES AND CULTURES
THROUGHOUT THE STATE. SUBSISTENCE IS NOT JUST A SUB-
CATEGORY OF "FISH AND GAME MANAGEMENT." IT IS NOT PRIMARILY

ABOUT ANIMALS, ABOUT THEIR HABITATS, OR ABOUT THE EFFICIENCY OF GOVERNMENTAL ACTIONS AFFECTING THEM. WHAT THE -- SUBSISTENCE ISSUE IS REALLY ABOUT IS PEOPLE -- THE POLITICAL ALLOCATION OF LIMITED RESOURCES AMONG COMPETING HUMAN USER GROUPS. SUBSISTENCE IS SOCIAL AND ECONOMIC POLICY ON A GRAND SCALE, AND IT TOUCHES EVERY PERSON, EVERY FAMILY. THUS, WE HAVE COME TO A WATERSHED IN THE HISTORY OF THIS STATE. HOW WE NOW DEAL WITH SUBSISTENCE WILL DETERMINE -- MORE POWERFULLY THAN ANY OTHER ISSUE OF PUBLIC POLICY -- THE HUMAN CHARACTER OF THE ALASKA WE BEQUEATH TO OUR CHILDREN AND GRANDCHILDREN.

MORE SPECIFICALLY, THE SURVIVAL OF VILLAGE ALASKA TURNS ON THE QUESTION OF SUBSISTENCE. DESPITE LARGE INFUSIONS OF PUBLIC CAPITAL DURING THE PAST TWO DECADES, THE ECONOMIES OF MOST RURAL VILLAGES REMAIN UNDERDEVELOPED, ARTIFICIAL DEPENDENCIES OF GOVERNMENT. THEY OFFER FEW INCOME-PRODUCING JOBS, PARTICULARLY FOR ALASKA NATIVES. MOST OF THE ESTIMATED 110,000 RESIDENTS OF THE BUSH SIMPLY CANNOT MAKE IT THROUGH EACH YEAR WITHOUT THE SUBSISTENCE PROTEIN BASE. IF IT IS TAKEN AWAY FROM THEM -- WHETHER BY NATURAL OR POLITICAL CATASTROPHE -- THEN MOST OF THE NATIVE VILLAGES OF THIS STATE ARE DOOMED; AND THE SOCIO-ECONOMIC COST OF THAT TO ALL ALASKANS WILL BE OVERWHELMING.

IF THAT IS THE HISTORICAL CONTEXT IN WHICH THE CURRENT SUBSISTENCE ISSUE ARISES, THEN WHAT IS THE REAL PROBLEM THAT HAS BROUGHT THE LEGISLATURE BACK TO JUNEAU IN THE MIDDLE OF THE SUMMER? IT IS THE CONFLICT BETWEEN THE ALASKA CONSTITUTION AND THE FEDERAL LAW THAT PROTECTS SUBSISTENCE. WHILE TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT REQUIRES THAT A SUBSISTENCE PREFERENCE BE GRANTED TO RURAL RESIDENTS ON FEDERAL PUBLIC LANDS, A MAJORITY OF THE STATE SUPREME COURT HAS RULED THAT OUR STATUTE -- ADOPTED BY THE LEGISLATURE TO COMPLY WITH ANILCA

AND TO ENSURE UNITARY MANAGEMENT OF FISH AND GAME BY THE STATE -- WAS UNCONSTITUTIONAL. --

IT IS NOW ABSOLUTELY CLEAR, AFTER MORE THAN A YEAR OF DENIAL BY THE HICKEL ADMINISTRATION, THAT ANILCA AND THE STATE CONSTITUTION ARE IRRECONCILABLE. NOTHING WILL BE SOLVED SIMPLY BY THE PASSAGE OF A NEW STATE LAW. REPEATED FAILURE TO FACE THE REAL ISSUE -- THIS LEGAL IMPASSE -- HAS NOW PRODUCED A SITUATION IN WHICH OUR FISH AND GAME RESOURCES ARE UNDER DUAL MANAGEMENT BY THE FEDERAL AND STATE GOVERNMENTS. NOT ONLY IS THIS IRRATIONAL FROM THE POINT OF VIEW OF FISH AND GAME MANAGEMENT. IT IS ALSO ONE OF THE BASIC ISSUES WHICH LED TO ALASKA'S STATEHOOD: WE DO NOT WANT FEDERAL CONTROL OF OUR RESOURCES.

THE ONLY WAY TO RESOLVE THE IMPASSE AND TO GET BACK FISH AND GAME MANAGEMENT, WITHOUT DESTROYING THE VILLAGES, IS TO AMEND THE CONSTITUTION AND TO ADOPT A STATUTE WHICH COMPLIES WITH THE CRITICAL PROTECTIONS OF THE FEDERAL LAW. THE PEOPLE OF ALASKA, IF PRESENTED WITH A CONSTITUTIONAL AMENDMENT THAT PROTECTS VILLAGE SUBSISTENCE, WILL PASS IT. THE HICKEL ADMINISTRATION KNOWS THAT. BUT IT HAS DECIDED TO RESOLVE THE FEDERAL-STATE IMPASSE ONLY THROUGH A CONGRESSIONAL AMENDMENT TO ANILCA. THE ALASKA CONGRESSIONAL DELEGATION, AS WELL AS OTHER COMMITTEE LEADERS IN WASHINGTON, HAVE REPEATEDLY TOLD US THAT ANILCA CANNOT BE AMENDED BECAUSE THERE IS NO CONSENSUS ON IT IN ALASKA OR IN CONGRESS -- AND THAT OPENING UP ANY PART OF IT WOULD GIVE EXTREME INTEREST GROUPS THEIR LONG-AWAITED OPPORTUNITY TO LOCK UP EVEN MORE OF OUR LANDS AND RESOURCES. THE GOVERNOR'S STRATEGY WILL NOT SUCCEED. BUT IT WILL TAKE YEARS, DURING WHICH DUAL MANAGEMENT WILL CONTINUE. IT WILL COST MONEY. IT WILL FURTHER POISON OUR STATE'S POLITICS AND GROUP RELATIONS. AND, IN THE END, IT WILL FAIL -- LEAVING THE PEOPLE OF ALASKA RIGHT WHERE THEY ARE TODAY.

THEREFORE, AS YOU EXAMINE THE EFFECTIVENESS AND PROJECT THE CONSEQUENCES OF THE GOVERNOR'S BILL, PLEASE HOLD TO THE CORE ISSUE: IT DOES NOT COMPLY WITH THE FEDERAL LAW AND WILL NOT GET BACK FISH AND GAME MANAGEMENT. EVEN THOUGH INDIVIDUAL LEGISLATORS MIGHT INTEND OTHERWISE, A VOTE FOR THE GOVERNOR'S BILL WILL BE A VOTE FOR CONTINUED FEDERAL INTERVENTION IN ALASKA'S BUSINESS. THE PEOPLE DESERVE BETTER THAN THAT.

THE SECOND MAJOR CONCERN WITH THE GOVERNOR'S BILL IS ITS CONSTITUTIONALITY. IF ENACTED, IT WILL ALMOST CERTAINLY BE STRUCK DOWN BY THE COURTS -- FOR MANY OF THE SAME REASONS THAT UNDERLAY THE MCDOWELL CASE. THEN, WE WILL BE RIGHT BACK WHERE WE ARE NOW -- OPERATING IN A POLICY VACUUM WITH NO SUBSISTENCE STATUTE ON THE BOOKS. THE GOVERNOR AND HIS DEPARTMENT OF LAW WILL NOT ADMIT THIS PROBLEM. BUT ON MARCH 16 THE LEGISLATURE'S OWN COUNSEL, IN A LETTER TO SENATOR HOFFMAN, WARNED ABOUT THE HICKEL BILL'S CHANCES OF SURVIVING JUDICIAL REVIEW . GIVEN THIS, IT IS CRITICAL THAT THE LEGISLATURE DELVE INTO THE CONSTITUTIONALITY ISSUE WITH ALL AVAILABLE PROFESSIONAL RESOURCES. BECAUSE OF ITS COMPLEXITY, IT DESERVES ANALYSIS AND DETAILED TESTIMONY FROM LEGAL EXPERTS. TO DO OTHERWISE RISKS SUBJECTING THE STATE TO AN EXERCISE IN FUTILITY.

BEYOND THE ISSUES OF ANILCA COMPLIANCE, RETRIEVAL OF OUR MANAGEMENT AUTHORITY, AND CONSTITUTIONALITY, THERE IS THE SIMPLE QUESTION OF WHETHER THE GOVERNOR'S BILL CONSTITUTES GOOD PUBLIC POLICY FOR ALASKA. I SUBMIT TO YOU THAT IT DOES NOT. IT WILL NOT PROTECT THOSE ALASKANS -- NATIVE AND NON-NATIVE, URBAN AND RURAL -- WHO REALLY DEPEND ON FISH AND GAME TO FEED THEIR FAMILIES. IT WILL THREATEN THE ECONOMIC AND CULTURAL SURVIVAL OF OUR MOST TRADITIONAL VILLAGES. IT WILL UNFAIRLY DISCRIMINATE AGAINST LEGITIMATE URBAN SUBSISTENCE USERS. AND IT WILL BASE THE SUBSISTENCE ELIGIBILITY OF INDIVIDUAL ALASKANS ON BEHAVIORAL CRITERIA

WHICH CAN BE NEITHER MEASURED NOR PROVED -- THEREBY OPENING THE SYSTEM TO WHOLESAL ABUSE.

LET US LOOK CLOSELY AT FOUR BASIC WEAKNESSES OF THE GOVERNOR'S BILL:

FIRST, IT FAILS TO PROVIDE AN ADEQUATE GUARANTEE OF SUBSISTENCE ELIGIBILITY FOR PEOPLE WHO LIVE IN ALASKA'S SMALL VILLAGES. AS ORIGINALLY CONSIDERED BY THE GOVERNOR'S SUBSISTENCE ADVISORY COUNCIL, THE BILL WOULD HAVE AFFORDED SUCH INDIVIDUALS AN IRREBUTTABLE PRESUMPTION OF ELIGIBILITY FOR THE PREFERENCE. BUT LATE IN THE PROCESS, THE ATTORNEY GENERAL URGED THAT "IRREBUTTABLE" BE REMOVED, ON THE THEORY THAT THIS WOULD SOMEHOW STRENGTHEN THE BILL'S SHAKY CONSTITUTIONALITY. THE ONLY CERTAIN RESULT, HOWEVER, IS THE WEAKENING OF STATUTORY PROTECTIONS FOR PRECISELY THOSE COMMUNITIES MOST DEPENDENT ON FISH AND GAME.

SECOND, THE GOVERNOR'S BILL IS NOT CONTENT TO DEAL WITH THE REAL POST-MCDOWELL PROBLEM OF THE FEDERAL-STATE IMPASSE. IT GOES FAR BEYOND THAT, IN ITS EFFORT TO CURTAIL SUBSISTENCE PRACTISES, BY EXCLUDING WHOLE FISH STOCKS AND GAME POPULATIONS - HUGE AREAS OF THE STATE - FROM SUBSISTENCE USES, REGARDLESS OF THE INDIVIDUAL SUBSISTENCE ELIGIBILITIES OF THE PEOPLE WHO LIVE THERE. IT IS NOW CLEAR THAT POLICY DECISIONS WERE MADE BY THE GOVERNOR'S OFFICE TO EXCLUDE SUBSISTENCE FROM CERTAIN AREAS BECAUSE OF INTENSE USER-GROUP COMPETITION. BUT, IF WE ARE GOING TO DEFINE SUBSISTENCE ELIGIBILITY BY LIFESTYLE, THEN ALL ALASKANS WHO LIVE THAT WAY MUST BE TREATED EQUALLY, NO MATTER HOW DIFFICULT THAT MAKES IT FOR THE FISH AND GAME BOARDS. TO DO OTHERWISE IS NOT ONLY UNFAIR, BUT UNCONSTITUTIONAL. MOREOVER, IT IS NOT NECESSARY.

THIRD, IF STATE LAW IS GOING TO DEFINE SUBSISTENCE BY LIFESTYLE, RATHER THAN BY RESIDENCY, IT MUST SET WORKABLE STANDARDS OF INDIVIDUAL ELIGIBILITY. PEOPLE MUST BE ABLE TO

USE, AND TO BELIEVE IN, THE CRITERIA BY WHICH WE DECIDE WHO IS A SUBSISTENCE USER AND WHO IS NOT. UNDER THE GOVERNOR'S BILL, IF ANY ALASKAN IS REQUIRED TO PROVE HIS OR HER ELIGIBILITY, SEVEN BEHAVIORAL STANDARDS ARE RATED ON A POINT SYSTEM. THE LEGISLATURE SHOULD EXAMINE THESE CRITERIA AND ASK WHETHER THEY ARE MEASURABLE AND ENFORCEABLE. WE CANNOT MANAGE AN EMOTIONALLY CHARGED ISSUE ON THE "HONOR SYSTEM." FROM PAST EXPERIENCE, WE KNOW THAT SELF-ENFORCEMENT WILL PRODUCE A TANGLE OF BUREAUCRACY, INVESTIGATION, COST AND LITIGATION.

FINALLY, THE GOVERNOR'S BILL ACCORDS TOO MUCH REGULATORY DISCRETION TO THE BOARDS OF FISH AND GAME. HISTORY SHOWS THAT CLEAR POLICY DIRECTION MUST BE GIVEN BY THE LEGISLATURE IN ORDER TO PREVENT EVEN THE BEST STATUTE FROM BEING EFFECTIVELY REPEALED IN THE REGULATORY PROCESS BY POWERFUL FORCES DETERMINED TO REDUCE OR ELIMINATE SUBSISTENCE PROTECTIONS.

I SUBMIT TO YOU, MR. CHAIRMAN, THAT EVEN IF THE GOVERNOR'S BILL WERE CONSTITUTIONAL, AND EVEN IF THERE WERE NOT AN ISSUE OF COMPLYING WITH FEDERAL LAW, THE POLICIES THEMSELVES WOULD BE WRONG FOR THE FUTURE OF THIS STATE. AMONG ALL THE OTHER CONSEQUENCES, THEY WOULD OPEN A WHOLE NEW ERA OF LAWSUITS AND JUDICIAL INTERVENTION, AS THE BOARDS OF FISHERIES AND GAME TRY TO IMPLEMENT THIS CONFUSING AND ILL-CONSIDERED SYSTEM. IF WE THINK THE PRESENT SYSTEM HAS PROBLEMS, WE HAVE SEEN NOTHING YET.

IF THE HICKEL ADMINISTRATION'S BILL IS FATALLY FLAWED, IS THERE AN ANSWER TO OUR PREDICAMENT, OR ARE WE DESTINED TO CONTINUE UNDER THIS RIDICULOUS SYSTEM OF DUAL MANAGEMENT? THE ONLY FAIR AND EFFECTIVE WAY TO RESOLVE THE SUBSISTENCE PROBLEM HAS THREE COMPONENTS:

- o ALASKA MUST HAVE A SUBSISTENCE STATUTE WHICH COMPLIES WITH THE FEDERAL LAW AND RETURNS

MANAGEMENT OF FISH AND GAME TO THE STATE
GOVERNMENT.

- o THAT STATUTE MUST PROTECT LEGITIMATE SUBSISTENCE USERS, WHILE TREATING ALASKANS FAIRLY IN THE DISTRIBUTION OF HUNTING AND FISHING OPPORTUNITIES.
- o IN ORDER TO HAVE SUCH A BALANCED STATUTE, THE LEGISLATURE MUST ALLOW THE PEOPLE OF ALASKA TO AMEND THE CONSTITUTION.

TODAY, YOU ARE CONSIDERING S.B. 485, A BUSH CAUCUS ALTERNATIVE TO THE GOVERNOR'S BILL.

HERE IS WHAT IT DOES:

- o IT COMPLIES WITH THE FEDERAL LAW, BY RETAINING THE ANILCA SUBSISTENCE PREFERENCE FOR RESIDENTS OF RURAL COMMUNITIES.
- o IT THEN ADDS A SECOND-TIER SUBSISTENCE PREFERENCE FOR ELIGIBLE URBAN SUBSISTENCE USERS.
- o IT TREATS ELIGIBLE URBAN SUBSISTENCE USERS FAIRLY.
- o IT CREATES A NEW SUBSISTENCE BOARD, TO WORK IN COOPERATION WITH THE BOARDS OF FISH AND GAME, IN ORDER TO INSURE MORE ATTENTION TO SUBSISTENCE SPECIES AND PRACTICES.
- o IT GIVES CLEAR STATUTORY DIRECTION TO THE BOARDS OF FISH AND GAME REGARDING MANAGEMENT STANDARDS AND THE PROTECTION OF ELIGIBLE SUBSISTENCE USERS IN BOTH URBAN AND RURAL AREAS.
- o IT PROVIDES ORDINARY CITIZENS WITH A GREATER DEGREE OF PARTICIPATION IN THE REGULAR PROCESS THROUGH AN IMPROVED SYSTEM OF ADVISORY COMMITTEES AND REGIONAL COUNCILS.

THE BUSH CAUCUS ALTERNATIVE IS BALANCED AND WORKABLE. IT SOLVES THE LEGAL CONFLICT. IT GETS BACK FISH AND GAME MANAGEMENT. AND IT DOES SO BY BEING FAIR TO PEOPLE.

THE BUSH CAUCUS BILL, LIKE ANY STATUTE THAT WILL REALLY SOLVE THE SUBSISTENCE PROBLEM, WILL REQUIRE A CONSTITUTIONAL AMENDMENT. WHY? BECAUSE THE LEGISLATURE DOES NOT NOW HAVE THE AUTHORITY TO DEFINE SUBSISTENCE USERS IN CONFORMITY WITH THE FEDERAL LAW, AND ONLY THE PEOPLE, SPEAKING THROUGH THEIR CONSTITUTION, CAN BESTOW THAT POWER. NONE OF US -- INCLUDING THE GOVERNOR -- WILL HELP OUR STATE ONE BIT BY CONTINUING TO DENY THIS REALITY.

IN CLOSING, MR. CHAIRMAN, LET ME RETURN TO THE WAY THE PEOPLE OF ALASKA BELIEVE THAT THE SUBSISTENCE ISSUE SHOULD BE RESOLVED. FULLY THREE QUARTERS OF OUR FELLOW CITIZENS WOULD PREFER TO VOTE ON IT IN THE FORM OF A CONSTITUTIONAL AMENDMENT. THEY DO NOT THINK IT SHOULD BE DEALT WITH ONLY AS LEGISLATION IN JUNEAU AND WASHINGTON, D.C. THE AVERAGE CITIZEN KNOWS THAT SUBSISTENCE IS ONE OF THOSE FUNDAMENTAL QUESTIONS OF HISTORY THAT REQUIRE, ABOVE ALL ELSE, LEGITIMACY -- THE KIND OF AUTHENTICITY WHICH, IN DEMOCRATIC SYSTEMS, COMES ONLY FROM THE VOTING BOOTH. IF THEY ARE ASKED, THE PEOPLE WILL KNOW WHAT TO DO. THEY WILL CUT THROUGH THIS LONG, WEARISOME DEADLOCK IN A SINGLE DAY, AND THEY WILL TAKE HEALTHY VILLAGE ECONOMIES AND CULTURES WITH THEM INTO THE 21ST CENTURY.

Southeast Alaska Tribal Council
313 Carlanna
Ketchikan, Alaska 99901

Governor Walter J. Hickel
P.O. Box A
Juneau, Alaska 99811-0101

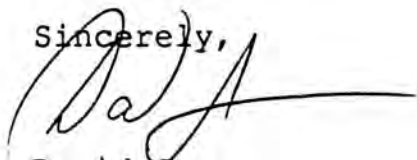
Honorable Governor Walter J. Hickel:

If laws and regulations don't provide for traditional and customary uses of our resources, the native people of southeast Alaska will not be able to comply.

Our heritage, customs, and traditions are tied to our land, foods and other resources.

If subsistence regulations are written that respect the inherent rights of Alaska's indigenous people, we are bound by our own traditional law to comply and protect those resources.

Sincerely,



David Jensen
President, Southeast Alaska Tribal Council

cc: Alaska State Senate
Alaska House of Representatives
Southeast Alaska Tribal Councils
U.S. Secretary of Interior-Manual Lujan
Federal Subsistence Commission
Regional Subsistence Council
Alaska Fish & Game
Alaska Intertribal Council
Southeast Native Subsistence Commission
Niles Ceasar Area Director, BIA
Ketchikan Daily News
Anchorage Daily News
Juneau Empire
ANB Grand Camp

Teller Traditional Council
P.O. Box 590
Teller, Alaska 99778
Phone (907) 642-3381

June 11, 1992

Members of the Alaska Legislature
State Capitol
P.O. Box V
Juneau, AK 99801

The Teller Traditional Council wishes to inform you that we strongly oppose the governor's subsistence bill. Our council represents subsistence users in the Native village of Teller. The council feels that the governor's bill does nothing to solve the problem of returning the management control to the State of Alaska and does not adequately protect subsistence uses which are the backbone of our way of life. The governor's bill will also give too much discretion to the Board of Fisheries in setting policies and regulation for subsistence users in the State of Alaska. The governor's administration is telling everyone to support his bill. The governor contends that unless his bill passes, the commercial industry will be ruined. We disagree with that. The State of Alaska had a subsistence priority for years and the commercial industry thrived. Our area has been hurt drastically the last several years enabling the closure of some of the salmon streams and rivers early as a result of over fishing in areas down south like the False Pass fisheries area. We urge every legislative member to reject the governor's bill. The governor's bill does not comply with the Federal law, is unconstitutional, does not resolve the fish and game management problem and will do damage to economies and cultures in the villages. Instead, we strongly urge the legislature to support and adopt HB592, the Bush caucus alternative legislation to the governor's bill.

Sincerely,

Dale H. Okpealuk

Dale H. Okpealuk
President

CITY OF KOYUK.

June 15, 1992

Members of the Alaska Legislature
State Capitol
P.O. Box V
Juneau, Ak 99801

The CITY OF KOYUK wishes to inform you that it is strongly opposed to the Governor's subsistence bill. Our village represents both subsistence and commerical fishermen.

The Governor's bill does nothing to solve the problem of returning management control to the State of Alaska and does not adequately protect subsistence uses which are the backbone of our way of life. The bill would also give too much discretion to the Board of Fisheries in setting policy and regulations.

The Governor's staff and the Commissioner of ADF&G are telling you that most commerical fishermen support the Governor's bill. They are also spreading rumors that unless the Governor's bill passes, the commerical industry will be ruined. That is not true. We had a subsistence priority for years in the State and the commerical industry thrived.

We urge you to reject the Governor's bill.

Sincerely,

M. Charles

Maryann Charles
City clerk

cc. Alaska Federation of Natives
Senator Lyman Hoffman
Senator Al Adams



City of Golovin
P.O. Box 62059
Golovin, Alaska
99762
Ph: (907) 779-3211
or 779-3681

June 11, 1992

To: Governor Hickel
Senator Al Adams
Representative Richard Foster
ADF&G Commissioner Carl Rosier
AFN President
Kawerak Inc President Loretta Bullard

Reference: Subsistence Lifestyle

Our subsistence use is being threatened. They are trying to dictate our use and take our fish at False Pass. This will restrict our dependence of fresh foods that have no freight cost. To live off the land and water is part of our culture ever since time began.

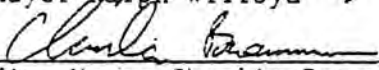
Wildlife protection is needed at False Pass to enforce a limit of their catch, so that fishing can continue in the Northern Region. They are cutting off the Norton Sound salmon catch in False Pass. It is not fair to us economically, because our commercial catch limit is already low, and many of the areas are closed for subsistence due to escapement requirements.

Our cultural lifestyle of hunting and fishing is the traditional way we feed our families to subsidize the high cost of store bought food. There is no need to make us innocent rural community residents into lawbreakers. If they say that we can't live off the land, then they will have to feed us in jail or other government institutions, or provide more public financial assistance.

Signed by the Golovin City Council.



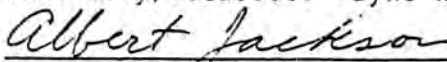
Mayor Ralph Willoya



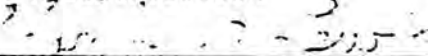
Vice Mayor Charlie Brown




Secretary/Treasurer Wayne Henry Sr



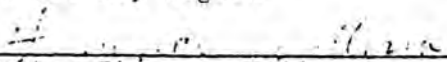
Member Albert Jackson



Member Charles Lewis



Member R6y Segock



Member Florence Willoya



ALASKA CHRISTIAN CONFERENCE

3031 La Touche St. Anchorage, AK 99508

(907) 272-0615

To: Governor Walter J. Hickel
Members of the Senate and the House of Representatives

From: The Executive Board of the Alaska Christian Conference in session June 9, 1992

As you meet to attempt to resolve the subsistence issue, we urge careful consideration of the emotional and spiritual dimensions of subsistence in the lives of Alaska Natives.

Their pain was expressed when the Native Concerns Task Force met at the Alaska Christian Conference Biennial Assembly, February 22, 1991 in Fairbanks. They asked the Executive Board to speak in their support.

From the Native perspective, subsistence is:

- * "Who we are and what we do as Native Alaskans."
- * "Our connection to the land, its resources and its seasons."
- * "Essential for our physical, emotional and spiritual well-being."

As early as 1899, Chief Johnson, a Tlingit of Taku lineage, appeared in Washington D. C. before the Senate Committee on Indian Affairs and expressed that his people were not asking anything unreasonable of the U. S. government, but rather that they desired help in the following manner:

"That the fishing and hunting grounds of their fathers be reserved for them and their children. (They have been) crowded or driven from (these grounds as well as from) the places where their fathers and grandfathers have lived and been buried.

(To have the committee understand that their) chief method of support is by fishing and hunting and that is the only way that most of them can live, as only a small number are educated sufficiently to go out in the towns of the land and compete with the whites."

Almost one hundred years later, we can look back and see that the Native people of Alaska have been trying for a long time to be heard and understood. The struggle is still present. We are called to justice, co-creation and equality in treating our fellow human beings with dignity as we look to the future. We must acknowledge that this is a matter not only of the head and the heart, but that there is a spiritual dimension that takes it to the very depths of the soul of the Native People.

We are asking the Governor, the Senate and the House of Representatives of Alaska to seek a fresh, creative approach to the whole subsistence puzzle, and most of all to be open to really listening to the Native peoples and their needs. We pray for you as you proceed.

David K. Fison
Rev. David K. Fison, Secretary

Mary E. Kron
Mary E. Kron, Treasurer

Robert J. Palmer
Rev. Robert J. Palmer

Wesley Veatch
Rev. Wesley Veatch, President

James N. Hunter, II
Rev. James N. Hunter, II

Jeanine R. Masciola
Jeanine R. Masciola

Betty J. Taylor
Betty J. Taylor, Vice President

Kokechik Fishermen's Association, Inc.
P.O. Box 180
Chevak, Alaska 99563
(907) 858-7828

June 15, 1992

Members of the Alaska Legislature
State Capitol
P.O. Box V
Juneau, Alaska 99801

The Kokechik Fishermen's Association from the villages of Chevak, Hooper Bay, and Scammon Bay are adamantly opposed to Governor Hickel's proposed subsistence bill. Our Association represents both the subsistence and commercial fishermen from the aforementioned villages.

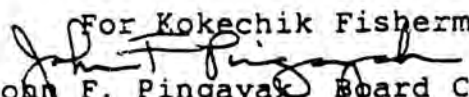
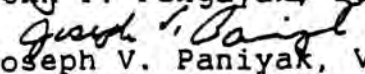
The Association believes that the governor's proposed bill does not in any way solve the problem of returning the management control to the State of Alaska and it does not adequately protect the subsistence uses; which are our way of traditional lifestyle. We also believe that the bill would give too much discretion(s) to the Board of Fisheries in setting their policies and regulations.

The governor's staff and the commissioner of the Alaska Department of Fish and Game may be telling your office that most commercial fishermen support this proposed bill, which is highly unlikely. They are also saying that unless this bill passes the commercial fishing industry will be ruined; and this is also highly unlikely and untrue.

We have had a subsistence priority in previous years in this state and the commercial fishing industry was not determently affected. Instead the industry was thriving.

The governor's proposed bill was drafted by a few policy makers, which we believe would benefit only the few and not for the whole State of Alaska. The type of letters that you will and have received and who have expressed this kind of concern are fighting for their lifestyle and for their children and their children's children for years to come.

We strongly urge you and your fellow legislators to vote and reject the Governor's proposed bill.

For Kokechik Fishermen's,

John F. Pingayak, Board Chairman

Joseph V. Paniyak, Vice-Chairman

cc: Kokechik Files, Alaska Federation of Natives, Senator Lyman Hoffman, Senator Al Adams, Bethel Legislative Information Office, Nome Legislative Information Office

cpc/JFP

Eric Forreth

In the beginning was the land. Then came the fish, the game, and the intricate biosphere. Then came the aboriginal inhabitants, who have been in Alaska so long that their tribal memories do not record their arrival. Then from the West came Russians, from the East, Europeans. Then came technologies which broke the age old relationship between human population and locally available energy and prey species and then, with rising population, came the social pressures with which we are wrestling today. There are steps on this path that stand out in recent history:

One of these steps was the Alaska Native Claims Settlement Act of 1971. The act contains a statement of one of the tradeoffs which was made by native peoples in structuring this Settlement: "All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, . . . and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished."

Another step was the Alaska National Interest Lands Conservation Act of 1980. In Title VIII the act dealt with the Federal Government's 'special relationship' with aboriginal peoples. It fell short of a native preference for subsistence rights, but came as close as possible by using the code word 'rural'. Section 804 states: ". . . the taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over . . . other uses." In the Act subsistence uses are defined as uses by rural residents. One of three criteria for establishing who may qualify for the subsistence harvest is local residency, and the term 'local rural residents' is used in title IX.

Alaska's Fish and Game department structured its regulations using the word rural in order to respond to the federal legislation and comply with it. Sam McDowell, an urban resident of the state, filed a suit which was taken to the State Supreme Court. In what has become widely known as the McDowell Decision, the Alaska Supreme court said that it was unconstitutional to use rural residence as a criteria for awarding individuals the right to harvest under subsistence rules, while denying urban residents that right. The court felt that the term rural was too arbitrary and not sufficiently or fairly focused for granting or denying a government benefit.

The term rural was stricken from Fish and Game regulation, and the Federal Government declared the state to be out of compliance with the terms of ANILCA. Native leadership clung fiercely to ANILCA as their only line of defense against the erosion of an historic native activity. Among their proposed solutions was an amendment to enshrine the term rural in the state constitution.

Without the limiting term rural, all citizens of the state became eligible for a use category that has priority over all other uses. Commercial fishermen saw their livelihoods threatened by the vision of a mass of urban residents, all wielding subsistence permits, descending on fish stocks that could not stand the strain.

Sports users, already at odds with commercial users, saw a threat to their seasons and bag limits, and they made arguments based on equal access.

This thumb nail sketch sets the stage for the Alaska subsistence controversy. Many of you have played a part in this over the years, and I ask you to bear with me as I cover ~~what may be~~ ~~forgot to mention~~ a few of the aspects of this issue.

One of the reasons that subsistence is so controversial is that federal law, and proposed state constitutional amendments governing eligibility for subsistence rights, depend upon definitions and criteria that divide the people of the state by raising the specter of special rights. Lurking beneath the surface of the phrase 'special rights' are contentious issues including race and money. The fiduciary interest is the interest of many, as considerable sums motivate the sports service industries, the guiding business, and the commercial fisheries.

^{One} A second reason for controversy is the practical problem of allocation. Who gets to harvest and who doesn't is the business of regulation, and this must be worked out because the state constitution requires management of renewable resources for sustained yield. The available harvest levels of fish and game in the state are not close to the quantities that would be necessary to feed the population in the pre-contact sense of one hundred percent dependency upon the land. Available harvest levels cannot support even the native population alone. It is a squeeze between the available harvest of wild stocks and an increasing human population that heats up the controversy. Attempts to structure the regulation of fish and game lead directly to the thorny tangle of defining groups who might be awarded or denied special rights. One is then lead further to the definition of the beneficial uses themselves, to definitions for many terms used in the history of subsistence management, and to a definition for subsistence. There are few clear, uncontested definitions in this entire enterprise, although some are less troubled than others.

In order to understand the subsistence issue it is helpful to take a look at the uses of fish and game, as the arguments made by competitors for the resources tend to be classified along the lines of the type of use in which they participate. Individuals of course most often participate in more than one type of use, and not infrequently in all types.

There are four generally recognized camps, or groups in contention over the human use of other species. Three of these are known by the names by which they are regulated and they are commercial, sport, and subsistence. These three are called 'beneficial uses,' from a term that occurs in the Alaska State Constitution. The fourth group is the general public, or national interest.

The national interest is a surreal conglomerate which includes all three beneficial uses as well as preservationists, conservationists, developers, and others. Consequently in terms of a definition it is a shifting target, as different and even contradictory values are proposed to be in the national interest.

The inability to know or predict what sensibilities will be in the ascendancy of this camp called national interest makes spokesmen for the three beneficial uses in Alaska uneasy about federal regulation. Different arms of the federal government show no tendency toward mutually consistent policy. For instance, Alaska is faced with Federal take-over of fish and game management on nearly half the state in order to protect the subsistence rights of rural residents. However federal law also prevents the taking of fish or game in the national parks. Thus one of the first consequences of federal protection of subsistence rights is the prevention of subsistence and commercial harvest in Glacier Bay.

Because of the growing strength of preservationist philosophy, I am among those who fear that the parks prohibition may eventually be expanded to include all federal land. Thus what starts as a protection for subsistence may become a blanket prohibition.

The federal government is understood to have a special relationship with indigenous peoples. Time and again native peoples have gone to the federal level for protection on issues of land, water, and game rights. Federal forces were in the field for decades in order to control and suppress those same peoples, and it is with bitterness and shame that any American must look back on the history of race relations in North America. Actually I look with horror at the history of race relations world wide, for extermination, slavery and conflict have everywhere occurred along tribal and racial lines. We struggle with this background legacy of universal human conflict, and in contrast Article I, Section I of the Alaska State Constitution marks a high note of achievement of the human spirit. ~~McDowell vs. the State~~ was argued on the basis of equal rights and equal access to public resources, and I agree that we should not be dragged back from this constitutional position, for only this position will enable us to make progress toward equality.

~~McDowell vs. the State~~
This argument does not imply that there is currently a level playing field. A source of frustration for native subsistence users and others is that arguments for the equality of all are used without regard to the current state of spiritual annihilation and deep inequality that presently exists between the dominant culture of European origin, and American aboriginal inhabitants. One culture's defining activities, in effect a religious structure, are another culture's avocation and the gulf between these two meanings for the same term is at the core of the difficulty. If those who make the most shrill arguments for equality in the subsistence debate were ever heard to make the same arguments when it was not directly in their interest to do so, a considerable distance between the protagonists might be closed.

On the other hand, I believe that it does native leaders no honor to argue for special rights based on racial groupings, and that it does the native population no favor to grant such rights in law. Special rights are inconsistent with the ideal of equality and they are a source of trouble because they set the enabled group aside and encourage harassment, noncooperation, and alienation between peoples who must ultimately go down the same road. I do believe that it is possible to establish regulation within which native cultures can practice those cyclic rituals of harvest that defined their lives in the past and which we know as subsistence use. This must be regulation under which all users can operate, without resorting to overt and clumsy reliance on racial or residence criteria, and I believe that the governor's proposed legislation satisfies these conditions.

Although it was quite unpopular and has resulted in turmoil for fish and game management for the interim, I think that the McDowell decision making rural residence criteria unconstitutional was a correct decision. The term rural is and will remain beyond the reach of a usable definition. That stage of development to which it refers in the contiguous 48 states is nearly nonexistent in Alaska. Urban and rural are not the only two possible alternatives on the path of development. In Alaska there is also wilderness. Villages set in the middle of wilderness are not rural. This is made clear when it turns out that those communities known as the regional hubs, many of whose inhabitants are people with deep ties to the bush and to subsistence, do not fall within the federal definition of rural. Residents of Bethel, for instance, would probably be denied subsistence rights under the language and definitions of ANILCA. Conversely, a resident of a smaller town who could be anybody from a highline fisherman to a bank president would be eligible for subsistence rights. Native citizens of the largest native community in the state, namely Anchorage, would not be eligible; school superintendents and air taxi operators based in villages would be. Reliance on the concept of rural vs. urban is hopelessly flawed and this understanding helps clarify the problem the state faces in any attempt to comply with the letter of the law of ANILCA and simultaneously provide a regulatory scheme that is a fair one.

Despite this difficulty, native practitioners of subsistence and native leaders have clung to the protection they believe ANILCA affords. This position is their only alternative, as they certainly cannot relinquish their only protection without having another firmly in hand. Village residents' hearts provide them with a working definition of the term rural, and that is the definition that they understand ANILCA to support. Consequently the split between those using the language of ANILCA as a bastion and those who would remove the term rural from the law is irreconcilable, even if the parties had the same goals for the protection of subsistence use. This of course is not necessarily the case and both camps probe and question their counterpart's motivation.

Mr. McDowell is an urban sportsman, and the McDowell decision is associated with the beneficial use called sport. Sport is a troubled designation. The spectrum of use and behavior to be found under the umbrella of field sports ranges from the barbaric to the uplifting. Possibly because of the barbaric end of the scale, sportsman's groups tend toward a defensive tone when making arguments in their own behalf in public.

On the face of it they have a difficult argument to make in defending sport (read entertainment), against subsistence (read livelihood and food for the family). The image of the sportsman challenging subsistence criteria is that of a fully engaged, middle or upper class caucasian residing in an urban center throwing his (definitely his), weight against less advantaged, native citizens. It is equal treatment under the law upon which legal challenge has been based, and the image of the powerful making this argument against peoples suffering considerable cultural stress is the reason that the call for equal treatment has been so poorly received.

The popularity of sport uses and the reason so many are drawn to them is that they make an elemental connection to the land and are a building block of a sense of identity for participants. At one end of the scale, as the activity of sport use has become further removed from its direct connection to a food source, the motivations and forms for sport activities have become confused. The lore of urban sportsmen is no longer connected, in the main, to the realities of the field. If their publications are to be believed they entertain themselves with all sorts of sensationalism and promote and trade in equipment and weapons of all sorts in order to protect themselves should they ever get to the wilderness. Meanwhile, out in that same wilderness all kinds of activities occur, including the activities of older native ladies who move about unarmed in the pursuit of berries, grasses, and fish.

At the other end of the scale there are many individuals who have never killed anything for sport, yet hold sport licenses. Philosophically and spiritually they are essentially subsistence users, and if they do their harvesting under the designation of sport it is a matter of circumstance, sport licensing being the only regulatory form provided. This essential connection between subsistence and sport is one of the arguments made against the regulatory elimination of sport use in order to continue to allow a subsistence harvest on diminishing resources. It is a good argument and illustrates the difficulty of thinking and regulating in the absence of clarifying definitions.

The connection between sport use and sustenance, or protein for the home freezer, is a nearly universal one for resident Alaskans. But Alaskans who harvest under any rules are up against a growing strength of numbers of people opposed to hunting and fishing on moral and ecological grounds. Numbers of bird watchers are beginning to challenge the tradition of bird hunters. I think that sportsmen, subsistence users, and game management personnel nearly

all agree that bird hunting is more directly connected to bird conservation than is bird watching. There is an apparent irony here and this is a difficult argument to make against urban residents who have no cultural or personal knowledge of the act of harvesting protein for their own dinner.

There are a few clues about the kind of thinking that is beginning to be in the majority and will have increasing influence on national policy in any number of arenas. One such clue is a question that is occasionally asked by tourists of the park service personnel at Denali National Park. The question is "What do you do with the animals in the winter time?" A startling number of bird watchers and their ecologically sensitive urban brethren of all stripes are in fact entirely removed from substantive knowledge about fish and game. That this question is not atypical is a reflection that federal policy is driven at least in part by citizens who have lost all real connections to the land. The notion that the world is some sort of zoo and that unnamed government agencies 'do something' with all the animals out there in the winter time is so far removed from reality that it is quite frightening to realize that this thinking is driving the creation of federal management policy.

I will now have a look at the third camp, or the beneficial use called commercial.

While subsistence use came first in some sense, commercial use followed immediately as part and parcel of human contact. Commerce between individuals and groups is as old as man's tread upon the continent. When Soviets and Europeans eventually showed up in Alaska, they came as commercial users in the sea mammal and fur trades. An argument is made by subsistence users that customary barter and trade, a recognized part of subsistence practice, shades imperceptibly into commercial use. This argument is used to defend the practice of selling parts of subsistence-caught fish and game. This may include non edible parts such as bone and fur used in crafts, and edibles such as salmon roe.

The whole picture of commercial fishing in Alaska is complex and has nationwide and world wide aspects. Commercial fisheries issues and manipulation by outside interests were one of the main considerations in the fight for statehood. Overcapitalization; off-shore draggers with company headquarters in Louisiana; factory trawlers harvesting tens of millions of pounds; the king crab fleet presiding over a decimated species; heavy foreign investment--this is alienation within the very ranks of commercial use. But these monster fisheries have not run afoul of conflict with subsistence regulation. It is the locally based skiff and small boat fisheries, harvests by Alaskans, that are threatened by the state's inability to find a mechanism for the management of subsistence use. For village residents, commercial fishing in their local rivers is a major or sole source for cash income, and the subsistence priority of which they are the beneficiaries works against their own interests in the economy. This situation has

resulted in native groups being pitted against each other in allocation fights and once again we are drawn back to the pressure of population levels in a finite world.

In spite of the complexities, commercial fisheries help provide local populations all over the state with their sense of identity, their economic base, and indeed, their sustenance. This last begins to sound like a description of subsistence use, to which I am finally drawn.

In 1963 and 1964 it was my privilege to be the only caucasian fishing commercially on the Lower Yukon River. I was able to succeed because two Eskimo fisherman acted as my guardians and made it their business to see me through to the end of the seasons. They and their contemporaries taught me about fishing and about the big river. This way of life close to the water and the country provided me with a spiritual framework from which I have drawn strength ever since. I call this framework a sense of place, and on various occasions I have argued for the importance of a sense of place to the health of individuals and the strength and diversity of the national spirit.

It is the erosion of the physical relationships of a place and the dilution and loss of knowledge about methods of sustaining life that constitute the main ingredients of culture shock. Certainly for that generation of native subsistence users who show up at public meetings in order to testify, as they do with forthright eloquence, subsistence is not something in which they engage occasionally, nor is it a structure to be found within state fish and game regulations. Subsistence is who and what they were for all the generations of the past, and the power of subsistence over the identity of practitioners is the power of symbolism. That the physical realities of twentieth century life and the structure of the symbol of subsistence do not coincide is a symptom of the relentless tide of technologies and events that sweeps down upon us all.

I come to this argument from the roots of my youth and I am forced to a bitter conclusion. Already for some years, and as far into the future as we can see, subsistence as it exists in the memories of those eloquent elders is no more. For subsistence to work an elementary and ruthless biological balance is necessary and there is no such balance. In biology this is known as a feedback loop. When a prey species is so reduced as to be unable to support a predator species, the predators have three alternatives. They can move, they can seek other prey, or they can starve to the point that their own numbers can be supported by the diminished prey.

Now, and for many years past, there is a fourth alternative. This is the delivery of alternative energy by modern transport. This has already changed the form of life for all the former subsistence cultures from a nomadic existence balanced on a knife edge of available resources, to a network of permanent villages, which are recipients of imported energies from cash to pilot crackers. World

wide, nation wide, and statewide the powers of science and civilization have eliminated balance in human development. At the top of this complex situation is human population, and by numbers alone, the Alaskan land and wild species cannot sustain the native population, much less the total population. In spite of devastation by introduced diseases in the last century, modern medicine and outside food supplies have enabled populations to survive lean times, then to double and to double again. Even special privileges will not solve the problem of excessive pressure on hunted species. The starving time has been eliminated from the cycle of subsistence. A hunter carrying a weapon made of tool steel, wearing rubber boots made overseas, driving an outboard powered plywood skiff, and wearing prescription sun glasses, may well be a subsistence hunter in spirit, but his effectiveness is that of a technological man and his responsibility to regulate himself must reflect this reality.

In the beginning was the land. . . . At the very core of the subsistence issue, at the core of the beneficial uses when all else is stripped away, is the question of the meaning of life: life in terms of food, in terms of connections, in terms of an activity involving time and knowledge about other forms of life. One of the mental tools for wrestling with this essentially unknowable mystery is a sense of place. For myself and others, a crucial part of this sense is involvement with sport, commercial and subsistence use on grounds we know well. Alaskan fishermen return year after year to their customary grounds and the reason they do is not to be found in harvest poundage or mindless habit. If you doubt this, look at the emotional response of the fishermen in Prince William Sound to the loss of their grounds after the big oil spill. Rock hard toughies were seen sobbing on national television, and it is my opinion that the depth of their emotion was a surprise even to themselves. Their tears did not fall because of lost money. It was the loss of their own identities, and the loss of the possibility of that identity for their children. Loosing rights to commercial harvest inside national parks or on Federal lands, loosing subsistence rights to 'national interest' sensibilities--these are steps down the road of alienation. In years to come when sociologists are standing around scratching their heads about high alcohol consumption and social violence, we will be lucky indeed if they even remember those activities that used to provide a spiritual framework, but which have ceased to exist.

In order to survive we must evolve mentally, or nature will impose upon us the fate of evolving physically. It follows that compromise and adaption to our technologies and population levels is necessary. This is a painful process, and so challenging that far more species than currently exist have failed this ultimate test of a face off with changing conditions. Rapidly changing conditions are what subsistence users and everybody else are up against so the subsistence controversy is far more than an allocation battle or a clarification of constitutional principles. It is in fact a struggle about paths which the human race may take, and it is part of the centuries old search for the meaning of life.

Mr. Chairman, of all the purposes, pursuits, and issues contained within the subsistence controversy, there is one overriding item at the top of the list and that is the loss of the state's right to manage the harvest. The activities associated with the beneficial uses are part and parcel of our identity and we have the right and the responsibility to be our own managers. The idea that there is a lasting federal commitment to protect subsistence rights is a chimera. The feds managed the fur seal harvest, and there is no more harvest. The feds offer to protect subsistence, and this protection includes a blanket prohibition against all harvest in Glacier Bay, including harvest activities on the outside coast. Federal policy is smoke and mirrors. The Governor's legislation that is before you was crafted at a table at which all major pieces of the puzzle were ably represented. To the surprise of the members of the commission, they left the process with a new understanding and respect for the sides of the question against which they were historically aligned. We worked on this legislation word by word. It has a good sense of balance and fairness, and it protects the beneficial use called subsistence. I urge you to adopt the governor's proposal. It is a substantial piece of the structure needed to rescue dearly held rights to fish and game use. The governor's legislation is fair and workable, and it will stand us in good stead as the future brings changing conditions to us all.

Thank you very much for your patience in hearing me out.



ALASKA OUTDOOR COUNCIL, INC.

P.O. Box 34097
Juneau, Alaska 99803

May 3, 1992

Senator Al Adams
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Adams,

I wish to take this opportunity to inform you that the Alaska Outdoor Council voted this week to support Governor Hickel's subsistence legislation, Senate Bill 443 and House Bill 552.

The Council remains opposed to a constitutional amendment on subsistence, because it exposes the equal rights and common use protection clauses to erosion, and is unnecessary.

I would be happy to discuss in greater detail the reasons for our position.

Sincerely,

Richard H. Bishop
Legislative Affairs

cc: all legislators



ALASKA OUTDOOR COUNCIL, INC

P O Box 34097
Juneau, AK 99803
463-3830

March 20, 1992

Representative Donley
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

As you may know, the Alaska Outdoor Council voted to take no position on the Governor's subsistence bill (SB 443/HB 552) when it was introduced.

Our position reflected concerns about: (1) the constitutionality of differences in individual qualifying procedures related to residence; (2) the lack of a mandate to verify individuals' qualifications in outlying areas; (3) the potential influence on Indian country arguments; (4) modest criteria to qualify for subsistence; (5) the need to make clear that both subsistence and other uses should be provided for when resources have recovered from a low level; and (6) the need for a definition of "urban". We also oppose related constitutional amendments which are unnecessary to make the bill workable and would invite backsliding in terms of equal protection and common use of the fish and game resources. To comply with ANILCA by amending our Constitution does not "return State management". It simply locks in Federal judicial oversight on the State's execution of ANILCA subsistence mandates.

However, the Governor's bill does address many of our concerns and we applaud this progress. Specifically, it establishes individual criteria based on resource dependency, regardless of where a person lives, as the means to qualify for a priority. It clearly limits "customary trade"^{Fed. Sub.} to non-commercial activities. It makes clear that subsistence uses will be regulated. It mandates increasing fish and game numbers when populations are low. It greatly strengthens resource protection and management. ^{Sub.}

The Alaska Outdoor Council is participating in your consideration of the legislation. We have recognized the importance of working for a good solution rather than against poor solutions. Recent Council policies and action demonstrate this.

For example:

- 1) We have formally recognized the important of non-commercial use

*"Subsistence uses shall be available
to all Alaska residents who are Alaska residents."*

of fish and game for food to support people's lifestyles;

2) We helped develop the concept of a priority based on a resource dependent subsistence lifestyle;

3) We worked constructively with the Governor's Subsistence Advisory Council on this legislation;

4) We have sought agreement with Native groups and others regarding resource and habitat enhancement and other management issues;

5) We have fought for continued subsistence uses in National Parks as authorized by ANILCA;

6) We initiated action to have Alaska represented at the Convention on International Trade in Endangered Species to protect Alaska Natives' subsistence uses of walrus;

7) We are supporting HB 446, the wildlife conservation viewing tag bill, that will benefit non-consumptive uses of fish and game; and

8) We participated on the public Wolf Management Planning Team in a constructive, good faith effort.

The point is, we are working to resolve subsistence and other fish and game issues in ways that enhance everyone's opportunities to responsibly use fish and game resources.

Our goals with regard to the subsistence legislation are to help pass a bill that:

1) ensures sound resource perpetuation and management;

2) maintains the equal rights, equal protection and common use provisions of our state constitution;

3) provides for a subsistence priority for fish and game and for other uses within the bounds of the constitution;

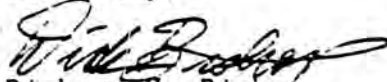
4) does not influence Indian country legal arguments; and

5) allows people to enjoy the physical and philosophical satisfaction of sustaining their Alaskan lifestyles through the responsible uses of fish and wildlife.

We believe these goals can be met. We believe that in meeting them, other people's goals can also be met. Further, we believe that such a fair and equitable solution will have inherent stability and permanence that cannot be achieved in any other way, not even by constitutional amendment.

We look forward to helping you complete this work that the Governor has started.

Sincerely,



Richard H. Bishop
Legislative Affairs

CC: Governor Hickel
Commissioner Rosier

TO: AOC Board of Directors
FROM: Dick Bishop
DATE: February 19, 1992
SUBJECT: Summary of Comments on Governor Hickel's Subsistence
Advisory Council Draft Legislation

OPTIONS

Several options for addressing subsistence priority use have been raised by various parties, some requiring a constitutional amendment, others no. They are:

<u>Constitutional Amend.</u>	<u>No Const. Amend.</u>
*1. "Rural" (not defined) priority.	1. No priority. Repeal state law.
*2. "Subsistence" (not defined) priority.	*2. Current state law.
3. Native priority.	*3. Priority based on individual criteria related to resource dependency. (Adv. Council draft.)

* Indicates politically viable alternative, i.e., could conceivably be passed by legislature (or current law could be left in place).

AOC POLICY

AOC policy has been that a subsistence priority law is unnecessary to accommodate subsistence uses, but if a priority is established, it should be based on individual criteria related to resource dependency (i.e., subsistence lifestyle) and must be constitutional.

ADVISORY COUNCIL BILL

1. Why have it?

(A) Because as a matter of policy of practical politics, the Governor has chosen to recognize and accommodate "subsistence", and to find a fair, workable way to do so.

(B) Secondly, in doing so it may provide a way to regain state management authority from the federal government without compromising Alaska's Constitution.

2. Who gets the priority, and how?

(A) Individuals who meet the individual criteria by

(1) being "presumed" to meet them (bush areas, small towns),

(2) signing an affidavit saying he/she meets the criteria (towns of 2500-7000), or

(3) filing an application which documents how he/she meets criteria (urban dwellers). These people presumed to meet criteria may lose the priority if it turns out that they do not.

(B) Minimum individual criteria must have been met in the preceding 12 months; evaluated by point system:

(1) Consume 125 lbs. of non-commercial wild fish and game;

(2) 6 species or groups of species used from a subsistence area;

(3) Parts of 30 days engaged in taking fish or game in a subsistence use area ("taking" can be under sport regs);

(4) Parts of 4 months spent taking fish or game in a subsistence use area.

Additional points gained for doing more than minimum; just meeting minimum use levels will not qualify a person, and all minimums must be met. An applicant could qualify by using more resources and committing more time to subsistence work.

Additional points may be gained for:

(5) Number of weeks when taking of fish and game was the principal work effort (max. 26 weeks);

(6) Number of households with which fish and game are shared (max 10 households);

(7) Whether taking was solely in subsistence use area.

Taking must be legal, non-commercial, "efficient and economical" (not defined). Allowance made for necessary non-participation, e.g., military, school. The Boards of Fish & Game are responsible for final decisions on points assigned to various criteria. Those people who are required to file an affidavit or application would have to do so annually.

The Boards must decide for what areas and communities subsistence is "a principle characteristic of the economy, culture, and way of life", based on a long list of economic, social, cultural, and fish and game use characteristics.

3. What fish and game resources are subject to subsistence uses?

(A) The Boards decide what stocks and populations have had a history of use and dependence for subsistence purposes, going back at least one generation. Some areas and some species or populations of species would not be included, e.g., immediate suburban/near urban areas, and dall sheep in much of their range.

(B) The Boards decide if resource abundance is adequate for all uses, for subsistence and some other uses, just for subsistence, or for only part of subsistence demand.

(C) The ADF&G is responsible for increasing resource abundance if it is too low to provide for subsistence and other uses.

(D) There is no guarantee of harvest for subsistence, but a reasonable opportunity must be provided based on several factors relating to resource abundance, management objectives, past use patterns (customary and traditional), competition, and other factors the Boards decides are important.

(E) The Boards establish subsistence use areas for stocks and populations. Usually, this will be one game management subunit (GMSU), plus those GMSU's adjacent to it. The Boards can change the shape/area if GMSU's don't make sense in terms of use patterns for stock or population.

4. Other provisions/definitions:

(A) "Customary Trade" -- allows limited non-commercial sale of fish or game, but not to commercial buyers (e.g., fish buyers). Boards may restrict or prohibit sales. Fur and furbearers are an exception and may be sold as in the past.

(B) "Subsistence Fishing" -- would be done in a subsistence use area; rod and reel prohibited.

(C) "Subsistence" -- specifies taking in a subsistence use area for food, clothing, or transportation (dog food) and allows sharing, barter (no cash), customary trade, and use of non-edible parts for handicrafts. All subsistence uses subject to regulation, and consistent with sustained yield.

5. Review

Operation of this law to be reviewed by Governor and a review group by June 1, 1994.

6. Concerns

(A) Different procedures for applicants depending on place of residency: rural -- no paperwork; regional centers -- affidavit; urban -- application form. This was a major issue with native representatives. the trade-off was that no one was irrevocably classified as a qualified subsistence user. If it turns out they don't meet individual criteria, priority can be revoked.

(B) No mechanism in the bill to verify individual qualifications in rural areas and regional centers. The Department/Boards need to do this on an ongoing basis to be sure the law is defensible, and this need will be explained in the bill analysis.

(C) Low/moderate individual requirements for resource use and for commitment to subsistence work. Taken together, the

minimum requirements will put some real limits on who qualifies. Technical/legal limitations and compromises resulted in lower standards than we sought.

(D) Vague, undefined terms -- "comfort language" -- without objective criteria give poor direction to the Boards and public in several places and provide opening for legal mischief.

(E) No "neutrality statement" affirming that this bill will not add to or detract from legal arguments re: tribal authority over lands, i.e., "Indian Country."

W. J. ...
AK Outdoor Council
6/16/82

Ref: conamdmmt.mss

CONCERNS WITH A CONSTITUTIONAL AMENDMENT ON SUBSISTENCE

- EQUAL RIGHTS AND COMMON USE -- Equal rights and common use of fish and game protected by the constitution must NOT be compromised. There is no assurance that any proposed constitutional amendment will not compromise those protections.
- RETURN OF STATE MANAGEMENT -- Amending the state Constitution to comply with ANILCA does not return state management authority. It ratifies management by federal rules (ANILCA) enforced by federal courts. State management is not returned until state regulations are enforced through state court proceedings.
- "RURAL", "NATIVE", "NO NET LOSS/RURAL PLUS" priority options -- Any of these discriminatory criteria can be promoted as the basis for a priority if any constitutional amendment is proposed. All are unacceptable and inconsistent with the interests of the majority of Alaskans. Discrimination based on local or rural residency will lead to "Indian country" status--tribal governments in control of regulations and tribal members exempt from state/borough taxation.
- CONSTITUTIONALITY OF GOVERNOR'S SUBSISTENCE BILL -- A constitutional amendment is not needed to "legalize" SB 440/HB 552.
- SUBSISTENCE AND SOVEREIGNTY -- Consistent with their "no net loss" policy, AFN will undoubtedly oppose any ANILCA amendment that does not protect a "community/group based" priority and federal court oversight. Both points are related to their quest for "Indian country" status.
- ANILCA AMENDMENTS before CONSTITUTIONAL CHANGE: A LEVERAGE FOR ANILCA CHANGE -- A constitutional amendment acceptable to the majority of Alaskans will not be acceptable to AFN, nor will it persuade them to support ANILCA changes. A constitutional amendment opposed by AFN but acceptable to the majority of Alaskans MAY encourage our Congressional delegation to support amending ANILCA in spite of AFN objection. Do we have any commitment from them?
- COST/BENEFIT ANALYSIS -- With regard to any proposal that would link constitutional change to ANILCA change: A cost/benefit analysis balancing potential loss of constitutional protection against beneficial changes to ANILCA must be kept foremost in mind. Principles of individual rights and equal protection must never be

sacrificed. Group (community) rights must never supersede individual rights. Group rights and federal court intervention both argue for Indian country status and both must be eliminated through amendment to ANILCA.

- PUBLIC PARTICIPATION -- Unlike the Governor's bill, proposed constitutional amendments and ANILCA amendments circulated by the Governor's office were not developed through broad public participation.
- CHANGING ANILCA -- There is no guarantee that Congress will "fix" ANILCA if Alaska's Constitution is changed. It would be outrageous to compromise Constitutional protection of Alaskans' equal rights and common use of fish and game by amending the Constitution in a future hope of getting ANILCA changed. Nonetheless, ANILCA must be changed to remove the discriminatory rural priority, to remove its inherent arguments for "Indian country", to correct bad resource management provisions, and to eliminate unconstitutional judicial oversight.
- SUBSISTENCE IS NOT "...essentially a native issue" as stated by AFN. If subsistence has a priority over all other uses, then everyone who uses fish and game or their habitats is affected. When a "rural" priority leads to "Indian country", as the 9th Circuit made clear would be the case, then every current or future tax paying citizen is affected.

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

Jeslie Kaleak, Sr., Mayor



POSITION STATEMENT OF THE NORTH SLOPE BOROUGH
ON THE
SUBSISTENCE ISSUE AND THE SPECIAL LEGISLATIVE SESSION ON SUBSISTENCE
COMMENCING JUNE 15, 1992

SUBMITTED BY

JESLIE A KALEAK, SR., MAYOR,
NORTH SLOPE BOROUGH

As the Mayor of the North Slope Borough, it is my responsibility to look after the interests of the people who elected me and whom I serve. The majority of the people who live on the North Slope continue to depend on the renewable resources, be they of the terrestrial, marine or avian species, for their sustenance and cultural well being. It is those people who will be impacted the most regardless of the outcome of this special legislative session to deal with the Governor's Subsistence Bill. Therefore, it is important that this position statement clearly reflects the wishes of the majority of the people who live on the North Slope.

The North Slope Borough consists of an area of approximately 90,000 square miles with a population of about 5,979 people scattered among the eight villages within the boundaries of the Borough with about 73% of the population being Inupiat. Since the creation of the Borough twenty years ago July 2, 1972, a lot of changes have been made on the lives of those people who call this part of the world their permanent home. The creation of the Borough have made things a little easier for the people who live here, but still a large majority of them still continue to hunt and fish for most of their food regardless of their financial situation. Those of us who can afford to buy boats, snowmachines, all terrain vehicles and other mechanical means of transport, take along those who can't afford them and then share the game that we harvest equally amongst ourselves.

June 10, 1992 via teleconference

THANK YOU MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. MY NAME IS JESLIE KALEAK, SR., MAYOR OF THE NORTH SLOPE BOROUGH. I APPRECIATE THIS OPPORTUNITY TO TESTIFY BEFORE THE SPECIAL SESSION BEGINS NEXT WEEK AND PRESENT THE NORTH SLOPE BOROUGH'S POSITION ON THE SUBSISTENCE ISSUE. AS THE PUBLIC ANNOUNCEMENT FOR THIS HEARING INDICATED, THIS IS INDEED A VERY IMPORTANT SUBJECT ESPECIALLY FOR THOSE OF US WHO LIVE IN RURAL ALASKA.

I'M ALREADY ON PUBLIC RECORD OPPOSING GOVERNOR HICKEL'S PROPOSED SUBSISTENCE LEGISLATION. THE GOVERNOR'S PROPOSED BILL DOES NOT REFLECT THE CONSENSUS AS CLAIMED. IN FACT, THE JOINT AFN/RURAL CAP SUMMIT MEETING ON SUBSISTENCE IN MARCH CLEARLY INDICATED THE OVERWHELMING OPPOSITION TO THE GOVERNOR'S PROPOSED LEGISLATION.

THE WAY I SEE IT, A CONSTITUTIONAL AMENDMENT IS THE MOST LOGICAL AND EFFECTIVE WAY TO ASSURE SUBSISTENCE USE RECEIVES PRIORITY OVER ANY OTHER USES AS WAS CLEARLY INTENDED UNDER TITLE 8 OF ANILCA. A CONSTITUTIONAL AMENDMENT WOULD ALSO BE A PERMANENT SOLUTION TO FINALLY PUT AN END TO ANY LAW SUITS IN STATE AND FEDERAL COURTS, AS WELL AS ENDING THE DEBATE ON THIS ISSUE WHICH HAS DIVIDED RESIDENTS OF OUR STATE.

BY NOT TAKING ANY ACTION TO RESOLVE THIS ISSUE, THE STATE HAS PLACED ITSELF IN THE POSITION OF POSSIBLY PERMANENTLY LOSING ITS POWER TO REGULATE SUBSISTENCE HUNTING AND FISHING ON ALL FEDERAL LANDS IN ALASKA. PROVIDING FOR A CONSTITUTIONAL AMENDMENT WILL GIVE THE POWER TO MAKE THE FINAL DECISION ON THIS ISSUE TO YOUR CONSTITUENTS AND THE RESIDENTS OF ALASKA.

THE GOVERNOR'S PROPOSED LEGISLATION DOES NOT SUFFICIENTLY ADDRESS THE FEDERAL MANAGEMENT ISSUE. ONLY A CONSTITUTIONAL AMENDMENT DECLARING SUBSISTENCE AS A PRIORITY USE WILL SOLVE THE PROBLEM.

TITLE 8 OF ANILCA PROTECTS OUR SUBSISTENCE RIGHTS. THESE PROTECTIONS ARE THE BACKBONE OF OUR POSITION ON THIS ISSUE. THE STATE, THROUGH THE COURTS AND LEGISLATURE AND NOW THE ADMINISTRATION, HAS BEEN UNWILLING TO MEET THE PROTECTIONS PROVIDED US UNDER FEDERAL LAW. WE DON'T HAVE A POSITION TO BACK DOWN FROM, BUT ONE TO PROTECT.

ANILCA PROTECTS OUR CUSTOMARY AND TRADITIONAL USES OF OUR SUBSISTENCE RESOURCES. SUBSISTENCE IS A COMMUNITY ACTIVITY, A COMMUNITY WAY OF LIFE IN RURAL ALASKA. IT'S NOT AN INDIVIDUAL ACTIVITY. OUR TRADITIONAL SUBSISTENCE WHALING ACTIVITIES, FOR EXAMPLE, ARE SUPPORTED BY OUR ENTIRE COMMUNITY AND RESIDENTS IN ALL TRADITIONAL WHALING VILLAGES. THE ENTIRE COMMUNITY SHARES IN A SUCCESSFUL HARVEST.

SUBSISTENCE HAS BEEN OUR WAY OF LIFE FOR THOUSANDS OF YEARS. IT'S THE BASIS OF OUR CULTURE. IT'S DIFFICULT, IF NOT IMPOSSIBLE, TO UNDERSTAND THIS WAY OF LIFE IF YOU HAVEN'T LIVED IT. IT'S CLEAR TO ME THAT THOSE WHO DRAFTED THE GOVERNOR'S PROPOSED LEGISLATION REALLY DON'T UNDERSTAND SUBSISTENCE. THE LEGISLATION SEEKS TO RESTRICT OUR SUBSISTENCE PRACTICES AND DEFINE WHAT RESOURCES CAN BE CONSIDERED FOR SUBSISTENCE USE.

ANYONE WHO EVEN VAGUELY UNDERSTANDS SUBSISTENCE SHOULD KNOW THAT OUR TRADITIONAL PRACTICES AND USES ARE BASED UPON AND ARE ALREADY RESTRICTED BY NEED AND TIME OF YEAR. AND ANYONE WITH EVEN A GENERAL UNDERSTANDING OF WILDLIFE MANAGEMENT SHOULD KNOW THAT WILDLIFE CANNOT BE ALLOCATED LIKE FUNDS IN A CAPITAL OR OPERATING BUDGET.

I WANT TO MAKE IT CLEAR THAT THE NORTH SLOPE BOROUGH FULLY SUPPORTS AFN'S POSITION ON THE SUBSISTENCE ISSUE. AS A RESULT OF THE HISTORY OF CONFLICT WITH THE STATE BOARDS OF FISH AND GAME, AFN IS RECOMMENDING THE CREATION OF A SUBSISTENCE BOARD. AS I UNDERSTAND IT, THIS BOARD WOULD ENSURE THAT THE NEEDED PROTECTION FOR SUBSISTENCE USES RECEIVES PRIORITY OVER OTHER USES, INCLUDING SPORTS AND COMMERCIAL ACTIVITIES. THIS BOARD WOULD ALSO ALLOW FOR GREATER PARTICIPATION IN THE DECISION MAKING PROCESS BY THOSE MOST AFFECTED AND MOST KNOWLEDGEABLE ABOUT THE RESOURCES.

THE LITIGATION WHICH HAS SURROUNDED THE DECISIONS MADE BY THE BOARDS OF FISH AND GAME IS CLEAR EVIDENCE OF THEIR INABILITY TO STRIKE A BALANCE BETWEEN COMPETING INTERESTS. THE GOVERNOR'S PROPOSED LEGISLATION SIMPLY SIDE STEPS THIS ISSUE BY EXCLUDING SUBSISTENCE USE AS A PRIORITY OF THE RESOURCES IN POPULATED AREAS.

I STRONGLY URGE YOU TO SERIOUSLY CONSIDER THE SUBSISTENCE LEGISLATION DEVELOPED BY AFN AND THE BUSH CAUCUS. IT TREATS ALL ALASKANS FAIRLY AND PROVIDES FOR A CONSTITUTIONAL AMENDMENT. THIS PROPOSED LEGISLATION, COUPLED WITH A CONSTITUTIONAL AMENDMENT, WILL PROVIDE THE NEEDED PROTECTION OF SUBSISTENCE USE OF RESOURCES, ALLOW THE STATE TO COMPLY WITH FEDERAL LAW, AND UNIFY THE MANAGEMENT OF FISH AND GAME ON BOTH STATE AND FEDERAL LANDS.

AGAIN, THANK YOU FOR GIVING ME THIS OPPORTUNITY TO TESTIFY.
QYANAQPAK.

The shares that we each receive is then shared with extended family members or friends in the local community or to other members of the family outside of the community or outside of the boundaries of the Borough.

As stated earlier, several species of animals are abundant throughout the Borough, with some species available only in certain areas around the different communities of the Borough. For example, I have on occasion sent some walrus meat to my relatives or friends in Kaktovik, because the availability of walrus is rare and they do like to eat walrus when they can get it from someone in the other villages where walrus meat is much more available.

They in turn send me sheep or muskox meat which is not indigenous to the area around Barrow, and which by the way is very delicious and I like to eat it whenever I have the opportunity to. This practice of sharing is one which has gone on for generations and continues to thrive to this day. I can go on and on with other examples, but I have no doubt that you will hear it time and again during this special session of subsistence.

The people of the North Slope are adamantly opposed to anything that would disrupt this dependence on the renewable resources which they have practiced way before any State and Federal rules and regulations were imposed upon them. The people who depend on these resources follow traditional rules and regulations which were passed on from generation to generation in order to preserve the populations which they depend on for their very survival. Everyone who hunts and fishes up here knows that if they over harvest a population of animals, they will not have any animals to hunt. This is ingrained on everybody's mind from childhood and throughout their lives.

The position of the North Slope Borough is that we do not support the Governor's Bill on Subsistence, but do support the efforts of the Alaska Federation of Natives to amend the Constitution of the State of Alaska which would effectively bring back state management of Subsistence on Federal lands to the State of Alaska. Many comparisons have been made between the Governor's bill and the AFN backed Bill over the past several weeks which you no doubt are aware of or have access to that we won't get into the details here. Representatives from the North Slope and interested local citizens from the area will be there to help us get the message to you about the importance of this issue to our people here in the Slope.

I have made public statements in the past to various legislative committees and other forums on the need to "give this issue to the people of the State and let them make their own minds up." We who live in Alaska take pride in the fact that we are independent and make our own decisions rather than be dictated to by outside forces. Let's show that independence and see where it will lead us. I thank you for the opportunity to make our position known and please make an informed decision rather than an emotional one.



City of Golovin
P.O. Box 620#9
Golovin, Alaska
99762
Ph: (907) 779-3211
or 779-3681

Handwritten signature

June 11, 1992

To: Governor Hickel
Senator Al Adams
Representative Richard Foster
ADF&G Commissioner Carl Rosier
AFN President
Kawerak Inc President Loretta Bullard

Reference: Subsistence Lifestyle

Our subsistence use is being threatened. They are trying to dictate our use and take our fish at False Pass. This will restrict our dependence of fresh foods that have no freight cost. To live off the land and water is part of our culture ever since time began.

Wildlife protection is needed at False Pass to enforce a limit of their catch, so that fishing can continue in the Northern Region. They are cutting off the Norton Sound salmon catch in False Pass. It is not fair to us economically, because our commercial catch limit is already low, and many of the areas are closed for subsistence due to escapement requirements.

Our cultural lifestyle of hunting and fishing is the traditional way we feed our families to subsidize the high cost of store bought food. There is no need to make us innocent rural community residents into lawbreakers. If they say that we can't live off the land, then they will have to feed us in jail or other government institutions, or provide more public financial assistance.

Signed by the Golovin City Council.

Ralph Willoya

Mayor Ralph Willoya

Charlie Brown

Vice Mayor Charlie Brown

Wayne Henry Sr.

Secretary/Treasurer Wayne Henry Sr

Albert Jackson

Member Albert Jackson

Charles Lewis

Member Charles Lewis

R6y Segock

Member R6y Segock

Florence Willoya

Member Florence Willoya

with

Tununak IRA Council

NATIVE VILLAGE OF TUNUNAK

P.O. Box 77

TUNUNAK, ALASKA 99881
Facsimile Number (907) 652-6011
(907) 652-6527

June 14, 1992

Members of the Alaska Legislature
State Capitol
P.O. Box V
Juneau, Alaska 99801


Honorable Legislatures:

The Tununak IRA Council understands the Governor is addressing the legislature on his subsistence bill. We have great concerns and opposition to his bill causing an impact and injustice to our people.

We believe the issue will not be resolved unless a constitutional amendment addressing the subsistence priority for the rural community becomes a reality.

We urge you to call for a constitutional amendment and reject the governor's bill.

Sincerely,
TUNUNAK IRA COUNCIL


Joseph J. Post
President

Sec. *(your copy)*
Al Adams *write*

I HAVE SOMETHING TO SAY, TLINGIT KA NULGTH YU QU TO A SUK, KITCH COOES EESH, SHUNGUKADIE, MY NAME IS ROGER SHEAKLEY MEANING WING FOOT FATHER, I AM A BORN AND RASIED ALASKA NATIVE.

AS FOR ONE I CHALLENGE THE THE PRESIDENT BUSH OF THE UNITED STATES TO COME HERE IN PERSON TO BACK UP HIS LITERATURE ON SUBSISTANCE IF HE CAN'T COME THEN HE BE BETTER OFF LEAVING SUBSISTANCE ALONE.

AS FOR THE GOVERNOR HICKLE I DON'T PUT ANY FAVOR IN HIS LANGUAGE AT ALL FOR ONE WHEN HE FIRST CAME IN TO OFFICE HE (QUOTED) SOVERNIGN RIGHTS IS NOT EVEN AN ISSUE, THIS HAS SURFACED ONCE ALREADY, WHAT WE HAVE BEEN TALKING ABOUT FOR A LONG TIME IT HAS SURFACED UP IN ANCHORAGE WHEN AN UPIK ESKIMO HANDED THE GOVERNOR A PAPER WITH HIS OWN LANGUAGE ON SUBSISTANCE THE GOVERNOR STATED HE COULDN'T EVEN TOUCH IT BECAUSE HE COULDN'T EVEN UNDERSTAND IT, AGAIN IT IS SURFACEING AGAIN.

FISHING AND HUNTING, LIVING OFF THE LAND IS A SOVERNIGN ISSUE AND WILL ALWAYS WILL BE SUBSISTANCE IS JUST A LABEL, A LABEL YOU THE NON NATIVES CAN'T EVEN DEFINE, WE AS TRUE ALASKA NATIVES NEED TO DO AWAY WITH THE LABEL SUBSISTANCE AND GO BACK TO OUR ORIGINAL LIFE STYLE - SOVERNIGN RIGHTS, IF WE STICK TO THIS LABEL OUR YOUNGER GENERATION ARE GOING TO HAVE A HARD TIME TRYING TO (LIVE) BECAUSE OF THIS LABEL WHEN THEY ARE ADULTS AND ARE TRYING TO PUT FOOD ON THEIR TABLE -THEIR NEXT GENERATION, WILL BE FACED WITH ALL THIS RED TAPE, (SUBSISTANCE) WHAT EVER YOU WANT TO DEFINE THIS LABEL AS.

WE HAVE TO MANY NON-NATIVES COMING IN TO THE STATE OF ALASKA DECLARING THEIR SELVES AS A RESIDENT, IN-TURN APPLYING FOR (PFD'S) PERMANENT FUND DIVIDENDS, TAKING JOBS, AND MAKING LAWS TO SUIT THEIR NEEDS, WE NEED TO DECLARE THE STATE A SOVERNIGN NATION AND STOP ALL THIS (APPLYING).

WE NEED TO DEVELOPE A (STRONG COALITION) ALL ALASKAN NATIVES TLINGIT AND HAIDA AND TSIMPSIAN NATIONS, ALL NATIVE CORPORATIONS IN THE STATE OF ALASKA MAKE A FINAL STAND ON THIS ISSUE, LETS NOT LET THEM MAKE THIS DECISION, IT DOES NOT BELONG TO THEM, TO SAY SO.

Quinalth Chesh

*Roger Sheakley, president
fisheries committee*

(AUB) camp 70

& vice president

City of St. Michael
Box 70
St. Michael, Alaska
99659

with

June 15, 1992

The Honorable Al Adams
Alaska State Senator
District 23
Juneau, Alaska 99801-1182

Dear Honorable Senator:

This letter is a request on demand on the very important issue pertaining to subsistence.

The community of St. Michael is a typical subsistence reliant community. We have a ratio of 75.09% low and moderate income level. The thought of the Federal government taking over our lifestyle is absurd.

The State of Alaska and its three branches of governance, judicial, legislative, and executive members were entrusted to their positions for the sole purpose of the people they represent. The lifestyle in rural Alaska is unique! We are not wealthy enough to bring higher education to our young people so we depend on subsistence to feed our families from season to season from which every type of food each season brings to us. We don't have the time or money to call upon the governor or anyone to bring food on our table each time we have a crisis. But there are times like these we address these issues to people many miles away from our homes so that our children will be able to hunt and fish each time there is a food crisis on the table. There are times we go on for weeks waiting for food stamps or other source of income. Every election year we are faced with issues relating to our lifestyle. We vote so that our needs be met especially our lifestyle, which means in this case **SUBSISTENCE!!!** I don't know what English version there is on subsistence but to me and the people I work for is our living standards. Our diet depends on it. The land and sea is our restaurant, we just don't run to the nearest restaurant to eat we have to hunt, fish and cook our own food. I don't know what and how we should compromise with sport fishermen, Sport fishermen are one thing and our lifestyle is another, Sport fishing is an option and our lifestyle is another. If the lawmakers don't like the idea of our lifestyle why are they wasting their time in Alaska? This is where we were found and this is our lifestyle and this is how we will live and no one from a law firm will change our amino acids we are built of native food if they went to change our lifestyle they better start restructuring our chromosomes in some scientific lab. We are made how we ~~are~~ fed.

were

Sincerely,

Virginia
Virginia Washington
City Clerk

Public Opinion for Subsistence

1-463-4867

Stebbins Community Association
General Delivery
Stebbins, Alaska 99671
934-4461

Marth

June 11, 1992

Members of the Alaska Legislature
State Capital
P.O. Box
Juneau, Alaska 99801

The Stebbins Community Association, IRA Council hereby informs you that it is strongly opposed to the Governor's subsistence bill. Our Association represents both subsistence and commercial fishermen.

The Governor's bill does nothing to solve the problem of returning management control to the State of Alaska and does not adequately protect subsistence uses which are the backbone of our way of life. The bill would also give too much discretion to the Board of fisheries in setting policy and regulations.

The Stebbins Community Association, IRA Council advocates and supports a "NO NET LOSS" position established by the recent subsistence summit in Anchorage.

The Governor's staff and the Commissioner of ADF&G are telling you that most commercial fishermen support the Governor's bill. They are also spreading rumors that unless the Governor's bill passes the commercial industry will be ruined. That is not true. We had subsistence priority for years in the State and the commercial industry thrived and will continue to thrive even after the existing administration is gone.

We, vehemently urge you to reject the Governor's bill.

Respectfully,
Fred Pete, Sr.
Fred Pete, Sr.
President

CC. Alaska Federation of Natives
Senator Lyman Hoffman
Senator Al Adams

1/10/92



Toksook Bay Traditional Council

June 10, 1992

To: NOME L10

From: James Charlie
Exec. Director

Members of the Alaska Legislatures
State Capitol
P.O. Box V
Juneau, Alaska 99801

Dear Legislatures,

The Toksook Bay Traditional Council, on behalf of the Native Community of Toksook Bay of whom 98% heavily depends on subsistence way of life, wishes to inform you that we are strongly opposed to the current Governor Hickel's Subsistence Bill.

As you can see, we represent both the subsistence and commercial fishermen in our area.

The Governor Hickel's bill does nothing to resolve the problem of returning management control to the State of Alaska and does not adequately protect subsistence uses of resources which are the backbone of our way of life in the bush. The bill would also allow too much discretion to the Board of Fisheries in setting policies & regulations.

The Governor Hickel's staff and the Commissioner of Alaska Department of Fish & Game are telling you that most commercial fishermen supports the Governor's bill. They are also spreading rumors that unless the Governor's bill passes, the commercial industry will be ruined. This is strictly not a case. We had subsistence priorities for years in the State and the commercial fishing industry had thrived.

On behalf of the local subsistence and commercial fishermen, we urge you to completely reject the Governor's bill as the call of the legislatures to Juneau is a waste of money at this time.

Sincerely,
TOKSOOK BAY TRADITIONAL COUNCIL

Joseph Asuluk, Sr.
Joseph Asuluk, Sr.
Chairman of the Council

cc: Alaska Federation of Natives
Association of Village Council President
United Villages, Inc.

North

June 9, 1992

Members of the Alaska Legislature
State Capitol
P.O.Box V
Juneau, Alaska 99801

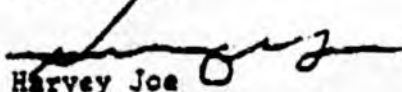
The Kokechik Fishermen's Association wishes to inform you that it is strongly opposed to the Governor's subsistence bill. Our Kokechik Fishermen's Association represents both subsistence and commercial fishermen.

The Governor's bill does nothing to solve the problem of returning management control to the State of Alaska and does not adequately protect subsistence uses which are the backbone of our way of life. The bill would also give too much discretion to the Board of Fisheries in setting policy and regulations.

The Governor's staff and the Commissioner of ADF&G are telling you that most commercial fisheries support the Governor's bill. They are also spreading rumors that unless the Governor's bill passes, the commercial industry will be ruined. That is not true. We had a subsistence priority for years in the State and the commercial industry thrived.

We urge you to reject the Governor's bill.

Sincerely,



Harvey Joe
Kokechik Fishermen's Association

cc: Alaska Federation of Natives
Senator Lyman Hoffman
Senator Al Adams

For Al Adams
Sen.

6/13/95

memo

State's Subsistence Proposals
"Stinks"

Alaska was supposed to be given their traditional use of fish and game before and after we became a state in 1959, which isn't being done. The Federal and State governments had to find a way to do away with "traditional use" of fish and game. They needed a "substitute" for those words.

Those sport fishermen's lawyers armed with a briefcase and pen and ink came up with the word "subsistence" which hadn't been invented yet. Brilliant, wasn't it? The sport fishing industry is breeding faster than rabbits.

The word subsistence is designed to do away with your God given rights to use fish and game wherever you are in Alaska.

The Outdoor Council, sport fishermen and the for hire sport fishermen groups are very powerful.

Leo Q Land
By Leo Land, Sr.



Resource Development Council

for Alaska, Inc.

907 "G" Street, Suite 208, Anchorage, Alaska 99501-3440
 Box 100516, Anchorage, Alaska 99510-0516 907/276-0700 Fax 278-3887

EXECUTIVE DIRECTOR
 Becky L. Gay

EXECUTIVE COMMITTEE
 Elhai H. "Pete" Nelson, President
 John Forcsekis, Vice Pres.
 Joseph E. Usibelli, Jr., Vice Pres.
 O.K. "Easy" Gilbreth, Secretary
 Larry L. Laughman, Treasurer
 Sharon E. Anderson
 Rex J. Bishop
 Curtis W. Foster
 Mano Frey
 Lin S. Garrison
 Uwe L. Gross
 Joseph R. Henri
 Dan H. Keck
 Robert W. Loescher
 Stephen M. Reinberg
 John Rense
 Jerome Selby
 J. Shelby Stasiny
 R.D. Stock
 Livia Von Bergen
 Doug M. Webb

DIRECTORS
 Larry G. Anderson
 Lenny A. Asensault
 Rich Baker
 Richard Barnes
 James K. Barnett
 Steven C. Sorell
 Robert A. Braeze
 Kelly M. Campbell
 Alexander J. Capasso
 Diane Carpenter
 J.J. Cincotta
 James L. Cloud
 Dave Cuddy
 Ric Davidge
 John Davens
 Larry Dinneen
 Rob Dragnich
 James V. Drew
 Paula P. Eastley
 Don L. Finney
 Lee E. Fisher
 A. Debbie Fullenwider
 Paul Glavinovich
 Randy Goodrich
 John L. Hall
 W. Ralph Hargrave
 Alan E. Hastings
 Charles F. Herbert
 Karen J. Hofstad
 Phil R. Holdsworth
 Dorothy A. Jones
 John T. Kelsey
 Janet M. Loberg
 Phillip L. Locker
 Can H. Marrs
 Chris McAtee
 Len McLean
 John C. Miller
 C. "Rocky" Miller
 Lonnie O'Connor
 H.L. Paterson
 Brad Phillips
 Gail Phillips
 William E. Schneider
 Steve Soley
 Leighton H. Thetford
 Betty Thomson
 Clement V. Tillion
 Richard W. Tindall
 Paul M. Tweten
 Charles R. Webber
 William R. Whiteside
 William R. Wood
 George P. Wuerch

EX-OFFICIO MEMBERS
 Senator Earl Stevens
 Senator Frank Murkowski
 Congressman Don Young

June 21, 1990

The Honorable Steve Cowper, Governor
 Pouch A
 Juneau, Alaska 99811

Dear Gov. Cowper:

The Resource Development Council for Alaska, Inc., would like to express its support for legislative action to retain control of Alaska's fish and game resources.

RDC's board and executive committee has had several meetings relating to the subsistence issue, including a recent session with presentations by the Alaska Federation of Natives and the National Rifle Association and Alaska Outdoor Council. The executive committee appreciates the input and literature provided by your staff, and has received information from the congressional delegation as well.

After a thorough review of the issues at hand, RDC's executive committee passed the following policy statement: "RDC endorses the position of keeping subsistence hunting and fishing under state control and if a constitutional amendment is required, then RDC supports the constitutional amendment."

The council will be sending a similar, more detailed letter to members of the Alaska Legislature conveying RDC's intent to work for a positive outcome to this dilemma that threatens not only a way of life, but Alaska's resource-based economy.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
 for Alaska, Inc.

Becky L. Gay
 Becky L. Gay
 Executive Director



Resource Development Council

for Alaska, Inc

307 "G" Street, Suite 200, Anchorage, Alaska 99561-3440
Box 100516, Anchorage, Alaska 99510-0516 907/276-0700 Fax 276-3527

June 21, 1990

EXECUTIVE DIRECTOR

Becky L. Gay

EXECUTIVE COMMITTEE

Ernie H. "Pete" Nelson, President

John Forcassie, Vice Pres

Joseph E. Jiribelli, Jr. Vice Pres

O.R. "Eazy" Gibreth, Secretary

Larry L. Laughman, Treasurer

Sharon E. Anderson

Rex I. Bishop

Curtis W. Foster

Mano Frev

Lin S. Garrison

Uwe L. Gross

Joseph R. Henri

Dan H. Keck

Robert W. Loeschner

Stephen M. Rennberg

John Rense

Jerome Seiby

J. Sheely Stastny

R. D. Stock

Lyle Von Barger

Doug M. Webb

DIRECTORS

Larry G. Anderson

Lenny Arseneault

Rich Baker

Richard Barnes

James K. Barnett

Steven C. Boreli

Robert A. Breeze

Kelly M. Campbell

Alexander J. Capasso

Diane Carpenter

J.J. Cicotta

James L. Cloud

Dave Cuddy

Ric Davidge

John Devens

Larry Dinnon

Rob Cragnich

James V. Drew

Paula P. Eastley

Don L. Finney

Lee E. Fisher

A. Debbie Futenwinder

Paul Glavinovich

Randy Goodrich

John L. Hall

W. Raipn Hargrave

Alan E. Hastings

Charles F. Herbert

Karen J. Hofstad

Pha R. Holdsworth

Dorothy A. Jones

John T. Keisay

Janet M. Loberg

Phillip L. Locker

Carl H. Marris

Chris McAtee

Len McLean

John C. Miles

C. "Rocky" Miller

Lonnie O'Connor

H. L. Patterson

Brao Phillips

Gail Phillips

William E. Schneider

Steve Seley

Leighton H. Thetford

Barry Thomson

Clement V. Tillion

Richard W. Tindall

Paul M. Twitten

Charles R. Webber

William R. Whiteside

William R. Wood

George P. Wuerch

EX-OFFICIO MEMBERS

Senator Ted Stevens

Senator Frank Murkowski

Congressman Don Young

Members of the Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative:

The Resource Development Council for Alaska, Inc., would like to express its support for legislative action during the upcoming special session to retain state control over fish and wildlife management on federal lands.

The pending takeover is an unacceptable subrogation of a right that Alaska has enjoyed since statehood, and opens the door to a number of scenarios that could not only restrict subsistence uses, but stonewall resource and economic development.

RDC has had several meetings on this issue, with thorough presentations from the Alaska Federation of Natives, National Rifle Association and Alaska Outdoor Council. As a statewide, non-profit membership association, RDC is concerned about the far-reaching effect of federal management of fish and game resources.

Congressional leaders warn that the regulations being proposed would eliminate aircraft access into national parks and there is potential for a similar restriction in the future in the refuges, forests and other federal lands. In addition, the requirement that game be managed to maintain natural populations, as opposed to a sustained yield basis, could affect our ability to open the coastal plain of ANWR due to the impact it might have on caribou herds in that region.

After lengthy review, RDC's executive committee unanimously passed the following policy statement: "RDC endorses the position of keeping subsistence hunting and fishing under state control and if a

constitutional amendment is required, then RDC supports the constitutional amendment."

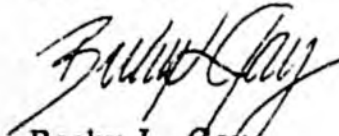
RDC has long been active in state and federal resource issues and believes the current threat of federal intervention could prove to be a major roadblock in Washington, D.C., if the Alaska Legislature does not take appropriate action.

RDC's primary interest is ensuring that Alaska has a thriving resource-based economy - a goal that would be even harder to attain if the subsistence issue is kicked back to the Interior Department and/or the U.S. Congress. Already, Alaska-based environmental groups and their national colleagues have embarked on campaigns to address the subsistence issue, with primary goals to designate more federal wilderness in Alaska and limit access on federal lands.

As you begin the special session on June 25 in Juneau, RDC urges you to pass legislation that corrects this situation, which threatens not only a way of life, but Alaska's resource-based economy.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.



Becky L. Gay
Executive Director

POSITION STATEMENT ----- DOUGLAS INDIAN ASSOCIATION
President Henry B. Peterson
P.O. Box 240434
Douglas, Alaska 99824

- (1.) SUBSISTENCE, is a Basic Right. "Subsistence is a BASIC RIGHT of Indigenous People. Alaska Native People are considered Indigenous People. A Basic Right is a right you're born with---it cannot be taken away.
- (2.) SUBSISTENCE, definition. Our definition is FOOD-GATHERING.
- (3.) We are for: NATIVE SUBSISTENCE as TRIBES, NOT JUST SUBSISTENCE. The documents for Native Subsistence are submitted here with our statement. The word "TRIBES" is a matter which is also Historically Documented. The word "TRIBES" is a Political---not a racial definition.
- (4.) The TRIBES in Alaska, will lose out if they are NOT considered in any bill. To pass a bill without the consultation or consent of the TRIBES in Alaska would NOT be right.
- (5.) THERE SHOULD BE: "Tribal Cards, issued by the Tribes, recognized by the Federal and State Governments for the purpose of SUBSISTENCE---maintained and monitered by the Tribes.

June 15, 1992

Mr. Chairman and Members of the Committee:

My name is Willie Goodwin, Jr. I am from Kotzebue and represent Kikiktagruk Inupiat Corporation--a Native village for profit corporation. This corporation represents 1,852 shareholders, most of whom are residents of Northwest Alaska.

I have three points I would like to impress upon the Committee. First, our Corporation considers subsistence its highest priority. Second, we do not desire continued federal management of fish and wildlife on state lands. Third, we view the means to achieve those goals through a constitutional amendment and not through the Governor's proposed legislation.

Our Corporation conducts itself with the understanding that the protection of subsistence is our first order of business. This may seem to conflict with the usual corporate directive of profit-making. But above all, the bottom line on our profit and loss statements means absolutely nothing to our shareholders if they are not allowed to continue the lifestyle that has held our people intact for thousands of years.

Kikiktagruk Inupiat Corporation, as a major landholder, has aligned its policies to support the taking of fish and wildlife for subsistence uses. It drove our original land selection process and it drives how we currently set policies for land use.

We have been an accommodating landlord, Mr. Chairman. Because of our cultural heritage of sharing resources, we have not enforced a policy to prohibit non-shareholders from hunting on our lands. However, there may come a day when the friendly landlord finds it necessary to say "the rent is overdue, it's time to move out". We consider the prohibition of land use by non-shareholders an

unfortunate measure. But if our state government cannot find a way to allow for the continuation of a rural preference for subsistence, we will be left with no other choice.

Although the federal government has been a friend to us in many respects, we do not see it in anyone's best interest for the federal government to manage federal lands. It's not good for us. It's not good for the State. It's not good for the feds.

In our view, the federal government is heavily influenced by interest groups whose ideals are diametrically opposed to ours. By this I mean the well intended, yet shortsighted, objectives of certain environmental groups. We see their fingerprints on how the federal government currently deals with the four national parks and two national wildlife refuge systems used in this area for subsistence.

If we are going to retain state management, it only makes sense to find a solution that truly gets us where we want to go. The Governor's bill does not satisfy ANILCA--your own attorneys have advised you of this. Worse yet, the Governor's Office has expressed it's own doubts.

Enough time has been wasted. Let the people of this state decide. Disregard the Governor's proposal, which gets us nowhere, and allow a constitutional amendment to come forward so that we can all solve this problem.

Thank you.

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

June 9, 1992

Senator Fred Zharoff
3111 C St. - Suite 520
Anchorage, AK 99503-3957

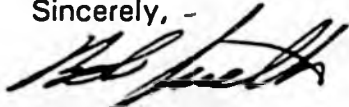
Dear Senator Zharoff:

The Aleutians East Borough Assembly instructed me to write you expressing its deep concern and adamant opposition to the AFN subsistence proposal. While the Assembly does not support Governor Hickel's subsistence bill because it is weak on subsistence, it cannot support the AFN proposal. The creation of a subsistence board, which has more power than the Boards of Fish and Game, the lack of definitions within the bill, especially of "customary" and "traditional" use and customary trade of subsistence will accomplish what the Board of Fish and the courts have failed to do -- abolish the June fishery within Area M. I am sure that I do not need to remind you that this issue went before the Board of Fish three times this year and we are now awaiting a court decision from Nome.

I was talking yesterday to Della Trumble, of King Cove. Expressing her frustration over the conflict between subsistence and commercial fishing between different areas of the State, she said something extremely simple and yet profound: "Subsistence should not be used by one group of Alaska Natives to annihilate another group of Alaska Natives." Adoption of HB 592 will destroy the economic and social fabric of our region and result in a negligible increase of subsistence and commercial salmon elsewhere in the State.

While it is true that our residents could fish for some groundfish species, it is the June red salmon season that provides significant income and employment for our residents. Any arguments to the contrary are false. If my letter sounds strident, I apologize. However, the passage of HB 592 is perceived by the AEB Assembly as sounding the death knell for our region.

Sincerely, -



Robert S. Juettner
Borough Administrator

RSJ:emn

MARK PLANNER
P.O. BOX 349
SAND POINT, ALASKA 99661
(907) 383-2699
(907) 383-3496 FAX

BOROUGH ADMINISTRATOR
1600 A STREET, SUITE 103
ANCHORAGE, ALASKA 99501-5146
(907) 274-7555
(907) 276-7569 FAX

FINANCE DIRECTOR
P.O. BOX 49
KING COVE, ALASKA 99612
(907) 497-2588
(907) 497-2386 FAX



UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

June 16, 1992

Dear Legislator:

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's
Marketing Association
Alaska Longline Fisherman's
Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnetters Association
Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional
Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound
Aquaculture Association
Prince William Sound Seiners Association
Seafood Producers Cooperative
Southeast Alaska Seiners
Southern Southeast Regional
Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association
Area K Seiners Association

United Fishermen of Alaska (UFA) has a long standing interest in the subsistence law so far as the law impacts commercial fishing. UFA's involvement has been one of support for a subsistence priority while trying to protect and maintain a healthy commercial fishing industry. This position reflected the fact that many of our members participate in both commercial and subsistence fisheries. To accomplish this goal UFA focused on the need for consistent definitions in state and federal statutes. While the circumstances of the subsistence debate has changed over the years, the context for resolution has always remained the same.....defining key terms.

In the spring of 1989, Alaska learned that it's definition of rural was not valid in the federal courts. At that time, the State of Alaska sought a simple resolution. . . insert the State's definition of rural into ANILCA. As you can see by the enclosed letter (Attachment A) from Senator Stevens, such technical amendments to ANILCA were once viewed as possible. In fact, Congressional action on inserting the State's definition of rural was moving along until Native leaders objected.


Then came the McDowell decision and the emphasis switched to a "rural" constitutional amendment. In this context, UFA then re-examined the subsistence issue and found that a simple constitutional amendment for "rural" was not enough to address the other outstanding problems with inconsistent definitions in federal and state statutes. In February 1991, UFA developed a position paper outlining the need for a more comprehensive resolution of subsistence (Attachment B).

Instead of moving toward resolution, Alaska has moved further away from a fair and reasonable subsistence priority. At this time under current state law, we have a situation whereby all Alaskans are qualified as subsistence users and where all stocks are subject to subsistence use. UFA has always found this situation to be unfair to all users of the resource. As such, UFA's Subsistence Committee focused a great deal of attention on this issue, thereby allowing UFA's Board of Directors to act constructively on legislative proposals.

At UFA's last annual meeting (Feb. 92), all Board members present voted to support the Advisory Council's legislation. The primary reason for this strong show of support was that this legislation included a complete set of definitions. . . definitions given for and by Alaskans and not by federal courts.

We realize that subsistence is an extremely complex issue, and that the natural inclination of elected officials is to avoid such contentious issues. It can no longer be avoided and the Advisory Council's legislation is that essential first step in achieving a comprehensive solution for all Alaskans.

Very truly yours,


Greg Seider, Executive Director

Legislation: Special Session (6/92)

JUN 14 1989

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-8025

ROBERT C BYRD, WEST VIRGINIA, CHAIRMAN

DANIEL E. WOULFE, HAWAII
 BRISTOL P. HOLLINGS, SOUTH CAROLINA
 J. BENNETT JOHNSTON, LOUISIANA
 QUENTIN N. BURDICK, NORTH DAKOTA
 PATRICK J. LEAHY, VERMONT
 JIM BASSER, TENNESSEE
 DENNIS DECONCINI, ARIZONA
 DALE BUMPERS, ARKANSAS
 FRANK R. LAUTENBERG, NEW JERSEY
 TOM HARKIN, IOWA
 BARBARA A. MIKULSKI, MARYLAND
 HARRY REID, NEVADA
 BROCK ADAMS, WASHINGTON
 WYCHE FOWLER, JR., GEORGIA
 J. ROBERT KERREY, NEBRASKA

MARIE O. MATFIELD, OREGON
 TED STEVENS, ALASKA
 JAMES A. MCCLURE, IDAHO
 JAKE GARN, UTAH
 THAD COCHRAN, MISSISSIPPI
 ROBERT W. KASTEN, JR., WISCONSIN
 ALFONSE M. D'AMATO, NEW YORK
 WARREN RUDDMAN, NEW HAMPSHIRE
 ARLEN SPECTER, PENNSYLVANIA
 PETE V. DOMINICI, NEW MEXICO
 CHARLES E. GRASSLEY, IOWA
 DON NICKLES, OKLAHOMA
 PHIL GRAMM, TEXAS

JAMES H. ENGLISH, STAFF DIRECTOR
 J. KATH CENNEDY, MINORITY STAFF DIRECTOR

June 2, 1989

Kate Graham
 Executive Director
 United Fishermen of Alaska
 211 4th Street, Suite 106
 Juneau, Alaska 99801

Dear Kate:

Thanks for your letter regarding the subsistence provision in the Alaska National Interest Lands Conservation Act.

Changes must be made in ANILCA to allow for better game management in Alaska. We are working with the Governor and his staff, particularly in view of recent court actions, to assure that federal and Alaska laws are compatible. The 1980 Act found the laws of Alaska in effect in 1980 were compatible. The State of Alaska has changed its laws and court opinions have clouded this issue.

I want to assure you that we are trying to get the 101st Congress to address this issue and I appreciate your writing to me so that I know your views.

With best wishes,

Cordially,

TED STEVENS



UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106
Juneau, AK 99801
907-586-2820

UNITED FISHERMEN OF ALASKA

ISSUE PAPER ON SUBSISTENCE

UFA supports subsistence-based use of fish and game populations in Alaska, but believes that such uses must be bound at an historical level.

UFA recognizes the problems of conflicting federal and state laws relative to subsistence. UFA members and all other commercial fishermen in Alaska have a great deal at stake as subsistence law and practices are re-defined in the wake of recent legal decisions. We desire to work with the administration, legislature, Congress, and subsistence users in resolving this complex issue.

Any resolution must, to be acceptable to UFA, address the following points:

* Problems resulting from multiple jurisdiction in fisheries management (i.e. Glacier Bay) need to be addressed immediately. If the federal government takes over, the state should attempt to reach an agreement that would limit jurisdiction over fish and game resources on state lands and waters. The question of how far beyond federal lands the jurisdiction extends for purposes of subsistence management must be answered to the state's satisfaction. Should the state pursue control of our fish and game resources to protect the conservation of the resources and economic stability of its residents?

* Clear policy direction needs to be provided to the Boards of Fisheries and Game and other regulatory agencies creating subsistence regulations.

* UFA members are concerned with an apparent pattern of increasing sales of subsistence harvests. The potential for major growth of subsistence catches sold under the "customary trade and barter" clause as evidenced in the *U.S. v. Tadamitsu Sakurai* decision needs to be examined.

* An enforceable and mutually protective definition for "priority" as it relates to competing fishery uses must be developed. There is a flurry of law suits, both filed and pending, that are using subsistence "priority" as a legal weapon against commercial fishermen.

* The definition of subsistence "use" and subsistence "user" needs to be clarified for the public as it relates to the implementation of Title VIII, Section 804 of ANILCA which affords priority.

* Alaska's population has grown over time and will continue to do so. As urban and rural areas become more heavily populated, it will not be possible to provide for the increasing subsistence demands for fisheries resources without displacing other users, including historical subsistence users and commercial fishermen. Subsistence conflict resolution must provide protection for existing commercial fisheries.

KONIAQ, INC.

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • FAX (907) 562-5258 •

June 15, 1992

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Ladies & Gentleman:

In April I sent a letter to each state legislator regarding the need to address the "subsistence issue" during the regular session. Unfortunately this did not occur thus necessitating the special session called by the governor.

Obviously not much has changed in the interim with the entire issue more volatile than ever before. Unless I am misreading the mood of the legislature,, the votes are not there to pass the much sought after constitutional amendment at this time. Nor, do I believe, is there much (if any) support for the substitute being offered by the A.F.N. This I believe, leaves the governor's bill as the only viable short term alternative. As I expressed in my April 9th letter, I firmly believe that the governor's bill, a compromise worked out by a commission comprised mostly of Alaska natives, is worthy of consideration.

I would think and hope that the passage of this bill would put on temporary hold the permanent federal take-over of fish and game management on federal lands pending a legal review by D.O.I. and or Justice as to whether or not the measure fulfills the requirements of title 8 of ANILCA. I can't help but think that D.O.I. would be eager to avoid implementation of permanent federal take-over if there was even the slightest possibility that the governor's bill solves the problem.

Furthermore, does anyone really believe that the truly rural residents of Alaska are presently being denied the right to subsistence harvest of fish and game? I think not, contrary to what the most vociferous factions would have one believe. If I for one minute believed otherwise, I would not be supporting the administration's bill.


SENIOR BY ROUTING SLIP
Alaska State Legislature
June 15, 1992
Page 2

If ultimately the legislation fails to meet the requirements of title 3 of ANILCA or the Alaska Constitution, then the administration and the legislature can re-group and address the issue of an amendment to the Alaska Constitution providing for a rural subsistence preference and do so in unison.

Again, I would suggest that many people worked hard to develop the governor's compromise legislation, why not at least give it a chance?

Sincerely,

KONLAG, INC.


Frank Pagano
President

cc: Governor Walter Hickel
Alaska Congressional Delegation

Attachment: Frank Pagano's letter of 4/9/92

KONIAG, INC.

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2000 • FAX (907) 562-5258 •

April 9, 1992

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Ladies & Gentlemen:

With the end of the current legislature session only a month away, it is important that the matter of "Subsistence" be addressed quickly.

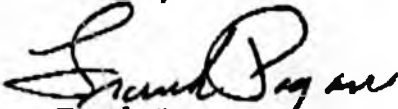
We recognize that this is a hotly debated and heavily contested issue but it must, nevertheless be resolved. The State of Alaska must do everything in its power to preclude permanent federal control of its fish and wildlife resources.

We believe that the Governor's Subsistence bill is a step in the right direction. Other groups complain that only a constitutional amendment will solve the problem. Although that may ultimately be the case, this approach is clearly premature. We would suggest that the Governor's bill takes us one step closer to a satisfactory resolution. Other steps may become necessary, but let's start somewhere and let's do it now.

Many people worked long and hard to develop the Governor's compromise proposal. Please give it a chance and support its quick passage.

Sincerely,

KONIAG, INC.


Frank Pagano
President

FP/dl

cc: Governor Walter J. Hickel
Alaska Delegation
Koniag, Inc. Board of Directors
Region Corporation Presidents

**Testimony of Carl Rosier
Commissioner
Alaska Department of Fish and Game**

**Before the Senate Select Committee on Indian Affairs
May 23, 1992**

Mr. Chairman and Members of the Select Committee:

I want to thank you for the opportunity to appear before you today on behalf of the State of Alaska and the Alaska Department of Fish and Game. In my brief testimony, I will provide you with an overview of Department of Fish and Game programs pertaining to subsistence management, marine mammals, and migratory waterfowl. Each of these topics, as you are aware, is of vital concern to Native and non-Native residents of Alaska. Each of these topics also is an area in which the Department of Fish and Game plays a critical role.

Subsistence

Senators, I believe you are well aware that the issue of subsistence is one of the most controversial and important issues facing Alaskans today. Subsistence hunting and fishing provides a major portion of the food supply of Alaska's small communities, but the development of a universally accepted

subistence management program has proven elusive, to say the least. The state is currently in the midst of discussions with Native leaders, legislators, and other user groups over the details of a new state subsistence law.

This renewed effort to craft a state subsistence law has resulted from the gridlock caused by numerous conflicting court decisions, stemming from the lack of definitions in ANILCA and its conflict with Alaska's constitution. One result of these legal problems has been the federal government managing subsistence on federal land for "rural" residents, and the state managing subsistence for "all Alaskans" on state lands and waters. Also, we have seen the recent development of a duplicative and extremely costly federal bureaucracy, the gradual loss of federal support to our own subsistence program, the evolution of an extraordinarily complex regulatory structure, and an increasingly frustrated and confused public. Unless we can work together to find a subsistence solution, subsistence will be poorly protected at the same time that other uses are curtailed.

As I mentioned, the existing state law still provides that subsistence is the priority use of fish and game. Application of the subsistence priority is difficult, however, because the issue of identifying who qualifies for

subsistence is unresolved. This is a frustrating situation for the state Boards of Fisheries and Game, who feel they do not currently have the legal tools available to fully address the subsistence issue. Recently, the Boards have been deferring most of the subsistence proposals that are presented to them.

Rather than dwell on this very difficult and complex legal problem, I'd like to point out that the Governor is committed to forging a subsistence solution and the Department of Fish and Game is doing all it can to maintain an effective subsistence program. In the process, we are working with federal agencies to minimize the confusion to the public. By and large, current regulations are providing for subsistence hunting and fishing practices, although there are some troublesome spots near urban areas. ADF&G staff has earned international recognition for their work in documenting subsistence uses in Alaska, monitoring ongoing subsistence uses and needs, and managing fish and game resources to provide for subsistence uses. Overall, the department maintains good working relationships with Native groups throughout the state, despite the difficulties with the state subsistence law. Increasingly, we have found opportunities to work with these groups in various aspects of our subsistence research and management program.

I fully expect these mutually beneficial relationships to continue, regardless of the legal and political issues that surround subsistence.

Marine Mammals

One important aspect of subsistence is the use of marine mammals by Alaska Natives. This department's involvement in marine mammal management includes research on seals, sea lion, walrus, whale species, and sea otter. Of course, this involvement is closely integrated with that of the federal agencies with primary marine mammal management responsibilities. We are currently working with the National Marine Fisheries Service to gain a better understanding of interactions between marine mammals and commercial fisheries, and hope soon to be involved in harvest monitoring programs that will lead to better data on Native subsistence harvests. The Department of Fish and Game actively supports the Alaska Eskimo Walrus Commission, the Alaska Sea Otter Commission, the Beluga Whale Committee, and the Alaska Eskimo Whaling Commission. We also attend meetings and cooperate with the Indigenous Council on Marine Mammals.

Waterfowl

In the case of migratory waterfowl, the Department of Fish and Game maintains an active research and management role. Our waterfowl programs are closely coordinated with the federal Fish and Wildlife Service. We recognize the importance of subsistence uses of waterfowl to many Alaskans. Furthermore, we recognize that the current regulatory framework for migratory waterfowl harvest does not adequately provide for subsistence uses in certain areas of the state. This is because in many parts of Alaska the birds arrive after March 10 and migrate south before the opening of hunting season on September 1, the dates of which are set under the terms of the Migratory Bird Treaty. As a result, most subsistence waterfowl harvest in Alaska is undocumented and, in much of the state, waterfowl hunting regulations are not enforced. Waterfowl conservation and management programs throughout the Pacific flyway suffer because of this situation.

Accordingly, we are working closely with the Fish and Wildlife Service and the affected user groups on an effort that we hope will result in successful negotiation of a protocol amendment to our migratory waterfowl treaty with Canada. Such an amendment would allow for the establishment and enforcement of appropriate subsistence hunting regulations in Alaska, to the

benefit of qualified subsistence hunters and waterfowl populations alike. According to a timetable set by the Fish and Wildlife Service and the State Department, detailed treaty negotiations are scheduled to begin in the fall of 1992. In the meantime, we are working on a comprehensive state position that will respond to concerns that have been expressed by various user groups.

Conclusion

In conclusion, Senators, I want to point out that our state constitution does not allow for a subsistence priority based on membership in an Alaska Native group. Furthermore, the state constitution does not allow us to apply the subsistence preference based on residency. The Governor is committed, though, to providing a clear preference and protection for subsistence and subsistence users throughout our state. The Department of Fish and Game is implementing resource management programs, as I have described here today, that attempt to provide opportunity for subsistence uses of fish and game for Alaskan residents. Alaska Natives derive significant benefits from these programs, and we are firmly committed to maintaining them, consistent

with our overall mandate of wise stewardship and sustained yield management of Alaska's fish and wildlife resources.

Once again, I'd like to thank you for the opportunity to testify before the select committee.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 485-4100

June 9, 1992

Dear Limited Entry Permit Holder:

I am writing you because as Commissioner of Fish and Game, I am required by law to manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state. As a result of a series of court decisions on subsistence, my ability to perform these duties and the abilities of the Board of Fisheries to balance allocations has been severely restricted.

If this situation is not corrected, your ability to make a living by fishing is very much at risk. The media has characterized subsistence problems as conflicts between state and federal law, but because Alaska owns navigable waters, state laws govern most fishing.

At this time under current state law, we have a situation whereby subsistence has a priority over all uses, whereby all Alaskans are qualified as subsistence users, and virtually every fish stock is subject to subsistence allocation. This scenario becomes more critical with pending court cases which would restrict or shut down commercial fisheries even if only a small incidental catch of a subsistence stock is involved. With all 530,000 Alaskans being qualified for a subsistence preference, and almost no stocks being exempt, in many fisheries subsistence will have a legal priority on so much of the resource that the commercial and recreational uses of the fish stock may be severely diminished or shut down entirely.

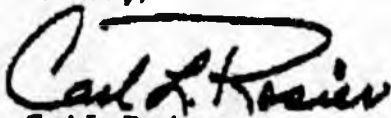
On June 15, the Alaska State Legislature will convene in special session to face this issue. Governor Hickel has introduced a consensus bill drafted by his Subsistence Advisory Council that solves the problem in state waters by protecting subsistence without damaging commercial or recreational use. The bill also corrects the problem recently brought about by federal court decisions that have sanctioned large commercial sales of fisheries resources under the guise of customary subsistence trade.

The board of directors of the United Fishermen of Alaska has endorsed the consensus bill. UFA has urged that the bill be enacted without amendment. Many other groups are becoming involved and support the bill as crafted by the Subsistence Council.

If the legislature does nothing or passes a subsistence bill that significantly departs from the consensus bill, Alaska's commercial fishing industry may be in jeopardy. Many legislators are involved in the effort to pass the Subsistence Advisory Council bill, but others are opposing it or proclaiming that their constituents don't care.

I know how busy you are at this time of the year, but if you don't take a few minutes to let the legislature know how important this is to you now, you could have much more free time in years to come.

Sincerely,



Carl L. Rosier
Commissioner



THE SECRETARY OF THE INTERIOR
WASHINGTON

June 15, 1992

Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Speaker Grussendorf:

Thank you for your letter of June 5, 1992, regarding the Alaska State Legislature's special session to consider legislation regarding subsistence management.

I fully appreciate the gravity of the situation Alaska faces relative to subsistence management. As you correctly noted, the Federal government was left with no alternative in July, 1990 but to assume management of subsistence resources on Federal public lands. We did that utilizing temporary regulations which expire on June 30, 1992. Permanent regulations have been published in the Federal Register and will take effect on July 1, 1992.

Over the past four years we have worked closely with Alaska to assist, where we could, in resolving this problem. Since early 1991, Interior Department staff has discussed subsistence management and drafts of proposed legislation with State officials on numerous occasions. We have advised the State of our view of the remedy to enable Alaska to comply with Title VIII of ANILCA and thus resume management on Federal lands where we now administer the program. The Federal government's responsibility is clear - we are required to manage subsistence resources on Federal lands by providing to rural Alaska residents a preference in the taking of wild resources for subsistence purposes. The only exception to that mandate is if the State provides that same preference in lieu of the Federal government. To realize that exception the State must have statutes and regulations that provide the same preference to rural Alaska residents.

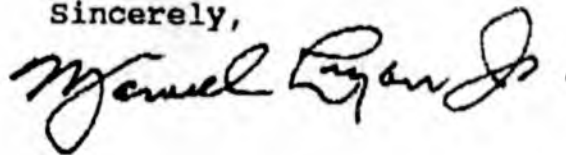
We have provided, and will continue to provide, all the assistance we can in what is now a critical decision for Alaskans to make. In addition, while I have no plans to send representatives to your special session, the Department is prepared to respond in a timely fashion to specific requests from the State government for comments on provisions of legislation which you are considering. After July 1, 1992, in accord with provisions in the Permanent Regulations, we

Honorable Ben Grussendorf
June 15, 1992
Page 2

will promptly respond to any petition from Alaska which properly requests review and recertification of a new State management program which complies with the rural preference requirement in ANILCA and thereby enables Alaska to resume management responsibility.

I remain committed to the principle of state management of fish and wildlife resources. I hope that the State will be able to devise a solution to these problems and thus resume management of the subsistence program consistent with the provisions of Title VIII of ANILCA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Samuel Lyman Jr.", is written below the typed name.

cc/ Governor Hickel

K
J
C

Ketchikan Indian Corporation

(IRA Council)

429 DEERMOUNT AVENUE
KETCHIKAN, ALASKA 99901
(907) 225-5158
FAX (907) 247-0429

MAY 15, 1992

HONORABLE WALTER J. HICKEL
GOVERNOR OF ALASKA
P.O. BOX 110001
JUNEAU, AK 99911-0001

DEAR GOVERNOR:

THE IRA COUNCIL OF THE KETCHIKAN INDIAN CORPORATION, WISHES TO APPLAUD YOU AND SAY THAT WE APPRECIATE YOUR CONCERN FOR SUBSISTENCE IN THE URBAN AREAS, SPECIFICALLY HERE IN KETCHIKAN. WE FIND IT HEARTENING THAT THERE IS RECOGNITION THAT KIC IS A VITAL PART OF THE COMMUNITY AND SHOULD BE INCLUDED IN ANY POLICY DECISIONS CONCERNING SUBSISTENCE. HOWEVER, WE FEEL THAT THE STANDARDS THAT WERE SET FOR THE GROUP 3, UNDER YOUR PROPOSED BILL, ARE TOO STRINGENT TO ALLOW US FREE ACCESS TO WHAT WE FEEL IS AN INTEGRAL PART OF OUR CULTURE AND SHOULD NOT BE A HINDERED BY ANY UNREASONABLE STANDARDS.

WE WOULD HOPE THAT YOU WOULD REVISIT THE STANDARDS AND REVISE THEM TO REFLECT THE TRUE NEEDS OF THE NATIVE COMMUNITY HERE IN KETCHIKAN.

AGAIN, THANK YOU, AND WE HOPE YOU WILL MOVE FORWARD WITH SUPPORTING SUBSISTENCE FOR THE URBAN POPULATION OF THE NATIVE PEOPLES OF ALASKA.

THANK YOU FOR YOUR TIME IN THIS MATTER.

SINCERELY,

Paul W. Young

PAUL W. YOUNG
EXECUTIVE DIRECTOR

COOK INLET COALITION

Resolution regarding the State of Alaska Subsistence Issue:

- 1) WHEREAS: Commercial and sport fisheries and tourism contribute significantly to the social and economic well-being of the State of Alaska in general and the Anchorage-Kenai Peninsula area in particular, and;
- 2) WHEREAS: The state's subsistence statute after the McDowell decision has been interpreted by the Department of Law to mean that virtually all non-commercial consumptive uses of our wild fish stock and game populations will be found to be subsistence uses, and;
- 3) WHEREAS: Subsistence uses have a priority over all other uses of our fish and wildlife resources, and;
- 4) WHEREAS: A priority subsistence fishery on any of the relatively small stocks of rainbow, steelhead, coho and chinook in the Anchorage-Kenai area would require the closure of/or severe restrictions on sport harvests of those stocks by residents and non-residents, and;
- 5) WHEREAS: A priority subsistence fishery on the relatively small stock of late run Kenai River chinook salmon would require the closure of/or severe restrictions on sport harvests of chinook salmon and commercial fisheries targeting sockeye salmon, and;
- 6) WHEREAS: A priority subsistence use on any fish or wildlife resource of small numbers requires restrictions on the use of that resource to a limited class of Alaskan residents in order that each user has a reasonable opportunity to satisfy his or her consumptive use of that resource, and;
- 7) WHEREAS: The cash economy is fully developed within the Anchorage-Kenai Peninsula area and there are practical alternative means available to replace the food supplies and other items gathered from fish and wildlife if any particular harvest effort is not successful, and;
- 8) WHEREAS: The Governor Hickel's Subsistence Advisory Council had representatives from all sides of the subsistence issue, and;

- 9) WHEREAS: Governor Hickel's charge to the Subsistence Advisory Council was to craft a solution aimed at long term stability "that the people of Alaska view as fair, that resolves outstanding court cases, avoids future legal uncertainty, and does not cause major reallocations", and;
- 10) WHEREAS: The Subsistence Advisory Council has drafted HB 552/SB 443 and Governor Hickel has submitted this legislation to the Alaska State Legislature;
- 11) WHEREAS: HB 552/SB 443 would retain the subsistence fisheries that existed in the area prior to the McDowell decision and will not cause major reallocations in the Anchorage-Kenai Peninsula area, and;
- 12) WHEREAS: The Cook Inlet Coalition is comprised of sport and commercial fishing organizations in the Anchorage-Kenai Peninsula area;

Therefore, be it resolved by the Cook inlet Coalition:

- Section 1: That the Governor's Subsistence Advisory Council has successfully drafted consensus legislation that provides for the subsistence taking of fish and game by those Alaskans who actually and substantially depend upon that subsistence taking in areas of the state where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area.
- Section 2: That the Alaska State Legislature is requested to enact HB 552/SB 443 as soon as possible so that the Boards of Fisheries and Game will have the tools and direction they need to establish regulations that avoid future legal uncertainties and will not cause major reallocations.
- Section 3: That the Alaska State Legislature is requested to repeal the current state subsistence priority statute if HB 552/SB 443 is not enacted so that the Boards of Fisheries and Game can provide for subsistence uses on a non-priority basis that will not result in major reallocations and disruptions of use patterns that existed prior to the McDowell decision.
- Section 4: That copies of this resolution be sent to Governor Walter J. Hickel, Lt. Governor John B. (Jack) Coghill, The Alaska Department of Fish and Game Commissioner Carl L. Rosier, the Boards of Fisheries and Game, all members of the Alaska State Legislature, and members of the Alaska Congressional Delegation.

COOK INLET COALITION
MEMBERSHIP

PAGE OF AGREEMENT

1. Kenai Peninsula Fishermens Association

[Signature] For Loren Flagg Date 6/4/92
(Signature of Representative)

2. North Pacific Fisheries Association

[Signature] For Ken Costner Date 6/4/92
(Signature of Representative)

3. Alaska Sportfishing Association

[Signature] For Phil Cutler Date 6/5/92
(Signature of Representative)

4. Kenai River Sportfishing Association

[Signature] For Robert C. Penney Date 6/2/92
(Signature of Representative)

5. Cook Inlet Professional Sportfishing Association

[Signature] For Roger Bjertly Date 6/5/92
(Signature of Representative)

6. Northern District Setnetters of Cook Inlet

[Signature] For Tommy J. Jensen Date 6/4/92
(Signature of Representative)

7. United Cook Inlet Drift Association

[Signature] For Therese Mathews Date 6/5/92
(Signature of Representative)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

DECEMBER 14, 1971.— Ordered to be printed

Mr. BIBLE, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 10367]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10367) "to provide for the settlement of certain land claims of Alaska Natives, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill, and agree to the same with an amendment as follows:

In lieu of the matter inserted by the Senate amendment, insert the following:

That this Act may be cited as the "Alaska Native Claims Settlement Act".

DECLARATION OF POLICY

SEC. 2. Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax

...ative people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of the date of enactment of this Act

(d) no provision of this Act shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlements involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;

(e) no provision of this Act shall effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10 of the United States Code except as specifically provided in this Act;

(f) no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act; and

(g) no provision of this Act shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89-136, the Public Works and Economic Development Act of 1965, as amended, shall be interpreted to include lands granted to Natives under this Act as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(j) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown on the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

(k) "Native group" means any tribe, band, clan, village, community or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

(l) "Public lands" means all Federal lands and interests thereon located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installations, and (2) land selection of the State of Alaska which have been patented or tentatively approved under section 6 (g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

(m) "State" means the State of Alaska;

(n) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;

(o) "Person" means any individual, firm, corporation, association, or partnership;

(p) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(q) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

(r) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 6; and

(s) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 17.

DECLARATION OF SETTLEMENT

SEC. 4. (a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6 (g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal title

surface estate in an equal amount of acreage outside these areas is provided for the Regional Corporations.

(h) *National forests*

Appropriate limitations are placed on the amount of lands which may be granted from National Forests to Native villages located in the National Forests.

C. OTHER ISSUES

1. In sections 7 and 8 of the conference report authorizing the creation of Regional and Village Corporations, the conference committee has adopted a policy of self-determination on the part of the Alaska Native people. The conference committee anticipates that there will be responsible action by the board members and officers of the corporations and that there will not be any abuses of the intent of this Act. The conference committee does not contemplate that the Regional and Village Corporations will allow unreasonable staff, officer, board member, consultant, attorney, or other salaries, expenses and fees. The conference committee also contemplates that the Regional and Village Corporations will not expend funds for purposes other than those reasonably necessary in the course of ordinary business operations.

2. The Senate amendment to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.

3. Villages located on the Pribilof Islands present a special problem because the fur seals which frequent the islands are the subject of an International Treaty. It is the conference committee's recommendation that the Secretary, after consultation with the Secretary of Commerce, the State and the Planning Commission, reserve the appropriate rights and interests in land to insure the fulfillment of the United States' obligations under the Treaty.

SEPARABILITY

SEC. 27. If any provision of this Act or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby. And the Senate agree to the same.

HENRY M. JACKSON,
ALAN BIBLE,
FRANK CHURCH,
LEE METCALF,
MIKE GRAVEL,
GORDON ALLOTT,
TED STEVENS,

Managers on the Part of the Senate.

WAYNE N. ASPINALL,
JAMES A. HALEY,
ED EDMONDSON,
MORRIS K. UDALL,
LLOYD MEEDS,
NICK BEGICH,
JOHN KYL,
SAM STEIGER,

JOHN N. HAPPY CAMP,
Managers on the Part of the House.

JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

The Managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the Bill (H.R. 10367) "to provide for the settlement of certain land claims of Alaska Natives, and for other purposes," submit this joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

I. GENERAL

A. INTRODUCTION

The language agreed upon by the managers is the result of long and careful consideration of the House passed bill and the Senate's amendment in the nature of a substitute to the House passed bill. The House bill and the Senate amendment were in major respects substantially different and the conference report—the compromise between the two measures—is in some respects different from the measures passed by the House and the Senate. The conference report is the final product of nine days of meetings by the conference committee since November 30, 1971.

The conference committee concurs on the relevant history and on the main facts at issue; there is general agreement on the principles of law involved and on the limits within which the formulation of public policies must be conducted; there is general consensus on the structural elements which constitute the settlement; and there is a common recognition that the institutions and machinery of settlement are in large measure dictated by the nature of the problem and the

Senate to the Bill (H.R. 10367) "to provide for the settle
of certain land claims of Alaska Natives, and for other purposes,
submit this joint statement in explanation of the effect of the language
agreed upon by the managers and recommended in the accompanying
conference report.

I. GENERAL

A. INTRODUCTION

The language agreed upon by the managers is the result of long and careful consideration of the House passed bill and the Senate's amendment in the nature of a substitute to the House passed bill. The House bill and the Senate amendment were in major respects substantially different and the conference report—the compromise between the two measures—is in some respects different from the measures passed by the House and the Senate. The conference report is the final product of nine days of meetings by the conference committee since November 30, 1971.

The conference committee concurs on the relevant history and on the main facts at issue; there is general agreement on the principles of law involved and on the limits within which the formulation of public policies must be conducted; there is general consensus on the structural elements which constitute the settlement; and there is a common recognition that the institutions and machinery of settlement are in large measure dictated by the nature of the problem and the elements of the settlement.

Among individual conferees, and among individual members of the House and the Senate, there are, of course, wide differences of opinions on specific issues: on amounts of money and land; on elements of the settlement; on some of the institutions established; and on emphasis and on detail. The specific resolutions proposed to each of these differences by the conference committee represents a compromise. These compromises were, however, recognized as being essential to the development of a conference report which will do justice to the Native people, insure a viable and economically healthy State government, and allow the fulfillment of the reasonable expectations and legitimate interests of all Alaskans and all Americans.

The conference report reflects a willingness on the part of the individual conferees after careful study of the issues involved to concur in the clear necessity for adoption of a *settlement package*, while reserving the right of all Members of Congress to debate further, at another time and in connection with other legislation, their individual views on some of the specific policies which are of necessity incorporated in this complex omnibus settlement.

bered 4 or in the National Wildlife Refuges, but an in lieu selection to subsurface estate in an equal amount of acreage outside these areas is provided for the Regional Corporations.

(h) *National forests*

Appropriate limitations are placed on the amount of lands which may be granted from National Forests to Native villages located in the National Forests.

C. OTHER ISSUES

1. In sections 7 and 8 of the conference report authorizing the creation of Regional and Village Corporations, the conference committee has adopted a policy of self-determination on the part of the Alaska Native people. The conference committee anticipates that there will be responsible action by the board members and officers of the corporations and that there will not be any abuses of the intent of this Act. The conference committee does not contemplate that the Regional and Village Corporations will allow unreasonable staff, officer, board member, consultant, attorney, or other salaries, expenses and fees. The conference committee also contemplates that the Regional and Village Corporations will not expend funds for purposes other than those reasonably necessary in the course of ordinary business operations.

② The Senate amendment to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened.

The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.

3. Villages located on the Pribilof Islands present a special problem because the fur seals which frequent the islands are the subject of an International Treaty. It is the conference committee's recommendation that the Secretary, after consultation with the Secretary of Commerce, the State and the Planning Commission, reserve the appropriate rights and interests in land to insure the fulfillment of the United States' obligations under the Treaty.

Section 25. Publication

The conference committee adopted the House language as section 25 of its report, which is almost identical to the Senate language, and is of similar intent.

Section 26. Saving clause

The conference committee adopted the House language as section 26 of its report. The Senate provision contained the statement: "Except as specifically provided for in this Act, nothing in this Act shall be construed as repealing any other provision of Federal law applicable to Alaska." That sentence was eliminated as being unnecessary.

Section 27. Separability

The provisions of the House and Senate bills concerning separability were identical, and are included in the conference report as section 21.

HENRY M. JACKSON,
ALAN BIBLE,
FRANK CHURCH,
LEE METCALF,
MIKE GRAVEL,
GORDON ALLOTT,
TED STEVENS,

Managers on the Part of the Senate.

WAYNE N. ASPINALL,
JAMES A. HALEY,
ED EDMONDSON,
MORRIS K. UDALL,
LLOYD MEEDS,
NICK BEGICH,
JOHN KYL,
SAM STEIGER,
JOHN N. HAPPY CAMP,

Managers on the Part of the House.

Alaska Natives, of course, do not have "treaty" subsistence rights and are therefore subject to State regulation in common with other citizens of the State unless State regulation is pre-empted or at least modified by Federal law. See *Kake v. Egan*, 369 U. S. 60, 76.

The regulation, however, has been predictably insensitive to Native subsistence needs. The recent Recommended Decision Concerning Resumption of State Management over Nine Species of Marine Mammals. (MMPA Docket No. WASH 76-1, June 30, 1977) (Hereafter "Marine Mammal Decision") noted as to Native participation in formulation of State regulatory policy:

Persuasive testimony received from Native areas mandates that the State take steps to make participation more meaningful to those areas. *Id.* at 74.

The opinion quotes Linda Ellana's testimony at the Nome Marine Mammal Hearings as typical of allegations made by Native representatives:

In the villages that I visited people have not read copies of proposed regulations, and I think that it is very important that if the State or Federal Government is to control something as critical to these people as their livelihood, which I feel sea mammal hunting is, that they be informed; if they cannot read these regulations or proposed regulations that there should be a definite effort made on the part of the State and the Federal Government to go into the villages and talk at length with the people about these regulations. They are confused and they have not seen any proposed new regulations. . . . *Id.* at 74-75.

Unfortunately, in spite of the "mandate," the decision does not require that the State implement a program to assure Native participation prior to assumption of marine mammal jurisdiction. *Id.* at 135.

generally Chapter I, Part 2, "Reserves and Reservations" *supra*.

E.g., *Kake v. Egan*, 369 U. S. at 75.

(E)ven on reservations State laws may be applied to Indians unless such application would interfere with reservation self-government or impart a right granted or reserved by Federal law.

Metlakatla v. Egan, 369 U. S. 552.

26 Stat. 1095, 1101.

Metlakatla at 54 & 59

The size of the Arctic-Venetie reserve was based specifically on the "use and occupancy" of the reserve for subsistence purposes. See letter of Interior Secretary Krug in opposition to S.J.R. 162, S. Rpt. No. 1366, 80 C:2s (1948) at 20. Terlln was established for "vocational education" but the "vocations" were hunting and trapping, etc.

21a. See e.g. 1971 USCAAN at 2195
Note: D-2 land selections (ANCSA 17(d)(2)) and easements across regional or village corporation lands (ANCSA 17(b)) are also a part of the subsistence land use question. Village land selections alone are not sufficient for subsistence needs; therefore, subsistence users require use of Federal d-2 and other public lands as well as access to such lands across private (corporate) property. The Secretary, in response to the recent decision of the Alaska District Court (*Calista Corp. v. Andrus*, Slip Op. A77-16 Civil (July 7, 1977)) on the easement issue, has issued a policy memorandum purporting to resolve the easement question. (Memorandum, "Alaska Native Claims Settlement Act Implementation and Policy Review" (March 3, 1978).)

22. S. Rpt. 92-581, 92C:13, December 14, 1971 at 37. ACCS
5043
C.I.

22a. See Udall, Stewart L., "The Alaska Natives and Their Subsistence Rights: A Discussion of the Constitutional Questions," Unpublished Memorandum, July 1977 at 6-8 (Hereafter "Udall").

23. Art. VI, cl. 2 U. S. Const.

24. *Missouri v. Holland*, 252 U. S. 416 (1920) Holding that the Migratory Bird Treaty of 1916 and the Federal laws enacted to implement it pre-empted Missouri's game laws.

25. Act of July 3, 1918, c. 128, 40 Stat. 755 as amended.

26. Fur Seal Act of November 1966, P.L. 89-207, 80 Stat. 1091.

27. Whaling Convention Act of August 9, 1950, c. 653, 64 Stat. 421 as amended.

28. Treaty of December 8, 1961, Art. II. See also 54 I.D. 517 holding that the Treaty prohibited Native hunting on the Swinomish Indian Reserve in Washington State.

29. Treaty of March 15, Art. II(c) & (d).

30. Treaty of March 4, 1972, Art. III(1)(e).

31. 16 USCA 703.

31a. 50 CFR 20.102 (1976).

32. Convention of October 14, 1957, Art. VII.

32a. Dunnigan, John H. "Alaskan Natives and Marine Mammals, Law and Policy Affecting Life Style," Unpublished Paper, Indian Legal Problems Seminar, University of Washington School of Law (1974) at 18. (Hereafter "Dunnigan").

33. *Id.* at 19.

34. *Id.* at 21.

35. Convention on the Regulation of Whaling, December 2, 1946. See also 3 Amer. Ind. L. J. No. 12 at 23 (December 1977) "Case of the Bowhead Whale."

36. Washington Post, October 8, 1977 at A-8 referring to June 1977 meeting of the International Whaling Commission (IWC) at which the decision to ban bowhead whale hunting was made by unanimous vote with the United States abstaining.

37. Washington Post, October 8, 1977, at A8.

38. *Id.*



Ukpeagvik Inupiat Corporation

RESOLUTION 91-19

A RESOLUTION IN OPPOSITION TO GOVERNOR WALTER J. HICKEL'S DRAFT SUBSISTENCE PLAN AND PROPOSED LEGISLATION AND FOR OTHER PURPOSES.

WHEREAS, Governor Walter J. Hickel established the Governor's Subsistence Advisory Council in 1990 to attempt to develop a statewide consensus position on subsistence policy.

WHEREAS, Native people participated in trust and good faith in the work of the Subsistence Advisory Council;

WHEREAS, the Subsistence Advisory Council developed 16 points of consensus to be included in any subsistence plan;

WHEREAS, the draft subsistence plan recently announced by the governor appears to totally ignore the 16 points of consensus unanimously agreed to by the full Advisory Council.

WHEREAS, the plan is accompanied by draft legislation to implement the governor's new proposed policy;

WHEREAS, the draft legislation would impose new qualifications for subsistence hunting and fishing based on lifestyle rather than rural residency and otherwise reflects an anti-subsistence posture.

WHEREAS, the governor's plan and his proposed implementing legislation appear to be a fundamental violation of the trust and faith that Native people placed in the Subsistence Advisory Council effort.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. Ukpeagvik Inupiat Corporation opposes to governor's draft subsistence plan and the proposed legislation to implement it.

2. Ukpeagvik Inupiat Corporation supports a plan that would preserve the subsistence rights of rural residents more consistent with the original provisions of the Alaska National Interest Lands Conservation Act.

3. UIC urges Governor Hickel to again take personal charge of the effort to resolve the subsistence issue.

ADOPTED at Barrow, Alaska this 9th day of October, 1991.



[Handwritten signature]

Chairman

ATTEST:

[Handwritten signature]

Corporate Secretary

THANK YOU, MR. CHAIRMAN, MEMBERS OF THE COMMITTEE,
FOR THE RECORD, MY NAME IS RONALD H. BROWER SR. I AM
HERE TODAY TO TESTIFY IN MY CAPACITY AS THE
REPRESENTATIVE OF THE ARCTIC SLOPE VILLAGES FOR AFN
AND ON SUBSISTENCE ISSUES.

THE ARCTIC SLOPE AREA CONTAINS OVER 88,000 SQUARE
MILES OF LAND AND HAS EIGHT VILLAGES CONSISTING OF 73%

INUPIAT ESKIMO. OUR VILLAGES CONTAIN A MINORITY
POPULATION OF TRANSCIENT NON-NATIVE PEOPLE MOST OF
WHOM ARE GOVERNMENT EMPLOYEES AND ARE CASH
ORIENTED. THE INUPIAT ESKIMO ARE PRIMARILY A
HUNTING SOCIETY AND SUBSISTENCE OFF THE LAND AND SEAS
IS A WAY OF LIFE IN THE ARCTIC. SUBSISTENCE HUNTING AND
FISHING ARE CRITICAL TO THE FUTURE SURVIVAL OF THE
ARCTIC SLOPE VILLAGES BEING SO REMOTE IN RURAL
ALASKA.

WE HAVE WORKED WITH BOTH FEDERAL AND STATE
GOVERNMENTS, AND ESPECIALLY WITH THEIR LAWS TO
PROVIDE FOR OURSELVES AN EFFECTIVE LONG TERM
PROTECTION OF OUR TRADITIONAL SUBSISTENCE LIFESTYLE

AND PRACTICES. THE MOST PROMINENT EXAMPLE IS THE WORK OF THE ALASKA ESKIMO WHALING COMMISSION. ANOTHER IS THE EXAMPLE OF THE NORTH SLOPE BOROUGH WITH REGARD TO MIGRATORY FISH AND GAME. THE RESULTS HAVE BEEN POSITIVE ASSETS IN THE MANAGEMENT OF FISH AND WILDLIFE IN THE ARCTIC

THE HICKEL ADMINISTRATION HAS INTRODUCED THE GOVERNORS BILL, WHICH WOULD IMPOSE NEW QUALIFICATIONS FOR SUBSISTENCE HUNTING AND FISHING BASED ON LIFE STYLE RATHER THAN RURAL RESIDENCY AND, OTHERWISE REFLECTS AN ANTI-SUBSISTENCE POSTURE.

IT DOES NOT COMPLY WITH ANILCA AND FEDERAL CONGRESSIONAL INTENT.

INSTEAD IT ATTACKS FEDERAL LAW AND PROPOSES TO CHANGE ANILCA. IF ADOPTED BY THE STATE LEGISLATURE IT WILL ENSURE THAT DUAL MANAGEMENT CONTINUES AND WILL DIMINISH MORE DRAMATICALLY THE STATE'S MANAGEMENT ROLE OVER FISH AND WILDLIFE IN ALASKA. THE GOVERNORS PLAN IN HIS PROPOSED IMPLEMENTING LEGISLATION APPEAR TO BE A FUNDAMENTAL VIOLATION OF THE TRUST AND FAITH THAT ALASKANS, AND

MORE PARTICULARLY, NATIVE PEOPLE PLACED IN THE STATE
IN MANAGING FISH AND WILDLIFE

WE THEREFORE OPPOSE THE GOVERNOR'S DRAFT SUBSISTENCE
PLAN AND THE PROPOSED LEGISLATION TO IMPLEMENT IT.

THE ARCTIC SLOPE VILLAGES INSTEAD SUPPORT THE EFFORTS
OF AFN TO AMEND THE CONSTITUTION OF THE STATE OF
ALASKA AND BRING BACK STATE MANAGEMENT OF FISH AND
WILDLIFE ON FEDERAL LAND TO THE STATE OF ALASKA.

THE ARCTIC SLOPE VILLAGES FEEL THAT ANILCA PROVIDES
PROTECTION FOR SUBSISTENCE USES IN RURAL ALASKA AND
DO NOT WANT TO SEE CHANGES TO THE FEDERAL LAW. THE

GOVERNOR'S SOLUTION TO RESOLVE THE FEDERAL STATE
IMPASS IS TO GET CONGRESS TO AMEND ANILCA. THIS
PROCESS WILL ONLY DELAY THE STATE FROM GAINING
MANAGEMENT TO FISH AND WILDLIFE AND, MORE CRITICAL
TAKE OUR STATE MANAGEMENT PROBLEM INTO A NATIONAL
ARENA. THIS IS A STATE IN HOUSE PROBLEM AND, SHOULD
NOT BE OPENED TO THE FEDERAL DECISION MAKING PROCESS.
WE SUPPORT A CONSTITUTION AMENDMENT WHICH WOULD

ALLOW ALL ALASKANS TO VOTE ON THE ISSUE. WE SUPPORT A CONSTITUTIONAL AMENDMENT SUCH AS THE ONE PROPOSED BY AFN WHICH WOULD COMPLY WITH FEDERAL LAW AND ALLOW THE STATE TO REGAIN STATE MANAGEMENT BY RETAINING ANILCA'S RURAL PREFERNCE FOR ALL RESIDENTS OF BUSH ALASKA.

ALL WE ASK IS THAT THE STATE OBEY FEDERAL LAW AND TRUST IT'S OWN PEOPLE ON A CONSTITUTIONAL AMENDMENT THAT IS FAIR TO ALL.

AFTER LISTENING TO THE STATEMENT OF THE ATTORNEY GENERAL DURING YESTERDAY'S SENATE COMMITTEE OF WHOLE, WHERE HE COMMENTED ON THE ISSUE OF " TO LET ALASKA BLEED A COUPLE YEARS BEFORE RESOLVING THE MANAGEMENT PROBLEM" SENDS A CHILLINGLY THREATENING MESSAGE TO RURAL, PREDOMINANTLY ALASKA NATIVE COMMUNITY. IT REMINDS US OF THE HAMMOND ADMINISTRATION WHO PROPOSED TO SHOOT DOWN AN AIRPLANE FULL OF ANGRY URBAN RESIDENTS DETERMINED TO SHOOT AND WIPE OUT THE NATIVE RESIDENTS OF BARROW.

THIS TYPE OF ADAMANT ATTITUDE DOES NOT ALLOW THE STATE LEGISLATURE TO CONSIDER A REAL CONSTITUTIONAL AMENDMENT WHICH WOULD END DUAL MANAGEMENT OVER FISH AND WILDLIFE IN ALASKA.

WE DO NOT ASK FOR CONCESSIONS ON SUBSISTENCE, ALL WE ASK IS THAT THE ADMINISTRATION AND THE LEGISLATURE OBEY FEDERAL LAW AND BE FAIR WITH IT'S OWN PEOPLE BY ALLOWING THEM TO VOTE ON THE CONSTITUTIONAL AMENDMENT THAT WOULD END THE DUAL MANAGEMENT PROBLEM.

THANK YOU

UNITED FISHERMEN OF ALASKA



211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

June 18, 1992

MEMBER ASSOCIATIONS

- Alaska Crab Coalition
- Alaska Independent Fishermen's Marketing Association
- Alaska Longline Fisherman's Association
- Alaska Trollers Association
- Bering Sea Fishermen's Association
- Bristol Bay Driftnetters Association
- Concerned Area "M" Fishermen
- Cook Inlet Aquaculture Association
- Copper River Fishermen's Cooperative
- Cordova District Fishermen United
- Kenai Peninsula Fishermen's Association
- North Pacific Fisheries Association
- Northern Southeast Regional Aquaculture Association
- Peninsula Marketing Association
- Petersburg Vessel Owners Association
- Prince William Sound Aquaculture Association
- Prince William Sound Seiners Association
- Seafood Producers Cooperative
- Southeast Alaska Seiners
- Southern Southeast Regional Aquaculture Association
- United Cook Inlet Drift Association
- United Southeast Alaska Gillnetters
- Western Alaska Cooperative Marketing Association
- Area K Seiners Association

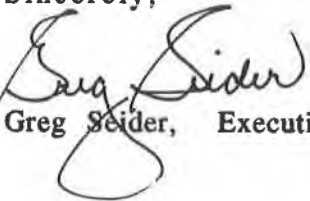
Senator Sam Cotten
Representative Mike Navarre

We would like to propose a path to consensus and finality on all aspects of the subsistence issue now before you. We'd appreciate your consideration of this proposal and ask that you advance it as a viable package to solve the problems and inconsistencies we are dealing with under present subsistence law. This proposal responds to the agreement among all parties to restore a subsistence priority for all legitimate subsistence users and regain state management on all fish and game populations. Finality on this issue means a constitutional amendment to limit participation in subsistence taking of fish and wildlife and technical amendments to ANILCA in the best interest of the state. As we indicated in our testimony, UFA does not object to a properly worded constitutional amendment that protects the interests of those dependent on subsistence uses and that does not systematically jeopardize other uses of our resources.

The path to finality on this issue begins with the Advisory Council's legislation, SB 484. SB 484 may need some modifications. In informal discussions with one of AFN's lawyers, we believe that some modifications can be easily made. If this fails, the governor's bill must pass alone.

The next step involves a constitutional amendment linked to amending ANILCA. Attached you will find the wording for a constitutional amendment based on the wording for limited entry.

As we stated in our testimony, finality can only be achieved if there are consistent definitions between state and federal statutes. Otherwise, the legislature will be back at this when the next term gets defined awry by a federal court. Amending ANILCA is an essential step that can no longer be avoided. Also attached is proposed wording for amending ANILCA. This wording just merely requires the federal government to accept Alaska law.

Sincerely,

Greg Seider, Executive Director

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

Robert T. Anderson Robert T. Anderson 920 W. 16th Ave. Anchorage, AK 99501

Michelle Jackson Michelle Jackson Box 123 Copper Center, AK 99586

Clara McCanney Box 14 Copper Center AK 99573

Cliff Gray Box 293 Glennallen AK 99588

Eileen L. Eddan Box 272 Gakona AK 99586

Angela Jackson Box 123 Gakona, AK 99586

Stacy McCanney Box 146 Gakona, AK 99586

Kirk Wilson Kirk Wilson HC 01 Box 1960 Glennallen AK 99588

Shirley Miller Box 225 Copper Center, AK 99573

Joseph R. Hicks mile 104 Old Right Hwy C.C. 99573

John R. Hicks P.O. Box 634 Glennallen AK. 99588

Karen Eskilida Karen Eskilida Box 284 Glennallen AK

Steeny Cunitz Steeny Cunitz PO Box 661, Glennallen AK 99588

TEDDY Boston Teddy Joe Boston PO Box 251 Gakona AK 99586

BILL JOE P.O. Box 251 GAKONA AK 99586

Edith Martin P.O. Box 117 Copper Center, AK 99573

Gloria Stickwan Gloria Stickwan P.O. Box 264 Copper Center, AK 99583

Wayne C. Bell P.O. Box Copper Center Alaska

Cliff A. Tibbits Box 60 Copper Center Alaska 99573

Cheryl A. Sabon Box 7, Copper Center AK 99573

Guan L. Sherman HC 60 Box 115-D Copper Center, AK 99573

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

<u>NAME</u>	<u>ADDRESS</u>
Marla Hand	Box 687 Glenn. Ak.
Henry Osborne	Box 145 Glennallen Ak
Reginald L. Fisher	Box 313 Glennallen Ak.
Thomas Ruttler	#60 Box 335-R Cooper Center Ak.
Clay Linn	HC 60 BOX 243-L Cooper Ctr. AK 9957
Sharon Linn	HC 60 Box 243-L Cooper Ctr. 99573
Sam Hawley	P.O. Box 492 Glennallen, AK, 99588
Kim Cooper	PO Box 428 Glennallen, AK 99588
Charles G. Mason	P.O. Box 221 Scitout tops, AK 9976
John Fisher	P.O. Box 193 Glennallen AK 995
John Fisher	P.O. Box 15 Glennallen AK 99588
James Graham	Box 216 Glennallen AK 99588
Jim Hannan	P.O. Box 695, Glennallen, AK 99588
Christy Foreman	Box 132 Glennallen AK 99588
Michael D. Rosewood	Box 43 Glennallen AK 99588
Aheral Attek	Box 233 Glennallen, AK 99588
Sam Busing	Box 367 Glennallen AK 99588
Paul Sackett	Box 274 Glennallen 99588
Ray Stutz	Box 245 Glennallen 99588
Ken Stutz	Box 295 " "
Paul Blair	Box 168 Glennallen 99588

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

Mawilka Box 289 Glennallen

Sarah Stronk Box 531 Glennallen

Jackie Wint HC 60 Box 51 Copper Center

Pat Gibson Box 365 Glennallen Alaska

Lydia Box 284 " "

Melvin W Steier Box 189 Glennallen Ak 99588

Tim Stone Box 547 Glennallen AK

Cheryl K. Hurling Po Box 15 Glennallen AK 99588

Carol Duncan Box 476 Nenana, Ak 99760

John Bennett 2250 SENTRY Anch. Alaska 99501

Wane Gillman Box 394 Glennallen, AK

Carole Bell Box 314 Glennallen AK 99588

John A. Leonard Box 309 Copper Center AK 99573

Felicia Keith Box 42 Glennallen, AK 99588

Tommy Anderson Box 379 Copper Center Ak 99573

Paul A. Kerner Box 329 Glennallen AK 99588

William P. Bowler Box 329 Glennallen AK 99588

Jim Hunt Box 373 " "

Daniel R. Winter HC 60 Box 51 Copper Center

Robert R. Fincher Box 289 Glennallen

Emory Hodson Box 1415 " "

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

<u>NAME</u>	<u>ADDRESS</u>
<u>Paul P. Thors</u>	<u>Mile 182.5 Glenn Valley, AK 99588</u>
<u>Edward P. Knebel III</u>	<u>Mile 183 1/2 Glenn Valley AK 99588</u>
<u>James L Kramer</u>	<u>Mile 183.5 Glenn Hwy AK 99588</u>
<u>Leslie Hartman</u>	<u>Mi: 183.5 Glenn Hwy AK 99588</u>
<u>Doug Rhoads</u>	<u>Mi 183.5 Glenn Hwy</u>
<u>Jerry R Lang</u>	<u>Mi 183.5 Glenn Hwy</u>
<u>Paul A. North</u>	<u>Mi 184 Glenn Hwy</u>
<u>James Boyer</u>	<u>Mi 184 Glenn Hwy 99588</u>
<u>Charles Perrygo</u>	<u>Mi 185 Glenn Valley 99588</u>
<u>Harold Perrin</u>	<u>Mi 185 Glenn Valley 99588</u>
<u>Robin A. Foster</u>	<u>Mile 185 Glenn Valley AK 99588</u>
<u>William H. Buck</u>	<u>Mile 185.5 Glenn Valley AK 99588</u>
<u>Mellie Buck</u>	<u>Mile 185.5 Glenn Valley AK 99588</u>
<u>Tom Pearson</u>	<u>Box 303 Glenn Valley AK 99588</u>
<u>Shirley M. Carr</u>	<u>Box 303 Glenn Valley AK 99588</u>
<u>Frances Pease</u>	<u>Box 117 Copper Center, AK 99573</u>
<u>Loren M. Kramer</u>	<u>Box 374 Copper Center, AK 99573</u>
<u>Shirley Harold</u>	<u>Box 134 Glenn Valley AK 99588</u>
<u>Robert P. Glavin</u>	<u>Box 134 " " " "</u>
<u>Drucilla Glavin</u>	<u>Box 134 Glenn Valley 99588</u>
<u>Cheri Lamb</u>	<u>Box 289 Glenn Valley 99588</u>

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

Tonya C Nutter

Box 278 Glennallen 99588

Tonya L Nutter

Judith L Becker
Judith L Becker

PO Box 357 Copper Center, AK. 99573

Elaine Shyam

~~Elaine Shyam~~
Elaine Shyam

SR 150, Gakona, AK. 99586

~~JAY F. Tyone~~
JAY F. Tyone

P.O. Box 161 Glennallen AK. 99588

~~Eric K. Nutter~~
Eric K. Nutter

P.O. Box 348 Glennallen, AK 99588

Eva B. Hall

P.O. Box 227 Glennallen, AK 99588

Linda Tyone

Box 303 Copper Center, AK 99573

LORRAINE KADLAN
LORRAINE KADLAN

Box 277 G.A. AK 99588

Linda M. Goodlatay

Box 304 Glennallen, AK. 99588

Regina L. Renard

H.C. 100 Box 213 Copper Center, AK 99573

Wendy Wurtschick
Wendy Wurtschick

P.O. Box 224 Copper Center, Alaska 99573

Shirley Bergey

Shirley Bergey

P.O. Box 191 Gakona AK 99588

MARK WURTSCHICK

P.O. Box 224 COPPER CENTER, AK 99573

Tom Caron

Box 36 Copper Center AK 99573

James Bell

PO Box 105 Copper Center, AK 99573

Robin A. [unclear]

Box 202 Copper Center, AK 99573

Sally [unclear]

Box 264 Glennallen, AK 99588

Neryl L. Hilland

Neryl L. Hilland

P.O. Box 612 Glennallen, AK 99588

Michèle Bester

Michelle N. Anderson

SR 224 Chistochina

Michelle N. Anderson

POB 348 Glennallen, Alaska 99588

Mark Anderson

Patrick M. Anderson

POB 348 Glennallen, AK 99588

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

Lisa Mehl
Lian Mill

Box 309 Copper Ctr. AK 99573

GAIL NIEBRUGGE

P.O. Box 365 Glennallen, AK 99588

~~Janis Niebrugge
Larry A. Hake
Karyn A. Hake~~

Box 278 Copper Center, AK. 9957

MARVIN M. COX
M. M. C.

P.O. Box 111 Copper Center AK 99583

MIKE NICKOLICH
MIKE NICKOLICH

Copper

Teresa Cheatham
Teresa Cheatham

PO Box 411, Glennallen 99588

James Cocozan
James B. Cocozan

PO Box 692 Glennallen AK 99588

Chuck Thomas
Chuck Thomas

Box 389 Copper Center AK 99573

John Miller
John Miller

Box 229 Copper Center 99573

ANN HEDGECOCK
ANN HEDGECOCK

Box 111 Copper Center 99573

BARRY HEDGECOCK
Shana Shell

Box 111 Copper Center 99573

Shana Shell

Box 258 Copper Center, AK 99573

Debra J. St. Amand

Box 182 Copper Center, AK. 99573

WILSON ST. AMAND
CASSANDRA HEDGECOCK

Box 341 Copper Center, AK 99573

MARIANNE WILSON
Marianne Wilson

Hole Box 100 Copper Center AK 99573

MICHAEL McSWAIN
Michael McSwain

P.O. Box 3 GLENNALLEN, AK 99588

WALT N. SAWHILL
Walt D. Sawhill

P.O. Box 636 GLENNALLEN AK 99588

SARAH LAPP

P.O. Box 207 GAKONA, AK 99586

Sandra Lapp

Judy A. Shelton

PO Box 118 GAKONA AK 99586

Judy A. Shelton

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME ADDRESS

- Jerry C. Terry Cuniz P.O. 661 Glennallen, AK 99588
- Jon Bruggel Hc 60 Box 106 Copper Center
- Mark Stimp POB 206 Copper CTR 99573
- Les Sutherland Box 344 Glennallen, AK 99588
- Nicholas Lincoln Box 34, Copper Center AK 99573
- Don E. Jay Box 265 Glennallen AK 99588
- Bugs Burns Cartoon st. 123 ABC
- Michael Thomas PO Box 676 Glennallen, AK 99588
- Kathy M. Kirtland PO Box 322 Copper Center 99573
- Bobby Kortwood
- Dwight Caluste P.O. Box 665 Glennallen, Alaska 99588
- Barbara D. Tipton P.O. Box 316 Copper Center AK 99573
- Andy Zajac - Andy Zajac P.O. Box 208 Copper Center, AK 99573
- James Bialos - Tavis Bishop Box 96 Copper Center AK 99573
- Barbara Spiders - BARBARA SPIDERS BOX 79, COPPER CNTR AK 99573
- Debra's Journal P.O. Box 238 Copper Center, AK 99573
- Clara C. Potterville Box 231 Glennallen, AK 99588
- Henry M. ILETTA Box 54 " " "
- Jim Hummel PO Box 348, Copper Center, AK 99573
- Tim Dancy P.O. Box 382 Glennallen AK 99588
- Daryl Koetter Box 21 Copper Center AK 99573
- LARRY D Huelskoetter.

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

<u>Dana Becker</u>	<u>Box 494 Glennallen 99588</u>
<u>John L. Becker</u>	<u>Box 359 Copper Center, AK 99573</u>
<u>✓ VERNON HURD</u> <u>Vernon Hurd</u>	<u>Box 308 Glennallen 99588</u>
<u>Judy Frederick</u>	<u>P.O. Box 970, Slana, AK 99586</u>
<u>ART & IRINA</u>	<u>P.O. Box 71931 Fairbanks AK 997</u>
<u>Celine C. Craig</u> ^{Alice} <u>A. CRAIG</u>	<u>Box 154 Glennallen AK 99588</u>
<u>Lorraine Jackson Lorraine Jackson</u>	<u>Box 123 Gakona AK 99586</u>
<u>JEFF DOTY</u>	<u>H660 Box 277 COPPER CENTER, AK 99573</u>
<u>Pat Stenberg</u>	<u>Box 197 Gakona, AK 99586</u>
<u>BRENDA George</u> ^{Brenda L. George}	<u>Box 200 Gakona AK 99586</u>
<u>John Dye</u> ^{John Dye}	<u>Box 200 Gakona AK 99586</u>
<u>Bucille Ewan</u>	<u>Box 246 Glennallen, AK 99586</u>
<u>Peter Tyone</u>	<u>Box 679 Glennallen AK 99586</u>
<u>Frank George</u>	<u>Box 285 Gakona AK 99586</u>
<u>Roy S Ewan</u>	<u>Box 215 GAKONA AK 99586</u>
<u>Glenda Ewan</u>	<u>Box 215 Gakona, Ak. 99586</u>
<u>Larry Ewan</u>	<u>Box 272 GAKONA 99586</u>
<u>Eileen E. Ewan</u>	<u>Box 272 GAKONA, AK 99586</u>
<u>Morris O. Ewan</u>	<u>Box 272 Gakona AK 99586</u>
<u>Christopher Gene</u>	<u>Box 217 Gakona AK 99586</u>
<u>Alice Gene</u>	<u>Box 124 GAKONA AK 99586</u>

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

Annie Ewan
Annie Ewan

99573
Copper Center Box 8

Peter F. Ewan
Peter F. Ewan

Copper Center PO Box 85

Nelly Ewan
Nelly Ewan

Copper Center AK 99573

Ina Lincoln
Ina T Lincoln

P.O. Box 34
Copper Center 99573

Nicholas Lincoln
Nicholas J Lincoln

HC 60 Box 331 Copper Center 99573
Kenai Lake AK 99573

Donna Stevens
Donna Stevens

Box 2 Copper Center AK 99573

Gerald K Stevens
Gerald K Stevens

Box 9 Copper Center AK 99573

Andrew Stickwan
Andrew Stickwan

Box 57 Copper Center

Nancy George
Nancy George

Box 58 Copper Center AK 99573

Mary George
Mary George

Box 50 Copper Center AK 99573

Susan Voyles
Susan C Voyles

Box 47 Copper Center AK 99573

Glenda K Simpson
Glenda K Simpson

Box 134 Hakona AK 99586

Fred Simpson
Fred Simpson

Box 134 Hakona AK 99586

Olaf Lord
Olaf Lord

Box 134 Hakona AK 99586

Maggie Joe
Maggie Joe

Christchurch AK PO Box 23

Mabel A Heaton
Mabel A Heaton

Glennallen AK 99588

Carolyn Craig
Carolyn Craig

Glennallen AK 99588 PO Box 53

Mary Bindara
Mary Bindara

8011 North Wind Anchorage

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

- Louis Lack Box 214 Glen AK 99588
- ~~Alfred~~ alpha v kammer HC 60 Box 294
- Angie McCarty Box 642 Glennallen, AK 99588
- Al Slemack Box 99 Copper Center AK 99588
- Maury D. Hays Box 409 Glennallen AK 99588
- John E. Johnson P.O. Box 377 Glennallen AK 99588
- Ed Hall Box 205 Glennallen 99588
- Ruth Ann Holthorse Box 142 Glennallen 99588
- Carlene Spahr Box 458 Glennallen, AK 99588
- Tracy Bradwin Box 497 Glennallen, AK, 99588
- Paul White Box 209 Glennallen, AK 99588
- Sharon McClellan HC 60 Box 2224, Copper Center, AK
- Israel John J P.O. Box 10811 Delta, AK 99573
- Katherine McConkey P.O. Box 14 Copper Center 99573
- Bob Johnson P.O. Box 177 Copper Center, AK 99573

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

ADDRESS

Vera C. Blair 10 Park 163 1/2 n.w. rd.

Wynne A. Klesing Box 276 Glennville

Dora Mullen Box 51 Glennallen

Napil Kuss Box 499 Glennallen

John L. Krum Box 450

Valo J. JUDGE Box 273 Glennallen, AK

John Tomik Box 83 Glennallen, AK

P. W. Stratton Jr. Box 548 Glennallen AK

Paul Jones Box 556 Glennallen AK

Andy Shalom Box 361 Glennallen AK

Ronald A. Shwick Box 110 Glennallen AK 99588

Rubens Williams Box 129 Glennallen AK 99588

Sharon Williamson Box 129 Glennallen AK 99588

Clayton Smith Jr. Box 253 Glennallen AK 99588

Larry Freeman Box 664 Glennallen AK 99588

Connie J. Powell Box 224 Glennallen 99588

Christine Smith Box 587 Glennallen, AK 99588

Walter Strong " " " "

Thompson Box 381 Glennallen AK 99588

DALE ENZELBERG Box 322 COPPER CENTER

Each part of the animal or fish is cut and prepared for future use.

In addition to the language that surrounds us in subsistence, we learn basic manners and skills which is our protocol in our Athabasca culture. We learn to share with others especially elders who are unable to hunt and fish and with people who are in need.

One other significant role that subsistence play is that it instills self-esteem, pride and integrity, especially for the men. It creates a challenge and a sense of accomplishment when they hunt and fish - they become the role models for our young generation as they carry on the traditions and language and culture.

Patsy Cronin

The subsistence issue for us, the
Native People of Alaska ~~area~~ means
more ~~to~~ to us than preserving fish
and game. It is the blood line that
links us to our very existence as
Alaskan natives.

As a subsistence user, I grew up
in Copper Center Village learning "our
way of life" by observing my parents
and others hunt and fish. Our whole
culture and language is essential during
that time.

Subsistence is the greatest tool for
Native Education for us. By observe
and participating in hunting and fish
we learn the Athabaskan words for
the animals, fish, parts of the animals
the area in which we hunt and fish,
and every detail that surrounds the
area.

~~Preparing~~ Preparation for hunting
and fishing and the act itself
is an automatic summon for the
use of our language and culture.

The ~~very~~ act of the kill is often
followed by a prayer of thanksgiving
to our creator for providing us with
the food followed by a careful
procedure of care for the food.

- (FROM
PINK FOLDER)

SUPREME

- COURT

DECISION

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

SAM E. McDOWELL, DALE E.)
BONDURANT, RONALD MARLE and)
HAROLD EASTWOOD,)

Appellants,)

v.)

STATE OF ALASKA, ALASKA)
DEPARTMENT OF FISH AND GAME,)
ALASKA BOARD OF FISHERIES,)
ALASKA BOARD OF GAME and)
DON W. COLLINSWORTH,)
Commissioner of Fish and Game,)

Appellees,)

THE ALASKA FEDERATION OF)
NATIVES, PROTECTORS OF THE)
LAND d/b/a NUMAN KITLUTSISTI,)
TONY VASKA and WALTER CHARLEY,)
on behalf of himself and all)
other persons similarly)
situated,)

Intervenors/)
Appellees.)

Supreme Court File
No. S-2732

Trial Court File
No. 3AN-83-1592 Civil

O P I N I O N

[No. 3540 - December 22, 1985]

Appeal from the Superior Court of the State
of Alaska, Third Judicial District, Anchorage,
Douglas J. Serdahely, Judge.

Appearances: Cheri C. Jacobus, Ross,
Gingras, Bailey & Miner, P.C., Anchorage, for
Appellants. Larri Irene Spengler, Assistant
Attorney General, Grace Berg Schaible,
Attorney General, Juneau, for Appellees.
Donald Craig Mitchell, Anchorage, for
Intervenors/Appellees.

Before: Matthews, Chief Justice, Rabinowitz,
Burke, Compton, and Moore, Justices.

MATTHEWS, Chief Justice.
COMPTON, Justice, concurring.
MOORE, Justice, concurring.
RABINOWITZ, Justice, dissenting.

INTRODUCTION

This case challenges chapter 52 SLA 1986 which grants a preference to rural residents to take fish and game for subsistence purposes. The only requirement to be met by a subsistence fisherman or hunter is residency in a rural area of the state.

The rural preference is challenged under several provisions of the Alaska Constitution: the common use clause, article VIII, section 3; the no exclusive right of fishery clause, article VIII, section 15; the uniform application clause, article VIII, section 17; the equal rights clause, article I, section 1; and the due process clause, article I, section 7. In addition, violation of the equal protection and due process clauses of the United States Constitution is claimed. For the reasons that follow, we hold that the rural preference violates article VIII, sections 3, 15 and 17 of the Alaska Constitution.

3540

FACTUAL AND PROCEDURAL SETTING

The 1986 act¹ defines subsistence fishing and hunting as activities which can be undertaken only "by a resident domiciled in a rural area of the state" Subsistence uses are also defined in terms of residency in rural areas:

"Subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption.

AS 16.05.940(30). A "rural area" is defined as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area." AS 16.05.940(25).

Appellants are Alaska residents who have engaged in subsistence hunting and fishing in the past and wish to continue to do so. Under the 1986 act, they are disqualified as subsistence users because they reside in areas classified as non-rural by the joint Boards of Fisheries and Game. Appellants McDowell and Mahle reside in Anchorage, Bondurant resides in

1. For ease of reference, citations to chapter 52 SLA 1986 in this opinion will be to the appropriate section of the Alaska Statutes where that act is codified.

Cooper Landing, and Eastwood resides in the community of McKinley Park.

The 1986 act requires the Board of Fisheries and the Board of Game to decide what portion of each fish stock and game population can be harvested consistent with the principle of sustained yield. Next the Boards must determine how much of the harvestable portion is needed to satisfy subsistence needs. If the harvestable portion of any stock or population is not sufficient to accommodate all consumptive uses -- sport, personal use, and commercial -- then subsistence uses

shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the Boards may provide for other consumptive uses of the remainder of the harvestable portion.

AS 16.05.258(c). If the harvestable portion of a stock or population is insufficient to satisfy all subsistence needs, all non-subsistence uses are barred, and the Boards are required to distinguish among subsistence users by applying three criteria: "(1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood; (2) local residency; and (3) availability of alternative resources." Id.

This case was brought in 1983 as a challenge to the 1978 subsistence statute, chapter 151, section 4 SLA 1978. The 1978 statute established that subsistence hunting and fishing had priority over other uses of fish and game stocks. Like the 1986

3510

statute, it provided for two tiers of subsistence users. In the first tier were those who could take fish or game for subsistence purposes when populations were adequate to satisfy all subsistence needs. The second tier was limited to those who could take fish and game for subsistence purposes when populations were inadequate to supply all subsistence needs. The 1978 statute distinguished the second tier of subsistence users from the first tier on the basis of the same three factors utilized in the 1986 statute, namely, customary and direct dependence, local residency, and availability of alternative resources. Id. However, unlike the 1986 statute, the 1978 statute did not impose a rural residency requirement as a condition to becoming a first-tier subsistence user.

The appellants' initial complaint challenged the second-tier subsistence priority of the 1978 statute. The complaint was amended several times to expand on the original theory and add challenges to various regulations. All parties submitted motions for summary judgment. The superior court granted some of these motions and deferred others on October 24, 1984. Before the deferred motions could be ruled on, this court decided Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), which struck down, as inconsistent with the 1978 statute, subsistence fishing regulations which imposed a rural residency requirement on first-tier subsistence users. Id. at 178.

3541

The next event of significance was the passage in 1986 of chapter 52 SLA 1986, which, as noted, provides that only rural residents can be first- or second-tier subsistence users. Following passage of this act, the appellants again amended their complaint, challenging the rural preference on constitutional grounds. Both the appellants and the state moved for summary judgment. The superior court granted the motion of the state and denied the motion of the appellants. Judgment was entered on the basis of this ruling.

The setting of this case would not be complete without mention of the Alaska National Interest Lands Conservation Act (ANILCA), enacted by Congress in 1980.² Section 3114 of this act requires that on federal public lands in Alaska, subsistence uses are to be given priority over the taking of fish and wildlife for other purposes. Under ANILCA, only rural Alaska residents are entitled to a subsistence priority.³ ANILCA requires federal

2. 16 U.S.C.A. §§ 3101-3233 (West 1985).

3. ANILCA § 804, 16 U.S.C.A. § 3114, states:

Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be

(Footnote Continued)

management of public lands in Alaska in order to ensure the subsistence priority.⁴ However, federal management may be supplanted by the state so long as the state enacts and implements subsistence laws "which are consistent with, and which provide for the definition, preference, and participation specified in" ANILCA.⁵

(Footnote Continued)

implemented through appropriate limitations based on the application of the following criteria:

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

(Emphasis added).

ANILCA § 803, 16 U.S.C.A. § 3113, defines the term "subsistence uses" as used in ANILCA to mean

the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

(Emphasis added.)

4. 16 U.S.C.A. § 3115(c).

5. 16 U.S.C.A. § 3115(d).

After this court's Madison decision, the Secretary of the Interior notified the state that state law was no longer consistent with ANILCA and that federal management would begin unless consistency was achieved by June 1, 1986. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312, 314 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989). With the passage of the 1986 act, the Interior Department has stated that Alaska is once again in compliance with ANILCA. Id.

After final judgment was entered by the superior court, the 9th Circuit Court of Appeals ruled that the definition of "rural" in the 1986 act does not comply with § 3113 of ANILCA. Id. at 318. "Rural," in ANILCA, according to the court, refers to "sparsely populated" areas; "rural is the antonym of urban and includes all areas in between cities and towns of a particular size." Id. at 316-17. The court referred to Census Bureau standards under which "the urban population consists of people living in communities of 2,500 or more, while the rural population comprises everyone else." Id. at 317. Thus, the 1986 act's subsistence-oriented definition was held inconsistent with ANILCA.

Bondurant and Eastwood both reside in rural areas as Kenaitze has interpreted ANILCA's use of that term. They are thus probably entitled to injunctive relief under ANILCA, 16

U.S.C.A. § 3117(a).⁶ However, the Kenaitze decision does not change the issues presented in this appeal because the 1986 statute remains fully applicable to all non-federal lands.

Background and Purpose of the 1986 Statute

Prior to 1978, urban residents could engage in subsistence hunting and fishing. However, there was no statutory preference given to subsistence over sport or commercial fishing or sport hunting. With the enactment of chapter 151 SLA 1978, subsistence hunting and fishing was given such a priority. Madison, 696 P.2d at 174 n.12. The 1978 statute did not bar urban residents from eligibility as first-tier subsistence users. Madison, 696 P.2d at 176. However, a regulation adopted by the Board of Fish and Game did exclude urban residents. 5 AAC 01.597. Madison held that this regulation violated the 1978 statute. Id.

In 1985 the Alaska House of Representatives adopted a letter of intent which accompanied the bill that became the 1986 subsistence act. 1985 House Journal 1246. The letter explained the rural preference of the 1986 act as follows:

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities in rural areas in Alaska is significantly dependent upon participation by the residents of these communities in the

6. Such relief has not been requested in this case, and the question whether the § 3117(a) remedy is available only in federal courts has not been briefed.

taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

Id. at 1229-30. In making this determination, the legislature sounded a theme that was also expressed by Congress in enacting ANILCA. The House Committee on Interior and Insular Affairs determined that:

After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40 percent of such families spend an average of 6 to 7 months of the year in subsistence activities

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978). The intervenors in this appeal similarly expressed the purpose of the rural preference as follows:

If village access to fish and game is overwhelmed by competition from the tens of thousands of sportsmen who Alaska's fortuitous oil wealth has drawn to the urban centers, the effect on the rural village economy would be adverse, and the effect on the health and welfare of rural residents would be even more so.

An additional purpose of the 1986 subsistence law is to retain state management of fish and game on federal lands by meeting the requirements of ANILCA.⁷

Urban-Rural Subsistence Patterns

Appellants' basic objection to the 1986 act is that by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, the act unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing. Appellants claim, in other words, that the urban/rural criterion is both unfairly under-inclusive, because it excludes deserving urban residents, and over-inclusive, because it includes undeserving rural residents. Appellants instead suggest that the right to subsistence should depend upon individual needs and traditions, not on one's place of residence.

The record supports the appellants' claim that there are substantial numbers of urban subsistence users. A state

7. Senator Fisher, a member of the Senate Resource Committee, noted in the Senate floor debate: "[T]his legislation will provide the boards the tools to solve the problems in harvest disruption that followed Madison, and will assure the state will retain management of fish and game throughout Alaska by meeting the requirements of the federal subsistence law."

study of subsistence use patterns⁸ found that of some 255 holders of subsistence salmon permits for the 1980 Tanana River fishery, approximately 20% exhibited the attributes commonly associated with a traditional subsistence lifestyle, even though they all resided in the urban Fairbanks area. The report states:

Despite their residence in or near populated areas of the Fairbanks North Star Borough, these households generally participated in the wage economy on a seasonal basis and had longer histories of participation in the fishery, lower cash incomes, and somewhat larger household sizes than the majority of users. Some of these households have long-standing cultural ties to the subsistence fishery. For these more intensive users, fishing in sub-district Y-6C was less a recreational outing than an integral component of their way of life in Interior Alaska. Their residence in an area which is currently defined by regulation as urban, coupled with escalating demands upon the resource base, however, raise questions about whether these more intensive uses can continue in the future.

Study at 12. Similarly, in the city of Homer, an urban area under the regulations,⁹ the study reports that 38.2% of the city residents obtained at least one-half of their meat and fish supply from personal hunting and fishing activities. Id. at 162.

8. R.J. Wolfe and L.J. Ellanna Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, Technical Paper Number 61, Alaska Department of Fish and Game, Division of Subsistence, Juneau, March, 1983 (hereinafter "Study").

9. 5 AAC 99.014.

Likewise, the study documents the fact that numerous Alaskans who live in areas classified by the regulations as rural do not engage in subsistence activities. For example, in the City of Sitka, which is classified as rural, although it has a population of 7,803, some 26% of the households sampled did no hunting and 7% did no fishing. Id. at 235. Similarly, in the City of Nome, population 3,249, which is also rural under the regulations, id. at 93, some 5% of all households use no locally taken fish or game. Id. at 111.

The study also amply supports the critical importance of subsistence hunting and fishing to residents of the numerous small and remote villages of our state. For example, in the Wade Hampton census area of Western Alaska, the average annual per capita cash income was only \$2,737 (1979),¹⁰ id. at 30, and the average household harvested 4,597, dressed weight, pounds of fish and game each year. Id. at 42.

The Article VIII Clauses - History and Analysis

A.

Section 15 of article VIII of the Alaska Constitution provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to

30. 10. The 1979 statewide average was \$11,152. Study at

3040

limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 3 of article VIII provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 17 of article VIII provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Although the ramifications of these clauses are varied, they share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited. Section 15 states this explicitly with respect to fisheries. The proceedings of our Constitutional Convention show that the same meaning was intended with respect to sections 3 and 17.

A memorandum of the Constitutional Convention Committee on Resources expresses the view that the common use clause has as one of its purposes a prohibition on exclusive grants or special privileges. The memorandum states: "The expression 'for common use' implies that these resources are not to be subject to exclusive grants or special privileges as was so frequently the case in ancient royal tradition." Alaska Constitutional Convention Papers, Folder 210, Papers Drafted by Committee on Resources, entitled "Terms."

304

The Committee on Resources commentary with respect to the uniform application clause states:

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the state.

6 Proceedings of the Alaska Constitutional Convention 84 (Dec. 16, 1955).

In Owsichek v. State, 763 P.2d 488 (Alaska 1988), we observed that the article VIII provisions were designed to ensure to the public the broadest possible access to wildlife. We noted that "the common use clause impose[s] upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Id. at 495 (emphasis added). "[A] minimum requirement of this duty is a prohibition against any . . . special privileges." Id. at 496. In State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983), we observed that the common use and no exclusive right of fishery clauses reflected "anti-exclusionist values."

Appellants contend that the rural residency requirement amounts to an exclusive or special privilege prohibited explicitly by section 15 and implicitly by sections 3 and 17. They focus on Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case which interpreted section 1 of the White Act, former 48 U.S.C. §§ 220-224 (1941), under which Alaska fisheries were regulated before statehood. In Hynes, the Supreme Court held that the White Act prohibited granting a preferential right to fish to Native residents of the Karluk Reservation. Id. at 123.

This case is of precedential importance, they contend, because section 15 was based on section 1 of the White Act.

In response, the state agrees that the first sentence of section 15 is based on section 1 of the White Act. However, the state distinguishes Hynes on the grounds that the exclusive right to fish there was available to "a closed class." In contrast, it argues there is no closed class here because "people may become eligible to participate in subsistence uses by establishing their domicile in a rural area." Further, the state relies on Kenai Peninsula Fishermen's Cooperative Association v. State, 628 P.2d 897, 904 (Alaska 1981) which held that section 15 does not bar differential treatment between commercial, sport, and subsistence fishermen. The intervenors' argument in response relies exclusively on this case.

The parties correctly agree that the no exclusive right of fishery clause is based on section 1 of the White Act. The commentary concerning the exclusive right of fishery clause prepared by the Committee on Resources of the Constitutional Convention states:

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the state.

6 Proceedings of the Alaska Constitutional Convention Proceedings at 87 (Alaska Legislative Council).

354'

The language of the White Act, for which the no exclusive right clause is meant to be a substitute, is as follows:

Provided, that every such regulation made by the Secretary of the Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, ch. 272, § 1, 43 stat. 464.

The appellants' reliance on Hynes as an explanation of the meaning of the bar on exclusive rights and special privileges is apt. At issue in Hynes was a regulation of the Secretary of the Interior¹¹ prohibiting commercial salmon fishing in all waters within 3,000 feet of the shores of the Karluk Reservation. 337 U.S. at 92. The Secretarial Order made an exception which allowed Natives residing on the Reservation and their licensees to fish in these waters. Id. The Supreme Court held that this exception in favor of the Native residents and their licensees violated section 1 of the White Act. The court stated:

[W]e think it clear that its proviso, "that no exclusive or several right of fishery shall be granted therein," applies to commercial fishing by Natives equally with

11. Regulatory jurisdiction over the administration of the White Act was transferred from the Department of Commerce to the Department of the Interior, effective July 1, 1939; Hynes, 337 U.S. at 92 n.4.

fishing companies, nonresidents of Alaska or other American citizens and so applies whether those Natives are or are not residents on a reservation. We find nothing in the White Act that authorizes the Secretary of the Interior to grant reservation occupants the privilege of exclusive commercial fishing rights. . . . "Exclusive," as used in Section 1 of the White Act, forbids not only a grant to a single person or corporation but to any special group or number of people. The legislative history set out above shows this. The offending regulations which brought about the enactment of the proviso in § 1 of the White Act were administered so as to limit fishing to those who had been using the fisheries before the regulations.

337 U.S. at 122.¹²

As noted above, the state seeks to distinguish Hynes on the ground that Hynes involved a closed class of recipients of a special privilege, whereas the 1986 subsistence law does not because anyone who wants to hunt and fish for subsistence purposes can move to a rural area. We find this argument unpersuasive. If it were valid, virtually any discrimination based on residence would be justified - the residents of the disfavored area could simply move. Such a rationale is inconsistent with the prevailing approach in territorial

12. We do not agree with Justice Rabinowitz's statement in dissent that the limitation struck down in Hynes was predicated solely on the fact that the users were Indians. Infra at 50. Both ethnic status and local residency were required as the regulation in question applied to "natives in possession of [the Kariuk] reservation." 337 U.S. at 92. In any case, the quote in the text makes it clear that if the exception had been based solely on residence, rather than on residence and race, it would also have been struck down.

3048

discrimination cases, which is to subject territorial classifications to scrutiny under the equal protection clause. Gilman v. Martin, 662 P.2d 120, 125 (Alaska 1983); Neuman, Territorial Discrimination, Equal Protection, and Self-Determination, 135 U. Pa. L. Rev. 261, 274-75 (1987).

The state's and the intervenors' reliance on Kenai Peninsula is also off the mark. That case merely affirmed what article VIII, section 4¹³ says explicitly - that preferences among beneficial uses of fish and game may be legislatively or administratively established. We stated in Kenai Peninsula:

While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species must also be allowed, would be to go far beyond the purpose of the section.

628 P.2d at 904 (footnote omitted). The state may, indeed must, make allocation decisions between sport, commercial, and

13. Article VIII, section 4 of the Alaska Constitution provides:

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

subsistence users. That authority, however, does not imply a power to limit admission to a user group.¹⁴

Section 1 of the White Act guaranteed equal access to fisheries regardless of residence. The language of the Act and Hynes make this clear.¹⁵ Alaska's constitutional framers were

14. The foregoing also answers Justice Rabinowitz's contention that our interpretation of the equal access clauses of article VIII is in conflict with article VIII section 4. We have consistently taken the position that limits on admission to user groups are subject to scrutiny under the article VIII equal access clauses. See State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichek v. State, 763 P.2d 488, 492 (Alaska 1988).

15. The legislative history of the White Act is in accord. Congressional debate at the time the White Act was proposed demonstrated concern that Alaska residents and non-residents alike were being excluded from Alaska fisheries. The debate also demonstrated Congress' desire that Alaska fisheries be equally accessible to everyone:

Mr. Robinson. The Secretary of Commerce sought to give exclusive right to fish in certain Alaskan water, and out of this attempt to give exclusive rights to fish, thus depriving a large number of the people the right to pursue their usual vocation, great complaint arose. This bill, however, denies to the Secretary of Commerce any power to grant an exclusive right to fish and requires him to give everyone equal rights within the areas where fishing is permitted.

. . . .

Mr. Jones of Washington. The bill removes the principal cause of complaint with reference to the exercise of power by the Secretary of Commerce. . . . Within the two reservations [of restricted fishing areas] that were created by Executive Order a year or two ago the Secretary of Commerce has seen

(Footnote Continued)

(Footnote Continued)

fit to make regulations under which outsiders might not go in order to fish. In other words, those who are already located there, if [the Secretary] thought they took all the fish that should be taken, were given the full rights, and nobody else could go in there and take fish.

Mr. King: They were given exclusive rights.

Mr. Jones of Washington. They may be called exclusive rights, but I want to say this in justice to the Secretary of Commerce:

When I came back this fall, and came down here, and we were considering matters of this kind, the Delegate from Alaska and I talked over the matter with reference to those exclusive rights, and I saw the Secretary of Commerce, and the Secretary of Commerce himself said that he would be glad to have that discretion taken away, that certainly he was not in favor of that policy, but those who were on the ground and who had been dealing with the matter especially and who might be considered to be experts had recommended and urged that that policy be pursued. I will say, in justice to him, that he said frankly that he would prefer not to have that absolute power, so I can say for him that he is glad that this provision is put in the bill prohibiting him from granting exclusive rights within the fishing areas up there.

. . . .

Mr. Robinson. I have been unable to find any authority for [the Secretary] to grant exclusive rights of fishery. It was about that alleged abuse of authority that most of the complaints arose; namely, that the Secretary in some instances had created reservations, and in others had granted in certain waters the exclusive right to fish, usually to large corporations or packing concerns, which deprived the fishermen of the

(Footnote Continued)

3043

aware of Hynes.¹⁶ As noted, section 15 of article VIII was meant to be a substitute for section 1 of the White Act and to further

(Footnote Continued)

opportunity to pursue their occupations; and they desired very much the provision that is in this bill, which secures to every citizen of the United States the right to fish in Alaskan waters upon equal terms and without discrimination. The bill deprives the Secretary of any power . . . to grant exclusive rights to fish in Alaskan waters.

65 Cong. Rec. 9520-21 1924) (emphasis added).

Based in part upon the Congressional debate identified above, Hynes concluded that

[T]he legislative history of the White Act only emphasizes what the statute clearly says, that is, no special privileges in Alaskan fishing preserves.

Hynes, 337 U.S. at 120 (footnote omitted).

16. A memo of the Committee on Resources defining terms states the following under "White Act Provisions 48 U.S.C.A. 222:"

That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery shall be granted therein, nor shall any citizen of the U.S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary. . . . The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluk Reservation)

Alaska Constitutional Convention Papers, Folder 210.

its purposes.¹⁷ It follows that section 15 likewise was meant to ensure an equal right to participate in fisheries, regardless of where one resides.

Although section 15 pertains only to fisheries, the prevention of grants of exclusive or special privileges with respect to fish and game is also one purpose of the common use and the uniform application clauses.¹⁸ It follows that the grant of special privileges with respect to game based on one's residence is also prohibited.

We therefore conclude that the requirement contained in the 1986 subsistence statute, that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution.¹⁹

17. Commentary on Article on State Lands and Natural Resources, 6 Proceedings of the Alaska Constitutional Convention at 87.

18. See supra pages 14 and 15.

19. Justice Rabinowitz states in his dissenting opinion that he does not interpret the statute to mean that "eligibility to participate in subsistence uses is determined solely with reference to where an individual lives." Infra at 47. That, however, clearly is the case with respect to first-tier subsistence users. Urban resident may not be subsistence users because subsistence uses are by definition limited to rural residents. AS 16.05.940(30), quoted supra at pp.2-3. Yet all rural residents may be first-tier subsistence users without regard to their individual characteristics. The regulation on which Justice Rabinowitz relies, 5 AAC 99.010(b), defines customary and traditional uses but does not state that first-tier subsistence rights can be limited to customary and

(Footnote Continued)

B.

The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing. We do not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons. We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional.

We are not called upon in this case to rule on what selection criteria might be constitutional. It seems appropriate, however, to note that any system which closes participation to some, but not all, applicants will necessarily create a tension with article VIII. In such cases, assuming that the exclusionary criterion is not per se impermissible, our decisions suggest that demanding scrutiny is appropriate.

We alluded to this in State v. Ostrosky, 667 P.2d 1184 (Alaska 1983) in discussing the interplay between the constitutionally allowed limited entry system, which was permitted by

(Footnote Continued)

traditional users. As we stated in Madison "the phrase 'customary and traditional' modifies the word 'users' . . . it does not refer to users." 696 P.2d at 174. The state acknowledges that only in the second-tier subsistence context may individual characteristics separate those rural residents who be second-tier subsistence users from those who are ineligible. Brief of Appellees, p. 8. The state also notes that the need for a second-tier limitation has, to date, not arisen. Id.

amendment to article VIII, section 15, and the common use and no exclusive right of fisheries clauses. We stated:

[S]ince the common use clause of section 3 and the no exclusive right of fishery clause of section 15 remain in the constitution, the premise of the argument is that whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause. The argument concludes that free transferability does not entail the least possible impingement on the anti-exclusionist values which these provisions reflect.

. . . [T]he premise of this argument is logical.

Id. at 1191. We expressed the same theme in Johns v. Commercial Fisheries Entry Commission, 752 P.2d 1256 (Alaska 1988) concerning the obligation of the Commercial Fisheries Entry Commission to establish an optimum number of entry permits. We stated in Johns:

In [Ostrosky], we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. Ostrosky The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because this risk of unconstitutionality

exists, the [Commercial Fisheries Entry Commission] should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so.

Id., 758 P.2d at 1266 (footnote omitted).

Most recently in Owsichek, we suggested that section 17 of article VIII, the uniform application clause, "may require 'more stringent review' of a statute than does the equal protection clause in cases involving natural resources." Owsichek, 763 P.2d at 498 n.17 (quoting Gilman v. Martin, 662 P.2d 120, 126 (Alaska 1983)). We also cited with approval Justice Rabinowitz's dissent in Ostrosky, 667 P.2d at 1196 which employs a least restrictive alternative approach in view of the "highly important interest running to each person within the state" by virtue of the common use clause. 763 P.2d at 492 n.10.

In reviewing legislation which burdens the equal access clauses of article VIII, the purpose of the burden must be at least important. The means used to accomplish the purpose must be designed for the least possible infringement on article VIII's open access values. Ostrosky, supra at 1191, Johns, supra at 1266.

We employ this method of analysis in the present case as an alternative ground of decision. Using this approach, we conclude that the rural-urban residency criterion is unconstitutional for the reasons that follow.

One purpose of the 1985 act is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so.

This is an important interest.²⁰ However, the means used to accomplish this purpose are extremely crude. There are, as noted above, substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims. A classification scheme employing individual characteristics would be less invasive of the article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criterion.

We note that several other jurisdictions have struck down intrastate residential preferences in fish and game statutes. These authorities support our view that the equal access clauses of article VIII, which are a special type of equal

20. Another expressed purpose is to aid communities whose residents are dependent on subsistence, as distinct from aiding the individual residents. This is not a purpose separate from aid to individual community members where the aid goes directly to the individuals. As we stated in State v. Enserch, P.2d , Slip Op. No. 3539 at 31 (Alaska, December 18, 1989): "It would not make sense to conclude that a statute may not discriminate between residents of two areas in order to aid the residents of the more disadvantaged area, but that such a statute could discriminate between residents of two areas in order to aid the communities in the more disadvantaged area. The communities are merely the collective sum of the residents."

A third purpose is to comply with ANILCA in order to retain state fish and game control on federal lands. It is difficult to view this as a sufficiently important purpose. ANILCA does not require state compliance. State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of article VIII.

protection guaranty, bar the residential discrimination imposed in this case.²¹ Lewis v. State, 161 S.W. 154 (Ark. 1913) contains an excellent historical statement:

When it becomes necessary for the propagation and preservation of wild game and fish for the use of the public, the people acting in their sovereign capacity, through their lawmaking power, may pass laws to regulate the right of each individual which he enjoys in common with every other member of the community to use of same. But when

21. See State v. Bryan, 99 So. 327, 330 (Fla. 1924) (state law levying \$10 and \$50 license tax on state residents who are non-residents of certain counties, as a prerequisite to hunting in those counties, when residents of those counties pay only \$1 or \$1.25, violates equal protection); State v. Barkley, 134 S.E. 454, 455 (N.C. 1926) (state law levying \$3 hunting fee on non-resident hunters in the county, and a \$1 fee on residents of the county, held invalid in that it taxed inhabitants unequally); Harper v. Galloway, 51 So. 226, 229 (Fla. 1910) (state law that required citizens of the state of Florida who were not residents of Marion County to give a previous notice of intention to hunt and to pay a special license tax for the privilege of hunting game in Marion County, while no notice or license tax was required of residents of Marion County, denied equal protection of the laws); Bruce v. Director, Dep't of Chesapeake Bay Affairs, 276 A.2d 200, 208 (Md. 1971) (statutes prohibiting crabber from crabbing in waters of county other than his county of residence and prohibiting oystermen from going to waters of another county invalid); Power, More About Oysters Than You Wanted To Know, 30 Maryland L. Rev. 199, 218 (1970) ("A county non-resident represents no peculiar threat to the fishery but merely the same threat as represented by a county resident.").

But see Commonwealth v. Hilton, 54 N.E. 362, 364 (Mass. 1899) (selectmen of a town may prohibit the digging of clams by nonresidents of the town); State v. Norton, 335 A.2d 607, 615 (Me. 1975) (state had compelled governmental interest in conservation of its clams and its attempt to achieve that purpose by, in part, authorizing municipalities to apply a resident-nonresident standard in licensing shell fisheries did not unconstitutionally discriminate against nonresidents).

3540

the sovereign undertakes to regulate or restrain the individual in its right as a member of the community to enjoy the right to take and use this common property of all, it must do so upon the same terms to all members of the community alike. The common right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law the exclusive privilege of the people of a certain class or section upon terms and conditions that do not apply to the whole people alike. This right which one individual has in common with every other individual in the community to take and use fish and game, *ferae naturae*, is one that has existed from the remotest times, and, although at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclusion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John. "The rights," says Green, "which the barons claimed for themselves they claimed for the nation at large." Green's History of the English People, vol. 4, pp. 252-254.

These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to us from the laws of England and may be regarded as a common heritage of the English-speaking people. See Parker v. People, 111 Ill. 581, 53 Am. Rep. 643. Also Geer v. Conn., 161 U.S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793; Martin v. Waddell, 16 Pet. 412, 10 L. Ed. 997. The only justification for a law regulating and restricting the common right of individuals to take wild game and fish is the necessity for protecting the same from extinction, and thus to preserve and perpetuate to the individual members of the community the inalienable rights which they have had from time immemorial. While the state, holding the title to game and fish, so to speak, in trust for every individual member of the community, may pass laws to regulate the rights of each individual in the manner of taking and using the common property, yet, as we have already stated, this must be done, under the

Constitution, upon the same terms to all the people. No special privileges or immunities can be conferred.

Where the necessity for the preservation of the wild game and fish exists in certain territories of the state, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the state outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation. Hayes v. Territory, 2 Wash. T. 286, 5 Pac. 927. In the cases of State v. Higgins, 51 S. C. 51, 28 S. E. 15, 38 L. R. A. 561, and Harper v. Galloway, 58 Fla. 255, 51 South. 226, 26 L. R. A. (N.S.) 794, 19 Ann. Cas. 235, the question here involved was considered and determined in accord with the doctrine we have announced.

Id. at 155-156 (footnote omitted, emphasis added).

CONCLUSION

Our disposition of this case makes it unnecessary to discuss the other grounds advanced by appellants. For the above reasons, the judgment of the superior court is reversed. This case is remanded to the superior court with instructions to issue a declaratory judgment that the rural preference of ch. 52 SLA 1985 is unconstitutional and to take such further action as may be appropriate.

REVERSED and REMANDED.

COMPTON, Justice, concurring.

I agree with Part A of the opinion, holding that this preferential scheme violates art. VIII, sections 3, 15 and 17 of the Alaska Constitution.

I express no opinion regarding Part B as it is superfluous to the decision.

304

MOORE, Justice, Concurring.

The court correctly concludes that chapter 52, SLA 1986 ("the Act") violates the Alaska Constitution. I write separately to explain my understanding of the court's holding in part B of the section entitled "The Article VIII Clauses - History and Analysis," which I join, and because I disagree with the court's analysis in part A.

Equal Protection

The Act is motivated by a compelling purpose, ensuring that persons who are dependent upon subsistence hunting and fishing have access to wildlife. However, the Act's geographical classification scheme is only loosely related to that purpose. This is an equal protection case, and an easy one at that.

Article I, section 1 of the Alaska Constitution provides that "all persons are . . . entitled to equal rights, opportunities, and protection under the law" We have decided many cases interpreting this provision, most recently, State v. Enserch Alaska Construction, Inc., ___ P.2d ___, Op. No. 3539, (Alaska, December 18, 1989). The Alaska Constitution has a similar clause specifically concerning natural resources. Article VIII, section 17, the uniform application clause, provides that "[l]aws and

regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation."

When applying the equal protection clause of article I, we determine the importance of the individual interest affected by the enactment. The importance of the individual interest determines the level of scrutiny we apply to both the state's interest in the enactment and the nexus between that interest and the enactment. Enserch, Op. No. 3539, at 22-24; Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269-70 (Alaska 1984). Without explicitly acknowledging it, the court's opinion employs the same analysis under the uniform application clause of article VIII. See supra pp. 26-27. Since the principle of equality underlies both clauses, the use of our equal protection analysis in the uniform application context is proper.

I believe that the individual interest impaired by the Act, access to wildlife for subsistence purposes, is a species of the important right to engage in economic endeavor at issue in Enserch, Op. No. 3539, at 25-28. See also Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980). The challenged enactment

therefore should receive close scrutiny.¹ The Act then at least must be closely related to an important state interest. Enserch, Op. No. 3539, at 28.

The state's interest, ensuring that those who must engage in subsistence hunting and fishing are able to do so, is undoubtedly important. Indeed, I believe it is compelling. However, the Act's classification scheme for deciding who is entitled to engage in subsistence hunting and fishing and its implementing regulations are not closely related to the purpose of the Act. As the court's opinion describes, large numbers of residents of areas classified as urban under the Act are dependent upon subsistence hunting and fishing. Conversely, some of the state's larger cities, where many people are not dependent upon subsistence hunting and fishing, are classified as rural. Supra pp. 11-12. There is only a modest correlation between the set of people who reside in areas designated as rural under the Act and the set of people who are dependent upon subsistence hunting and fishing. The fit between the Act and the state's interest does not even approach that required to withstand

1. Enserch, Op. No. 3539, at 28; Patrick v. Lynden Transp., Inc., 765 P.2d 1375, 1379 (Alaska 1988). It may be that the enactment should receive even greater scrutiny under the uniform application clause; however, the court has not decided that question. Owsichek v. State, 763 P.2d 488, 498 n.17 (Alaska 1988).

close scrutiny. Therefore, the Act violates the equal protection and uniform application clauses of the Alaska Constitution.

This is not to say that all subsistence preference laws would be unconstitutional. I simply believe that for such a law to pass constitutional muster, it must be closely related to its compelling purpose. A law providing for individual determinations of eligibility would in my view be sufficiently tailored to the state's interest to withstand a constitutional challenge.

Common Use and Exclusive Right of Fishery

The court's holding in Part A of the section entitled "The Article VIII Clauses - History and Analysis" is not altogether clear. I agree with the court to the extent that it holds that an intrastate geographical preference for the taking of wildlife violates sections 3 and 15 of article VIII of the Alaska Constitution. I reject any implication that all preferences, especially all subsistence preferences, would violate these sections. I do not believe that the court can find a violation of article VIII, section 17

3040

without a full equal protection analysis. I do not join part A of the court's opinion, but I concur in its result.²

Section 15 of article VIII provides that "[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State." Alaska Const., art. VIII, § 15 (emphasis added). Section 4 of article VIII provides that the use of resources shall be "subject to preferences among beneficial uses." On the surface, there appears to be some conflict between these provisions. To the greatest extent possible, we must interpret the provisions of Article VIII consistent with each other. See Abrams v. State, 534 P.2d 91, 95 (Alaska 1975).

Section 4 clearly authorizes some preferences based upon uses. The court recognized a parallel exception to section 15 in Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897 (Alaska 1981), where we wrote that section 15 "was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen." 628 P.2d at 904. The Act distinguishes subsistence uses from commercial and sport uses in name only. As discussed above, its classification

2. I would not, however, reach this question, because I believe that such geographical preferences violate the equal protection and uniform application clauses of the Alaska Constitution.

is in fact a fairly arbitrary one based upon residence. It is not the type of classification we have previously held permissible under section 15.

We are left with the question whether geographical preferences are permissible under section 15. For the reasons given in the court's opinion, see supra pp. 15-19, I believe that reliance upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), which interpreted the federal statute upon which section 15 was based, is appropriate. In Hynes, the Court invalidated regulations prohibiting fishing off the shores of the Karluk Reservation. While I do not believe that Hynes is determinative since it involved an exclusive right to fish in a particular area and not a mere preference, 337 U.S. at 92, section 15 proscribes "special privilege[s]" as well as exclusive rights. Like the court, I do not read Hynes as being based on the fact that the exclusive right was granted to Natives rather than some other group. Nor do I believe that Hynes can be distinguished by the ability of people to move to rural areas and thus qualify under the Act. See supra pp. 18-19 & n.12. For these reasons, I agree with the court that geographical preferences for the taking of fish are not permissible under section 15. The Act thus violates section 15. Although section 15 is facially applicable only to fishing, I would have no difficulty finding a corresponding

prohibition of geographical hunting preferences in the
common use clause of article VIII, section 3. See supra p.
23.

RABINOWITZ, Justice, dissenting.

I dissent from the court's holding that ch. 52 SLA 1986 is unconstitutional.¹ In my view Alaska's subsistence laws are not violative of either section 3 ("common use"), section 15 ("no exclusive right of fisheries"), or section 17 ("equal application of laws") of article VIII of the Alaska Constitution.

Article VIII, section 4 explicitly provides for "preferences among beneficial uses." In Kenai Pen. Fisherman's Co-op Ass'n v. State, 628 P.2d 897, 904 (Alaska 1981), we said in part: "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen." The subsistence laws at issue here do not exclude individuals from access to wildlife; rather, wildlife resources are allocated on a preferential basis. Nor do these laws create an exclusive right of fishery in any class. Rather, the effect of these laws is to provide for a subsistence preference among beneficial users of the resource. No exclusive, monopolistic, or otherwise closed classes of resource users are established.

I would further hold that ch. 52 SLA 1986 is not violative of the equal protection provisions of the Alaska

1. Hereinafter state subsistence laws.

Constitution (article I, section 1, article VIII, section 17). In my view adoption of the strict scrutiny and least restrictive alternative standards is inappropriate. Given the nature of the interest at stake I would apply a lesser standard for purposes of equal protection analysis. This subsistence legislation is substantially related to legitimate legislative goals. I conclude that the fit between the legislature's goal of furthering the health and welfare of subsistence users, and the subsistence preference system it devised to carry out this objective, is sufficiently close to withstand scrutiny under Alaska's equal protection provisions.

INTRODUCTION.

In response to the impact the state's population growth has had upon subsistence lifestyles, Congress in 1980 enacted the Alaska National Interest Lands Conservation Act (hereinafter ANILCA or federal subsistence law).² ANILCA was designed to protect subsistence hunting and fishing by giving such uses priority over commercial and sport uses in rural areas.³

2. Pub. L. No. 96-487, 94 Stat. 2371 (1980); 16 U.S.C. §§ 3101-3233 (West 1985). Congress prefaced Title VIII of ANILCA with a declaration that "the continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential to Native physical, economic, traditional, and cultural existence" 16 U.S.C. § 3111(1).

3. See 16 U.S.C. §§ 3111-3126 (1982 & Supp. IV 1986).

The federal subsistence law specified that subsistence uses must be "customary and traditional uses by rural Alaska residents." ANILCA § 803; 16 U.S.C. § 3113 (emphasis added). Thus, under ANILCA, eligibility for subsistence permits was dependent in part upon one's geographic place of residence. ANILCA § 804; 16 U.S.C. § 3114.⁴

ANILCA authorized the state to continue managing fish and game inhabiting Alaska's federal lands and waters if the state established regulations maintaining the definition of and preference for subsistence uses articulated in the federal subsistence law. ANILCA § 805(d); 16 U.S.C. § 3115(d). The state legislature complied, and thereby retained managerial control over federal lands located within the state by authorizing the Joint Boards of Fish and Game to promulgate regulations defining "rural" use.

In enacting ch. 52 SLA 1986 the Alaska House of Representatives adopted a letter of intent.⁵ The letter articulated the subsistence-rural preference of the act in the following terms:

4. "Rural" areas are those with sparse populations, and the term "rural" as used in ANILCA is not a term of art. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989), (term "rural" is to be given its ordinary significance, meaning "sparsely populated").

5. 1985 House Journal 1246.

354!

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities in rural areas in Alaska is significantly dependent upon participation by the residents of the communities in the taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.6/

The subsistence statutes challenged here define "rural area" as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area." AS 16.05.940(25).

6. See also the House Committee on Interior and Insular Affairs Report issued in conjunction with the passage of ANILCA.

After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40% of such families spend an average of 6 to 7 months of the year in subsistence activities. . . .

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978).

1041

Appellants' basic contention here is that "by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, it unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing." The linchpin of this dispute, then, is whether the challenged subsistence law constitutes an unconstitutionally imperfect attempt to fulfill the legislature's purpose of protecting subsistence uses.

I. DO ALASKA'S SUBSISTENCE LAWS VIOLATE ARTICLE VIII OF THE ALASKA CONSTITUTION?

Appellants challenge the constitutionality of the state subsistence laws under three clauses of article VIII of the Alaska Constitution, sections 3 ("common use"), 15 ("no exclusive right of fisheries"), and 17 ("equal application of laws").⁷ The court attributes a "shared meaning" to these three constitutional

7. Section 3 of article VIII provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 15 of article VIII provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural

(footnote continued)

provisions: that "exclusive or special privileges to take fish and wildlife are prohibited." The court then concludes that the subsistence statute's preference for rural residents violates each of the aforementioned clauses and offends the shared meaning of article VIII. I disagree.

A. Section Three: The "Common Use" Clause.

Article VIII, section 3 (the "common use" clause) is derived from laws designed to guarantee the common citizen participation in wildlife harvest, and to divest the Crown of exclusive entitlement to those resources.⁸ It is said that this

(footnote continued)

waters of the State. This section does not restrict the power of the State to limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 17 of article VIII provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

8. In Lewis v. State, 161 S.W. 154 (Ark. 1913), the court described the history of the common use principle in the following terms:

[A]lthough at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclu-

(footnote continued)

i) 4'

"public trust" doctrine⁹ "impose[s] upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Owsichek v. State, 763 P.2d 488, 495 (Alaska 1988) (citations omitted); see also Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 905 (Alaska 1961), aff'd, 369 U.S. 45 (1962); Herscher v. State, Dep't of Commerce, 568 P.2d 996, 1003 (Alaska 1977).

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), reh'g denied, 468 U.S. 1204 (1984), we accepted the view that the common use clause reflects "anti-exclusionist values." Id. at 1191. Thereafter, in Owsichek v. State, 763 P.2d 488 (Alaska 1988), a case involving an exclusive right to conduct guided hunting in particular areas of wilderness, we reiterated this

(footnote continued)

sion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John.

. . .

These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to use from the laws of England and may be regarded as a common heritage of the English-speaking people.

Id. at 155 (citations omitted).

9. The public trust doctrine maintains that government holds untaken wildlife in trust for public use, and that government owes a fiduciary duty to manage such resources for the common good of the public as beneficiary. See Owsichek v. State, 763 P.2d 488, 493-95 (Alaska 1988).

514

theme stating that section 3 is fundamentally "anti-monopoly" in its thrust. Id. at 493 ("Because an EGA [exclusive guide area] is clearly a type of monopoly . . . [legislative] history strongly suggests that the statutes at issue here are unconstitutional."). Critical to our holding that the guide licensing system at issue in Owsichuk was unconstitutional under the common use clause were the following characteristics of the scheme: it permitted a single guide permanently to exclude all other guides from leading hunts professionally on specific lands; it favored established guides at the expense of new entrants in the guiding market; it created a salable, property-like interest in the license; and it established exclusivity of an unlimited duration. Id. at 496.

In the case at bar the challenged subsistence laws exhibit none of these characteristics. The state subsistence laws establish a subsistence preference, not an exclusive, monopolistic, or otherwise closed class. Anyone may join subsistence users by moving to a sector of the state which has been designated as a "rural area." Further, these laws do not establish subsistence hunting and fishing as an exclusive use, even in rural areas, except during periods of extreme resource scarcity.¹⁰ In regard to this issue I think the court's reliance

10. Alaska Statute 16.05.258(c) authorizes complete
(footnote continued)

on Owsichuk and Ostrosky is misplaced. Both Owsichuk and Ostrosky emphasize that the primary thrust of article VIII is anti-exclusionist or anti-monopolistic, not anti-preferential.

I do not read the statutes in question as providing that eligibility to participate in subsistence uses is determined solely with reference to where an individual lives. That is not the case. The subsistence laws at issue here are implemented by multi-factoral regulations which focus not only on place of residence, but also upon particular stocks and populations of fish and game, and particular patterns of subsistence usage.¹¹ Moreover, individual characteristics are always considered under the state subsistence law during lean periods when it becomes necessary to restrict even certain subsistence uses. In those periods, the determination as to which individuals among those normally eligible for a subsistence permit may continue harvesting is made on the basis of an analysis of individuals' characteristics under the following criteria: (1) customary and

(footnote continued)

prohibition of non-subsistence uses during periods of famine when the state's total harvest is insufficient to support even normal subsistence uses.

11. Subsistence uses must be "customary and traditional" uses as determined by the separate Boards after evaluation of a particular fish or game stock in light of eight criteria. 5 AAC 99.010(b). These eight criteria include examination of individual populations' patterns of use, methods and efficiency of use, consistency of use, and methods of food storage, as well as the nexus between the asserted subsistence use and the maintenance of individuals' cultural heritage. Id.

direct dependence on the resource as the mainstay of livelihood; (2) local residence; and (3) availability of alternative resources. AS 16.05.258(c).

The court's interpretation of the common use clause would prohibit the legislature from making any differential allocation of natural resources whatsoever, an outcome precluded by our holding in Kenai Peninsula, 628 P.2d 897 (Alaska 1981) and the language of article VIII, section 4, which explicitly provides for "preferences among beneficial uses." In Kenai, we held that "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fisherman." 698 P.2d at 904 (emphasis added).

Moreover, it is axiomatic that the provisions of article VIII of the Alaska Constitution should be interpreted so as to avoid internal contradictions. Abrams v. State, 534 P.2d 91, 95 (Alaska 1975) ("It is an undisputed maxim of constitutional construction that the different provisions of the document shall be read so as to avoid conflict whenever possible"); Park v. State, 528 P.2d 785, 786-87 (Alaska 1974) ("It is a well-accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized."). In my view the court's reading of article VIII, section 3 as prohibiting preferences among beneficial uses

of Alaska's resources plainly conflicts with article VIII, section 4. That section provides, in full:

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

(Emphasis added.) The intent of section 4 is that persons situated differently can be treated differently and that some users of a resource may legitimately be given preference over others.

In brief, the common use clause constitutionalized the doctrine that wild fish and game are held in trust by the state for the benefit of the public as a whole, rather than by the sovereign in exclusive possession. That principle is consistent with the view that the sovereign state may manage wildlife for the common good, including certain beneficial preferences. Thus I conclude that the challenged subsistence laws do not offend the anti-monopolistic, anti-exclusionist values underpinning the public trust and common use doctrines embodied in section 3 of article VIII of Alaska's constitution.

B. Section 15: the "No Exclusive Right" Clause.

I also disagree with the court's holding that the state subsistence law violates article VIII, section 15 (the "no exclusive right" clause).

The court relies for its interpretation of the no exclusive right clause upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case in which the United States Supreme Court interpreted the federal legislation which governed Alaska's fisheries before statehood, former 48 U.S.C. §§ 220-224 (1941) (hereinafter "The White Act"). The White Act did include language seemingly prohibitive of the kind of geographic distinction at issue here. Section 1 of the White Act provides, in relevant part:

[N]o exclusive or several right of fishery shall be granted . . . nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, Ch. 272, § 1, 43 stat. 464 (emphasis added). On the other hand, I disagree with the court's view that insofar as the White Act was expressly anti-geographic, section 15 should be given a similar construction. For in my opinion Hynes is distinguishable in several important respects.

First, Hynes did not involve an allocation of fish and game on the basis of residence; rather, the exemption at issue there applied only to fish, and was predicated upon the users' status as Indians, not their place of residence. 337 U.S. at 89-97. Second, Hynes involved an exclusive right of access which had been made available only to a closed class of fishermen. At issue in Hynes was a regulation of the Secretary of the Interior completely prohibiting commercial salmon fishing in all waters

within 3,000 feet of the shores of the Karluk reservation, but exempting Native fishermen from this otherwise comprehensive ban. Id. Therefore, Hynes, like Owsichuk, is distinguishable from the classification scheme at issue in the present case, since in the case at bar one may become eligible for subsistence permits by moving into a rural area. Finally, as noted previously, both article VIII, section 4 and Kenai Fishermen establish that section 15 cannot be read to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence users.

C. Section 17: the "Equal Application" Clause.

Although section 17 (the "equal application clause") is a component of article VIII, it is essentially, as the court states, a "'more stringent . . .' equal protection clause [for] . . . cases involving natural resources." I will address these issues together.

II. DO THE 1986 STATE SUBSISTENCE LAWS VIOLATE ARTICLE VIII, SECTION 17 OR THE EQUAL PROTECTION CLAUSE OF THE ALASKA CONSTITUTION (ARTICLE I, SECTION 1)?

The court holds the state subsistence laws unconstitutional on equal protection grounds.¹²

Although this court has not yet addressed the issue whether equal access to fish and game is a fundamental right, we have held that commercial fishing is not fundamental. Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1262 (Alaska 1980). Other courts have concluded that recreational hunting is not a fundamental right. See, e.g., Baldwin v. Montana Fish and Game Comm'n, 436 U.S. 371 (1978) (elk hunting by non-residents not fundamental); Utah Public Employees Ass'n v. State, 610 P.2d 1272 (Utah 1980) (entry in big game permit drawing not fundamental). See also Herscher v. State, Department of Commerce, 568 P.2d 996, 1003, 1006 (Alaska 1977).

In my view, the interest at stake, i.e., the right to participate in subsistence hunting and fishing, is not a fundamental right. Maximum scrutiny is reserved for fundamental

12. The majority opinion employs article VIII section 17 and the concurring opinion of Justice Moore uses article I section 1. As Justice Moore points out, the method of analysis in either case is the same. Because Alaska's equal protection standards are more stringent than the federal constitutional standard, any statute which passes muster under Alaskan law will also survive the equal protection clause of the United States Constitution. Herrick's Aero-Aqua Repair v. Department of Transportation, 754 P.2d 1111, 1114 (Alaska 1988). Therefore, discussion of the federal standard is omitted.

rights and suspect classifications. Ostrosky, 667 P.2d at 1192. Given what I perceive to be the appropriate characterization of the interest involved, the state must demonstrate the existence of a substantial relationship between the means utilized by the legislation and the legitimate governmental ends sought to be achieved thereby.

Since I am of the view that strict scrutiny is inapplicable, I conclude that the questioned legislation does not violate the Alaska Constitution's equal protection clause. The challenged subsistence laws are fairly and substantially related to the important governmental goal of protecting the health and welfare of the state's subsistence users, a goal admittedly within the state's police powers to pursue.¹³

13. As mentioned previously, in enacting the state subsistence laws, the Alaska legislature explicitly found that "the general health and welfare of these citizens is significantly tied to their participation in [subsistence] activities." 1985 House Journal 1246. In a similar vein this court said in State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854, 859 n.18 (Alaska 1978):

. . . For hundreds of years, many of the Native people of Alaska depended on hunting to obtain the necessities of life. To this day, despite incursions by those of different cultures, many Alaska Eskimos, Indians and Aleuts eke out a livelihood by reliance on fish and game. . . . Not only is the game of prime importance in furnishing the bare necessities of life, but subsistence hunting is at the core of the cultural tradition of many of these people. . . .

3540

Implicit in my view that this legislation is not violative of equal protection is the further conclusion that the subsistence classification formulated to fulfill this concededly legitimate legislative purpose is not constitutionally infirm. As we said in Apokedak, 606 P.2d at 1267:

[I]ndividual cases will arise in which those barred may be able to show extreme hardship. The legislature in its wisdom could conceivably have better provided for such instances. But equal protection, even under Alaska's stricter standard, does not demand perfection in classification. If it did, there would be few laws establishing classifications that would sustain an equal protection challenge.

The subsistence legislation in question here effectively captures within its ambit the thousands of subsistence users residing in Alaska's numerous rural villages. In short, I would hold that the subsistence laws' fit satisfies the requirements of equal protection under both article I, section 1, and article VIII, section 17 of the Alaska Constitution.

3340

burden of proof, the court finds the state's argument in its reply more persuasive. The court thus has used a preponderance of evidence standard in evaluating the legislature's intent with regard to severability. The court finds that even under this less stringent standard the evidence fails to show that the legislature would have intended non-severability.

The parties and all amici agree there were three purposes behind the 1986 legislature's amendment to the subsistence law. The court should find in favor of severability unless a preponderance of evidence shows that the legislature would have intended non-severability to further these purposes.

The first goal of the legislature was to protect those Alaskans most reliant on the non-commercial use of fish and game, i.e., subsistence users. All parties agree that severability serves this purpose because severing the unconstitutional rural residency requirement from the remainder of the statute leaves the subsistence law on the books. A finding in favor of non-severability would delete the law altogether with the result that subsistence uses would not have a priority over any other uses.

The second purpose of the legislature was to put state fish and game laws in compliance with ANILCA to assure the state of control of fish and game management on both federal and state lands. This purpose is not relevant to the question of severability, however, because this purpose cannot be served regardless of the decision on severability. The supreme court's ruling in McDowell renders compliance with ANILCA an

impossibility without a constitutional amendment. Moreover, a decision in favor of non-severability would put the state further out of compliance with ANILCA because there then would be no subsistence preference in Alaska law at all. The legislature likely would have preferred to comply with ANILCA as much as possible because the degree of compliance with ANILCA might affect whether the threatened federal takeover of fish and game management on federal lands actually occurs.

The third purpose of the legislature was to cure the post-Madison confusion and disruption in the harvests of fish and game. This purpose actually is two separate purposes. The first is eliminating uncertainty about the amount of subsistence use. The second is providing for other users some certainty about their use. These other users include commercial users and sportsmen, particularly hunters, including out of state hunters.

For the court to find in favor of non-severability for these last two reasons, the court would have to find that the legislature intended to throw out the decade-old subsistence preference altogether merely to avoid a return to the confusion and disruption caused by the Madison decision. The court finds nothing in the legislative history that indicates a willingness to take such a drastic step, even though some legislators were determined to protect other uses. To the contrary, both the record and the briefs of the parties convincingly show the legislature's emphasis since 1975 on furthering a subsistence priority. As the state acknowledges, the 1986 law retained the

It will be burdensome for the state to decide on appropriate regulations to carry out AS 16.05.258. This difficulty does not require the court to find the remaining provisions non-severable, however. There is no legal or logistical barrier to the promulgation of new regulations that both permit subsistence use to those Alaskans who qualify as subsistence users and foster management of the resources so as to allow other uses.

Regulations could provide deadlines for applying for subsistence permits. All residents will not apply. Applicants could be required to provide some of the information the state needs to make its eligibility determinations. Alaska already has a system in place for all residents to apply for permanent fund dividends. On those applications, certain information must be given, witnesses must be provided, and the applications must be notarized. There appears to be no reason why those who wish to subsistence hunt or fish could not be burdened to provide information in similar form, in order to obtain the benefit of subsistence harvesting.

Logical limitations could be placed on the amount of fish and game taken for subsistence purposes, based on criteria such as size of household and use of product harvested. To permit the state to obtain knowledge to help it wisely control the resource's uses, reports of the amount harvested could be required. Regulations might even be considered that would limit residents who successfully subsistence fish from other harvest activities such as sports fishing, unless they catch and release.

Many innovative but fair ways of distributing the resources are possible, even with a subsistence priority. The above are mere suggestions of possible approaches by the Fish and Game boards. They do not in any way represent the opinion of the court as to what regulations should be passed.

A further finding must be made with regard to "tier-two" determinations and the continued viability of "local residency" as a criterion in AS 16.05.258(C)(2). This criterion will be used only if subsistence use itself has to be limited to fewer than all persons eligible. The court sees no reason to strike down the "local residency" criterion as long as it is interpreted and applied as amici Bobby suggest in their brief. Memorandum for Amici Curiae on the Severability Issue, at 8-9. For example, if an applicant resides in southeast Alaska, there is no reason why his place of residence should not be considered with regard to whether he is chosen for a limited subsistence hunt near Fairbanks. Even though the Alaska Supreme Court held earlier in this case that use of a rural residency requirement is too crude a yardstick for determining all subsistence eligibility, because it is unrelated to the compelling purposes of the subsistence act, the court did not hold that the domicile of a person has no relation to whether the person should be given a permit for a specific subsistence hunt or fish opening if a "tier-two" determination has to be made. This court does not believe the supreme court would reach that far.

A finding also must be made in regard to the first section

of AS 16.05.258, which previously directed the boards to identify "in each rural area" the fish stocks and game populations of the state that are customarily and traditionally used for subsistence. The law directs the boards to make these determinations as a step preliminary to adopting regulations to determine subsistence use and subsistence users. The parties do not address whether the boards now should identify any such stocks or populations anywhere in the state, not merely in rural areas. That the boards should make these determinations anywhere in the state appears to be a logical result of the supreme court's holding in McDowell, supra. The boards still must find, however, that a stock or population is customarily and traditionally used for subsistence before making it available for subsistence use.

Based on the foregoing analysis, the court finds that the following provisions are severed from the following statutes:

- from AS 16.05.258(a) - "rural" in line 4
- from AS 16.05.940(26) - "rural" in line 1
- from AS 16.05.940(29) - "a rural area of" in line 3
- from AS 16.05.940(30) - "a rural area of" in line 2
- from AS 16.05.940(31) - "a rural area of" in line 3.

DATED at Palmer, Alaska this 20 day of June, 1990.

Beverly W. Cutler
BEVERLY W. CUTLER
SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

SAM McDOWELL, et al.)	
Plaintiffs)	
vs.)	
DON W. COLLINSWORTH, et al.)	
Defendants)	
and)	
THE ALASKA FEDERATION OF NATIVES, et al.)	
Intervenors)	
<hr/>		
Case No. 3AN-83-1592 Civil		

Filed in the Trial Courts
 STATE OF ALASKA THIRD DISTRICT
 AT PALMER

JUN 25 1990

Clerk of the Trial Courts
 Jy _____ Dep'

ORDER OF CLARIFICATION OF ORDER
ISSUED JUNE 20, 1990

The court in its order of June 20, 1990, stated that compliance by the State of Alaska with ANILCA was not possible without a constitutional amendment. The court now restates its finding as follows.

Literal compliance with ANILCA does not appear possible without a constitutional amendment. In other words, Alaska law cannot limit subsistence use to rural residents without running afoul of the Alaska constitution.

This conclusion does not preclude the state from trying to persuade the federal government that Alaska's subsistence law does comport with ANILCA, despite Alaska law's failure to contain a specific rural resident preference. Alaska law defines subsistence uses as "customary, traditional and non-commercial uses", AS 16.05.940(31). This definition heavily favors rural

residents. Alaska law for tier-two subsistence user determinations employs as criteria "customary and direct dependence on the fish stock or game population as the mainstay of livelihood, local residency, and availability of alternative resources", AS 16.05.256(c)(1-3). This part of the law also heavily favors rural residents.

This rural favoritism results from the fact that most subsistence uses happen to be rural uses by rural persons in rural areas. The Alaska Supreme Court did not outlaw such a de facto favoring of rural residents. The supreme court merely struck down a complete closing of the door to non-rural residents who might otherwise meet the criteria for subsistence users. The supreme court was not trying to change the definition of subsistence use but rather was protecting the constitutional rights of urban residents to attempt to qualify as subsistence users.

Whether the federal government sees current Alaska law as complying with ANILCA remains to be seen. The court has issued this clarification merely to aid the parties in addressing the subsistence crisis. This court must caution, however, that it is merely a trial court, and is not the final say as to what portions of Alaska's fish and game laws survive constitutional scrutiny.

DATED at Palmer, Alaska this 25 day of June, 1990.

Beverly W. Cutler
 BEVERLY W. CUTLER
 SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT PALMER

SAM McDOWELL, et al.

Plaintiffs

vs.

DON W. COLLINSWORTH, et al.

Defendants

and

THE ALASKA FEDERATION OF
NATIVES, et al.

Intervenors

Case No. 3AN-83-1592 Civil

44-3051
344-7914
Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
AT PALMER

JUL 1 1990

Clerk of the Trial Courts

By _____ Dep.

ORDER OF CLARIFICATION PURSUANT TO
STATE'S MOTION FOR RECONSIDERATION

The court has reviewed the state's motion for reconsideration and the responses thereto. The court finds that the second paragraph on page 5 of its original decision is subject to different interpretations and hereby replaces it with the following paragraph.

"All Alaskans will not automatically become subsistence users. The Fish and Game Boards first will determine which fish and game populations are to be used for subsistence use. For this purpose the boards will use selected criteria which may be somewhat similar to the criteria set forth in current 5 AAC 99.010(b)(1-8). Individuals then may apply for subsistence use. The boards will set criteria for declaring which applicants are bona fide subsistence users. The boards will not be able to limit eligibility to merely granting "grandfather rights" to

those who have customarily and traditionally subsistence used the resource in the past. All Alaskans will not automatically qualify simply by virtue of their state residency, however. A valid subsistence use of the resource will need to be shown."

This latter point is illustrated by the example given by Amici Bobby on pages 4-5 of their response to the State's motion to reconsider. The supreme court stated in McDovall, "The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing." McDovall v. State of Alaska, 785 P.2d 1, 9 (Alaska 1989). The court noted, "A classification scheme employing individual characteristics would be less invasive of the Article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criteria." Id. at 11. In its decisions in Madison v. Alaska Department of Fish and Game, 696 P.2d 188 (Alaska 1985) and McDovall, the supreme court did not intend to turn subsistence use of resources into something else. A subsistence use still must be a subsistence use.

DATED at Palmer, Alaska this 12 day of July, 1990.

I certify that on 7-12-90
a copy of this document was sent to:
 C/SD
 Plaintiff
 Other
 Attorney(s) of Record
 Defendant
at the address(es) of record.

*Stephen
Jason
Mitchell
Caldwell
Garni*

Rec'd. Jcl: [Signature]
Deputy Clerk

Samuel W. Cutler
SAMUEL W. CUTLER
SUPERIOR COURT JUDGE