

ALASKA LEGISLATURE COMMITTEE FILES | 1983-1984 86 / 2

2747 HRES HB 232 - HB 267 239

PROJECT DESCRIPTION (CONTINUED):

PROJECT JUSTIFICATION (CONTINUED):

ANNUAL SALES GROWTH RATE, LAST FIVE YEARS

<u>Year</u>	<u>MWH</u>	<u>% Change</u>
1976	13,597	
1977	14,835	+ 9.0%
1978	14,564	- 2.0%
1979	12,608	-13.0% <u>3/</u>
1980	14,888	+18.0% <u>3/</u>
1981	13,546	- 9.0% <u>3/</u>

1976 - 1980 trend +1.0%/year
 1977 - 1981 trend -1.9%/year

PEAKLOAD FORECAST

<u>Year</u>	<u>Peak Load (KW)</u>	<u>Installed Capacity</u>		
		<u>Hydro</u>	<u>Diesel</u>	<u>Total</u>
1980	4,770	5,500	500	6,000
1985	5,580	5,500	3,000	8,500
1990	5,940	5,500	3,000	8,500
2000	6,820	5,500	3,000	8,500

PREVIOUS PROJECT APPROPRIATIONS

<u>Bill Number</u>	<u>Amount</u>
SB 26 Feasibility and Design	\$1,000,000 (\$650,000 remaining)

ESTIMATE OF PROJECT COST (Design, Construction Management, Capital Cost, Owner's Cost, and Contingencies)

35b PROPOSED PROJECT
(Continued)

.....Chester Lake.....
Project Title

CATEGORY POWER DEVELOPMENT
 AGENCY ALASKA POWER AUTHORITY
 PROGRAM ENERGY DEVELOPMENT
 PROPOSED FUNDING YEAR FY 84

Page 8 of 9

Revised Date

FY 84

000155

PROJECT DESCRIPTION (CONTINUED):

PROJECT JUSTIFICATION (CONTINUED):

Date of Estimate: January, 1982
 Type of Estimate: Feasibility
 Total Cost (Constant \$, Base Date): 9,720,000
 (January, 1982)
 Total Cost (Nominal \$, Inflation Rate): 13,750,000 (9%)
 Estimated Start of Construction: late 1983
 Estimated Year of Completion: early 1986
 Cash Flow (To cover obligations):

<u>Year</u>	<u>Constant \$</u>	<u>Nominal \$</u>
FY 84	9,720,000	13,750,000

NOTE: This project has been exempted from FERC licensing and the community has obtained all permits required.

- 1/ This is about 200,000 kwh below the average hydro generation from this plant.
- 2/ Primarily related to new housing and public sector loads (school, docks). Per capita consumption is forecast to decrease.
- 3/ 1979 and 1981 reflect partial operation of LPK spruce mill in those years.

CATEGORY POWER DEVELOPMENT
 AGENCY ALASKA POWER AUTHORITY
 PROGRAM ENERGY DEVELOPMENT
 PROPOSED FUNDING YEAR FY 84

Page 9 of 9
 Revised Date

FY 84

000156

35b PROPOSED PROJECT
 (Continued)
 Chester Lake

Project Title



40' CONCRETE DAM
(NO POWER TUNNEL)

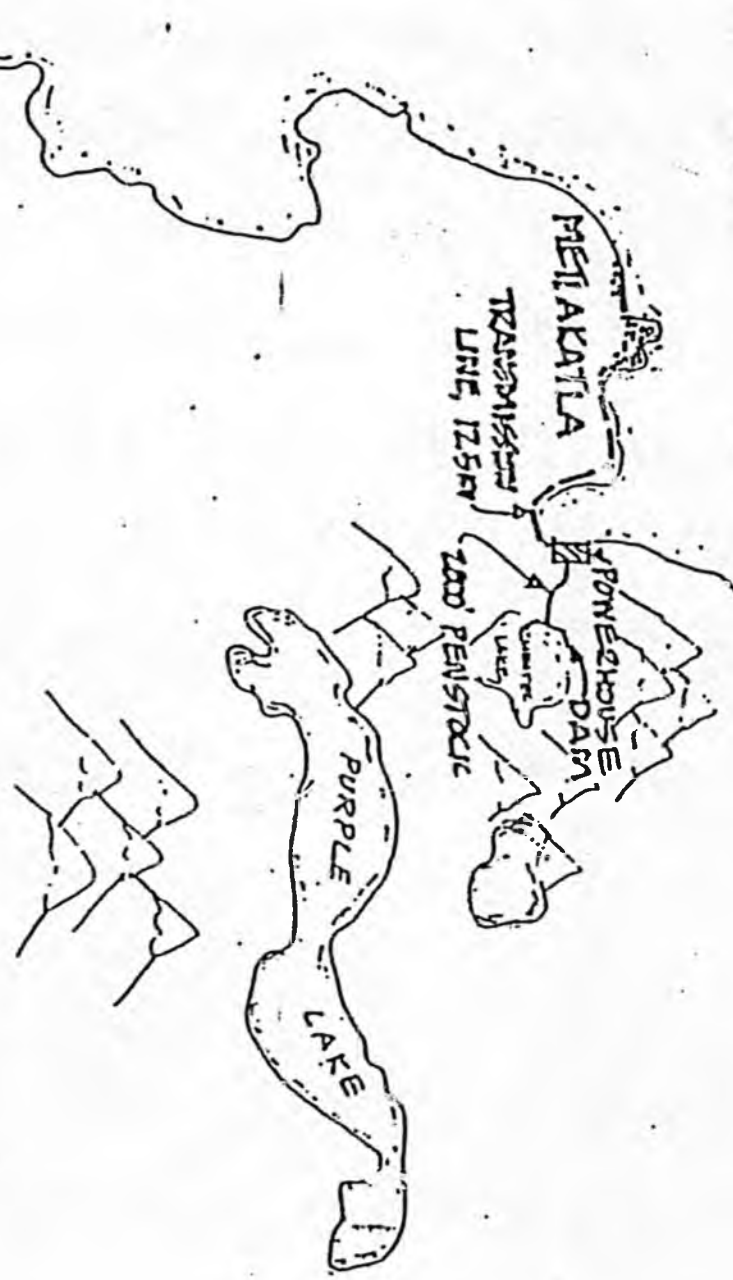
2800' PENSTOCK-28" DIAMETER

1/2 MILE TRANSMISSION LINE, 125KV

2.5 MW

INSTALLED CAPACITY

Party
S. J. CHESTER



CHESTER LAKE
HYDROELECTRIC PROJECT

9,800,000 KWH YEARLY AVERAGE
OUTPUT

ESTIMATED CONSTRUCTION PERIOD
LATE 1983 TO EARLY 1986

CHESTER



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Alaska Power Authority	Sponsor (Principal) McBride and Wendte	Bill Number HB 232
Department Position This bill is consistent with the approval steps needed to construct the Chester Lake Hydroelectric Project and is consistent with Alaska Power Authority recommendations to proceed with the Chester Lake Project		
Division Director	Date	Commissioner's Signature
		Date

GOVERNOR'S OFFICE USE

Comments:

Petition Noted

By _____ Date _____

SUMMARY

1. a) Related Bills (Similar or Conflicting) The Administration Budget Request.	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill Metlakatla Indian Community Metlakatla Power and Light Alaska Rural Electric Coop. Association	2. b) Organizational Opposition to Bill

3. Program Effects of Bill

This bill is consistent with Governor Sheffield's proposed capital budget which includes a request for first year construction funds for the 2.5 MW Chester Lake Project to serve Metlakatla. A feasibility study for the project was completed in 1982. The effect of this bill would be to allow detailed design, and subsequently, construction, of the project to proceed.

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:

To be consistent with the Governor's request and cost estimates, the authorization should be for \$13,750,000 rather than \$13,200,000.

6. Comments:

See attached page.

6. COMMENTS

Chester Lake first provided hydroelectric power for Metlakatla in 1927 with a small 150 KW unit and in 1937, a 250 KW unit was added. When the 3,000 KW Purple Lake project was installed in 1956 to serve Metlakatla the Chester Lake hydroelectric plant was abandoned and the reservoir has since been used only for village water supply. In the 1960's, 3,000 KW of diesel generation was added to the Metlakatla system. For several years, the Purple Lake hydroelectric project has been fully utilized and a greater portion of Metlakatla's energy needs are being met by diesel generation.

The Village of Metlakatla completed a study in 1977 which recommended redevelopment of the Chester Lake project, but subsequently had difficulty in arranging sufficient financing. The project has been exempted from Federal Energy Regulatory Commission licensing and the community has received other necessary permits for the project.

The 1981 Legislature appropriated \$1,000,000 for feasibility and engineering of the Chester Lake Hydroelectric Project to serve Metlakatla. The Power Authority expended \$350,000 for detailed studies of several alternatives to serve Metlakatla including:

1. Expansion of the existing Purple Lake Hydroelectric plant,
2. wood waste generation,
3. additional diesel generation,
4. a new hydroelectric project at Triangle Lake, and
5. two alternatives for a project at Chester Lake.

The Chester Lake project proved to be the most economical alternative. In addition to the Engineer's cost estimate, the Power Authority contracted a separate, independent cost estimate of the project during the summer of 1982. Based upon those two cost estimates, the Power Authority estimated the January 1982 feasibility level cost estimates to be \$9,720,000 for a 2.5 MW run-of-the-river project at Chester Lake and \$13,815,000 for a 2.5 MW storage project with a higher dam. Based upon economic analysis, the Power Authority staff recommends the low dam, run-of-the river project with some public water supply storage rather than the larger storage project. Based upon equipment procurement and construction beginning in January 1984, project completion by March 1986, and nine percent inflation, the total estimated construction costs are \$13,750,000. This estimate does not include any interest charges should bonding be required.

Additional References:

Chester Lake Project Feasibility Report, for Alaska Power Authority by Harza Engineering Company, May 1982.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 232 Date on Bill: 3/2/83
 Title: An Act Authorizing Chester Lake Hydroelectric Project
 Sponsor: McBride and Wendte
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital		5,449.0	8,301.0	
Operating				95.0
Total				100.0

b. Revenues:

Revenue				95.0	100.0
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Raymond J. Smith Phone: 276-0001
 Division: Alaska Power Authority Date: 3-11-83
 Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83

H B

256

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

465-2600

5 1983
BILL SHEFFIELD, GOVERNOR

POUCH 0 - JUNEAU 99811

April 4, 1983

The Honorable Richard Shultz
House of Representatives
Co-Chairman House Resources
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz:

Please accept this letter as a reiteration of DEC's position on HB 256 (attached). This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS. The permitting responsibility contained in .020 more appropriately belongs to the Department of Fish and Game and could easily blend into their current Title 16 permitting activities.

Accordingly this department supports amending AS 16.10.010 to read Department of Fish and Game instead of DEC and amending AS 16.10.020 to read Department of Fish and Game instead of DHSS. This would support the intent of Title 16.

Please feel free to call me or Randy Bayliss of my staff (465-2653) with any questions you may have on this position. Thank you for your attention to this matter.

Sincerely,



Richard A. Nave
Commissioner

cc: Bruce Baker, DFG
Paddy McGuire, DFG
Randy Bayliss

HB 256 - RELATING TO PERMITS FOR
DEVELOPMENT OF SALMON STREAMS

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
POSITION PAPER

BEFORE THE HOUSE RESOURCES COMMITTEE
March 23, 1983

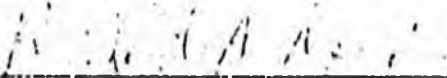
This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS, based upon the following reasoning: -

1. Passage would result in duplication of existing permit functions in the Department of Fish and Game (AS 16.05.840-870).

2. This section is more habitat or enhancement-oriented than water quality.

3. DF&G staff agree that the permitting responsibilities contained in these two sections could be easily blended into DF&G's current Title 16 permitting activities.

The department does support amending AS 16.10.010 to read Department of Fish and Game instead of DEC and amending AS 16.10.020 to read Department of Fish and Game instead of DHSS. This would support the intent of Title 16 and minimize implementation costs.



Richard A. Nevel
Commissioner

commercial purposes and by the Alaska Constitution, art. VIII, § 15, providing that "no exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state." They were further modified by the enactment by the first state legislature of a law making it unlawful to erect, moor or maintain fish traps (SLA 1959, ch. 17), and by a later

enactment (SLA 1959, ch. 95) making it unlawful to operate fish traps and prescribing penalties therefor. (See AS 16.10.070 — 16.10.110). Metlakatla Indian Community, Annette Island Reserve v. Egan, Sup. Ct. Op. No. 42 (File Nos. 21—23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Chapter 10. Fisheries and Fishing Regulations.

Article

1. Interference with Streams and Waters (§§ 16.10.010 — 16.10.055)
2. Fish Traps and Other Illegal Fishing Devices (§§ 16.10.060 — 16.10.130)
3. Herring Spawn (§§ 16.10.140 — 16.10.173)
4. Migratory Fish and Shellfish (§§ 16.10.180 — 16.10.230)
5. Transportation of Fish and Shellfish (§§ 16.10.240 — 16.10.250)
6. Purchase of Fish (§§ 16.10.270 — 16.10.296)
7. Commercial Fishing Loan Act (§§ 16.10.300 — 16.10.370)
8. Salmon Hatcheries (§§ 16.10.375 — 16.10.475)
9. Fisheries Enhancement Loan Program (§§ 16.10.500 — 16.10.620)

Article 1. Interference with Streams and Waters.

Section

10. Interference with salmon spawning streams and waters
20. Group. — for permit or license
30. Violation of §§ 10 — 55 of this chapter a misdemeanor
40. Disposition of money received for fines and penalties

Section

50. Construction of §§ 10 — 50 of this chapter
55. Interference with commercial fishing gear

Sec. 16.10.010. Interference with salmon spawning streams and waters. It is unlawful for a person to

(1) obstruct, divert or pollute waters of the state, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber in those waters, casting, passing, throwing or dumping any tree limbs or foliage, underbrush, stumps, rubbish, earth, stones, rock or other debris, or passing or dumping sawdust, planer shavings, or other waste or refuse of any kind in those waters;

(2) erect a dam, barricade or obstruction to retard, conserve, impound or divert these waters to prevent, retard or interfere with the free ingress or egress of salmon into these waters in the natural spawning or propagation process;

(3) render the waters inaccessible or uninhabitable for salmon for that purpose without first applying for and obtaining a permit or license from the Department of Environmental Conservation. The application shall set out the name and style of the person or concern, describe the waters and location and state in particular the plans, purpose and intention for which the application is made. (§ 39-2-31 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971; am § 12 ch 208 SLA 1975)

Effect of amendment. — The 1975 amendemnt substituted "Department of Environmental Conservation" for "Department of Health and Social Services" at the end of the first sentence of

paragraph (3) and substituted "set out" for "set forth" near the beginning of the second sentence of that paragraph. Am. Jur. reference. — 22 Am. Jur., Fish and Fisheries, § 34 et seq.

Article:

- Section
- 60. [Repealed]
- 70. Fish traps un waters in
- 80. Federal comp
- 90. Penalties for chapter
- 100. Fish traps or waters

16.10.020. Grounds for permit or license. If in the judgment of Department of Health and Social Services, the purpose of the applicant for the permit or license is to develop power, obtain water for civic, domestic, irrigation, manufacturing, mining or other purposes tending to develop the natural resources of the state, the department may grant the permit or license and may require the applicant to construct and maintain adequate fish ladders, fishways or other means by which fish may pass over, around or through the dam, obstruction or diversion in the pursuit of the propagation or spawning process. (§ 39-2-32 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971)

Sec. 16.10/ Repealed b

Editor's note derived from § :

Sec. 16.10/ state. It is u floating, pile- lands, tidela prevent the ordinarily w operated in o

Revisors's note (1962). — Under AS 16.05.840 the commissioner of fish and game determines when a fishway or other similar device should be constructed.

Sec. 16.10.030. Violation of §§ 10 — 55 of this chapter a misdemeanor. A person who violates §§ 10 — 55 of this chapter is guilty of a misdemeanor and, upon conviction is punishable by a fine of not less than \$100 nor more than \$500. (§ 39-2-33 ACLA 1949; am § 13 ch 208 SLA 1975)

Effect of amendment. — The 1975 amendment substituted "§§ 10 — 55" for "§§ 10 — 50."

Sec. 16.10.040. Disposition of money received for fines and penalties. The proceeds of all fines and penalties imposed under §§ 10 — 50 of this chapter shall be paid into the general fund and they shall be immediately available for expenditure by the Department of Fish and Game. (§ 39-2-34 ACLA 1949)

Sec. 16.10.050. Construction of §§ 10 — 50 of this chapter. Sections 10 — 50 of this chapter do not affect the vested rights or privileges granted by federal statute to any person. (§ 39-2-35 ACLA 1949)

Sec. 16.10.055. Interference with commercial fishing gear. A person who wilfully or with reckless disregard of the consequences of his activity, interferes with or damages the commercial fishing gear of another person is guilty of a misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss or loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another. (§ 1 ch 55 SLA 1971)

Purpose. — 16.10.070 — measure. Its ol relief of ec fishermen, to supply of a competition in had every rigl applicable to unless its poli Natives while curtailed. Met Annette Island Op. No. 42 (Fil (1961), vacate grounds, 369 U 2d 562 (1962). Fish trap. principally of across or part;

Sec. 16.1 chapter sha Stat. 339, v Alaska, unc other prope be held by I



Alaska State Legislature

House of Representatives

March 1, 1983

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Rep. Schultz

*10:30 AM
Sandy
Rep*

MEMORANDUM

TO: Representative Joe Flood

FROM: Mark K. Johnson
Staff Counsel *MK*

MAR 23 REC'D

SUBJECT: "An Act relating to permits for the development of natural resources affecting salmon spawning streams and waters."

This legislation represents a technical change to AS 16.10.020. The present statute calls for the Department of Health & Social Services to make certain determinations regarding the use of water and development of water power when those activities would have an effect on fisheries.

Research reveals that the Department of Health & Social Services has never possessed the technical capability to perform this function and is not currently performing it. Similar statutes in title 16 suggest that if the function is to be performed, it should be performed by the Department of Environmental Conservation. It could also be argued that the Department of Fish and Game should be the responsible agency. Regardless of which of these two agencies is designated, it is clear that the Department of Health & Social Services is not the appropriate agency. Committee hearings would hopefully resolve the Fish & Game/Environmental Conservation issue.

No statement on the advisability of the statute or of the agency implementing it is intended by this proposed legislation. Those questions should be resolved by committee deliberations.

Marking

I. REQUEST

Bill/Resolution No.: House Bill 256
 Title: Permits for Develop. of Salmon Streams
 Sponsor: Flood, Uehling and Grussendorf
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: ADEC
 Program Category Affected: Env. Conserv.
 BRU, Program of Subprogram(s) Affected: EQO, Water Pollution Control, Drinking Water

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	0	312.6	312.6	312.6	312.6	312.6
200 TRAVEL	0	22.5	23.0	23.5	24.0	24.5
300 CONTRACTUAL	0	14.7	14.7	15.2	15.2	15.7
400 COMMODITIES	0	3.5	3.5	4.0	4.0	4.5
500 EQUIPMENT	0	4.2	4.2	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL OPERATING	0	357.5	358.0	355.3	355.8	357.3

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		357.5	358.0	355.3	355.8	357.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	7	7	7	7	7
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Increased general funds appropriation

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Alex Vitcei Phone: 465-2640, 2653
 Division: Environmental Quality Management Date: 5/23/83

Approved by Commissioner: Gillie Trust for R. Nowe Date: 3/23/83
 Department: Environmental Conservation

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

STATE OF ALASKA 1984 LEGISLATIVE SESSION
HOUSE RESOURCES COMMITTEE

FISCAL NOTE

Revision Date: November 30, 1983

JAN 14 REC'D

I. REQUEST

Bill/Resolution No.: CSHB 256
 Title: Permits for Development of Streams
 Sponsor: House Resources Committee
 Requestor: _____
 Date of Request: _____

II. FISCAL DETAIL

Agency Affected: Fish and Game
 Program Category Affected: NRMEC
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

OFFICE OF
MANAGEMENT & BUDGET

NOV 30 1983

BUDGET REVIEW

I. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume
 Division: Administration

Phone: 465-4120
 Date: _____

Approved by Commissioner: [Signature]
 Department: Fish and Game

Date: 11/29/83

Distribution:

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9/14/83

HB 256 - RELATING TO PERMITS FOR
DEVELOPMENT OF SALMON STREAMS

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
POSITION PAPER

BEFORE THE HOUSE RESOURCES COMMITTEE
March 23, 1983

This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS, based upon the following reasoning:

1. Passage would result in duplication of existing permit functions in the Department of Fish and Game (AS 16.05.840-870).
2. This section is more habitat or enhancement-oriented than water quality.
3. DF&G staff agree that the permitting responsibilities contained in these two sections could be easily blended into DF&G's current Title 16 permitting activities.

The department does support amending AS 16.10.010 to read Department of Fish and Game instead of DEC and amending AS 16.10.020 to read Department of Fish and Game instead of DHSS. This would support the intent of Title 16 and minimize implementation costs.



Richard A. Neve
Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date April 6, 1983

I. REQUEST

Bill/Resolution No.: CS for HB 256
 Title: "resources affecting salmon spawning."
 Sponsor: Resources
 Requestor: Flood, Ueling & Grussendorf

II. FISCAL DETAIL

Agency Affected: FISH & GAME
 Program Category Affected: N/A
 BRU, Program of Subprogram(s) Affected: N/A

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No Fiscal Impact

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume Phone: 455-4120
 Division: Administration Date: April 6, 1983
 Approved by Commissioner: Don W. Collinsworth Date: April 7, 1983
 Department: FISH & GAME

Distribution:

- Original to Legislative Finance
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- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
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STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

465-2600

APR 5 1983
BILL SHEFFIELD, GOVERNOR

POUCH 0 - JUNEAU 99811
April 4, 1983

The Honorable Richard Shultz
House of Representatives
Co-Chairman House Resources
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz:

Please accept this letter as a reiteration of DEC's position on HB 256 (attached). This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS. The permitting responsibility contained in .020 more appropriately belongs to the Department of Fish and Game and could easily blend into their current Title 16 permitting activities.

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Please feel free to call me or Randy Bayliss of my staff (465-2653) with any questions you may have on this position. Thank you for your attention to this matter.

Sincerely,



Richard A. Neve
Commissioner

cc: Bruce Baker, DFG
Paddy McGuire, DFG
Randy Bayliss

HB

266

May 25, 1983

Dear Governor Sheffield:

As you are aware, several pieces of legislation have been introduced this session regarding subsistence. However in light of your stated intention to appoint a subsistence task force, no action was taken on these bills during the first half of the session. Later when a determination was made to give the Boards of Fish and Game the opportunity to resolve the issue, the House acted upon one of these bills, HB 266. To this date several public hearings have been held and testimony taken. In light of the recently-formed task force, however, no further action has been initiated by the legislature.

In order to better determine what action the House should take to aid in resolving this issue, it would be helpful if you could delineate what objectives have been set for the task force and under what parameters and constraints they will be working. For example, will the task force be considering possible improvements to the State and federal subsistence laws, or will it focus instead on how best to implement the existing laws?

Prior to adjournment, the House will determine what direction, goals, etc. it will set with regard to the subsistence issue. To avoid duplication of effort, your response would be most valuable if received before that time.

We, too, would like to set ^{this} divisive issue to rest as soon as possible.

Sincerely,

Representative John Ringstad
Resource Committee Co-Chairman

Representative Joe Hayes,
Speaker of the House

Representative Dick Shultz
Resource Committee Co-Chairman

Representative Mae Tischer

MSG 83-00013023 PRTY 1 04/28/83 14:41:44 ORIG: LF05 IN= 0001 OUT= 0015
FROM: MAXINE/FBX TO: JUNO T/C
TARGET: 4104 SUBJ: HOUSE RESOURCES T/C 4/28 PAGE 0001

OMNI #1
FAIRBANKS TO TESTIFY
1. ✓ DOUG BUCHANAN,
2. ✓ GLENN W. DE SPAIN
3. ✓ MELBA CHARLES
4. ✓ CATE SZABO
5. ✓ GENE CARLSON
6. ✓ HAL LIVINGSTON
7. ✓ MARY BISHOP
8. ✓ IVER JOHNSON

---MORE TO COME ---

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013031 PRTY 1 04/28/83 14:57:16 ORIG: LL00 IN= 0006 OUT= 0016
FROM: LORI/SOLDOTNA TO: TIM, JNU TC
TARGET: 4104 SUBJ: H.RES.TC 4/28/83 PAGE 0001

OMNI# 1
OBSERVER
1. DAVE ALLEN GENERAL DELIVERY SOLDOTNA, AK 99669 203-3212

SG 83-00013032 PRTY 1 04/28/83 14:44:19 ORIG: LA08 IN= 0007 OUT= 0017
FROM: CANDY/ANCHORAGE TO: TIM/TOM
TARGET: 410# SUBJ: HB 266 T/C PAGE 0001

MNI # 1
0 SPEAK:
1 REPRESENTATIVE VASKA
1 BOB LOHR/RURAL CAF

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

SG 83-00013034 PRTY 1 04/28/83 14:46:52 ORIG: LM00 IN= 0004 OUT= 0019
FROM: MARTIE/MATSU TO: T/C MODERATORS
TARGET: 410# SUBJ: SUBSISTENCE T/C PAGE 0001

AT SU OMNI NO. 1
0 TESTIFY:
1 ED GRASSER, PO BOX 1350
0 OBSERVE
1 NANCY ROWLAND

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

SG 83-00013035 PRTY 1 04/28/83 14:54:52 ORIG: LF05 IN= 0003 OUT= 0020
FROM: MAXINE/FBX TO: JUNG MODERATOR
TARGET: 410# SUBJ: HOUSE RESOURCES T/C PAGE 0001

MNI #2
AIRTHANKS TO TESTIFY
1 BERT SHARP
0 ~~JACK NELSON~~
1 TOM SCARBOROUGH
2
0X OBSERVORS
1 ROBYN RUSSELL
1 SUSAN FISHER FROM DAILY NEWS-MINER

---MORE TO COME

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

SG 83-00013038 PRTY 1 04/28/83 14:57:14 ORIG: LI00 IN= 0005 OUT= 0021
FROM: MASSA AND ANNA MAY IN DILLINGHAM TO: TOM IN JUNEAU
TARGET: 410# SUBJ: HB 266 CONSUMPTION OF FISH & GAME PAGE 0001

MNI # 1
1 HAVE ONE PARTICIPANT:
REG PETERS, BOX 189 DILLINGHAM, ALASKA 842-5257

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

SG 83-00013039 PRTY 1 04/28/83 14:57:13 ORIG: LN00 IN= 0004 OUT= 0022
FROM: SANDY, NOME TO: TIM, JUNEAU
TARGET: 410# SUBJ: HB266, HOUSE RESOURCES T/C 4/28 PAGE 0001

MNI #1
0 TESTIFY:
1 CALEB FUNGOWIYI, PRESIDENT, KAWERAK, INC. BOX 948, NOME, AK 99762/443-5231
0 OBSERVE:
1 MATTHEW IYA, KAWERAK, INC. BOX 948, NOME, AK 99762/443-5682
1 'M NOT SURE IF WE'LL HAVE ANYONE ELSE COMING IN, BUT WILL OMNI ASAP IF WE DO.

MSG 83-00013045 PRTY 1 04/28/83 15:01:55 ORIG: LF05 IN= 0005 OUT= 0024
FROM: MAXINE/FBX TO: JUNO MODERATOR
TARGET: 410\$ SUBJ: HOUSE RESEARCH T/C PAGE 0001

OMNI #3
AIRBANKS TO TESTIFY:
2. BUD WIESE
3. JOE VOGLER
MORE TO COME

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013047 PRTY 1 04/28/83 15:04:09 ORIG: LA08 IN= 0008 OUT= 0025
FROM: CANDY/ANCHORAGE TO: TIM
TARGET: 410\$ SUBJ: HOUSE RESOURCES ON HB 266 PAGE 0001

OMNI # 2
TO SPEAK:
3. HENRY MITCHELL/BERING SEA FISHERMEN
4. BOB HUNTER/ALASKA SPORTSFISHING ASSOC.
OBSERVERS:
1. JUDE HENZLER/RURAL CAP
2. WARREN OLSON

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013048 PRTY 1 04/28/83 15:05:19 ORIG: 460\$ IN= 0003 OUT= 0026
FROM: DOROTHY/PETERSBURG TO: TOM/TIM
TARGET: 410\$ SUBJ: HB 266 PERSONAL CONSUMPTIVE USE F&G PAGE 0001

TO TESTIFY:

1. JOHN E. LONGWORTH BOX 328, PETERSBURG 772-4623
OBSERVERS:
1. CHRIS RIELLEY BOX 930, PETERSBURG 772-4623
2. E.L. YOUNG BOX 667, PETERSBURG 772-3801
OMNI 1.

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013049 PRTY 1 04/28/83 15:00:50 ORIG: LK00 IN= 0007 OUT= 0027
FROM: EVELYN/KETCHIKAN TO: JUNEAU T/C
TARGET: 410\$ SUBJ: F&S T/C PAGE 0001

OMNI #1
TO OBSERVE IN KETCHIKAN:
1. JOHN VALENTINE, REPRESENTING FISH & GAME
STATE OFFICE BLDG., KETCHIKAN, ALASKA 99901
PHONE: 225-5195
EOM

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013049 PRTY 1 04/28/83 15:00:50 ORIG: LK00 IN= 0007 OUT= 0027
FROM: EVELYN/KETCHIKAN TO: JUNEAU T/C
TARGET: 410\$ SUBJ: F&S T/C PAGE 0001

OMNI #1
TO OBSERVE IN KETCHIKAN:
1. JOHN VALENTINE, REPRESENTING FISH & GAME
STATE OFFICE BLDG., KETCHIKAN, ALASKA 99901
PHONE: 225-5195
EOM

MSG 83-00013054 PRTY 1 04/28/83 15:08:17 ORIG: LB00 IN= 0008 OUT= 0029
FROM: WALLY IN BETHEL TO: MODERATOR
TARGET: 4104 SUBJ: HB266 T/C PAGE 0001

OMNI #1

TO TESTIFY

1. ✓ JOHN P. JONES, BETHEL
2. ✓ JANET KAISER, NUNAM KITLUTSISTI, PO BOX 2068, BETHEL 543-2856
3. ✓ DAVID FRIDAY, BETHEL

TO OBSERVE

1. NORMAN COHAN,

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013056 PRTY 1 04/28/83 15:19:56 ORIG: LF05 IN= 0007 OUT= 0030
FROM: MAXINE/FBX TO: JUND MODERATOR
TARGET: 4104 SUBJ: HOUSE RESEARCH ON GOING T/C PAGE 0001

OMNI #5

THANKS TO TESTIFY:

4. ✓ SPUD WILLIAMS, TANANA CHIEFS CONF

OBSERVERS:

1. JIM KOWALSKY, TANANA CHIEFS CONF
2. RICK CAULFIELD, AK DEPT FISH & GAME

---EOM

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013059 PRTY 1 04/28/83 15:09:31 ORIG: L001 IN= 0002 OUT= 0031
FROM: KODIAK / LORNA TO: JUNEAU T/C
TARGET: 4104 SUBJ: HOUSE RESOURCES T/C PAGE 0001

OMNI #1

HERE TO OBSERVE ONLY:

1. BOG FLANDERS, KODIAK DAILY MIRROR
2. KODIAK, ALASKA 99615
3. 86-3227

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013062 PRTY 1 04/28/83 15:11:05 ORIG: LZ00 IN= 0003 OUT= 0032
FROM: MARY IN KOTZ, TO: MODERATOR
TARGET: 4104 SUBJ: T/C PAGE 0001

TO OBSERVE: OMNI #1

1. TIM COCHRAN KOTZ RADIO KOTZEBUE, ALASKA 99752 442-3434

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013068 PRTY 1 04/28/83 15:21:32 ORIG: LA08 IN= 0009 OUT= 0034
FROM: MICKI IN ANCHORAGE TO: JUNEAU T/C
TARGET: 4104 SUBJ: HOUSE RESOURCES HB 266 PAGE 0001

ADDITIONAL ANCHORAGE PARTICIPANT

OMNI #3

1. DON MITCHELL, 411, W. 4TH AVE. SUITE 1A ANCHORAGE 99501

PLEASE NOW HAVE THE FOLLOWING AS A COMPLETE LIST

1. ✓ SPEAK
2. ✓ BOB LOHR
3. ✓ HENRY MITCHELL
4. ✓ BOB HUNTER
5. ✓ DON MITCHELL

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013074 PRTY 1 0 28/83 15:30:37 ORIG: LN00 IN= 0005 OUT= 0013
FROM: SANDY, NOME TO: TIM
TARGET: 4104 SUBJ: CONSUMPTIVE USE T/C 4/28 PAGE 0001

OMNI #2
MY ONE OBSERVER WOULD NOW LIKE TO TESTIFY. NEW SET-UP:
TO TESTIFY:
1. CALEB FUNGOWIYI (ALREADY TESTIFIED)
2. MATTHEW IYA
I HAVE NO OTHER OBSERVERS OR PEOPLE TO TESTIFY.

NXT MSG U/R/S R PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013095 PRTY 1 04/28/83 16:10:02 ORIG: LN00 IN= 0006 OUT= 0009
FROM: SANDY, NOME TO: TIM
TARGET: 4104 SUBJ: CONSUMPTIVE USE OF FISH AND GAME T/C PAGE 0001

OMNI #3
TO OBSERVE:
1. BRENDA H. JOHNSON, MEMBER, STATE GAME BOARD, BOX 924, NOME, AK 443-5743

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013110 PRTY 1 04/28/83 16:37:27 ORIG: LZ00 IN= 0006 OUT= 0006
FROM: CAROL, OTZ TO: MODERATOR
TARGET: 4104 SUBJ: FISH & GAME CONSUMPTIVE T/C PAGE 0001

OMNI #4
FINAL LIST
OBSERVERS
TIMOTHY COCHRAN, KOTZ RADIO, KOTZEBUE, ALASKA 99752 442-3434
ROLAND QUIMBY, ALASKA DEPT. OF FISH AND GAME, KOTZEBUE, ALASKA, 442-3420
DEREK CRAIGHEAD, ALASKA DEPT. OF FISH AND GAME, KOTZEBUE, ALASKA 442-3420
JOSEPH JESSUP, KOTZEBUE, ALASKA

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00013123 PRTY 1 04/28/83 17:02:13 ORIG: LN00 IN= 0007 OUT= 0005
FROM: SANDY, NOME TO: JUNEAU T/C
TARGET: 4104 SUBJ: HB 266, H. RES. T/C, 4/28 PAGE 0001

FINAL STAT S:
TO TESTIFY:
1. CALEB FUNGOWIYI, PRESIDENT, KAWERAK, INC., BOX 948, NOME, AK 99762/443-5231
2. MATTHEW IYA, KAWERAK, INC., BOX 948, NOME, AK 99762/443-5282
TO OBSERVE:
1. BRENDA H. JOHNSON, MEMBER, STATE GAME BOARD, BOX 924, NOME, AK 443-5743
2. MURIEL M. GERMEAU, AK DEPT. OF FISH&GAME BOX 1143, NOME, AK 443-2190

MSG 83-00013083 PRTY 1 04/28/83 15:46:00 ORIG: LM00 IN= 0005 OUT= 0027
FROM: MARTIE/MATSU TO: T/C
TARGET: LJH7 SUBJ: T/C SUBSISTENCE

MATSU NG, 2
TO TESTIFY
2. RAY MORGAN, HAS TIME CONSTRAINTS

4/28

H. Resources Personal Consumptive Use of Fish & Game.

Witness

Galena

✓ Sidney Huntington

1 observer

Gambel

✓ Paul Apanglook

Haines: Leo Land

Homer: ✓ David Bentley

Wainwright: ✓ Natha Kayutak

John Ringstad, Co-Chair
Richard Shultz, Co-Chair
House Resources Committee
Alaska State Legislature
Pouch V (MS 3107)
Juneau, Alaska 99811
April 24, 1983

RE: House Bill No. 266 (personal consumptive use of fish and game)

Dear Sirs:

Of the bills concerning subsistence introduced into the Legislature this session H.B. 266 seems to propose the most far-reaching effects. Some of the proposed changes I support; such as the elimination of references to gender in existing subsistence statutes, and the addition of a definition for "barter" (lines 18 - 24, pg. 9). However, there are several items in the bill that I question.

As you know, the foundation for the States' subsistence laws is the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). In this Act, and in the Congressional Record for the House (November 12, 1980) Congress requires that the State meet certain conditions in its statutes and regulations before it is allowed to manage the taking of fish and wildlife for subsistence purposes. In Title VIII (the Subsistence Title) of ANILCA, Section 802(1) states that "...The utilization of 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...". It further states that "... The purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so...". Section 804 establishes three priority criteria for subsistence use if fish and wildlife populations are in short supply. Section 805 allows the Secretary of the Interior to manage, in effect, Alaska's fish and wildlife populations so as to accommodate subsistence uses and needs; but it also allows the State a continued lead role in this if it adopts certain measures.

Nowhere in ANILCA is economic need mentioned as a criteria for priority use of subsistence resources. On the contrary, in the Congressional Record concerning ANILCA it is said that "... The policy requires that regulatory systems which employ income requirements not be imposed upon rural residents."

If my understanding of the situation is correct, the provisions in H.B. 266 (lines 4 - 14, pg. 3, and lines 12 - 22, pg. 4) for the adoption of income eligibility regulations would be contrary to fed-

eral law. This, if I read Section 805 of ANILCA correctly, would result in a loss to the State of most of its management prerogatives for fish and game. Therefore, I urge the deletion of these provisions from the bill, and urge the retainment of the original language in AS 16.05.251(b), and AS 16.05.255(b), concerning criteria for prioritizing consumptive uses.

I would also like to comment on the language in the bill that would drop the ADF&G Subsistence Section's duty to determine which users and what methods of use should be determined "personal consumptive use" (lines 6-8, pg. 2). According to Section 804 of ANILCA if the priority criteria for harvesting fish or game in an area have to be implemented, it will be on the basis of: customary and direct dependence on the resource; local residency; and the availability of alternative resources. It would seem to me that who the personal consumptive users are has a direct bearing on implementing this part of ANILCA. You must know this in order to decide who has customary and direct dependence on the resource, and who has alternative resources to turn to. Therefore, I urge the retainment of the original language in the Alaska Statutes (Section 16.05.094(4)).

In Section 16.05.257 of the Statutes there are two provisions concerning public petitioning for the adoption of personal consumptive hunting in a game management unit, which H.B. 266 proposes to delete (lines 18 - 23, pg. 5). I would argue that, although the local advisory committees provide a good mechanism for citizen input on this matter, the petitioning provision is a good "safety net" for citizens. It should be made clear, though, that petitioning should be resorted to only after other means found in this section have been exhausted.

On page nine, lines two thru six, is added the provision that fishing with hook, line, and pole in certain areas be a personal consumptive use harvest method. This is consistent with lines six thru eight on page two (concerning the deletion of the determination of what users and methods should be allowed). However, in my opinion, this cuts a bit too deep into the management prerogatives of ADF&G, and should be deleted from the bill.

My overall impression of this bill is that its authors had little sympathy for the concept of a "subsistence lifestyle" in Alaska. I will have to admit that this lifestyle is nearly gone in their home-districts, but it is alive and functioning in more rural parts of Alaska.

But beyond a recognition of its existence is the need to recognize that it also entails behavior patterns, ways of looking at the world, and a general knowledge of ones surroundings that differs as much from urban Alaska as urban New York City does from the Amish sections of Pennsylvania. Having been raised in urban Alaska (Anchorage),

I'll confess to a similar ignorance and lack of sympathy at one time in my life. However, a little first-hand knowledge and a lot of personal exposure to rural people has changed my mind. Alaska's fish and game resources should be thought of as more than just cheap food. It should be thought of as a part of a way of life that is uniquely Alaskan among the fifty States,

Thank you for your time on this matter. A copy of this letter has been sent to My representative, Peter Goll.

Very truly yours,

Paul M. Wild

Paul M. Wild
PO Box 531
Skagway, AK
99840

COMMENTS ON SUBSISTENCE - HB266
HELEN M. CHYTHLOOK
ALEKNAGIK, ALASKA
APRIL 22, 1983

As we are aware, there are Alaska State laws and regulations for hunting, fishing, as well as, for trapping that we all abide by. Plus, there's license and permit fees that are required for the hunters, trappers, and fishermen to buy before they can pursue their game for food or as a way of providing for their livelihood.

By now, we know that most rural Alaska Natives do hunt, fish, as well as trap to help meet their livelihood needs, such as food, fuel, clothing and the necessities of every day living. You also know that some of the rural areas of Alaska are so remote that you can't run to the grocery store to get one thing, because the grocery store may be 50 to 75 air miles away. You would have to air charter a plane to get to your shopping destination, unless the bush airlines had a scheduled route to your village. Therefore, in order for most rural Alaska Natives, as well as those persons interested in surviving in the "Bush," you have to live off the land.

COMMENTS ON SUBSISTENCE -HB266

HELEN M. CHYTHLOOK

ALEKNAGIK, ALASKA

APRIL 22, 1983

Page Two

The hunting, fishing, and trapping are done by the seasonal availability of the resource, and each game unit has limits set per hunting season. For instance, in Unit 17(C), Dillingham area, the bag limit for moose is 1 bull per season. In Unit 9(E), the Bristol Bay region, bag limits for caribou for part of the hunting season is four.

The Joint Boards of Fisheries & Game on Subsistence have set procedures for subsistence users. In 5 AAC 99.010., Section 2, it states that "Each Board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing." Section 2 (b) provides that customary and traditional subsistence uses will be identified in rural Alaska with the following criteria:

Section 2 (b)(1): a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

Section 2 (b)(2) - a use pattern recurring in specific seasons of each year;

Section 2 (b)(5) the means of handling, preparing, preserving and storing fish or game which has been traditionally

COMMENTS ON SUBSISTENCE-HB266
HELEN M. CHYTHLOOK
ALEKNAGIK, ALASKA
April 22, 1983
Page Three

used by past generations, but not excluding recent technological advances where appropriate.

To this day, the Alaska Native men are the meat/fish providers in the villages. The men usually hunt for meat needed when the Fish & Game Management opens the hunting season. The meat caught is still shared with friends, relatives, and elders who cannot hunt for various reasons, without a second thought. We are taught to treat with respect what nature provides for us, as well as to share our catch.

Therefore, I am opposed to HB 266 because I feel it would do away with the current Subsistence Laws, as well as with the ADF&G Subsistence Division, because it would be replaced with a "new" division entitled, "Consumptive Use Section." To me, having a "Subsistence Section" in the ADF&G Department is something I can relate to, especially now that the term, "Subsistence" is much more widely known than "consumptive use." In my opinion, "consumptive use" is a term that was used during the last election by those who wanted to do away with subsistence. However, that term and ballot measure was handily defeated at the polls by Alaskan voters. By this name change, is the bill trying to do what the Alaskan voters refused to do?

I would recommend that you legislators leave the subsistence law as it is and quit trying to interfere with those who wish to continue living a subsistence way of life.

Page ①
of 3

To: Hse Resources Cmte

Testimony -- House Resource Committee
HB 266, April 28, 1983

Mary Bishop 455-6151
SR 20145-D
Fairbanks, Alaska 99701

My name is Mary Bishop. I've been a resident of Interior Alaska for about 22 years.

First and foremost, I want to thank the Committee for addressing the subsistence issue through its hearings on HB 266. I think that there are elements of this bill which are superior to the current priority law. For example, all people who personally consume wild resources are given some priority over commercial users. Perhaps it's necessary to add that, in general, this does not mean that commercial use is to be eliminated. But certainly commercial use of a species should not be allowed if personal use has been eliminated. This may have been the cause of the original subsistence furor regarding king salmon in Cook Inlet.

In HB 266, unlike the current priority law, there is no discrimination on the basis of past customary and traditional use. This emphasis on past customary and traditional use, rather than current need or dependency is one of the most undesirable aspects of the current law. HB 266 would provide a priority based upon economic need in certain cases. The mechanics of how this need is to be measured are of minor consideration. The major consideration is whether to base a priority on current measurable need or upon past customary and traditional use.

Hearings on HB 266 allow us to consider other changes in the language of the current law. The current law says that the priority for customary and traditional use occurs "Whenever there are

restrictions..." There are several interpretations of that word-
ing, but we do always have restrictions in the form of hunting and
fishing regulations. Priority advocates, during the past few
years, have attempted to assure us that this means that the
priority is only triggered in times of an unusual shortage. Indeed,
if that is what the language means, then priority advocates should
have no objection to having the law rewritten so that we are all in
agreement upon what the words of this law relate.

The point was made during your Juneau hearing last week that
at least some of the opponents of the current law have a history of
opposing Native and rural issues. It is only fair to also point out
that at least some of us have a history of supporting Native and rural
issues. Any inference, intended or otherwise, that those of us who
oppose the current priority are inclined to be racists is very
unfortunate. I am confident that I am not a racist. I doubt that
the majority of Fairbanks area residents are racists. Yet a majority
of Fairbanks area voters voted FOR Proposition No. 7 and should not
feel guilt or intimidation for having done so.

Lastly, those of us who have been encouraging a change in the
priority law have been placed in a very awkward position by the
Governor. Perhaps you, as legislators, would give us some advice.
The Governor is evidently going to appoint a subsistence task force.
But it is reported that this task force will only address how to better
implement the current law. It is not to consider any possible changes
in the current law. Because we believe that the basic problem re-
volves around the language of the law, and not its implementation, it
is our judgement that this task force would be, sadly, a "waste of

time and energy". After all, courts rule on the language of a law. If we refuse to participate, we will be labeled "uncooperative". If we participate, the Governor can claim that he is addressing the issue--when he really isn't. We've been placed in a no win situation. Do you have any recommendations?

If the Governor insists that his task force be limited in this fashion, would you please reconsider the House Resolution that would establish a legislative task force on the subsistence law.

Thank you again for your consideration of this issue. I would be pleased to receive any advice regarding my last inquiry or questions on any part of my testimony.

- 005 Ringstad called mtg. to order
 019 Anch. - Vaska
 Sec. 416 - "heart of the bill
 eliminate subs. - ~~is~~ consumptive use
 sport fishing over commercial fishing priority
- 112 Ringstad stated members present - Rep Fischer present
 120 Anch - Bob Lohr - Rural Cap, gov. task force
 P.S. "inappropriate minority reaction" - leave subs. law alone
 155 Fbx - Doug Buchanan - in support of HB 266
 177 Mat-Su - Ed Grasser (self) - bill is a step in rt. dir.
 problem - Board ~~shall~~ should be [may].
- 194 Ringstad
- 202 Haines - Leo L (member of ANB)
- 250 Patsbg - John - "poor law" - another layer of govt.
 that would confuse the law.
- 278 Dillingham - Greg Peters - Bristol Bay Native Assoc.
^{they are} opposed to legislation.
- 305 Nome - Kaleb Pongwee - create "admin. nightmare"
 (inconsistent in Act).
- 360 Galena - Sydney Hunnington - semi-inaudible
- 459 Homer - David Bentley - trap nets - "flat opposed")
- 494 Wainwright - Nitana -
- 508 Check w/ teleconf sites APANDLOOK
- 535 Fbx - Glen Dispayne - in favor (agst new F46 Dept)
- 582 Bethel Jones -
- 656 discriminates rural people
- 696 Anch - Henry Mitchell - Ex. Dir. Bering Sea fishermen
- 005 Henry Mitchell, continued - work w/ present law
 019 Nome - Matthew Eya - Eskimo Walrus Commission
 027 Fbx - Melb Charles - agree w/ Buchanan
 032 Anch. Bob Hunter - Pres. AK. Fishermen Assoc.
 step in rt. dir. - supports bill
 concerns - letting F46 operate ^{w/out help} under ~~same~~
 need sportfishing representatives in F46 Dept

076 Bethel - Janet Kaizer - opposed

gov. - subs. task force

098 ^{wasilla} Matsu - Ray Morgan - needs a lot of work!
create an administrative "boondoggle"

144 Fbx - ~~Kate~~ ^{Kate} Zabo - top priority - pers. consump.

188 Bethel - David Friday -

209 Anch - Don Mitchell - Council to Nat'l Fed. of Natives
do not support HB 266 - ~~is~~ ^{MAKES} 2 classes of AK's
discriminatory. ~~is not~~

301 Ringstad - task force - requested public msg.
regarding personal opinions

320 Fbx - Gene Carlson - Chitna Dipnetter Assoc. -
supports bill

FBX

✓

384

425 Fbx - Iver Johnson -

460 Birk Sharp - "barter privilege" -

548 Tom Scarborough - moving in rt. direction - except -
discrimination is present.

637 Bud Weiss - (Int. Wildlife Assoc.) - boundaries shouldn't
be used - leg. should elect their own task force

681 Joe - unconstitutional!

005 Spud Williams - opposed

026 Ringstad thanked participants - more opinions
welcomed. adj. 4:35

038 End of Tape.

ALL members

TELECOPY COVER SHEET

TO: House Resources PHONE: _____

FROM: FAIRBANKS I. I. O. PHONE: 452-4448

INSTRUCTIONS: Testimony for telecon. ON HB266
going on Now.

RECEIVED: DATE: _____ TIME: _____

SENT: DATE: 4/28/83 TIME: 12:45

BY: (YOUR OFFICE AND PHONE NO.) Please Deliver

DISPOSAL OF ORIGINAL: _____ THROW AWAY

_____ HOLD FOR PICK UP

NUMBER OF PAGES: 1 (NOT COUNTING THIS COVER SHEET)

To: House Resources ⁽¹⁾

The following comments and personal opinions pertain to Alaskan residents only and have no bearing whatsoever upon Outside Trophy Hunters, as it would not even be considered to allow them to be subsistence users.

I am ~~strongly~~ OPPOSED to House Bill 266 which concerns re-interpretation of the subsistence laws to allow ANYONE to hunt subsistence if the meat is "... for personal and consumptive use."

I feel this is just another attempt on the part of the "sore losers" in the last election to push their views on subsistence on the rest of the State. May I repeat what I indicated in a letter last fall to Governor Sheffield - the voters turned down the proposed Subsistence Initiative, Proposition 7. Their views were clearly stated. Let's let it lie and interpret the existing law as is. The existing law is fair and equitable and the best possible for the people of the State, for the environment, and to sustain a healthy population of the natural resource of wildlife (wild game). Another problem is that I don't believe the average Alaskan understands the meaning of subsistence and the existing subsistence law. I feel that I do. I have read the law itself and the criteria which determine whether one is a subsistence user or not. If all the criteria are met, it is a fair and just law.

The wild game population of this State, particularly the moose, which is the most popular as far as taking "for personal and consumptive use" is concerned, just cannot sustain itself if Anchorageites, Fairbanksans, etc. (urban dwellers having jobs and access to food through grocery stores) are allowed to hunt in any other manner than is now prescribed by Fish & Game laws. Urban dwellers can RIGHT NOW hunt during hunting season according to existing Fish & Game laws. I just cannot see why they have any gripe whatsoever. I feel what the people are desiring is to be able to kill a moose, whenever they see one, no matter what the season, even if it is a calf or a female with a calf, or a cow when there is no cow season, or a pregnant female, etc. etc., with no regard to limits, time of year, whether or not it is on the road, etc. etc. That just cannot be allowed. Much research has been done on the wild game population and the effect hunting will have or has had before Fish & Game laws are enacted. I would venture to say that if House Bill 266 passes, there will literally be thousands of people claiming the right to hunt THEIR INTERPRETATION OF SUBSISTENCE. It cannot help but have a drastic negative effect on the game population of our state.

What person doesn't kill wild game for "their own personal and consumptive use?" While I hear rumors that a few individuals have taken game for sale and financial gain, it is my opinion that these people are so few in number that they are almost negligible. Then there is always the problem of someone living OUTSIDE who has a good friend who is a resident. The outsider could kill his trophy and the resident would keep the meat. Is this still personal and consumptive use??? This happens more than you know and it is extremely difficult to prove. All this bill would do is drastically reduce, maybe to the point of no return, the game population surrounding the urban areas and on the road system. It would take longer, no doubt, to deplete the game population in areas reachable only by boat, snow machine or airplane, but, that, too, could, and would happen. Leave the existing subsistence laws as is and enforce them as they are!

~~As subsistence hunting is concerned is fish. If it is determined and the hunter subsistence user is more than he and his family, in the case of that he in a village more than the village (resident) use and a trophy, sell the trophy wastes it should be fined with punishment meted out similar to other Fish & Game violations, (take away hunting license, fined, etc.).~~

In conclusion, may I once again state that I AM ~~strongly~~ OPPOSED TO HOUSE BILL 266. LEAVE OUR SUBSISTENCE LAWS AS THEY ARE!

Sincerely,

Sandra Sedwarf

Sandra Sedwarf
104 "E" St.
Fairbanks, Ak 99701

H-456-4766
W-452-1741



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

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FIVE-DAY NOTICE OF PUBLIC HEARING

BILL NUMBER
AND TITLE: HJR 43 Requesting that Birch Creek and
Beaver Creek be removed from
designation as wild rivers.

DATE OF
HEARING: Tuesday, May 3, 1983

BILL NUMBER
AND TITLE: Jt. House/Senate Briefing
Mineral Development
(Fairbanks State Forest)

SB 108 "An Act establishing the Tanana
Valley State Forest and a program
for the management of state forests
and forest land of the state; and
providing for an effective date."

DATE OF
HEARING: Friday, May 6, 1983

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 8, 1983

SUBJECT: Consumptive use of fish and game
(Work Order No. 13-0661)

TO: Representative Mae Tischer

FROM: Richard C. Folta *D*
Legislative Counsel

You have requested a sectional analysis of your bill draft entitled:

"An Act establishing personal consumptive use of fish and game as the highest and best use of fish and game and creating in the Department of Fish and Game a section of consumptive use."

Section 1. Intent. This section broadens the present "subsistence user priority". It establishes "personal consumptive use as the highest and best use" of fish and game resources. The only substantial change, from a legal point of view, is the modification to "personal consumptive use". Whereas there has been difficulty and disagreement in the past defining subsistence, the words "personal consumption" are relatively unambiguous.

Sections 2 and 3. These provisions provide for a personal consumptive use hunting and fishing section within the Department of Fish and Game and duties which are modified to reflect the new personal consumptive use responsibilities of the section.

Section 4. This section provides for the highest and best use of fish and game to be consumption for personal use and eliminates the three-tier test for determining restrictions and limitations on the resources with a "poverty income level for Alaska". It is significant to note that this provision only comes into play when there is a shortage of resources and the Board of Fisheries or the Board of Game

determines that it is necessary to further restrict the harvesting of fish and game resources. [See attached Alaska Planning Information pages.] According to state officials, this index is the best indicator available for a poverty index and is revised each year by the Department of Labor.

The replacement of the three-tier test in this section and in sec. 6, is perhaps the most critical part of the personal consumptive use bill. With the recent repeal of the Alaska Income Tax, there is no longer an easy way to ascertain the income levels of personal consumptive use applicants. The poverty level index provides an income level and perhaps could be implemented by an oath along with the application which the applicant signs under penalty of perjury that his income level is within the poverty index. Perhaps, as in the state energy audit and the twenty-five cent license program, there could be a random enforcement audit to determine the abuse level. However, there is a danger of implementing a bureaucracy such as the Limited Entry Commission in expending considerable sums in policing the activity. As in the present subsistence program, there is a potential for abuse in the personal consumptive use program because of the difficulty of pinning down incidental income and the nature of fish and game use.

Sections 5, 6, and 7. These sections provide for adoption of regulations by the Board of Game and the Board of Fisheries for personal consumptive use.

Sections 8 and 9. These sections substitute consumptive use for subsistence.

Sections 10, 11, and 12. These sections relate to the definitions of three words -- fishing, personal consumptive uses, and barter; amending the prior definitions.

Under sec. 10 under the definition of personal consumptive use; additional fishing methods are added for hook and line held in the hand; by hook and line with the line attached to a pole; or pole which is held in the hand or closely attended. These fishing methods are also the methods used in sport fishing.

In sec. 11, as in prior sections the words "customary and traditional uses" and "rural Alaskan residents" are replaced or eliminated to conform to the personal consumptive use concept. These changes, along with the three-tier method as

Representative Mae Tischer
Page 3
March 8, 1983

described earlier, may also raise issues of sufficiency under sec. 8.

All the other sections through sec. 28 relate to changing the word "subsistence" where it is found in the statutes and replacing it with the words "personal consumptive use". As you might expect subsistence also relates to board and room and other definitions. However, those sections were not changed in any way by this bill.

Section 29. This was a repealer section of eight provisions, however, since we are amending provisions instead of repealing them to make them conform to personal consumptive use, I propose to eliminate sec. 29.

This section-by-section analysis of the personal consumptive use draft bill has been necessarily short due to the press of time.

If you would like additional work done on this, please let me know.

RCF:ljb

Enclosure
1/005

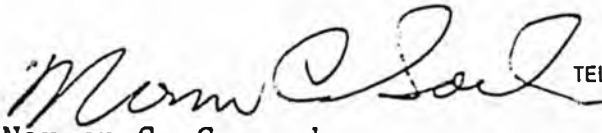
MEMORANDUM

State of Alaska

TO Honorable Bill Sheffield
Governor

DATE: February 25, 1983

FILE NO: 166-448-83



TELEPHONE NO: 465-3600

FROM Norman C. Gorsuch
Attorney General

SUBJECT: Subsistence Law

During the recent election, a great deal of publicity was generated by Ballot Measure No. 7, which would have repealed the state subsistence law and added new statutory language severely restricting the authority of the Boards of Fisheries and Game. Misinformation about the law and the ballot measure was widely circulated. The voters defeated the measure, but considerable confusion remains.

I recently asked the members of my staff who work in the area of fish and game and who have been working closely with the subsistence law, to outline the state statutory and regulatory framework, and its relationship to the federal Alaska National Interest Lands Conservation Act (ANILCA). Attached is the resulting memorandum on the subject prepared. The discussion also encompasses three actual problems in implementing the law and identifies several specific issues that require attention. The three actual problems are:

1. the definition of "rural", which needs to be amended or repealed;
2. the need to avoid disruption of non-subsistence harvest opportunities, which can be accomplished in part through the personal use category; and
3. confusion among some state officials and their apparent reluctance to follow the advice of the Attorney General.

The memorandum additionally examines twelve items which erroneously have been perceived as difficulties, and explains their basis in misinterpretation and misinformation. The facts demonstrate that they are not really problems requiring action,

other than clarification to the public. The memorandum explains that the subsistence law:

1. is constitutional;
2. does not provide for exclusive use;
3. does not permit harm to fish and game resources;
4. will not dilute advisory committee effectiveness nor create regional council regulatory authority;
5. does not result in courts managing resources;
6. does not permit waste;
7. does not contain racial criteria;
8. does not guarantee a particular harvest to particular individuals;
9. does authorize subsistence harvests to be regulated without triggering the priority;
10. does not require precipitous regulatory change;
11. does not threaten the limited entry system and does not allow commercial sale of subsistence harvested fish or game; and
12. cannot be amended consistent with ANILCA to define subsistence uses by economic need.

I believe the attached memorandum provides a useful summary of three real problems with implementing the subsistence law, and of twelve misconceptions or perceived problems. I believe it is imperative that this review be provided to the Commissioner of Fish and Game and to the Boards of Fish and Game as they embark upon their duties. With your concurrence, I would like to provide copies of it to them following your review. If I or my staff can be of further assistance, please let me know.

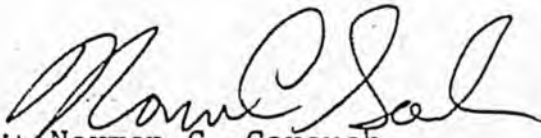
MEMORANDUM

State of Alaska

TO: Hon. Bill Sheffield
Governor

DATE: February 25, 1983

FILE NO: 166-448-83


FROM: Norman C. Gorsuch
Attorney General

TELEPHONE NO:

SUBJECT: Subsistence law:
real and perceived
problems

I recently asked the attorneys on my staff who work in the fish and game area to prepare an overview of the current status of the state subsistence law, with relevant background information for your review. The material which follows is the result of that effort. I have reviewed it personally and concur fully with its content.

OVERVIEW

The framework for the implementation of the subsistence law is now in place. The approach codified in regulation by the Joint Boards of Fisheries and Game is fairly straightforward, and with one notable exception, the definition of "rural," it is likely to be upheld by Alaska courts. See Madison v. ADF&G, 3KN 81-542, CIV; Gjosund v. ADF&G, 3HO 80-92, 77-22104 Homer. This memorandum will explain the state statutory and regulatory framework and its relationship to federal law. It also will discuss three actual problems and twelve perceived "problems" in the current situation and identify specific issues that require attention.

STATE LAW

The Alaska Boards of Fisheries and Game are authorized by the legislature to allocate Alaska's fish and game resources among various uses, so long as sustained yield will not be jeopardized. Since statehood, the boards and their predecessor, the Board of Fish and Game, have had the discretion to decide which non-subsistence uses (for example, sports, commercial) should be allowed in each area of the state, and to what extent. Under AS 16.05.251(b) and 255(b), the boards are required to adopt regulations allowing subsistence uses, unless sustained yield will be jeopardized. Attachment A.

Although contained in the same statute, the requirement to allow subsistence uses is separate from the priority for subsistence uses over non-subsistence uses, which is triggered only by a relative resource shortage. The boards must accord the priority to subsistence uses whenever "it is necessary" to

restrict the taking" of a fish stock or game population in order to assure maintenance of sustained yield or continuation of subsistence uses. AS 16.05.251(b) and 255(b). Attachment A. As discussed below, the mere existence of regulations authorizing subsistence uses does not mean that taking is "restricted" so as to trigger the priority. Rather, the priority comes into play only in relative resource shortage, when restrictions on non-subsistence uses must be imposed because harvest competition among user groups or decline in numbers of fish or game would jeopardize sustained yield of the resource or subsistence uses of the resource.

The legislature has defined subsistence uses as "customary and traditional uses" of wild, renewable resources for certain purposes. AS 16.05.940(26). Attachment B. The state statutory definition of "subsistence uses" is practically identical to that found in Title VIII of the federal Alaska National Interest Lands Conservation Act (ANILCA). Virtually the only difference is ANILCA's specification that subsistence uses are "customary and traditional uses by rural Alaska residents." ANILCA §803 (emphasis added). Attachment C.

However, the boards have determined that the state definition of "subsistence uses" also is limited to customary and traditional uses by "rural Alaska residents." 5 AAC 99.010(a). Attachment D. Not all uses of fish and game by rural Alaska residents are "subsistence uses." Rather, subsistence uses by rural Alaska residents are customary and traditional uses, which can be identified by eight criteria. 5 AAC 99.010(b). Attachment D. See April 1, 1982, memorandum from our office to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, A66-432-82. These criteria are based upon the ten criteria in 5 AAC 01.597 which the Board of Fisheries has employed to identify which uses of salmon in Cook Inlet are subsistence uses. The ten criteria have been upheld by two state superior court judges in the last year. Madison v. ADF&G, supra; Gjosund v. ADF&G, Supra. In approving the ten criteria, the court in Madison concluded at page 4 of the March 5, 1982, findings of fact and conclusions of law that:

The intent of AS 16.05.251(b) and .940(26) is to provide for and protect personal use ... fisheries conducted by persons who reside in rural communities which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community. (Emphasis added.)

The boards determine on a case by case basis whether a use qualifies as a subsistence use by evaluating information presented by the public, the advisory system, and the Department of Fish and Game in light of the criteria. Attachment D. The joint board regulation also sets out the procedures each board will follow in allocating between subsistence uses and other uses. 5 AAC 99.010. In brief, if a fish stock or game population can be harvested without jeopardizing sustained yield, the board will provide reasonable opportunities for subsistence uses of that resource. If the resource population is adequate, the board may permit opportunities for other uses as well. Attachment D.

FEDERAL LAW

ANILCA established a procedure for the state to continue managing fish and game on federal lands and in all the waters of Alaska if the state meets certain standards. In particular, ANILCA §805(d) requires the state to have "laws of general applicability" which mirror the federal provisions in three areas: (1) the definition of "subsistence uses," (2) a preference for those uses in times of relative resource shortage, and (3) public participation which includes advisory committees and regional councils. The Department of the Interior has determined that the state statutes, together with the boards' procedural regulation (5 AAC 99.010) and the regulations governing fish and game advisory committees and regional councils (5 AAC 96), satisfy the requirements of ANILCA. See December 2, 1981, and April 28, 1982, letters from our office to Governor Hammond, A66-120-82. Thus, under the approach now in place, the state is authorized to continue to regulate the taking of fish and game on federal lands and in all the waters of Alaska.

ACTUAL PROBLEMS

There are three actual problems with the implementation of the subsistence law which have not yet been resolved.

1. "Rural": When the joint boards adopted the criteria and procedures specified in 5 AAC 99.010, they also adopted a definition of "rural" in 5 AAC 99.020, Attachment E:

In this chapter 'rural' means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more as determined by the Alaska Department of Community and Regional Affairs.

The definition poses serious equal protection problems under state and federal constitutions, in part in that whether an area of the state is "rural" is to be determined by whether the area has or has not organized as a borough. Equal protection requires that persons similarly situated be treated alike. Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981). A definition of "rural" keyed to the presence or absence of a borough appears to violate that principle. For example, the Matanuska-Susitna Borough boundary bisects game management unit 13. Under 5 AAC 81.055(c)(3), rural residents of game management 13 who meet certain other requirements qualify for a subsistence permit to hunt Nelchina caribou. If the definition of "rural" in 5 AAC 99.010 is applied, residents of game management unit 13 living outside the borough are eligible, and those living inside are not. Information supplied to the Department of Law by the Alaska Department of Fish and Game would probably lead a court examining the classification to conclude that persons living inside and outside the borough are apparently similarly situated, except for the location of the borough boundary line. That boundary appears to be entirely unrelated to factors considered important by the boards in identifying subsistence uses, such as available opportunities. Consequently, a court would probably conclude that classification of land as being within a borough is a factor which does not reflect a difference in the pattern of harvest and use of resources and that different treatment of Alaskans based only on their residency in a borough violates equal protection principles. See June 17, 1982, memorandum from our office to Ronald Skoog, Commissioner of Fish and Game, J99-098-82.

The current definition of "rural" is also potentially flawed by vagueness. Regulations must be precise enough to enable the agency implementing them and the public to know what is intended. Woodards v. State, 604 P.2d 250 (Alaska 1979). For that reason, the Department of Law discourages the use in regulations of words like "adjacent" or "near", since courts have found that other such relative terms are too vague to be enforceable. Marks v. City of Anchorage, 500 P.2d 644 (Alaska 1972). Similarly, in the definition of "rural" the term "road connected area" is potentially vague. There is no way of knowing whether the definition of "road" was intended to include frozen

rivers in winter, logging roads, animal trails, or railroads. Nor is there any information on the amount of "area" anticipated to be included in terms of specific distances in yards or miles from a "road." It should also be mentioned that even if specific guidelines were set out, a differentiation in treatment based on proximity to a road also would have to bear a fair and substantial relationship to a legitimate governmental purpose under an equal protection analysis. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).

A definition of "rural" is not required by state law. The April 2, 1982, letter from our office to Representative Ramona Barnes, J66-561-82, points out that it is not necessary under federal law either. ANILCA requires only that subsistence uses be rural customary and traditional uses, not that "rural" be defined. ANILCA §803, §805(d). As the April 2, 1982, letter discusses, the legislative history of ANILCA indicates that Congress envisioned subsistence uses occurring in rural areas, and rural areas being places where subsistence uses occur. Although seemingly circular, that approach enables the state to provide for subsistence uses on a case-by-case basis through the operation of criteria which have the effect of limiting those uses to rural areas. The joint boards' eight criteria for identifying subsistence uses and their acknowledgement in 5 AAC 99.010(a)(2) that subsistence uses are rural uses would probably be sufficient under ANILCA to accomplish the rural focus. For example, Madison, supra, and Gjosund, supra, held that the Board of Fisheries' ten criteria, which are similar to the joint boards eight criteria, identified rural subsistence uses in the Cook Inlet area.

In addressing the concept of "rural," consideration also should be given to the term "residents" as used in section 803 of ANILCA and 5 AAC 99.010(b). Enforcement of the subsistence regulations will require a definition of residency for subsistence purposes. A possible model is the definition of "domicile" recently approved by the Board of Fisheries at its January meeting. See 5 AAC 39.975(30) (not yet filed with Lt. Governor's office).

2. Avoiding disruption of non-subsistence harvest opportunities: Another problem related to implementation of the subsistence law is the authorization and use of a workable system to avoid disrupting harvest opportunities of those whose uses are no longer classified by the boards as subsistence uses and are not commercial or sport. A solution to this problem is the personal use category established by the Board of Fisheries in 5 AAC 77.001-015, in response to the court's action in Madison,

supra. */ This category is intended to authorize regulations which provide access to fishery resources for those whose uses do not qualify under the criteria as subsistence uses, and cannot be classified as commercial or sport.

This personal use category has generated concern among some members of the public. There are those who fear that it will receive a disproportionately high allocation of the resource, and others that it will consistently be relegated to the lowest position. If the relationship between personal use and sport and commercial use can be resolved, the application of the personal use category as the board addresses different fisheries can be a useful tool to assure the adequacy of harvest opportunities when a particular use is not classified as subsistence use. For example, suppose a fishery has been conducted on a particular fish stock under subsistence fishing regulations for a number of years. As the Board of Fisheries considers proposals for regulations, the uses of that fish stock are examined, and only some of the uses are identified under the criteria as subsistence uses. In addition to providing for the identified subsistence uses, the board could authorize a personal use fishery to continue the uses no longer eligible to be classified as subsistence uses. Assuming the target stock and the continuation of subsistence uses would not be jeopardized, the personal use harvests could be regulated as before, except

*/ In 1981 in Cook Inlet, the board had identified the non-commercial gillnet fisheries in Port Graham, English Bay and Tyonek as subsistence use fisheries. Gillnet fisheries had long occurred in other parts of Cook Inlet under previous subsistence regulations, but the board in 1981 simply eliminated those other harvests. In Madison, the court did not find that the subsistence law was flawed, nor that the board had erred under the law or the constitution in identifying subsistence uses in Cook Inlet. However, the court ruled at the preliminary injunction stage that the board's action in eliminating the other gillnet harvests which did not qualify as subsistence uses violated due process, in that all use groups had not been treated fairly. In response, the board established the personal use category. For 1982, a personal use gillnet fishery was permitted in Cook Inlet for gillnet harvests not qualifying as subsistence uses. 5 AAC 77.547.

under a new name. If it ever became necessary to restrict the harvest of that particular fish stock, the board would then of course treat the personal use and subsistence fisheries differently.

3. Apparent reluctance to follow Attorney General's advice and confusion among state officials:

There has been reluctance by some board members and some Department of Fish and Game personnel to follow the advice of the Department of Law in implementing the subsistence law. For example, that department chose to ignore our recommendation that the flawed definition of "rural," Attachment E, be severed and not be applied in issuing permits for the subsistence hunt of the Nelchina caribou herd. Such a procedure would have allowed any qualifying resident of game management unit 13 to apply for a subsistence permit, rather than only those living outside the Matanuska-Susitna Borough. That would have avoided the equal protection problem discussed above, which was caused by the use of the borough boundary in the classification of uses. See July 23, 1982, memorandum from our office to Ronald Skoog, Commissioner of Fish and Game, 366-042-83.

Another example is the refusal to publish a legal notice for the March 1982 meeting of the Joint Boards of Fisheries and Game which was adequate to allow action at that time to bring the state into compliance with ANILCA. Under the Administrative Procedure Act, state agencies are required to give notice to the public at least 30 days before taking action adopting proposed regulations. The notice must be specific enough to give a clear idea of the area in which action may be taken. AS 44.62.190, .200. For the March 1982 joint board meeting, despite advice from our office, a decision was made not to publish a notice sufficient to give the boards the flexibility to adopt regulations to meet the specifications of ANILCA at that session.

An additional ongoing problem is confusion among some board members and department personnel about what is possible or necessary under the subsistence statutory and regulatory framework. For example, some board members continue to insist that partial compliance is sufficient under ANILCA. As discussed earlier, ANILCA §805(d) requires the state law to be the same as the federal law in three areas: (1) the definition of "subsistence uses," (2) preference for those uses in times of relative resource shortage, and (3) a public participation system (advisory committees and regional councils). Although this has

Hon. Bill Sheffield
Governor

February 25, 1983
Page 8

been explained on a number of occasions by our office, suggestions have continued to be made by some board members that Alaska could fail to comply in one or more of the areas specified and somehow still retain management on federal lands and in all the waters of Alaska.

Another example of ongoing confusion is the discussion outline prepared by the boards' executive director for the joint board meeting which began on November 30, 1982. The thrust of the outline is the purported need to formulate a "policy" on subsistence when, in fact, as discussed earlier, 5 AAC 99.010 already clearly sets out the boards' approach. Attachment D. It is now simply a matter of following those procedures.

PERCEIVED "PROBLEMS"

Numerous other "problems" which are perceived as stemming from the subsistence law are based on misinformation and misinterpretation.

1. Misperception: unconstitutional: In an April 1, 1982, memorandum to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, A66-432-82, our office analyzed the most commonly alleged constitutional flaws in the state subsistence law and concluded that the law was constitutionally sound.

Article VIII, section 4, of the Alaska Constitution allows for preferences "among beneficial uses." Kenai Peninsula Fisherman's Cooperative Association v. State, 623 P.2d 897, 904 (Alaska 1981), affirmed the authority of the Board of Fisheries to provide for "different treatment of such diverse user groups as commercial, sports, and subsistence." That authority is not diminished by Article VIII, section 15, of the Alaska Constitution, which prohibits exclusive fisheries and was derived from 48 USC §222, The White Act. 1961 Op. Att'y Gen., No. 3. The intent of the White Act, and Article VIII, section 15, was to preclude creation of classes of use of Alaska's fisheries for which some individuals could never qualify. Hynes v. Grimes Packing Co., 11 Alaska 564, 165 F.2d 323 (9th Cir. 1947), vacated and remanded on other grounds, 23 Alaska 348, 337 U.S. 86 (1949). As discussed below, the subsistence law is not the equivalent of exclusive use, nor does it create a class closed to participation by people who wish to qualify.

The constitutionality of the subsistence law also is not affected by Article VIII, section 3, of the Alaska Constitution, which reserves fish and wildlife to the people for common use. As the April 1, 1982, memorandum explains in more detail, the record of Alaska's constitutional convention shows that section was intended to prohibit private ownership of fish or game still in their natural state. This does not occur under the subsistence law.

The April 1, 1982, memorandum also concluded that identifying subsistence uses as rural uses was permissible under state law. The classification does not violate the equal protection clause of the Alaska Constitution, since the boards have received substantial evidence that basic differences exist between rural and urban areas with respect to economies, social and cultural systems, and resource use characteristics. Indeed, in another context the state supreme court has acknowledged the great differences. In Alvarado v. State, 486 P.2d 891, 894 (Alaska 1971), the court described the differences:

... economies which rely on hunting, fishing, and gathering activities, strong kinship bonds, isolation from those parts of Alaska that approximate mainstream America, different seasonal activity patterns, concepts of time and scheduling, which, in accordance with other cultural divergences, may be quite different from those of mainstream America, and finally, very limited participation in the cash economy.

2. Misperceptions: exclusive use: Participation in subsistence uses is not restricted to a closed class. This means eligibility is not limited in a way that precludes entry; it is not limited to individuals who have lived here since statehood, or to Alaska Natives. For example, in Cook Inlet the Board of Fisheries has determined that the uses of salmon by English Bay, Port Graham, and Tyonek are subsistence uses, and that any person domiciled in those communities may participate. 5 AAC 01.580(a). The class is not closed, since individuals may move to one of the communities and enter the subsistence system, or may move away.

The subsistence law also does not automatically preclude non-subsistence uses, for example, sport and commercial fishing. As always, no harvest is allowed if sustained yield would be jeopardized, but the legislature obviously intended non-subsistence uses to continue, and the boards have the discretion to authorize them. AS 16.05.251(a) and .255(a). For

example, when the Board of Fisheries provides for subsistence uses identified by the eight criteria, some fisheries which previously have been termed "subsistence" may not qualify. That does not mean those harvests will cease to exist. As discussed above, the personal use category can be employed at the board's discretion to permit continued resource harvest opportunity.

If relative resource shortage, which is described earlier, occurs and the priority must be implemented, the boards still have available all their traditional management options to restrict non-subsistence uses and to continue regulating subsistence uses, such as altering seasons or prohibiting use of aircraft. These options can be used to implement the priority in ways that do not exclude non-subsistence uses, although that option is available to the boards in extreme cases.

3. Misperception: harm to resource: Under the regulations, statutes, and Article VIII, section 4 of the Alaska Constitution, maintaining sustained yield of the resource is always the paramount consideration. No uses, including subsistence uses, are allowed to interfere with that. If any harvest of a fish stock or game population will jeopardize sustained yield, no harvests, subsistence or otherwise, may be authorized on that stock or population.

4. Misperception: dilution of advisory committee effectiveness and creation of regional council regulatory authority: Created by the boards to assist in gathering information on resource issues, fish and game advisory committees have existed in all regions of Alaska long before the state or federal subsistence laws. Currently, there are 67 of these advisory committees, each of which is represented on one of the state's six regional councils, which were formed by the boards before passage of ANILCA.

In order to satisfy the public participation requirements of ANILCA §805, modifications were made to the advisory system regulations, some of which strengthened the regional councils' role in the regulatory process. Two concerns have since emerged regarding the regional councils. The first is that the councils will replace the committees, and thus hinder public access to the boards. However, under the current regulations, individuals may express their views directly to the boards, councils and committees. Committees may channel information both to the councils and to the boards. The councils supplement, rather than replace, communication with the boards by individuals and committees.

The second concern is that the councils will have undue authority over the boards, or will have separate regulatory authority. In conformance with the specifications of ANILCA §805(d), the boards now give limited deference to council recommendations concerning subsistence uses, although they receive council recommendations on all fish and game issues. The boards may reject the recommendations concerning subsistence uses if they are not supported by substantial evidence, if they would violate conservation principles, or if they would harm subsistence uses. 5 AAC 96:610(e). The regional councils have no authority to promulgate regulations; rather, they are authorized to make recommendations to the boards.

5. Misperception: courts managing resources: Although the subsistence law was enacted in 1978 (ch 15, SLA 1978), the boards did not begin implementing it immediately. In fact, the boards' actions were often inconsistent with the law. As a consequence, the state lost four lawsuits in 1980. For example, Tyonek v. Alaska Board of Fisheries, 3AN 80-3073, ruled that it was improper for the board to authorize a sport fishery on Susitna River king salmon while not allowing a subsistence fishery on those stocks, when sustained yield would not be jeopardized by harvest of the fish.

However, once the boards began articulating and applying standards for implementation of the subsistence law, recent litigation has been more successful. For example, the Board of Fisheries' approach to subsistence uses in Cook Inlet has been upheld completely in Madison, supra, and in large part in Gjosund, supra. The state's success in such cases hinges primarily on the boards' reasonableness in following the requirements of the law.

6. Misperception: waste permitted: The subsistence law does not authorize waste, which is prohibited separately by statute and regulation. See, for example, AS 16.05.831. Waste is not allowed by any use, subsistence or otherwise.

7. Misperception: racial criteria: The requirements of the subsistence law are race neutral. This is true of both the state statute and ANILCA.

8. Misperception: guaranteed take: 5 AAC 99.010(c) requires that "reasonable opportunities" for subsistence be provided. Attachment D. No participant is guaranteed a harvest.

9. Misperception: subsistence harvests may not be regulated without triggering the priority: AS 16.05.251(b) and .255(b) require the boards to "adopt regulations" allowing subsistence fishing and hunting. Attachment A. However, the fact that a subsistence harvest is regulated does not automatically trigger the priority. The priority becomes active if "it is necessary to restrict the taking" of fish and game, because of relative resource shortage, which is described earlier. AS 16.05.251(b) and .255(b). Attachment A. See February _____, 1983, memorandum from our office to Don Collinsworth, Commissioner of the Department of Fish and Game, 166-423-83. This is also true under ANILCA §804. See S. Rep. No. 413, 96th Cong., 1st Sess. 269 (1979).

Just as with other uses, subsistence harvests can be regulated by specified areas, openings, and other management measures. Indeed, regulation of subsistence uses has been and is part of sound resource management, and it was expected by the legislature. For example, the legislature indicated in section 1, ch. 151, SLA 1978, the intent section of the subsistence law, that beneficial uses of fish and game by all state residents "should be carefully monitored and regulated." Historically, the Board of Fisheries has adopted regulations denominated "subsistence." The Board of Game has generally regulated subsistence uses without designating the regulations as "subsistence."

10. Misperception: requirement for precipitous change: As discussed in the March 22, 1982, memorandum regarding subsistence regulations from our office to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, the regulatory process contemplated by ANILCA is ongoing. Under ANILCA §806, the Department of the Interior will monitor the state's subsistence program on a continuing basis. Accordingly, instantaneous regulatory change in all fishing and hunting situations statewide is neither necessary nor desirable. As potential problems are identified and as data become available, the boards should act according to the procedures in 5 AAC 99.010. Attachment D. See May 4, 1982, memorandum to Milstead Zahn, Executive Director, Boards of Fisheries and Game, regarding effect of joint boards' subsistence regulations.

11. Misperception: limited entry system threatened and commercial sale of subsistence harvested fish or game allowed: Both state and federal laws include "customary trade" as a component of "subsistence uses." AS 16.05.940(26), Attachment B; ANILCA §803, Attachment C. However, legislative history indicates that Congress was mostly concerned about trapping, and neither state law nor ANILCA authorizes significant commercial activity. The state law limits the scope of customary trade by the phrase "for personal or family consumption." AS 16.05.940(26). Attachment B. Although those words do not modify "customary trade" in ANILCA §803, legislative history is clear that Congress did "not intend that 'customary trade' be construed to permit the establishment of significant commercial enterprises under the guise of 'subsistence uses'." S. Rep. No. 413, 96th Cong., 2nd Sess. 234. See December 2, 1981, letter from our office to Governor Hammond, A66-120-81, p. 26-29. Thus, under the subsistence law any exchanges involving cash which are eventually authorized by board regulation would be of a very limited nature, perhaps recognizing established exchange and distribution networks within subsistence economic systems.

The inclusion of "barter" as a component of "subsistence uses" as defined in AS 16.05.940(26) does not authorize commercial exchanges, either. "Barter" is defined in AS 16.05.940(27) as the exchange of fish or game taken for subsistence uses for other fish or game, or for "other food or nonedible items other than money if the exchange is of a limited and noncommercial nature."

12. Misperception: flexibility to define subsistence uses by economic need: It has been suggested that either the legislature or the boards should narrow the definition of subsistence to encompass only economic need, based, for example, on individual income level. Whatever the policy advantages or disadvantages of that approach, it is not an amendment that can be made if the state is to remain in compliance with federal law. An economic need requirement would be inconsistent with the language of ANILCA and with Congressional intent, as amply evidenced in legislative history. For example, in discussing the policy expressed in ANILCA §802(1), Representative Udall noted that it "also requires that regulatory systems which employ income requirements not be imposed upon rural residents." 126 Cong. Rec. H10546 (daily ed. November 12, 1980).

Hon. Bill Sheffield
Governor

February 25, 1983
Page 14

CONCLUSION

State regulations and statutes provide a framework for implementing the subsistence law in a manner consistent with ANILCA. Many "problems" which have been perceived with the framework actually arise from misinformation and misinterpretation. Providing the public with correct information on the law would dispel the impression that these "problems" exist.

One problem which needs to be addressed is the authorization and use of a workable system to avoid disrupting harvest opportunities for those whose uses are no longer classified by the boards as subsistence uses. The personal use category established by the Board of Fisheries is a potential solution, though its relation to sport and commercial uses needs to be resolved. For example, Cook Inlet is a highly populated area where all four categories of fishery -- subsistence, sport, commercial, and personal use -- occur. Examining the appropriate application of the personal use category in Cook Inlet could develop a model not only for Cook Inlet but for other areas in the state.

Another problem is the current definition of "rural", which is vulnerable to equal protection and vagueness challenges. The definition could be amended, or even repealed, since a definition of "rural" is not required by either state or federal law.

If I can provide any further information or assistance, please let me know.

Sec. 16.05.251. Regulations of the Board of Fisheries.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources. (§ 3 ch 206 SLA 1975; § 2 ch 218 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980)

Sec. 16.05.255. Regulations of the Board of Game.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board

shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources. (§ 3 ch 206 SLA 1975; § 5 ch 151 SLA 1978)

Sec. 16.05.940. Definitions. In AS 16.05.010 — 16.05.950 /

(26) "subsistence uses" means the customary and traditional uses in Alaska 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 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; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

ATTACHMENT B

DEFINITIONS

Sec. 803. As used in this Act, the term "subsistence uses" means ^{16 USC 3113.} the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for: food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by us of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained-yield basis.

(e) Each board will, in its discretion, adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained-yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained-yield basis. (Eff. 5/30/82, Reg. 92)

Authority: AS 16.05.251(b)
AS 16.05.255(b)

5 AAC 99.020. DEFINITIONS. In this chapter, "rural" means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more, as determined by the Alaska Department of Community and Regional Affairs. (Eff. 5/30/82, Reg. 82)

Authority: AS 16.05.251(b)
AS 16.05.255(b)

APR 05 1983

ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 1A • Anchorage, Alaska 99501 • Phone 907-274-3611

March 31, 1983

Representative Mike Szymanski
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: HB 266

Dear Mike:

Thank you for sending me a copy of HB 266 and requesting AFN's views on the bill. Although the AFN Board of Directors has not had an opportunity to consider the bill, when it does, the board undoubtedly will determine that the policies embodied in the bill are inconsistent with both the State of Alaska's commitment to ensuring the continuation of subsistence uses of fish stocks and game populations and with relevant sections of the Alaska National Interest Lands Conservation Act (ANILCA).

As you know, the state subsistence laws, A.S. 16.05.251(b) .255(b) and .940(26), implement a policy decision made by the legislature in 1978 that protection of subsistence uses of fish stocks and game populations by residents of rural Alaska is important to all the citizens of the state. HB 266 would repeal that policy decision and establish a new policy which implies that the reliance on fish and game by Alaskans who live in our urban population centers is the same as it is for Alaskans who live in rural villages. Such a policy would not reflect the reality of life in either urban or rural Alaska. In addition to abandoning a policy which analyzes hunting and fishing on the basis of its role in the economic life of rural communities, HB 266 also would require the Alaska Board of Fisheries and Board of Game to differentiate among Alaskans solely on the basis of state poverty guidelines. Rural families with income above an artificial poverty level would be forced to compete for access to limited resources on an "equal" basis with numerically superior sport and trophy hunters and fishermen. Aside from the questions of whether such a system is fair or whether destroying the economic viability of rural village economies is in the best interest of all Alaskans particularly during a period of declining state revenues, such a system would require a new, large and expensive state bureaucracy to administer.

The enactment of HB 266 also would result in sport fishing (which is defined in the bill as "personal consumptive use fishing") being afforded a statutory priority over commercial fishing. Whether such a result is or is not good public policy has nothing whatsoever to do with the regulation of subsistence uses of fish and game. If the legislature intends to enact such a radical change in allocation policy (at the moment neither sport fishing nor commercial fishing is afforded a priority over each other), it should do so only after sport and commercial fishermen have been notified of the proposed change and have been provided an opportunity to present their views to the legislature.

Lastly, title VIII of ANILCA conditions the State of Alaska's authority to regulate hunting on Federal lands and fishing on navigable waters on the State's development and implementation of a fish and game management program which conforms to the requirements of section 805(d) of that Act. Section 805(d) requires the State to have a statute such as A.S. 16.05.251(b) and .255(b) and a definition of "subsistence uses" such as that included in A.S. 16.05.940(26). HB 266 would amend those statutes in a manner which would make them inconsistent with the requirements of section 805(d) which in turn would result in a Federal takeover of most of the State's authority to regulate hunting and fishing. A result which I am sure you would agree would be a disaster for all Alaskans and for the wise management of the fish stocks and game populations which would be subject to two management systems.

Unlike HB 266, the present state subsistence laws satisfy the requirements of ANILCA and establish a fair and workable system for allocating access to finite fish stocks and game populations in instances in which harvest demands by all user groups exceed the harvestable surplus of the stock or population. The Alaska Board of Fisheries and Board of Game have made considerable progress in adopting regulations interpreting the state subsistence laws to assist them in identifying subsistence uses of individual stocks and populations. In my judgment the boards should be provided an opportunity to use their new regulations to implement the subsistence laws in a fair and reasonable manner. I also would note that hunting and fishing by Alaska residents which do not fall within the definition of "subsistence uses" are not compromised by the state subsistence laws. A subsistence priority does not mean exclusive use. Rather, non-subsistence uses of fish and game may be authorized and regulated by the boards pursuant to their discretionary administrative authority under A.S. 16.05.251(a) and .255(a) rather than pursuant to their authority to regulate subsistence uses under A.S. 16.05.251(b) and .255(b).

Thank you for the opportunity to express AFN's views on HB 266 and on the important policy questions embodied in that bill. If I can be of any further assistance with respect to your consideration of HB 266 or any other bill being considered by the legislature please do not hesitate to contact me.

Sincerely,

ALASKA FEDERATION OF NATIVES, INC.



Janie Leask
President

xc: AFN Board of Directors
Representative Tischer

Blender

Mon - HB 232 Chester Lake Hydro

Tues - * HJR 43

Wed - Cook Inlet Fisheries Briefing

Thurs - HB 320, HB 370, HB 371 Property Oil Contracts

Fri - Joint House / SENATE Briefing / Mineral Development
* SB 108 Fairbanks STATE FOREST

"highlight + best"

Midnight Sun Arctic
Adventurers

Rural Alaskan Natives
Urban Sportsmen

no clear markers on a yardstick

economic need:

Native Concerns
Guiding Concerns

Rupert Andrews - Alaska Sportsmen's Council
ambiguity

Ron Summerville

Bob Kausch

Ron Skoog

H B

267

ALAKANAK	NOME
BEVING MISSION	SAVOONGA
CHEVAK	SCAMMON BAY
DICHADE	SHAKTOOLIK
ELIM	SHELDON'S POINT
EMMONAK	SHISHMAREF
GAMBELL	STEBBINS
GOLDWIN	ST. MICHAEL
HOPPER BAY	TELLER
KOTLIK	UNALAKLEET
KYUK	WALES
	WHITE MOUNTAIN



MEMBER
 FINANCE COMMITTEE
 POLICY COMMITTEE
 COMMITTEE ON COMMITTEES
 REAA BUDGET OVERSIGHT COMMITTEE
 BLUE RIBBON COMMISSION ON PERSONNEL

Alaska House of Representatives

MEMORANDUM

TO: Fisheries Committee members DATE: March 21, 1983

FROM: Rep. Jack Fuller *JF*

SUBJECT: HB 267 re herring stripping
 Fisheries Committee teleconference
 3:30 pm, March 24, 1983

HB 267 extends the time that herring stripping is allowed to take place in the Bering Sea until 1986. "Stripping" is the process by which herring roe is extracted from the carcass. The herring is first either lightly salted for three - four days or frozen, then processing workers extract the roe. After this process, the carcass is discarded.

A brief background on the bill, taken from hearings on legislation two years ago which first allowed stripping to continue in the Bering Sea, will bring you up to date on the subject. Legislative policy on utilization of herring, as adopted in 1977, states that stripping "is wasteful and does not constitute utilization of this resource for the maximum benefit of the people. Therefore, it is the policy of the legislature that this process should be eliminated to the fullest extent possible." Reacting to the mounting pressure against stripping, the Board of Fisheries prohibited by regulation the stripping of herring effective for the 1979 season. The result of this was that most of the herring from the Bering Sea (Fish and Game estimates 70%) were lightly salted and shipped overseas, bypassing Alaskan processors and labor altogether.

HB 590, passed in 1980, prohibited export of unprocessed herring and allowed herring stripping in the Bering Sea through the 1982 season. This was to encourage the development of Alaska-based processing facilities and allow processors to ease into the requirement that the whole herring be utilized. Once the ban on stripping is reinstated, processors will have to find some use for the herring carcasses. This means that they will have to be reduced - turned into fish meal or fertilizer - since this is about all that a herring carcass is good for after the roe extraction process. There are no reduction plants along the Bering Sea coast, with the closest one being in Seward.

In 1981 the Unalakleet Co-op processed its own herring for the first time. Due to poor conditions, they were unable to process last year. This year they had intended to strip three to five hundred tons,

but need to be allowed to dispose of the carcasses. Current regulations provide that carcasses be dumped outside of the three-mile limit. The regulations are still on the books and will remain in place for the coming season if this legislation is enacted. It is estimated that the stripping operation will bring in between \$20,000 and \$35,000 to the local economy. This bill would allow them to continue herring stripping until 1986, when they will have enough experience and will have built up enough of an infrastructure to dispose of the carcasses some other way.

Allowing the stripping of herring until 1986 will give local processors time to build up a base of investment for their developing fisheries as well as create jobs and economic benefits for the area. It is a realistic approach to phasing in the local processing industry. Dumping of the herring carcasses at this time is the most economical use of this by-product, where there is no market at all for them. Following department regulations, the herring carcasses are disposed of in an ecologically safe manner far out to sea. This bill will not affect other areas of the state.

MAR 23 1985

3NC FISHERIES
P.O. BOX 100
UNALAKLEET, ALASKA 99684

Representative Jack Fuller
Alaska State Legislature
Pouch V (MS-Space 3100)
Juneau, Alaska 99811

Dear Representative Fuller:

The three village Corporations of Unalakleet, Shaktoolik and Stebbins along with the Norton Sound Fishermen's Cooperative have formed a new joint venture for commercial fishing in the southern Norton Sound. The interim board is made up of myself as Chairman, member Chuck Degnan from Unalakleet Native Corporation; Eugene Asicksik as vice-chairman and Alex Sookiyak from Shaktoolik Native Corporation; Cornelius Dan as Secretary/Treasurer and member Morris Coffey from Stebbins; and R. Weaver Ivanoff from the Norton Sound Fishermen's Cooperative.

In our second organizational meeting a motion was passed unanimously to send you a letter of support toward requiring a 2-year residency in the State of Alaska to qualify for fisheries loans and also increasing the minimum loan amount of \$35,000 on the Fisheries Mortgage and Note Sale Program. We feel that the 1-year requirement opens to the program to too many fishermen which puts even more constraints on our local fishermen qualifying for the loans. The least that should be required is that the one year be 12 consecutive months. The current \$15,000 limits ourselves to getting a small somewhat substandard boat and outboard motor. The minimum a work outboard motor costs is approximately \$5,000. If we allocate \$2,000 for freight, that leaves us only \$8,000 to buy a boat. The base price for a 24-foot Monson Boat open model, costs \$10,000. We have had fishermen interested in this boat, but because of the \$15,000 limit, it cannot be bought with that loan program. The 26-foot boat that most would like costs \$12,500 and it would be impossible to buy this boat with the loan program.

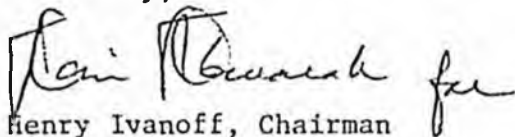
We have been informed that House Bill 267 has been introduced by yourself regarding dumping of herring carcass in western Alaska. Through a telephone poll our Board of Directors would like to go on record as fully supporting such a bill.

As you well know and as classified by the Board of Fish, herring fishing in the Norton Sound is a developing fisheries. We have been fishing herring since 1976 but the real effort by local fishermen did not start until 1979. In 1980 the Norton Sound Fishermen's Cooperative entered into it's first contract for herring and in that year approximately 800 tons of herring flown out of Unalakleet. It was flown out because of lack of experience of handling the fish product any other way, much less processing of the herring. In 1981 the Norton Sound Fishermen's Cooperative processed herring and experienced a modest success of approximately 400 tons. It proved more of a success in creating an opportunity for employment by our local labor force rather than a profitable one for the Cooperative. Approximately \$60,000 in wages were paid with all local labor and a few women flown in from St. Michael. Attempts were made to bring in more laborers, but because of the fast pace of the herring season, it did not materialize. In 1982 partially because of the need to review all facets of herring operations, Norton Sound Fishermen's Cooperative did not process herring but had the fishermen deliver directly to floating processors who brought the fish elsewhere in Alaska for processing. Needless to say, Norton Sound Fishermen's Cooperative did not benefit as much from the herring season that year.

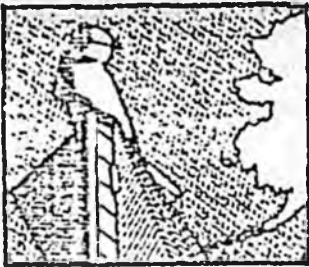
The 3NC Board supports House Bill 267 because of the past experience learned by Norton Sound Fishermen's Cooperative. As a group of village corporations with a joint venture, we feel responsible in utilizing our investment to have the broadest positive impact to our area and our stockholders. Unless we are able to dump the herring carcass into the Norton Sound we would not be able to process herring locally. Financial analysis show that a stripped herring carcass in the Norton Sound is worth in the neighborhood of \$200 per ton but at the same time it would cost approximately \$400 per ton to ship that product out. Clearly more money is spent shipping the product out than what the product is worth and the economics of that alone would prevent us from processing herring.

In an area where employment is one of the lowest in the State, any means of assistance that the State could allow would be a boost for our standard of living. Were we to dump the herring carcass in the Norton Sound we would be able to create jobs for our people, especially women. The men have an opportunity to derive income from fishing and with processing herring we would be able to hire as processors, women, college students and those not able to participate in herring fishing. For discussion purposes if 3NC processed 500 tons of herring in Unalakleet, Stebbins or Shaktoolik and the processors were paid .50 cents per pound for eggs extracted and we averaged 8% roe recovery, that means that there would be roughly 80,000 pounds of eggs processed. This would provide \$40,000 paid to processors. Additionally there would be helpers, generally high school aged males to do lifting and other sundry workers that would probably earn half again the amount paid to processors so that 3NC would have approximately \$60,000 in wages paid to local employees. At this time of the year, after a long winter of not working, this income would be a valuable source of new income to the communities. This would pay for approximately 30,000 gallons of heating fuel, or other much needed basic necessities otherwise not possible should there not be any processing.

Sincerely,

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

Henry Ivanoff, Chairman
3NC Fisheries



Bering Sea Fishermen's Association

805 West 3rd Avenue
Anchorage, Alaska 99501
(907) 279-6519

March 17, 1983

Representative Fuller
Juneau

Representative Fuller:

The Bering Sea Fishermen's Association supports House Bill No. 267 which will significantly benefit all Western Alaska herring fishermen who are trying to increase their economic returns from the roe herring fishery. The dumping of herring carcasses after the stripping operations represents the most economical use of that by-product for Western Alaska, given the present level of infrastructure development. Furthermore, the carcasses can be disposed of in an ecological and safe manner following current ocean dumping guidelines.

There are several specific reasons why we support this Bill:

1) The ability to dispose of the herring carcasses allows fishermen and Western Alaska processors to strip the roe from the herring and therefore realize a greater profit. By stripping the roe themselves, the local economies benefit by the extra labor payments, extended use of the local fish plants, tendering of the carcasses out to sea, the processing profits, and the gain in expertise and consequent gain in local control of their fisheries. Kotzebue and southern Norton Sound have locally controlled processing facilities which could be used for a roe stripping operation, and the Kokechik Bay, Goodnews Bay, Security Cove, and Togiak fishermen could also strip herring roe with some planning.

Unalakleet stripped herring roe at their plant in 1981 at a labor cost of about \$70/ton. Using this labor cost as an assumption, the ability to strip 300 - 500 tons of herring would mean an influx of between \$21,000 and \$35,000 in wages to the local economies.

The utilization of the local processing plants (Kotzebue and Unalakleet) would help spread the overhead costs of those facilities over more time, and therefore make them more efficient. The herring stripping operation is relatively simple; the round herring can either be frozen in the round (an option for Unalakleet) and then thawed and stripped, or it can be brined and then stripped (an option for both plants).

The brining/stripping process offers an excellent market alternative to Togiak gillnet fishermen who sometimes find that their usual buyers (floating freezer

ships) are plugged and therefore refuse to buy the gillnet herring. Because it is a relatively low capital investment operation, an enterprising processor could set up a brining/stripping operation which could act as a safety valve and relieve some of the pressure on the buyers who freeze herring in the round. Some of the herring tenders in Togiak - who stay on the grounds for the opening of the salmon season - would be logical processing platforms for the stripping operation.

In the extreme case, the fishermen of Goodnews Bay and Security Cove might have herring roe stripping as their only option if, because of exclusive registration, freezer/processors decide not operate in those two areas.

2) By taking the herring roe from a raw state to a semi-processed, preserved state, the fishermen and local processors would also have improved their marketing position. They can now hold on to their product until they can come to an agreement with a buyer of their choice, rather than having to sell it immediately and in a lower-value state. The quality of the roe is also better after stripping (the unacceptable eggs are culled in the stripping process) and this also brings a better price.

3) In the case of Unalakleet, Stebbins, St. Michael, and Shaktoolik, where some if not all of the stripping will be done by the freeze-thaw-strip method, the ability to dump most of the carcasses makes it possible to use some of the carcasses for human or dog food. The better quality carcasses could be air dried in the same way that ton cod carcasses are currently used.

4) Most fishermen and local processors won't have the facilities available to freeze the herring prior to stripping. For these people, the brining method is the only option. After brining, the carcasses are too salty to be good for anything except meal. There are currently no meal/reduction plants in Western Alaska, and the closest one is in Seward. One estimate of the freight costs of getting the salted carcasses to Seward from Togiak is \$300/ton, and even then the meal plant would pay nothing for the carcasses. The market price for herring carcasses in Japan is \$0.10 - 0.15/lb., but the freight costs to Japan would be around \$0.20/lb. It therefore appears that there is no viable market at the present time for the herring carcasses from Western Alaska.

Regards,

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