

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672  
4222.7 SRES SUBSIST. BILL DRAFTS (file 2) - SUBSISTENCE MEETINGS 1/88

1 compensation of \$50 per year or \$1 for each permit or tag issued,  
2 whichever is greater.

3 \* Sec. 7. AS 16.05.940(22) is amended to read:

4 (22) "subsistence fishing" means the taking of, fishing for,  
5 or possession of fish, shellfish, or other fisheries resources by a  
6 resident domiciled in a rural area of the state for subsistence uses  
7 with gill net, seine, fish wheel, long line, or other means defined by  
8 the Board of Fisheries;

9 \* Sec. 8. AS 16.05.940(23) is amended to read:

10 (23) "subsistence uses" means the noncommercial, customary  
11 and traditional uses [IN ALASKA] of wild, renewable resources by a  
12 resident domiciled in a rural area of the state for direct personal or  
13 family consumption as food, shelter, fuel, clothing, tools, or trans-  
14 portation, for the making and selling of handicraft articles out of  
15 nonedible by-products of fish and wildlife resources taken for per-  
16 sonal or family consumption, and for the customary trade, barter, or  
17 sharing for personal or family consumption; in [FOR THE PURPOSES OF]  
18 this paragraph, "family" means [ALL] persons related by blood, mar-  
19 riage, or adoption, and a [ANY] person living in [WITHIN] the house-  
20 hold on a permanent basis;

21 \* Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

22 (28) "domicile" means the true and permanent home of a  
23 person from which the person has no present intention of moving and to  
24 which the person intends to return whenever the person is away; domi-  
25 cile may be proved by presenting evidence of having had a permanent  
26 home in a particular location for the preceding 12 consecutive months  
27 or other evidence acceptable to the boards of fisheries and game;

28 (29) "fish stock" means a species, subspecies, geographic  
29 grouping or other category of fish manageable as a unit;

1           (30) "game population" means a group of game animals of a  
2 single species or subgroup manageable as a unit;

3           (31) "rural area" means a community or area of the state in  
4 which the noncommercial, customary, and traditional taking and use of  
5 fish or game for personal or family consumption is a significant  
6 characteristic of the economy of the community or area;

7           (32) "subsistence hunting" means the taking of, hunting for,  
8 or possession of game animals by a resident domiciled in a rural area  
9 of the state for subsistence uses by means defined by the Board of  
10 Game.

11 \* Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

12 \* Sec. 11. This Act takes effect June 1, 1986.

Letter of Intent for CSHB 288 (am)  
an act relating to the taking of fish and game for subsistence and  
personal use  
by the House Resources Committee  
4/14/85

The purpose of this bill is to authorize the Alaska Board of Fisheries and the Alaska Board of Game to adopt regulations identifying "subsistence uses" of fish stocks and game populations as the boards did from May 30, 1982 until February 22, 1985.

Pursuant to this bill the boards will limit the identification of "subsistence uses" of fish stocks and game populations to the taking of such stocks and populations by Alaska residents who are domiciled in rural communities and rural areas in which the taking of fish stocks or game populations for personal and family consumption is a significant characteristic of the economy of the community or area, as determined by the boards.

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities and rural areas in Alaska is significantly dependent participation by the residents of these communities in the taking of fish stocks and game populations for personal and family consumption. Further, the Legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

The boards will be authorized to adopt regulations for identifying customary and traditional uses by Alaska residents of those rural communities and rural areas. It is the intent of the Legislature to preserve the approach to implementing the state's subsistence law embodied in 5 AAC 99.010, (as adopted by the Joint Boards of Fisheries and Game on May 30, 1982), for identifying subsistence uses on a community or area basis.

The Legislature finds that implementing the subsistence law is consistent with the intent of the definition of subsistence hunting and fishing and personal use fishing contained in House Bill 288 when criteria such as those outlined below are used to identify customary and traditional uses of the resource:

- (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;

Letter of Intent for CSHB 288 amended  
by the House Resources Committee (Continued)

(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.

This legislation establishes that the commercial sale of fish and game taken for personal and family consumption is prohibited, but does not preclude the sale of handicraft articles made from the non-edible by products taken for such uses. Accordingly, the Legislature intends that barter, sharing and customary trade of fish or game taken for personal and family consumption be of a non-commercial nature. This restriction however, does not apply to the existing limited sale of animal furs by subsistence users of the resource.

The bill also establishes a statutory definition of "personal use fishing." Although sport, commercial and personal use fishing are not afforded a statutory priority over each other, the inclusion of a definition of "personal use" is to indicate that the intent of the Legislature is to delegate to the Alaska Board of Fisheries adequate regulatory authority to provide all persons engaged in sport, commercial, and personal use fishing a reasonable opportunity to participate in the harvest of Alaska's fish stocks.

LETTER OF INTENT -- HB 288

It is the intent of the Legislature that the needs criteria provided for in Section 16.05.262 be consistent with the customary and traditional language provided for in federal legislation and with customary and traditional uses of wild resources by those in need as evidenced by An Act to Prevent the Extermination of Fur-bearing Animals in Alaska, ch. 189, 16 Stat., 180 (1870); An Act for the Protection of Game in Alaska, ch. 1037, 32 Stat., 327 (1902); An Act for the Protection of Game in Alaska, ch. 162, 35 Stat., 102 (1908); An Act to Protect the Seal Fisheries of Alaska, ch. 183, 34 Stat., 326 (1910); An Act to Establish an Alaska Game Commission, ch. 75, 43 Stat., 744 (1925).

Letter of Intent:

This legislation establishes a statutory definition of "personal use fishing." The legislature recognizes that the personal use of fish and wildlife plays a valuable role in the lives of many Alaskans. Therefore, the Legislature intends that the Board of Fisheries shall provide fairly and adequately for these personal uses.

Sport, commercial and personal use fishing are not afforded a priority over each other. The Legislature intends to delegate to the Alaska Board of Fisheries adequate regulatory authority to provide Alaskans with a reasonable opportunity to participate in commercial, sport and personal use fishing.

In addressing the needs of commercial, sport and personal use fishing user groups in a particular area, the Board of Fisheries may make allocations from discrete stocks of fish. The board does not have to make allocations to each user group from each stock of fish. For example, the Board may decide it is in the public interest to allocate harvestable portions of the Kenai River king salmon runs to only sport and commercial fishermen, while meeting the needs of personal use fishermen on other Kenai Peninsula salmon stocks.

In making major allocation decisions among the commercial, sport and personal use fishing categories, the Legislature intends for the Board of Fisheries to consider the following factors for each of the fisheries involved: the historical importance, number of persons expected to participate, availability of alternative resources, importance to the local and state economy, and importance for providing Alaskans the opportunity to fish for personal consumption or recreation.

SUBSISTENCE

Committee

Meetings &

Testimony

SENATE STATE AFFAIRS COMMITTEE HEARINGS ON SUBSISTENCE

Prepared Testimony of  
Jeff Parker  
August 26, 1985

The Alaska Legislature can and should enact numerous amendments to the state subsistence law. I will describe here several possible amendments, all of which are directed at two goals that are equally important: (1) improving the opportunity for sportsmen, and (2) protecting subsistence use of resources by those who are truly dependent on the resources. If we can accomplish those two goals, then many sport people will be more willing to accept some form of a subsistence priority.

I will now discuss many different possible amendments that I hope you will consider. For purposes of discussion I have divided my recommendations into those related to how people should qualify for subsistence, those related to how subsistence might be targeted on some fish and game stocks and not on others, and those that are simply additional proposals.

I. QUALIFICATION FOR SUBSISTENCE

The federal definition of subsistence is stated in terms of being for "rural Alaska residents". (Sec. 803 of ANILCA and the corresponding part of the state law are attached.) The state law does not on its face restrict subsistence to rural residents. Hence, the Alaska Supreme Court held in the Madison case that urban subsistence residents could be qualified. That tension between the federal and state statutes and the resulting Madison case are the cause of having to close down sport hunting on about

40 hunts that were previously open to sport hunters by permit drawing. The legislature can reopen those hunts to sport hunters, and even provide them more opportunity than they had before Madison, by limiting subsistence to rural residents who are engaged in an ongoing customary and traditional subsistence life-style. To do so the legislature should define "rural" and define "customary and traditional", in order to make a two-pronged test for qualifying people for subsistence.

#### A. Defining "Rural"

Neither the federal or the state law defines what areas of the state are "rural" for subsistence purposes. Therefore, the state is at liberty to do so, so long as it does so reasonably. To define "rural" the legislature could do one two things.

First, it could establish criteria that the Boards of Fisheries and Game would be required to consider when determining whether an area is rural. Reasonable criteria might be: (1) proximity to the road system, (2) community size and population, (3) dependency on major and frequent barge or air freight for foodstuffs, (4) dependency on the cash or subsistence economies, and (5) other such measures of the local characteristics might be reasonable criteria for the boards to consider when defining "rural".

Second, the legislature could statutorily find that some areas of the state are not rural and then direct the boards to use criteria, such as those mentioned, to determine what remaining areas of the state qualify or do not qualify for rural subsistence.

## B. Defining "Customary and Traditional"

Both the state and federal statutes define subsistence in terms of "customary and traditional uses" of wildlife for food, shelter, clothing, and other uses. Thus, "customary and traditional" addresses the user and the use, while "rural" addresses the area.

However, neither the federal or state statutes, nor the state regulations, have tried to address how to identify a customary and traditional user. Tests based on individual or household economic need probably would not comply with federal law, since it protects cultural needs, too. Tests based on a combination of economic need and cultural need might comply with the federal law. However, any need-based test of all rural Alaskans would be expensive, would be prone to fraud, would be an administrative nightmare, would invite numerous suits by individuals marginally disqualified, and would eliminate fish and game budgets for most other purposes such as enforcement, research, and administration. In the face of declining oil revenues, the state needs an efficient method of qualifying rural Alaska residents as customary and traditional users. I will propose a method.

In addition to being "rural" (however we define it), we could qualify users as "customary and traditional" if they are determined qualified by the Boards of Fisheries and Game by virtue of the user fitting into one of four categories. That is, the user would have to be a rural resident plus be qualified by one of four methods addressing "customary and traditional." Here are

four methods, that are not mutually exclusive, that the legislature could give to the boards for qualifying a person as "customary and traditional."

First, the boards could for reasons of administrative simplicity and efficiency qualify everyone residing in a large area as qualified for customary and traditional use. Large, sparsely populated areas of the remote bush might so qualify. It does not make administrative sense to spend time and money disqualifying a relatively few individuals in such areas who are not customary and traditional users. (This does not mean that such areas are without conflict over wildlife; those conflicts should be addressed through targeting subsistence on particular stocks and other administrative mechanisms I will discuss.

Second, the boards could find that within an area some communities would qualify as ongoing customary and traditional subsistence communities and some would not. Efficiency and simplicity would again be served. For example, in the Glennallen area, Dot Lake and Copper Center might qualify, but Glennallen as an ongoing customary and traditional subsistence community might not. (This is not to say that some Glennallen residents would not still be qualified; it is only to say the whole community might not be qualified.)

Third, the boards could find that an identifiable, discrete group within a community qualifies as an ongoing customary and traditional subsistence group. For example, in Kaktovik there are the traditional villagers and there are the operators of the DEW-Line (Defense Early Warning) Site who are

employees of International Telephone and Telegraph, living a third of a mile away. These are discrete groups, one of which hunts birds, caribou and fish, while the other hunts Russians

Fourth, the boards could then turn to a needs test based on economic and cultural criteria for determining if individuals maintain an ongoing customary and traditional subsistence lifestyle, even though the groups, communities or areas to which they belong had not been found generally qualified for customary and traditional subsistence.

C. Effects of Defining "Rural" and "Customary and Traditional"

What would be the advantages of such definitions of "rural" and "customary and traditional"?

First, the definitions would identify not only how people qualify for subsistence, but they would also set up the method by which they become no longer qualified at some future date if they are not longer engaged in a customary and traditional subsistence life-style. (The Governor's bill failed to do this in that it defined subsistence in terms of "rural" and "rural" in terms of areas that had in the past been customarily tied to subsistence. That would have been a closed loop from which no community would ever become disqualified, once it was qualified.)

Second, if the sport people are right (as I think they are) that the present system has allowed many people who do not carry on a customary and traditional subsistence lifestyle to be qualified for subsistence, then these changes would put such people under sport regulations where they belong and not under

subsistence regulations where they raise the understandable ire of the urban sport community.

Third, competition between sportsmen and a smaller group of qualified subsistence users would be reduced. Therefore, where competition has been intense, such as on the Nelchina caribou herd near Glennallen, there would be more permits for the sport people.

Fourth, true subsistence could be more easily protected and managed.

Fifth, hopefully a greater sense of fairness would prevail.

Sixth, would this system comply with "tier I" and "tier II" subsistence, as stated by the Alaska Supreme Court? Yes, it would be a way of defining "tier I". "Tier II" would still work as it always has in the law as protecting a subset of qualified subsistence users when the wildlife stock cannot sustain the harvest of all qualified subsistence users. The subset would still be those who are qualified at Tier I and are also local residents, dependent on the resource, and without alternative resources.

## II. IDENTIFYING APPROPRIATE SUBSISTENCE STOCKS

Another arena in which the legislature could amend the state subsistence law and give guidance to the boards is in the area of identifying subsistence stocks of fish and game. At least three questions fall within this arena. Under the present subsistence law the answers to each are at best unclear. The

legislature could give clear answers to the following questions: (1) Should the boards be given direction by the legislature to identify appropriate subsistence stocks of wildlife and what criteria might be established to guide the boards?, (2) Should the boards be allowed to shift subsistence harvest from one stock to another, and if so, under what circumstances should shifting the target be allowed or prohibited?, (3) Should the subsistence preference automatically require the elimination of all sport use when the stock is not fundamentally important to subsistence and the stock cannot sus' in the combined subsistence and sport harvest?

A. Identifying Appropriate Subsistence Stocks

The state and federal laws are silent on identifying appropriate subsistence stocks. Therefore, the state can address the issue so long as it does not unreasonably eliminate subsistence use of fundamentally important stocks.

The legislature could establish criteria by which the boards would identify stocks of fish and game that would be subject to the subsistence preference, and the legislature could require the boards then to identify subsistence stocks, with the assistance of the Department of Fish and Game. Reasonable criteria might include: (1) historic subsistence use of the wildlife stock in question, (2) the degree of economic and cultural dependence, (3) the ability of the stock to sustain a subsistence harvest under methods and means currently used by subsistence users, and (4) the degree of competition over the stock with non-subsistence users.

In the past the boards took some steps in identifying stocks subject to the subsistence preference, but the efforts were piecemeal. The Board of Game was criticized by the court in the Eluska decision this spring for failing to provide subsistence hunting regulations. The Board of Game therefore recently had to adopt the controversial regulations allowing subsistence "tier II" hunts on sheep, brown bear, bison, and perhaps others speices that generally would not meet the criteria stated above and that generally are not subsistence stocks. The Board of Game should have flexibility to find that no subsistence preference is appropriate on those stocks, subject perhaps to specific and occasional exceptions related to documented but marginal historic subsistence use, such as that of sheep in the vicinity of Anaktuvuk Pass and Kivilina.

The Board of Fisheries has adopted a regulation prohibiting subsistence on rainbow trout and steelhead trout. I believe that is wise policy, but the legality of the regulation would be more clear if the legislature clarified the authority of the boards to identify appropriate subsistence targets.

I have attached a copy of two pages showing subsistence harvest data, and dollar value by species, for subsistence harvest by the village of Tuluksak, near Bethel. The data is from a document entitled "Does One Way of Life Have to Die So That Another Can Live: A Report on Subsistence and the Conservation of the Yupik Life-Style", by Yupiktak Bista. The data shows that certain species, such as brown bear, sandhill cranes, and rainbow trout, all of which are very important to sportsmen, are not

significant to subsistence. Although the data is now ten years old, it shows that in 1974, out of a total subsistence harvest having a cash equivalent value of \$378,000 in Tuluksak, brown bear accounted for \$416, cranes accounted for \$25, and rainbow trout accounted for \$330. These harvests should be put under sport regulations where all Alaskans would be treated equally. There is no need for a preference on those stocks, and it is sensible for sport people to cry out that a preference on such stocks is improper.

Other good questions related to subsistence targets are: (1) should subsistence or the priority be applied to transplanted game, such as Sitka black tail deer on Kodiak and Afognak Islands, bison in interior Alaska, elk, or hatchery released fish?, and (2) should subsistence be allowed on moose in the Nome area, which was never inhabited by moose until 20 years ago? I think these questions could be defensibly answered either way, but that doesn't mean the legislature shouldn't think about them and provide guidance to the boards and the Department of Fish and Game when new stocks are introduced or indigenous stocks occupy new territory.

B. When Should the Boards be Allowed to Shift the Subsistence Target?

Two contrasting examples will flesh out this question.

Opposite Anchorage is Tyonek. A superior court judge, and the Board of Fisheries reluctantly, found a qualified subsistence fishery to exist. The Tyonek residents net about 4000 king salmon off a run of 80,000 kings bound for the Susitna River

drainages. The kings are the first fresh meat of the year that arrives on the Tyonek beaches. There is no prior or contemporaneous stock onto which the Board could reasonably shift the subsistence, and there are plenty of kings going to the sport fishermen up river. The court in the Tyonek case held that the Board could not shift the subsistence target. That made sense. However, the Attorney General's Office consistently tells the Board of Fisheries that shifting targets, therefore, is to be prohibited in all cases, because of the court decision in the Tyonek case. Regardless of whether the Attorney General is right, a total prohibition of shifting subsistence targets doesn't make sense. To see that, we need only look at the east beach Cook Inlet subsistence harvest of late Kenai River coho salmon now in effect because of the Madison decision.

The late Kenai cohos, like the famous late Kenai kings, are the largest of their race. They are a prize sport stock. They hit the east beaches of Cook Inlet in late August and run through September or later. Run size varies, but the Board of Fisheries has been told, I believe by the Department, that the late run averages 20,000 to 30,000 fish. Historically, there was a subsistence gill net harvest of 13,000 of these fish, engaged in mostly by commercial set net fishermen after the close of the commercial season. That harvest led to numerous court fights, including the Madison case, and heated political fights before the Board over allocation of salmon bound for the Kenai River.

Prior to the cohos hitting the east beaches, there is a run of hundreds of thousands to millions of sockeye salmon on the

same beaches, catchable with the same gear. Furthermore, higher price that sockeyes command on the commercial market indicates that they are preferred table fare.

Thus, it makes sense for the legislature to give the boards authority to shift subsistence target stocks in the situation of the late Kenai coho, but not in the case of the Tyonek kings. A statutory criterion for allowing the boards to shift in the coho case and prohibiting it in the Tyonek case, could be whether or not there is "a suitable, prior or contemporaneous stock".

C. Should the subsistence preference always mean that the sport harvest must be eliminated when the combined sport and subsistence harvest is greater than the stock can allow?

If sheep were a significant subsistence stock to the villagers in Anaktuvuk Pass, then the answer to this question would be "yes". The priority would demand elimination of sport hunting. However, I believe that the Subsistence Division of the Department of Fish and Game will tell you that sheep are an incidental subsistence target for the people at Anaktuvuk Pass. If that is true, then an allocation between sport and subsistence users might be appropriate to allow a reduced preference for subsistence and a permit draw for sport. Sport hunters should not carry the whole burden of reducing the harvest and the opportunity to hunt in such a situation where the target is only incidentally used for subsistence. The legislature could give the boards guidance in such allocative decisions, by establishing criteria

focusing on the significance of the wildlife stock to the subsistence users.

### III. ADDITIONAL ISSUES TO ADDRESS

#### A. When should new subsistence users be allowed and not allowed to use an area?

The federal government considered this issue in the late 1970's but left it to the State on the belief that the State could deal with it better? The fact that the subsistence was designed to allow the opportunity for subsistence to continue and is tied to culture, custom and tradition in both the federal and state laws clearly implies that it is appropriate to allow children born into a subsistence life-style to continue to have the opportunity to choose that life-style, so long as they remain otherwise qualified.

However, a person who moves to a bush location, either from another bush location, or from Anchorage or New York, presents a more complicated set of questions. An Anchorageite or New Yorker who moves by virtue of a state or federal land disposal should not get the priority if there is not enough game to satisfy increased subsistence harvest and sport harvest. Federal land disposals must be measured against their impact on subsistence, under Sec. 810 of ANILCA. I would recommend that the State go one step further and require that state land disposals be measured against impacts on subsistence and sport use. Land disposal will only make sense if it does not inhibit urban Alaskans from hunting

and fishing. Any "cap" on subsistence could be general or be species specific.

B. When should a person be allowed to return to a subsistence life-style?

This is a difficult question, but luckily we do not face it today in many instances. Nevertheless, the legislature might want to give the boards some guidance.

For more than a century our political and legal attempts to deal with Native issues have swung, like a pendulum, between two contradictory goals: assimilation and self-determination. Renewed interest by Alaska Natives in sovereignty, less than two decades after Native corporations were set up as part of the Settlement Act, seems to indicate that the pendulum is again swinging toward self-determination, as it is in the lower-48, with renewed assertions of treaty rights and land claims.

Regardless of where the pendulum is now or in the future, how do we address the person who wants to return to a subsistence life-style? What if a young adult was born in Seattle and spent summers subsistence fishing with a grandparent in Alaska? What if a person resides and works in Anchorage for nine months of the year, and customarily and traditionally returns to subsistence fish at a home village during the summer? What if a person has been away from the subsistence life for a period of years without returning and then wants to return? There are other such questions that we may have to address in the future. For now, I would only recommend that the legislature do what it does best. That is, duck the issue and delegate it to the boards with

the authority to adopt reasonable regulations that can be amended as the pendulum swings.

### C. Final Points

#### 1. Protect Only Nonwasteful Subsistence

The federal law protects only "nonwasteful" subsistence. The state law is silent on waste of wildlife in subsistence. It should be amended to protect only nonwasteful subsistence for two reasons. First, a clarification that subsistence is for the nonwasteful use of wildlife would go hand in hand with the targeting issues, discussed above, and would provide additional underpinning for targeting subsistence on resources that can take substantial harvest. Second, waste has been a problem in the taking of walrus for tusks only.

#### 2. How to Reduce Court Cases

Many law suits over subsistence could be avoided if the boards had an administrative appeal process. The federal law requires that before any subsistence related case goes to federal court the plaintiff must exhaust administrative remedies. The boards have no appeal process. They should have one and exhaustion of administrative appeals should be required before a plaintiff can go to state court.

# TULUKSAK

Average Yearly Harvest Estimates and Approximate  
Dollar Values of Meat, Fish, Skins, Berries, and Greens<sup>1</sup>

<i>Species/Food Item</i>	<i>Harvest<sup>2</sup></i>	<i>(Pounds) Average Utilizable Weight</i>	<i>Equivalent \$ Value Per Pound of Meat, Fish, Berries, or Greens<sup>3</sup></i>	
			<i>Anchorage</i>	<i>Bethel</i>
<i>Big Game</i>				
Moose	10	700	\$1.35	\$1.85
Black Bear	5	150	1.35	1.85
Brown Bear	1	225	1.35	1.85
Total Lbs.—Big Game	7975 lbs.			
<i>Furbearers</i>				
Beaver	500	20	.69	1.25
Muskrat	2000	2	.69	1.25
Mink	65			
Land Otter	30			
Red Fox	10			
Lynx	65			
Marten	1			
Weasel	30			
Tree Squirrel	5	.5	.69	1.25
Hare	165	3	.69	1.25
Wolverine	3			
Wolf	5			
Total Lbs.—Furbearers	14498 lbs.			
<i>Porcupine</i>	3	10	.69	1.25
Total Lbs.—Porcupine	30 lbs.			
<i>Waterfowl &amp; Birds</i>				
Ducks	1150	1	\$ .69	\$1.25
Geese	990	3	.69	1.25
Swans	165	10	.69	1.25
Cranes	5	4	.69	1.25
Loons	10	2	.69	1.25
Ptarmigan	3000	1	.69	1.25
Grouse	20	1	.69	1.25
Total Lbs.—Waterfowl & Birds	8830 lbs.			
<i>Fish</i>				
Whitefish	16550	1.5	1.00	1.00
Pike	6600	6	1.00	1.00
Lush	30000	4	.69	1.00
Sheefish	660	9	1.00	1.00
Blackfish	200		1.00	1.00
Smelt	3300		1.00	1.00
Grayling	300	1	1.00	1.00
Rainbow Trout	165	2	1.00	1.00
King Salmon	1400	15	1.43	2.50
Other Salmon	7000	4.3	1.09	1.65 <sup>4</sup>
Total Lbs.—Fish	245520 lbs.			
<i>Berries</i>	5000 lbs.		.87	1.30 <sup>4</sup>
<i>Rosehips</i>	50 lbs.		.49	.74 <sup>4</sup>
<i>Rhubarb</i>	3000 lbs.	\$ .39	\$ .59 <sup>4</sup>	
Total Lbs. and Dollars	284903 lbs.			
Lbs. and Dollars per Capita	1619 lbs.			

(Notes to table on following page.)

Average Current \$ Value of Skin	\$ Value per Animal		Total \$ Value	
	Anchorage	Bethel	Anchorage	Bethel
Not Determined	\$945.00	\$1295.00	\$9,450.00	\$12,950.00
Not Determined	202.50	277.50	1,013.00	1,388.00
Not Determined	303.75	416.25	304.00	416.00
32.00	45.80	57.00	22,900.00	28,500.00
1.25	2.63	3.75	5,260.00	7,500.00
40.00	40.00	40.00	2,600.00	2,600.00
43.00	45.00	45.00	1,350.00	1,350.00
45.00	45.00	45.00	450.00	450.00
80.00	80.00	80.00	5,200.00	5,200.00
25.00	25.00	25.00	25.00	25.00
1.00	1.00	1.00	30.00	30.00
.65	1.10	1.28	6.00	6.00
—	2.07	3.75	342.00	619.00
70.00	70.00	70.00	210.00	210.00
100.00	100.00	100.00	500.00	500.00
Not Determined	6.90	12.50	21.00	38.00
Not Determined	\$ .69	\$1.25	\$ 794.00	\$ 1,438.00
Not Determined	2.07	3.75	2,049.00	3,713.00
Not Determined	6.90	12.50	1,139.00	2,063.00
Not Determined	2.76	5.00	14.00	25.00
Not Determined	1.38	2.50	14.00	25.00
Not Determined	.69	1.25	2,070.00	3,150.00
Not Determined	.69	1.25	14.00	25.00
—	1.50	1.50	24,750.00	24,750.00
—	6.00	6.00	39,600.00	39,600.00
—	2.76	4.00	82,800.00	120,000.00
—	9.00	9.00	5,940.00	5,940.00
—			200.00	200.00
—			3,300.00	3,300.00
—	1.00	1.00	300.00	300.00
—	2.00	2.00	330.00	330.00
—	21.45	37.50	30,030.00	52,500.00
—	4.69	7.09	32,830.00	49,630.00
			4,350.00	6,500.00
			25.00	37.00
			\$1,170.00	\$1,770.00
			\$281,380.00	\$377,678.00
			\$1,599.00	\$2,146.00

managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial plans; and

(4) unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

## TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

### FINDINGS

16 USC 3111. SEC. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

43 USC 1601  
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

### POLICY

16 USC 3112. SEC. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

Ante. p. 2377

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

### DEFINITIONS

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

16 USC 3113.

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

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

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

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

### PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

16 USC 3114.

Priority criteria

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

## LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

SEC. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

Regional advisory council authority.

Annual report to Secretary.

by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

## FEDERAL MONITORING

Sec. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as

Implementation

Reimbursement to States.

Report to Congress.

Report to congressional committees.  
16 USC 3116.

he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

JUDICIAL ENFORCEMENT

SEC. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

SEC. 808. (a) within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or

investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

COOPERATIVE AGREEMENTS

SEC. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title.

SUBSISTENCE AND LAND USE DECISIONS

SEC. 810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

Civil actions.  
16 USC 3117.

Hearing.

16 USC 3118.

Subsistence  
hunting pro-  
gram.

Program and  
recommendati  
implementatio

16 USC 3119.

16 USC 3120.

Hearing.

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Notice and hearings.

42 USC 4332.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

48 USC note prec. 21.

43 USC 1601 note.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

ACCESS

16 USC 3121.

SEC. 811. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

RESEARCH

16 USC 3122.

SEC. 812. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submittal to Speaker of House and President of Senate.  
16 USC 3123.

SEC. 813. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

- (1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;
- (2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;
- (3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;



LAWS OF ALASKA

1978

Source

Chapter No.

SCS CSHE 960 am S

151

AN ACT

Relating to fish and game management.

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

\* Section 1. INTENT. The legislature finds that there is a need to develop a statewide policy on the utilization, development and conservation of fish and game resources, and to recognize that those resources are not inexhaustible and that preferences must be established among beneficial users of the resources. The legislature further determines that it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated, with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained-yield principle.

\* Sec. 2. AS 16.05.090 is amended by adding a new subsection to read:

(c) There is established in the Department of Fish and Game a section of subsistence hunting and fishing.

\* Sec. 3. AS 16.05 is amended by adding a new section to read:

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

(1) compile existing data and conduct studies to gather information, including data from subsistence users,

② how sustained yield for what level or category of use?

\* ①

on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;

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

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

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

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

(6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

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

\* Sec. 4. AS 16.05.251 is amended by adding a new subsection to read:

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) 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.

\* Sec. 5. AS 16.05.255 is amended by adding a new subsection to read:

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) 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.

\* Sec. 6. AS 16.05.257(a) is amended to read:

(a) The Board of Game, at its regularly scheduled annual meeting and other meetings held under authority of sec. 300(a) of this chapter, shall consider and may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit upon

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

(2) the recommendation of the active local advisory committees for that game management unit or subunit or a portion of a unit or subunit;

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

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

\* Sec. 7. AS 16.05.257(c) is repealed and re-enacted to read:

(c) No regulations may be adopted by the Board of Game under (a), (b) or (f) of this section unless, in addition to the requirements of AS 44.62.180 - 44.62.290, the department

(1) holds public hearings, after reasonable notice, at least 30 days before the meeting at which the regulation is to be adopted, with at least one of the hearings being held in close proximity to the area potentially affected;

(2) presents at the hearings the information provided for in (e) of this section;

(3) makes the information provided for in (e) of this section available to the appropriate advisory committees and to petitioners if consideration of adoption of regulations was prompted by petitions under (a)(3) or (4) of this section; comments shall be received by the board

until 10 days before any adoption of regulations.

\* Sec. 8. AS 16.05.257(d) is amended to read:

(d) A petition submitted under (a)(3) - (4) of this section shall contain a complete description of the area requested as a subsistence area and a specification of the species within the area considered necessary for subsistence use. A petition or recommendation made under (a)(2), (3) or (4) of this section must be filed with the department at least 75 days before the meeting of the board at which the petition or recommendation is to be considered.

\* Sec. 9. AS 16.05.257(e) is repealed and re-enacted to read:

(e) The department shall investigate, by collecting existing data, and, when necessary, conducting new studies, every petition or recommendation made under (a)(2), (3) or (4) of this section to the extent practicable within the time available and provide the following information:

(1) the concentration of the species to be affected and carrying capacity of the area to be affected;

(2) the current hunting practices in the area, including numbers of animals taken and by what methods and means and whether the take is subsistence or recreational;

(3) the dependence of persons in the area for subsistence use of a species;

(4) the population trends of the affected fish and game in the area;

(5) whether the affected fish and game population is able to support a nonsubsistence harvest; and

(6) other information considered necessary by the section of subsistence hunting and fishing.

\* Sec. 10. AS 16.05.257(h)(1) is amended to read:

(1) "subsistence hunting" means the taking of game animals by a state resident for subsistence uses by means defined by the Board of Game;

\* Sec. 11. AS 16.05.257(h)(2) is repealed and re-enacted to read:

(2) "subsistence hunting area" means an area in which only subsistence hunting of the affected species is permitted and which is managed for maximum food potential.

\* Sec. 12. AS 16.05.257 is amended by adding a new subsection to read:

(1) The Board of Game may make no decision denying, creating or changing a subsistence hunting area unless based on specific written findings of fact regarding all the information provided in accordance with (e) of this section.

\* Sec. 13. AS 16.05.930 is amended by adding a new subsection to read:

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

\* Sec. 14. AS 16.05.940(17) is amended to read:

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

\* Sec. 15. AS 16.05.940 is amended by adding new paragraphs to read:

(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 with in the household on a permanent basis;

(27) "barter" means the exchange or trade of fish or game, 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.

Def.  
"subsistence use"  
(no word)  
regul.)

Excerpt from Senate Resources Committee Meeting, 2-26-86

DENNIS KELSO, Deputy Commissioner, Alaska Dept. of Fish & Game

With me is Larri Spengler, Assistant Attorney General, and we thought we could save some time by presenting our comments jointly.

Madam Chair, you mentioned that the issue was out of the box now for several months. In fact, it was one year and four days ago that the Madison decision was issued. When we first appeared before the Senate State Affairs Committee last spring, we emphasized that our purpose was to participate in a spirit of cooperation, and we'd like to offer comments today in that same spirit of cooperation.

The original HB 288 was intended to address as simply as possible four basic concerns: constitutionality, enforceability, consistency with federal law in order to maintain state management of all lands in Alaska, and flexibility for the boards to provide fairly for all uses including subsistence, personal use, recreational and commercial.

Since the first meetings of the State Affairs Committee, several versions of HB 288 have been drafted. Many of these were seriously flawed. Because they tried to take on too much, these versions encountered problems that were unnecessary in addressing the Madison problem. In going beyond the four basic principles, they became entangled in complex issues not pertinent to a straightforward and succinct resolution of the problem. State Affairs did work very hard in order to reword these drafts, to trim them down to a more manageable version, and to their credit they tried to put together a version of HB 288 that could stay on track in aiming toward what we think we the correct goal. When the bill came from State Affairs, it still had serious legal and management problems, and some of these were critical flaws that made the bill rather seriously inaccessible to some of the basic concerns that we've been trying to resolve. However, the proposed version before you significantly reduces the problems that are present in the previous versions. It begins to resemble, in its essential detail, the original, and although there are still some ambiguities with respect to federal law, those probably can be resolved largely by a letter of intent. We were asked by the committee staff to discuss this proposed version, so rather than take the time to go through all the rather serious problems that came with the State Affairs version, we'll focus on the one you have before you right now.

We respect the work that was done in State Affairs. When the bill came forward it still had some major problems and the current version which you've adopted as a working draft is much improved.

I'll ask Larri to touch on those things that still remain as legal concerns, and you already have her more detailed critique of the problems with the previous version. In the interest in ease of following this, when Larri has a legal comment or when I have a management-related comment, we'll just follow through the bill in the order of pages rather than skipping around.

LARRI SPENGLER, Assistant Attorney General, Department of Law

Looking through this committee substitute, referencing the problems that were noted in the written analysis, and one problem that was not raised in the analysis that we do see in this proposed version.

Page 1 - lines 23 through 27 - the first subsection of the new section 258 - there is a potential ANILCA ambiguity in this language. However, the sectional analysis that accompanies the proposed ..... says that this part is designed to take into account patterns of local use as established over time. If that intent to accommodate such ... use is incorporated in legislative history through intent in some fashion, the ANILCA ambiguity that is present could be resolved. There is a comment that Mr. Kelso wants to make about the process the board uses to identify subsistence uses throughout the state.

KELSO: That same section, the lines 28-29, and at the top of page 2, first three lines -- if the intention of the bill is to require the boards to develop a master list of every resource in every area and how much is used, and there is a substantial burden in addition to what normally would be done -- in the past we've assumed that the boards would take action on proposals as the need became apparent, whether it was suggested by the department or by the boards themselves or by the advisory committees or the public. It is desirable from an administrative economy standpoint to have that same incremental evolution of regulations continue rather than have this be a situation where the department is supposed to go out and gather information so they can develop a master list. A master list would also be very expensive, and I presume that, depending on how the committee approaches this, that matter could simply be clarified in a letter of intent as well.

SENATOR HALFORD: A quick question on the specific point with regard to customary and traditional uses in areas identified by the boards to comply with ANILCA -- are you saying that in order to comply with ANILCA we have to provide that if a new population moved into an area and takes up residency, that they become the priority use of that resource, regardless of what the prior use was?

SPENGLER: The ANILCA legislative history indicates that the time frame Congress was concerned about was longer than one year or two years, and would take into account, for example, shifts in caribou migration patterns. So the notion is that if this language is intended to also take into account shifts in caribou migration patterns, for example, then there would not be an ANILCA problem. If it's intended to only allow subsistence uses of caribou where that caribou population is found the exact year that this legislation passes, then there could be an ANILCA problem because the patterns shift from year to year as to location.

HALFORD: What if you apply it to a substantially increasing population in the area of a fish stream that's currently used in commercial fishery, and later you have a major community there that is a rural community? How do we get "customary and traditional"? Is it only retrospective, or is it prospective? And if it's prospective, how does it affect existing other uses? If, for example, a community developed on a major fish-rearing stream in southeast, and that community developed a subsistence lifestyle which they initially met through the .... season but found they couldn't do it over time, would they in fact be entitled to a priority over the commercial fishery that'd been operating on that fish stock for decades?

SPENGLER: In that example, if there had not been a community there in the past, there would have been no customary and traditional use patterns built up in that area, so my guess is the board would not find that there would be customary and traditional uses of that stock. If there had been a community that was really small that had customary and traditional use patterns and then grew -- unless it grew to a size where it would no longer be a rural community, then the uses would be allowed to grow along with the population of the human community.

HALFORD: The point is just how it works in terms of being retrospective or prospective. If we're only dealing with existing uses, then that's one series of questions; if we're in fact dealing with all potential expansions of existing uses in new areas or expansions in existing areas, that creates a much greater potential for conflict.

SPENGLER: What is intended is up to the legislature. It's not a very simple question to answer, because of the different kinds of situations that can arise. Maybe the Department of Fish and Game would be better qualified to talk about this, but some examples are fish stocks that have been wiped out and have been restarted by hatcheries and then are stocked again, which may not exist at this moment but it existed years ago, so it's hard to give a simple answer to the question.

HALFORD: What if the stock has been returned by a hatchery and it hasn't existed for 25 years? But somewhere in history there was a traditional use of it. As soon as that stock comes back, is it subject to a preference?

SPENGLER: If the stock in existence 25 years ago had been subject to subsistence use and then had been wiped out or declined to such an extent that no harvest could be allowed, it seems that ANILCA legislative history would contemplate as those stocks grew again that subsistence uses would be allowed again on stock, because it wouldn't be a case where the subsistence uses had died out; it would be a case of subsistence uses couldn't be carried on.

The chairman requested that Spengler do some work on this issue and bring further information back to the committee. Demand for public hearing via teleconference limited the questions and discussion from the committee at this time.

SPENGLER: On page 1, between lines 25 and 27, the bill uses the term "subsistence purposes." This is not defined anywhere; suggest dropping word "purposes."

Page 3, lines 5 through 9: subsection (g) talks about military land. This subsection would exempt military land, which is federal land, from the subsistence priority for military personnel. This section would therefore be . . . . . with ANILCA because under ANILCA, Section 102, military land falls within the definition of federal public lands. From the sectional analysis, it appears that this section has been included because of a threat by the military to close their lands to all hunting and fishing, etc., unless the section is included.

Under ANILCA the military could not change their land to ANILCA subsistence uses and .... subsistence uses if those meshed (?) except in cases of public safety administration or to protect the continued viability of the stock. So whether or not the military have a right to close the lands to other hunting and fishing is another issue, but what the sectional would do would be exempt the portion of federal land from the requirements of federal law...

KELSO: Treating military personnel differently from other Alaskans does add an additional management complexity.

SPENGLER: On page 3, lines 10-12: this would allow the Board of Fisheries and the Board of Game to establish an administrative appeal process which would then be an avenue for people who were displeased with regulations. This is a discretionary section; does not require the boards to establish this procedure. If they did establish it and if they chose the Commissioner of Fish and Game to be the arbiter of the appeal, that could bring a separation of powers issue which was discussed in my memorandum. It also has practical problems which Mr. Kelso will discuss.

KELSO: Recognizing that the administrative appeals section is optional with the board, nevertheless if the legislature were to expect the board to follow this section, there are some real management problems. For one thing, the board already has the authority to reconsider its actions. In addition, anyone can petition for a regulatory change under the Administrative Procedures Act, AS 44.62.220 and 230. Petitions also can be filed with the board for emergency action, and if the statutory standards are met, that action can be granted expeditiously. The boards could not delegate this authority to a nongovernmental body. That means that if the commissioner is the entity that is granted the appeal authority, basically the commissioner would be looking over the boards' shoulder and would basically have the authority to redo what the board did. The board is really a legislative body, utilizing a direct grant of your authority, and the problem is if an executive branch entity has the ability to veto or overrule what the board has done using its legislative authority. There are other potential problems as well; I don't need to go into them in any detail; they are time-consuming. ...If the other board, for example, is the appeal entity, ... will hear all the things first board did; if there's a subcommittee of the board, you run into the problem of who really is taking the binding action when regulations are adopted. And since there's already the ability to petition, and since the board

can reconsider, basically this section provides for a cumbersome and duplicative function. ...It would be as if the legislature were delegating authority either to a committee or to the governor to rework what was done, and I'm sure you don't want to do that.

SPENGLER: On page 3, lines 20-26, regarding permits. Right now the boards of fish and game have the authority to require subsistence permits when they feel it is useful. The second sentence of this subsection (c) would require that the board adopt regulations requiring subsistence permits in circumstances where there was a reduction in the harvest of a fish stock, because of the subsistence preference. This has some management ....

KELSO: From a management perspective the boards already have the authority to require permits for subsistence hunting and fishing. Because this section would mandate permits in certain circumstances, there are three problems that might arise. First, under what circumstances are they required? For example, how does one evaluate reduction in harvest, which is the language used in this section. Harvests fluctuate from year to year as do populations of animals, so when this requirements would be triggered is the first problem. Second is the burden on people who harvest fish or game. Licenses, of course, are already required for subsistence hunting. Subsistence fishing has been administered by the Board of Fish somewhat differently. In the game context, harvest tickets are often required as well, but the boards have not always required permits because they didn't feel they were always necessary. When information was necessary that we weren't already getting, or when certain kinds of limitations were desired, permits have been used. It's required them in every instance where reductions of other kinds of uses might occur. It may put a burden that really isn't necessary from the management perspective on the board and the department. Finally, we have the problem of cost, in that dealing with the mandatory permit process basically an additional layer of bureaucracy could be substantial, even if that is only getting the word out to people about provisions of the permit. And if the permit itself is on a community or area basis, ... the permit itself is fairly illusory because it would simply be a regulation.

SPENGLER: On page 4, lines 20-21, definition of "domicile." Domicile is used in the definition of subsistence uses above on same page on line 6 as "...a resident domiciled in a rural area of the state" and "domicile" is defined as having a home in a particular location for the preceding 12 months or other evidence acceptable to the board. If the board did not take

action and it did not adopt regulations setting out additional criteria, this provision would cause constitutional problems because of the durational residency requirement. Someone would have to live in the rural area for 12 consecutive months or longer to qualify. This could raise "equal protection" problems, and some attorneys in our office even think the courts might find there is a "right to travel" that might be violated. At the moment the Board of Fisheries does have a definition of "domicile" which would get that board out of the situation if this bill passed; Board of Game would have to adopt a similar definition. But it would put us in the unusual situation of being constitutional because of board action and failing that board action, the statute would be constitutionally flawed.

One page 5: in the definition of "rural area" on line 3 -- the definition incorporates the term "customary and traditional taking and use." Rural areas -- the term is used in the definition... as found on previous page... "customary and traditional uses of residents domiciled in a rural area of the state" (page 4, lines 4-6). Subsistence uses itself uses the words "customary and traditional" in its definition, so what you end up with a somewhat circular definition. The definition of subsistence uses explaining what happens in a particular place; the definition of rural area explaining where it happens; but you would wind up with no ... -- rural area would be a term of art(word?) -- it would mean those areas where subsistence uses occurred and you would have no rural areas that did not have subsistence uses occurring there.

The chairman requested that Spengler work with the committee to clarify the wording.

SPENGLER: Also related to that definition, on page 5, line 3, the word "taking" is modified by "customary and traditional." There is no use elsewhere in the statute that ... "customary and traditional taking." "Customary and traditional use" is a part of the definition of subsistence uses, and if the word "taking" is left in this definition, it establishes a new factor that the boards have never dealt with before. It isn't clear what it's intended to mean, and depending on what it's intended to mean, it could raise ANILCA problems. And I would be happy to work with the committee on the "circular definition" and the meshing of the two definitions.

HALFORD: The Governor's bill provided for rural area residents. Why do we always refer to "rural area" instead of saying "local residents"? Is it the intention that the preference apply either in federal law or state law to a rural resident from one part of the state traveling to another part of the state and enjoying preference in hunting and fishing?

SPENGLER: If you prefer the term "local" rather than "rural," then you would run afoul of federal law, because Anchorage residents are obviously local to the Anchorage area, but they would not be rural (under federal definition). As far as the requirements of ANILCA go, subsistence use is defined in terms of "rural Alaska residents" not "local residents." That's the simplest answer to your question.

HALFORD: So we'd have to say that someone from a Southeast community traveling to somewhere in the interior has to be afforded a preference in the harvest of the resource in that area they're traveling to?

SPENGLER: No, that's not correct. If the question is, if they have to be rural residents in the particular area where they live, that is what this bill would do, because if they're domiciled in the particular rural area -- that's the function of the use of the word "domicile" in the definition.

HALFORD: But it says "domicile in any rural area," not the area where the harvest is taking place.

SPENGLER: If this bill is intended to be in compliance and consistent with ANILCA, what ANILCA envisions is that people in rural areas of the state would have subsistence uses reasonably accessible to the areas where they live.

HALFORD: It doesn't say that.

Chairman said Halford's issue was a good one and would be looked into.

Testimony was received from teleconference sites.  
The chairman felt Halford's point was a good one

EXCERPT from Senate Resources Meeting, March 5, 1986, re Subsistence:

SENATOR STURGULEWSKI: (to Wm. P. Horn, Assistant Secretary, Department of Interior)

I would like a little more discussion on need. In this bill, as I'm sure you are aware, we haven't included any reference to economic need. We haven't included any reference to economic need because of our understanding that a law based on economic need would not comply with the federal law. Would you expand on this issue of ANILCA and economic need? It's a a real basic one. It's one that's important to a lot of Alaskans, and I'd like more information on the record regarding that.

SECRETARY HORN: Well, in Congress, during the development of Title 8, there was considerable discussion about how should a subsistence program should be established. Should it be a residency program, an area program, an individual program, a need program? When Congress addressed the issue of need, it decided not to go down that particular road for a very practical basis. It concluded that it would be inappropriate, very difficult, and extremely socially disruptive to, in essence, license a force of the equivalent of social workers to roam rural Alaska, deciding who was needy and who wasn't, and therefore, who would qualify for a subsistence permit and who wouldn't. It was decided that (it) would be such a nightmare, and such a headache.

(It was decided) to go with this community system (instead) -- a residency-based system, notwithstanding the fact that Congress knew that there would be circumstances in which relatively well-to-do individuals in some isolated communities would get a preference ahead of somebody less relatively well-to-do in an urban (setting). For very practical reasons, they decided to reject the approach of need.

Of course, that is clearly enshrined in the language in Section 803. They did bring need into effect when, of course, there is not enough resource to take care of the rural, customary, traditional subsistence users and said that the first criterion that you look at when you have to allocate among the subsistence users is customary and direct dependence. That's, basically, a need factor.

As I also indicated earlier, however, Congress did go on in the legislative history to specify that in defining the term customary and traditional, it would be appropriate to use the concepts of 804, including customary and direct dependence, and the availability of alternative resources, both of which are need-based factors, that those could be among the factors considered in rendering and reaching a definition of what customary and traditional was.

That, in essence, is the way need factors into the process and some of the decision-making process that Congress used in rejecting an individual need program, but leaving it in 804 and allowing parts of need to get into 803 under the hook of customary and traditional.

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SENATE STATE AFFAIRS  
STANDING COMMITTEE  
August 27th and 28th, 1985

Members Present: Senator Mitch Abood, Chair  
Senator Vic Fischer  
Senator Tim Kelly

Members Absent: Senator Bill Ray  
Senator Edna DeVries

COMMITTEE CALENDAR

The purpose of this meeting was a hearing to take public testimony on the issue of subsistence.

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Mayor Tom Peterson  
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ACTION NARRATIVE

TAPE #1 08/27/85 SIDE A.

The meeting was call to order by Chairman Abood at 1:18 p.m. Chairman Abood welcomed all participants to the meeting and informed them of the upcoming hearings scheduled for October 9th and 10th, 1985 in Fairbanks and those on November 19th and 20th in Anchorage. Informed public that their input was needed to help solve the issue of subsistence.

Commissioner Don W. Collinsworth, of Department of Fish and Game was the first to take the stand on the issue of subsistence.

Mr. Chairman, my name is Don Collinsworth, and I am the Commissioner of the Alaska Department of Fish and Game. I appreciate the opportunity to be able to testify before your committee today.

Mr. Chairman, the last time I met with your committee I made an appeal to you to take legislative action to amend the state's subsistence law. I advised your committee at that time that there was no administrative or regulatory solution which could be undertaken by the administration or the Boards of Fisheries and Game to solve the problems which we perceived would develop as a result of the Alaska Supreme Court's decision in Madison and the Court of Appeals' decision in Eluska. I advised you that the only solution to avoid disruption in the existing uses and patterns of use in fish and game was a legislative amendment to the state's subsistence law. I pointed out that the state's subsistence law must be amended to allow the Boards

of Fisheries and Game the flexibility to continue to regulate fisheries and hunts as they had since the passage of the state subsistence law, but prior to the Madison and Eluska court decisions, and that it was our belief that the law would have to be amended in order not to lose management on federal lands under the provisions of ANILCA.

I would like to present to you for the record a chronology of events leading to the emergency fish and game regulations which have resulted in considerable public consideration.

On February 22 of this year, the Alaska Supreme Court's decision in the Madison case changed the way the Boards of Fisheries and Game could regulate subsistence hunting and fishing.

The supreme court ruled in Madison that the state law (statute) would not allow the Boards of Fisheries and Game the flexibility to continue to regulate fishing and hunting based on the criteria that the boards had developed and believed to be fair and reasonable.

The Department of Fish and Game pointed out that serious disruptions to established hunting and fishing use patterns would result, and that neither the boards nor the Department of Fish and Game has the authority to overcome these problems without legislation. Accordingly, on March 13, 1985, legislation was introduced by the administration which would have given the boards the flexibility to regulate as they did prior to the supreme court decision.

The Boards of Fisheries and Game met in late March and early April. The boards recognized that serious problems lay ahead unless the authority they had exercised previously was restored. Neither board felt comfortable making the extensive regulatory changes necessary in order to meet the standards announced in Madison without the opportunity for public comment. The Board of Game wished to leave in place the permit drawings and limited registration hunts for one more season.

However, on April 12, 1985 (after the Boards of Fisheries and Game had adjourned), the Alaska Court of Appeals ruled that because of the Board of Game had not adopted specific regulations governing subsistence hunting, a "subsistence defense" could be used to block prosecution for some violations of existing regulations.

In effect, the Eluska decision required the Game Board to adopt separate subsistence regulations consistent with Madison or face unenforceability of many regulations.

The Court of Appeals also interpreted the supreme court opinion in Madison to mean that the current statutes are not adequate to allow the boards or the Department of Fish and Game to significantly impair subsistence for any Alaskan until they have first closed all sport and commercial fishing or hunting on a particular fish stock or game population.

# **CORRECTION**

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

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ACTION NARRATIVE

TAPE #1 08/27/85 SIDE A.

The meeting was call to order by Chairman Abood at 1:18 p.m. Chairman Abood welcomed all participants to the meeting and informed them of the upcoming hearings scheduled for October 9th and 10th, 1985 in Fairbanks and those on November 19th and 20th in Anchorage. Informed public that their input was needed to help solve the issue of subsistence.

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On May 4, the House passed CSHP 288 (Jud), 52 days after being introduced. The Legislature adjourned on May 13, with out completing action on the House-passed bill.

On May 22, 1985, state Chief Prosecutor Daniel Hickey wrote a memorandum to Commissioner Robert Sundberg and me establishing guidelines for enforcement personnel and prosecuting attorneys in light of the Eluska decision. Mr, Hickey concluded that unless the Legislature took action, certain specific regulatory steps were necessary in order for normal enforcement and prosecution to continue.

With respect to fishing regulations, the Department of Law advised the Commissioner of Fish and Game "to exercise his authority under 5 AAC 01.015 and the authority delegated to him by the Board of Fisheries and to issue subsistence permits for taking salmon in areas where subsistence harvests have been historically authorized and conducted." I consulted with the Board of Fisheries and initiated the required emergency regulations on May 28, 1985.

With respect to hunting, Mr. Hickey explained that specific subsistence regulations consistent with Madison and Eluska were necessary. Until regulations were adopted which complied with Eluska, guidelines would have to be followed which would sharply limit state prosecutions of hunting violations. In response to the Eluska decision and Chief Prosecutor Hickey's guideline memorandum, the Board of Game convened June 10, 1985, in emergency session to ensure that hunting regulations would continue to be fully enforceable.

Attorney General Norman Gorsuch met with the boards and advised them what steps were necessary in order to comply with the Madison and Eluska decisions. These are the rules as explained by the Department of Law:

Under Eluska, the Game Board must adopt separate subsistence hunting regulations consisten with Madison, or the "subsistence defense" can be used and many regulations will be unenforceable.

Under Madison, subsistence hunting means hunting by any Alaska for food, shelter, fuel, clothing, tools, transportation, customary trade, barter or sharing.

Unless sustained yield would be jeopardized, subsistence hunting must be authorized on any game population that has been hunted in the past and used for these purposes.

Because Alaska law requires that meat be salvaged from most game hunted in Alaska, these populations have been documented to be taken for food. This includes species like sheep, goats, and bison.

If subsistence hunting of a game population must be restricted (that is, "significantly impaired") to protect the resource, then

nonsubsistence uses (nonstate resident hunting) must be eliminated first.

If, after nonresident hunting has been eliminated, and subsistence hunting on a game population must still be restricted (significantly impaired) to protect the resource, then the board must use the three criteria listed in AS 16.05.255(b) to determine how hunting opportunities are to be distributed among Alaskans. These criteria are:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

The Board of Game concluded that it was essential to have enforceable regulations and therefore took the following steps to comply with the court decision.

The practical results of the board's emergency actions in June included the following:

- (1) Separate subsistence and general hunting regulations were adopted; in the process, approximately 450 regulations were evaluated and amended or readopted.
- (2) Hunting opportunities in many areas of the state are open to both residents and nonresidents.
- (3) Hunting opportunities for some species in certain areas are open in Alaska residents only (Tier I).
- (4) Tier II standards were applied to distribute hunting opportunities for certain species in certain areas where more Alaskans wish to hunt than can be accommodated while maintaining sustained yield.

The Board of Game adopted emergency regulations in June which will become "permanent" approximately the first of October.

The board has scheduled these regulations for review and further action at its November meeting; comment from the advisory committee and other members of the public is invited.

The Board of Game took only those actions they believed necessary under the court decisions and to protect wildlife resources; the board used Tier II standards only when they concluded there was no effective alternative.

The board had previously used general permit drawing hunts and limited registration hunts to allocate hunting opportunity in situations where more people wished to hunt than could be accommodated.

The board would have used the same system this year if changes had not been necessary because of the Madison and Eluska decisions.

Before the Madison decision, both the Board of Fisheries and the Board of Game had interpreted "subsistence" narrowly; as a result, use of Tier II standards had not been necessary.

Under the boards' approach, even if some resource circumstance were to require the use of Tier II standards, the category of users affected by Tier II would be much narrower, and urban hunters would have been virtually unaffected.

Tier II standards were applied to a large number of hunts only because Madison overturned the boards' interpretation of "subsistence users" and greatly broadened the "subsistence" category. Consequently, many more situations resulted in which people who now qualified for subsistence hunting were competing for limited game resources.

Tier II standards will also be applicable to subsistence fishing, although in most areas the problem is likely to be less immediately acute than in hunting; however, where circumstances warrant, the three criteria (dependence, local residency, alternative resource) must be applied.

Mr. Chairman, in my opening remarks I mentioned a state rights issue, retention of state management. Without amendment to the state subsistence law, state management of Alaska's fish and wildlife is in jeopardy on all federal lands (about 60 percent of the land area) and associated waters if the state is out of compliance with federal law; this may include species which move through or into these lands and waters even if they do not remain there throughout their life cycles (including virtually all anadromous fish and a large proportion of the state's wildlife).

The department believes that loss of state management authority would be detrimental, both to proper management of Alaska's resources and the Alaskan user of these resources.

Mr. Chairman, rather than speculate about what the federal government may or may not do, I would suggest you may want to invite a representative of the Department of Interior to address your committee.

Mr, Chairman, the administration believes that there should be four key elements of any new subsistence legislation,

1. It must be constitutional.

2. It must be consistent with federal law so the state can retain management,
3. It must be enforceable.
4. It must provide reasonable opportunities for all uses: commercial, recreational, personal use and subsistence.

Experience with the Board of Game emergency regulations underscores the need for a solution which meets all four of these standards.

In summary, Mr. Chairman, the two court decisions have radically changed the way the boards and the department may do business. The current law does not provide the boards the authority they need to regulate hunting and fishing in the fair and reasonable manner as they had in the past. Neither the boards nor the department have the authority to remedy the situation.

We appeal to you again, Mr. Chairman, to take legislative action to return to the boards the authority to provide for all uses. The board system is a good one and it can work.

We also appeal to you, Mr. Chairman, and all Alaskans to work together to solve this problem in the spirit of cooperation.

Senator Fischer stated that one thing that bother him was who can hunt when there has to be a restriction in a hunt. For example the Nelchina caribou hunt. Some in Wasilla gets a priority over the person who lives in Anchorage, etc. Can the Board not give some fairer criteria in situation like these.

Commissioner states that the Board had to go into special session to set the criteria there was not as much time to prepare as they wish there would have been. Due the time crunch everyone knew that there would be problems and this is one of them. The Board will meet again this fall and review the criteria involve in the Tier II hunts.

Senator Fischer refers to legislation that continues the priority for certain individual. States that the Governor's bill does not include the personal use category as a priority. Does the Department have a plan for the personal use individual.

Commissioner states that it is important to establish this because of the number of court cases. There were a number of individuals that used the resource that did not fall under the subsistence area. Personal use category is something to be address with the legislature and the Department.

Senator Abood asks the Commissioner to explain the difference between subsistence and personal use.

Commissioner - the Boards has made a difference prior to Madison and Eluska. Subsistence was a activity very narrowly defined and accured

in rural Alaska and the rural communities qualified after they meet the criteria. Personal use was established by the Board to allow the use of the same kind of gear for fishing such as using nets instead of just rod and reel. It really was associated with the type of gear.

Senator Abood and the Commissioner converse about personal use, sport and subsistence and the gear used. Senator Fischer joins in and talks about the rod and reel fishing. They speak of taking the word "personal" out and who it would affect. There was the difference made between personal and personal because of enforcement.

Ron Sumerville took the stand on behalf of the Alaska Outdoor Testimony. The Alaska Outdoor Council would like to again thank the Senate Committee on State Affairs, Chairman Senator Mitch Abood and Committee members for giving Alaskans another opportunity to participate in determining the fate of Alaska's common property fish and wildlife resources. We applaud the Alaska State Senate's efforts to openly review and possibly restructure Alaska's controversial subsistence law.

For the record, we would like to point out that the Alaska Outdoor Council is a statewide Alaskan organization consisting of 45 affiliated clubs and a total membership of almost 9,000 Alaskan residents. Our organization represents a broad spectrum of outdoor resource users throughout Alaska. Special emphasis is made of the fact that our membership includes significant rural as well as urban residents.

The Alaska Outdoor Council is committed to protecting the rights of all Alaskans with regard to the use of our fish and wildlife resources and our public lands. Because of this commitment we have consistently opposed regulations and statutes which tend to provide exclusive uses of our common property resources to one class of citizen over another. For this reason, the Alaska Outdoor Council and its parent organization, the Alaska Sportsmen's Council, have consistently opposed the philosophy inherent in the State's subsistence law which unfairly discriminates between Alaskan residents in the establishment of an ultimate priority over use of our fish and wildlife resources.

It would be a waste of the Committee's time, as well as that of the participants to once again review all the material associated with the subsistence controversy. We have finally reached a critical point in history where it appears possible to clearly dissect the present subsistence law and decide whether it or some form would establish a more publicly accepted mechanism to provide some sort of preference for legitimate subsistence uses.

Undoubtedly, the biggest decision facing the Committee involves whether or not to give a priority to rural Alaskans over all other Alaskans. One of the solutions being offered is to insert the word rural into the State law. If one were to take the existing Game emergency regulations as examples, it would mean that only rural residents would be able to participate--primarily in their area of

residence. It is our contention, however, that the regulations you have on the books today are only a minor illustration of how far reaching the impact of the subsistence law will be in the near future.

For example, I am submitting as part of my testimony, a study conducted by the Division of Game, Alaska Department of Fish and Game, in 1981. The title of the submittal is "Subsistence Demand Forms." These summary forms were developed to aid the Board of Game in developing regulations concerning subsistence uses statewide. The subsistence demand forms simply summarize in which units and subunits the residents of the local areas are capable of taking the harvestable surpluses given lenient seasons, bag limits and methods and means.

According to the Game Division in 1981, on all major statewide hunts of Sheep, Pison, Elk, Caribou, Moose, Goat, and Muskoxen the local residents were capable of taking the harvestable surplus in 143 out of the 216 hunts. In other words, even in 1981 urban users and residents of other units could have been legally excluded from participating in 67% of the hunts on the major Big Game species statewide. The contrast is even more pronounced if you consider that the existing controversy only involves 42 permit hunts which are being limited to Tier I or Tier II residents. The reason for submitting this evidence is to illustrate the potential discrimination that could occur if the existing course is continued whereby these species are limited to only local residents under the guise of subsistence.

Certain other key points and issues must be addressed before a rational solution can be found.

1. It should be recognized that the existing law has proven to be a catalyst for extreme and increasing social unrest in Alaska. Any law which openly discriminates against its citizens can only lead to social conflicts.
2. Contrary to what Alaskans had been told initially, the State and Federal subsistence laws do not only come into play when there is an extreme shortage of a particular resource. The two major 1985 court decisions have verified that the "priority" is in effect at all times and it is a legal requirement that the Boards of Fish and Game implement the law.
3. Alaskans were clearly told when the State law was enacted in 1978 that all Alaskans would be subsistence users if they took fish and game for personal or family consumption. We are now considering making a major modification in that law by eliminating urban residents from participating. It is our contention that the 1978 law would never have passed if all Alaskans were advised originally of the intent to exclude most Alaskans from participation.
4. Contrary to the provision in the State Constitution providing for "preferences amongst beneficial uses", the State law

provides an absolute "priority" which requires that, according to the State Supreme Court, all other uses must be eliminated before restricting subsistence uses.

5. The Boards of Fisheries and Game have wrestled unsuccessfully for over eight years with implementing the State law.
6. The Sheffield Administration's solution to the current problem is to guarantee rural subsistence users will be given a priority over urban residents who are now, under State law, considered to be valid subsistence users. This priority to rural residents, as evident in the present Game regulations, means a priority only in the area in which they reside. In essence, a rural subsistence user on the Kenai Peninsula will not be given any priority in the Nelchina basin or any other area of residence.
7. The State Supreme Court has accurately interpreted the existing State Law. The question is whether or not the law should be changed to unfairly exclude a major part of Alaskans from participating or should the law be changed to narrow down a subsistence preference to a relatively few Alaskans who are true subsistence users.
8. At present, the Alaska subsistence law is inconsistent with the Federal subsistence law in a number of areas--- particularly because the State law does not give a priority to "rural" residents. The question is whether or not the State must or will conform to the Federal law. We seem to have one of two choices, either adopt the Federal law in total and accept the social decisiveness and discrimination or construct a State law which will be accepted by Alaskans.
9. It will be continually debated whether or not the Federal law can or should be changed. It is a certainty that the law will never be altered if corrective surgery is not applied to the State law. Most certainly, the Federal law only applies to Federal lands and waters and the State lands and waters.
10. The subsistence issue is not and should not be a racial issue. The only individuals that are attempting to construct this as a racial issue are those special interests who are proposing to identify segments of Alaskans, namely rural Native Alaskans, and certain associated culture as having first rights to Alaska's common property resources.
11. Subsistence harvests should be based on meeting the protein needs. One species should be substitutable for another comparable species, and harvest should occur on those species that are most abundant and best able to withstand the harvest.

12. Certain areas exist where the fish and game resources are so sensitive that the efficient harvest methods associated with some subsistence taking (i.e. gill nets) would destroy those resources. The regulatory Boards must have the authority to close or severely regulate these uses, including allowing other less efficient means.
13. The definition of subsistence gear in State law is proper and should not be amended.
14. The Boards must have the authority to designate which species are subject to the subsistence priority.

The Board of Directors for the Alaska Outdoor Council would like to once again reiterate that the Council has consistently supported the continuation of subsistence uses. We question, however, the mechanisms being used to identify the subsistence users and to provide for a legal preferential use.

Of all the legislation now pending before the Alaska Senate, we much prefer using SF 320, introduced by the Chairman, as the piece of legislation used for markup. For the Committee's assistance, I am submitting as part of this testimony, the "Subsistence Consensus Points" which have been reviewed by our membership and approved by our Board of Directors. These consensus points are the major items that have to be reflected in any State legislation before this type of allocation will be acceptable to most of the Alaskan public. The Consensus points are as follows:

#### ALASKA OUTDOOR COUNCIL

#### SUBSISTENCE CONSENSUS POINTS

August 21, 1985

1. Permitting: A permit will be required for subsistence preference use. Permitting will be based on personal or family qualifications--not on the locality in which one lives nor upon racial, cultural or ethnic considerations.
2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that: (1) the wild resource taken be used for personal and family consumptive use only; (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent family unit with income from all sources at or below Federal poverty levels with no more than one subsistence license per family unit.
3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations regarding applicable or substituted species by area, seasons, quotas, bag limits, and methods and means as authorized by the Boards of Fish and Game.

The opportunity to harvest will be given a preference but no guarantee of harvest is intended.

4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.
5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges or commercial sale shall be included in subsistence use.

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The Board of Directors of the Alaska Outdoor Council would like to clearly point out that nothing in the subsistence statutes should interfere with the Boards of Fisheries' authority to establish and regulate personal use fisheries on a non-priority basis.

For consideration of the Committee during markup, we have provided additional material titled "Aspects Needing Consideration in Subsistence Legislation". This is an initial cut in comparing and adjusting the various bills now before the State Senate with the above consensus points in mind.

In closing, I am submitting three documents for the record: (1) a letter from Ms. Janie Leask, President, AFN for Representative Jack Fuller; (2) a Petition from Ms. Janie Leask, President, AFN to the Joint Boards of Fisheries and Game; and (3) a letter from the A.G.'s office to Commissioner Collinsworth concerning the pending Bobby vs. State (Lime Village) case. It is important to note that all three documents call for or advocate some form of Federal preemption of State of fish and game management in Alaska.

It is also important to point out that the petition to the Boards request the insertion of a priority for "rural" residents be accomplished by State administrative action despite the fact that the legislature refused to modify the State law accordingly last year. Also, the petition requests specifically that "rural" be defined in such a fashion to allow subsistence that "rural" be defined in such a fashion to allow subsistence uses to be limited to communities - a practice which was specifically excluded by the State Supreme Court in the Madsion case.

Most importantly, it is of major concern to the Alaska Outdoor Council that none of these documents acknowledge that the State retains exclusive control over all State and private lands, even if some Federal preemptive authority existed on Federal lands and waters.

It is extremely difficult for the average Alaskan to swallow these discriminatory and decisive actions when we are witnesses to the fact that the "true subsistence" user is not the beneficiary. Rather we see the allocation based almost exclusively on where you live and not whether the user is any more deserving or needy than his excluded neighbor.

It is not difficult to understand why most Alaskans are getting upset with existing subsistence laws. For once, we are getting an accurate look at what the law really means. We are also beginning to visualize what sort of regulations we can expect within a few short years for all our fish and wildlife resources, if the laws remain intact.

Most importantly, we are witnessing the rapid loss of one of the major benefits for Statehood in 1959--the right to manage our fish and wildlife resources.

We would like to remind the State Senate that HP 288, now before you, was passed by only one vote in the State House of Representatives. This was accomplished after much debate and political maneuvering. Regardless, we hardly consider that a mandate for immediate irresponsible action on the part of the Senate. Rather, we request that you consider modifying the State subsistence law so that it is fair and reasonable, will stand Constitutional challenge and, most of all, provide a path for social understanding and harmony.

Tape 1, Side B

Mr. Rupe Andrews then took the stand for the National Rifle Association. At statehood there were three methods of hunting and fishing, commercial, subsistence and sport. Believes that if federal law took over that it would be in non-compliance with ANALICA. Noted that with the passage of ANALICA what are we going to lose to federal management? Believed that we should return to state management. Priority does not bother this organization.

Mr. Ralph Andy Johnson took the stand. First I want to thank you for the stand you took during the first session of this legislature. At least you listened to the voice of the people and was not snowed by the WUG (Wugs are "wild unsupported guesses" but there is nothing scientific about the propaganda related to subsistence), and the political mis-information they use to justify their position.

After seven years of fighting in and out of court, we the appellants of the Madison case, finally thought that now since the Supreme Court of the State of Alaska has agreed with us that our interpretation of the law is correct and that the Board of Fisheries with its questionably able attorney have been fighting, would be required to write regulations that conformed to AS 16.05.251.

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Even the AFN with its masterful attorney has learned to read during this time and changed from an adversary to a supportive position. To prove one of my points I am going to quote this attorney's present position as stated in the document they submitted to the Court naming that Title 16.05.251 is confusing and unclear and all that Madison did was to add to this confusion. This is not a direct quote but the mis-quote conveys the intent.

Ever since Moses came down the mountain, man and more particular lawyers have been saying the law is unclear and confusing.

But that should be settled now, all the Board has to do is write regulations that give the subsistence user the prior right to the fish and game but which allows all users the right unless the propagation of the species is endangered.

If the species is endangered, sport and commercial uses will be the first curtailed. If that proves to be insufficient the first tier of subsistence will be shut down using the criteria of traditional uses. If that is not enough, the second tier will be shut down.

Before the Madison decision the Board of Fisheries, Governor, and Department of Fisheries had a legitimate excuse to protest and make the illegal regulations. However, since Madison and the clear decision given them there is no excuse and it seems to me that it is out and out malfeasance for them to continue to make regulations that are contrary to the law, and I feel the Constitution of the State of Alaska. The Supreme Court did not see the necessity of ruling on the constitutionality or the unequal treatment of people saying those questions were moot since the regulations were illegal.

Now comes the question of what can you do to stop a Governor, Commissioner and or a bureaucracy from making illegal regulation. I suggest that we circulate a petition asking for the resignation of the Governor, Commissioner and Board on the grounds of malfeasance and that the State be required to re-imburse us for costs incurred in trying to force them to obey the law plus stopping all funding to the Department of Fish and Game until new regulations are written and passed.

I was told of an interesting side light relating to subsistence at a meeting I attended recently.

In a Federal report on subsistence one section of it states "trust the State of Alaska has been re-imbursed up to 5 million dollars last year to manage the subsistence enforcement." If this is true, I would like to know where it has been spent and on what?

In conclusion, I feel that the Commissioner, Board Members and Department Head of the Bureau of Fish and Game should be requested to sign a statement that they have read and understand AS 16.05.251 (intent of law) and the Madison decision. If the Governor, Commissioner of Fish and Game and other public officials do not pay

any attention to the laws you have already passed or the decision of the Supreme Court, what good will it do to change the law or pass a new one?

Signed Sincerely, Ralph A. Johnson. Mr. Johnson read the above statement and Chairman Abood asked if he would mind sending in a typed copy of his testimony. Mr. Johnson agreed to do so and the above testimony is just that.

Al Gagon agreed with subsistence use, but only for the people who truly need it. This should not be limited to Natives only. He felt there is a need to protect the resources as well as the real subsistence users, but felt a definition of a true subsistence user needed to be found. Maybe a definition of a subsistence could be determined by the location of where a man lives and his income. He noted that to come up with a solution to this problem that everyone would have to give some.

Mr. Chairman, members of the Committee. My name is Janie Leask and I'm the president of the Alaska Federation of Natives. The AFN Board of Directors is composed of representatives of the thirteen regional corporations formed under the Alaska Native Claims Settlement Act and the twelve non-profit associations which deliver human service programs throughout the state.

Today, on behalf of my Board, I would like to express our anger and frustration at the current state of affairs with respect to subsistence.

There have been numerous newspaper columns, stories, and letters to the editor in recent months and weeks regarding the subsistence issue - and, in particular, the emergency regulations adopted by the Board of Game which unfairly restrict urban hunters. Hunters in Anchorage and other urban areas are angry - and they have a right to be. The current situation is not only unfair - but also unnecessary - it could have been avoided.

Alaska is unique, in that it is the only one of our states in which the continued health and well-being of a significant number of residents is dependent upon the harvest of fish, game and other wild renewable resources for personal and family consumption. The whole economy of our rural communities is dependent upon the continuation of these uses.

In 1978 the Alaska Legislature recognized this unique situation by enacting the state subsistence law. That law required subsistence uses be afforded a priority over other uses in situations where the harvestable surplus of a fish stock or game population is not large enough to accommodate all harvest demands. In 1982 regulations interpreting this law were passed by the Boards of Fish and Game and put into effect.

Later that year a group called "Alaskans for equal hunting and fishing rights" disagreed with the policies embodied in that law and were successful in obtaining enough signatures to place an initiative on the ballot to repeal it. The subsistence issue was thoroughly debated during the 1982 election. The initiative was defeated and the 1978 law, and the regulations interpreting that law, were retained.

At that time, regardless of whether you supported or opposed the repeal initiative, every Alaskan assumed the 1978 subsistence priority was limited to residents of rural communities, native and non-native, in which hunting and fishing for personal and family consumption is the base for the local economy. No one believed the subsistence priority was intended to provide those of us who live in Anchorage and Alaska's other urban centers a priority over commercial and sport fishermen or hunters.

The supreme court decision in the recent Madison case decided that that was in fact what the 1978 legislature had intended; and consequently, all hunters and fishermen - both urban and rural - are lumped together in the "subsistence uses" category established by the 1978 law. So, rather than expending the access of urban hunters and fishermen to the resources, the current situation restricts it.

The Madison decision transformed urban hunters into "subsistence" hunters and now allocates hunting opportunities based on three criteria: local residency, dependence on the game populations as a mainstay of livelihood, and availability of alternative food resources.

The once-popular lotteries have been replaced by an allocation formula based on the three criteria. The result is that all hunters are now competing against each other and the lottery hunts have been eliminated. This has angered the urban hunters - and justifiably so.

The unfortunate aspect of our current situation is that it was all unnecessary. The position in which we now find ourselves, which has the effect of pitting urban against rural could have been avoided - through the enactment of subsistence legislation during the 1985 legislative session. If legislation had passed last session, we would not have to be here today. The urban hunters would have been treated fairly, and we would not be faced - again - with the decisive situation we encountered back in 1982 when alaskans for Equal hunting and Fishing Rights tried to repeal the state subsistence law.

The Governor, the Department of Fish and Game, the members of the Boards of Fish and Game, and a majority of the House realized the negative impact on urban hunters. That is why the Governor introduced legislation and why House legislators passed it out.

We can all turn around and find someone to blame for our current situation. Certainly there are a number of individuals and groups which I feel are responsible. But the fact of the matter is we are all sitting here today: without legislation, with the hands of the

Boards of Fish and Game tied, denying them the flexibility they need to make fair allocations, and with a potentially explosive situation on our hands - similar to what we faced in 1982.

You have heard a lot of talk about "equal" hunting and fishing rights. But in this area we don't have rights - we have privileges. Is commercial fishing a right, and should all Alaskans be treated "equally" in their access to it? No. A policy decision on this was made in the mid-1970's when the legislature and the Governor realized that there were too many people wanting to fish commercially and there were too few fish. A priority was established for access to this resource, similar to the establishment of exclusive guiding areas. We now have a limited entry permit system reflecting our resource allocation priorities. The holding of this permit is a privilege, not a right, and the courts have upheld it in several challenges to its constitutionality.

Mr. Chairman, members of the committee, I am here today on behalf of my Board to ask that you pass legislation which would simply amend Title 16 of the Alaska Statutes to the extent necessary to provide the Boards of Fisheries and game the same regulatory authority and flexibility which they possessed on the day prior to the issuance of the Madison decision - no more and no less.

The people of Alaska spoke in 1982 when they defeated the initiative to repeal the State subsistence law. They voted to retain the subsistence priority for those residents living in rural Alaska who are most dependent on fish and game resources.

Since that time the Boards of Fish and Game have implemented the subsistence statute in a fair and reasonable manner. Their regulatory success is proof that the 1978 law is good public policy - a workable way to protect Alaska's unique rural economy without drastically reallocating hunting and fishing opportunities for those of us - native and non-native alike - who live and work in urban centers.

As everyone knows, Sam McDowell and Dale Pondourant have gone to court stating the current regulations are invalid and trying to stop all hunts. AFN is intervening in this lawsuit for two reasons:

- \* to oppose a temporary restraining order or preliminary injunction to ensure that innocent people who have nothing to do with the current situation don't get hurt; and
- \* To agree that the regulations are invalid - but not for their reasons, but because the state is out of compliance with the federal law. But rather than asking all hunts be stopped, we feel the Boards of Fish and Game should be allowed the opportunity to bring the regulations into compliance. In that light, we have filed a petition with the Boards of Fish and Game to bring the state into compliance with the federal law. If those petitions are adopted, we again will have in place regulations which were in effect when the 1982 initiative was defeated.

While we feel this is an Alaskan problem to be solved by Alaskans, we are advocating federal intervention in an effort to ensure those Alaskans living in the rural areas of our state whose lives and communities are dependent upon fish and game resources, are protected.

We are not anxious to see a re-play of the decisive, bitter kind of politics which accompanied the 1982 repeal effort, and we hope this situation will be avoided.

We feel the subsistence law has worked in the past and we strongly urge the Senate to move quickly to put an end to the current situation and to pass out legislation as quickly as possible next year.

To do otherwise would put subsistence again in the political arena, and would do all Alaskans, hunters and fishermen alike - urban and rural - a great disservice.

Thank you.

Fred Bismark stated that he believed that subsistence was vital to the needs of his people, the Natives of Alaska. Noted that he has lived off the land all of his life and has never required welfare. If subsistence is taken away then the land should also be taken away. This move would hurt his people greatly.

Ms. Susan Frey then took the stand and noted that she was opposed to Tier II hunting. She agrees with the Alaska Outdoor Council and there stand on subsistence. Subsistence is for those who need to survive. Stated that she would rather see rural people feed the meat to the dogs then see hunters take the horns and leave the meat. Felt that all citizens and residents of Alaska should be treated equally.

Jim Kowalsky with the Rural Alaska Resources Association is in favor of rural subsistence. Felt that rural residents should have the opportunities to feed themselves, due to the fact that many have no cash to live off. Stated that subsistence was the mainstay of many rural Alaskans. Mr. Kowalsky was in total agreement with the Governors bill, SF 288 and wanted the system to return to the way it was. Didn't want rural areas to be put on a lottery system and that it should not be treated like a welfare system. Added that maybe it was possible for Communities to subsist as communities and not as individuals. Felt that rural communities should not be considered poor, but should be allowed to protect and fend for themselves

Senator Abood ask Mr. Kowalsky what he thought was rural. Tok? Mr. Kowalsky responded that yes Tok is rural. Abood--Kotzebue? Mr. Kowalsky--yes. Abood--Kenai? Mr. Kowalsky--yes. Abood--Stevens Village? Mr. Kowalsky--oh, yes.

Senator Vic Fischer then question Mr. Kowalsky on the defination of rural and what the rural people thought of Tier II process. Mr. Kowalsky did not give a defination of rural and was not certain of the

what rural people thought of Tier II, but under the current Tier II conditions have been a shambles.

Senator Fischer wanted to know the difference between Tier II and subsistence. Mr. Kowalsky deferred to the Department for an answer to this question. A Mr. Behanke took the stand for the Department to answer this question. Mr. Behanke said that Tier II applied only in certain cases

Senator Fischer continues to question Mr. Behanke on the issue by asking if subsistence should be put in one use and then certain criterias made.

Questioning continues.

Walter Johnson took the stand and agrees with rural subsistence.

Tape 2 Side P

Margery Roose took the stand on behalf of equal rights for hunting for all residents in the State. As an urban resident hunter, she feels that the meat her family uses saves her between \$1500.00 and \$2000.00 a year on her family's regular food bill. Mrs. Roose feels that everyone should have access to all the natural resources of this State.

Senator Fischer asked if they have to choose between hunters and hunting rights, would she rather see it be on permit basis or income need. Mrs. Roose answered it should be equal rights for all residents.

Evelyn Pete of the Native Village of Chitina Tonsina was the next to testify. Noted she was the first baby born in Glenallen. According to Federal law we were a third party trespassing on their land. Stated that her life was hunting and not just a lifestyle. Rural villages have their own jurisdiction and have no concern over our (the State's) issue.

Sheldon I. Katchatag of the United Tribes of Alaska agreed with rural subsistence and that it was the true intent of western society. Stated that there is going to be a meeting on September 10 in Unalkleet, Alaska to finalize the Declaration on a new sovereignty in Unalkleet. Noted that they would only stand behind tribal government and will not stand behind the state laws.

Senator Abood then ask Mr. Katchatage to step away from the stand due to the fact that what he was saying had no baring on the issue of subsistence as earmarked for this hearing.

Bob Hunter then took the stand on behalf of the Alaska Sportsfishing Association. Senator Abood, members of the State Affairs Committee: We wish to thank the members of this committee for taking the time for public input to this crucial issue.

Once the legal interpretation of the 1978 subsistence law was forced, the Board of Fish and Game had no alternative but to adjust regulations and allocations according to the existing law. Only now is the public beginning to understand what we were trying to explain in 1981.

Even now, as in 1981, the Governor and AFN (via Janie Leask) are attempting by publicizing in local papers to cloud the real issues the subsistence priority creates. The very nature of a priority designation creates a class system, or Alaska's own apartheid laws. Hunters and fishermen alike recognize that in all cases there is insufficient fish and wildlife resource for everyone to take what they want. We do, however, wish to have an equal and fair chance just for the opportunity to take fish and game. Yet, even with that statement we are willing to recognize that it is still possible in this vast state to allow exceptions to this equal opportunity to permit those in very remote, rural areas not yet affected by the rapid population expansion to harvest fish and game on limited need for survival basis.

During the 1985 legislative session, Governor Sheffield introduced Don Mitchell's subsistence bill entitled HP 288. Not only was there insufficient time for public understanding and input, but the bill would simply have insured that all rural Alaskans have priority in taking the fish and game public resource. This is why we asked that the bill not be passed, or at best pass it with one year sunset clause. Fortunately, it was not passed.

Since AFN was successful in obtaining a federal law that finally included subsistence wording in ANILCA, we are now faced with an even less understood federal law and intervention situation. In summary we have a very unfair, unconstitutional mess on our hands.

Alaska is a very dynamic and growing state. People are drawn here for numerous reasons besides jobs and one of those major reasons is the hunting and fishing opportunities. The existence of a subsistence law, as exists today or as proposed by the Governor, will seriously affect an individual's desire to stay in such a prejudicial and corrupt climate. The tourism industry, both in hunting and fishing, will be drastically affected. Not all of this will happen overnight, but as individuals are excluded from sport hunting and fishing, they will apply for subsistence permits. In a relatively short number of years, it will be all subsistence fishing and hunting to the detriment of sport and commercial operations.

Currently, we have land still being given away by the state for "settling" A2, 5, 40, or even 160 acre tract of land does not necessarily raise the moose, caribou, salmon, and other needs of the individual that moves there to "live on the land". Yet rural preference would give that lucky winner of a lottery preference for all time to fish and game resource. "Rural" in itself is not the answer and we cannot go for a short-term solution to the subsistence mess.

We are willing to recognize limited subsistence needs of an extremely limited few remote individuals, but we will also state that we will not accept a priority subsistence right to an individual or family that has chosen the remote living over urban living as a way of life and expects all urban residents to give up their rights to a common resource. Neither do we recognize individuals or families taking part in the commercial activities commonly associated with Alaska's business or industrial expansion as having a priority right to suddenly with Alaska's business or industrial expansion as having a priority right to suddenly claim subsistence need and priority. Cook Inlet and its surrounding relatively densely populated area is an excellent example of an area where subsistence priority for any resource must be a very rare exception. You simply can no longer support that type of living no matter how desirable.

What all of this adds up to is the fact that the Boards of Fish and Game were doing an excellent job in accounting for true subsistence needs prior to the imposition of the literal translation of the law. We are therefore providing eleven points that we feel are necessary for consideration and inclusion in any amendment to the 1978 subsistence law. These points will enable the Boards of Fish and Game to return to an equitable allocation of the resources.

We hope that these points will be incorporated into SP 320 or other appropriate legislation. All points are important. These eleven points are:

1. Permit: A permit will be required for subsistence preference use. Permits will be based on personal or household qualifications. No fee will be charged for this permit .
2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that (1) the wild resource taken be used for personal and household consumptive use only, and (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent household. The Board may initially qualify an area, then restrict further to a community, then groups, the families, and individuals, as the situation and need arise... or otherwise pass a needs test as specified by the Boards.
3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations on seasons, quotas, bag limits, etc. The opportunity to harvest will be given a preference, but no guarantee of harvest is intended.
4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial, or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.

5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter, or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges shall be included in subsistence use.

6. POSITION STATEMENT

Subsistence harvests should be based on meeting the protein needs and in some cases, significant cultural needs of the harvesters. One species should be substitutable for another comparable species, and harvest should occur on those species that are most abundant and best able to withstand the harvest.

BACKGROUND

The need for the Board of Fisheries to be able to shift subsistence harvests to the most abundant species is statewide in application. However, it is most clearly demonstrated by the existing Cook Inlet situation. Current law stipulates that subsistence harvests are based on "customary and traditional" harvest patterns. The courts, as in the Tyonek case in Cook Inlet, ruled that harvests originally were a spring fishery on King Salmon, and thus the Board of Fisheries could not shift to a more abundant species of salmon for the Tyonek fishery.

The history of modern subsistence in Cook Inlet is that it was chiefly conducted by commercial fishermen who already owned gill nets. These people fished for subsistence early in the season until sufficient salmon were available to harvest commercially. They then fished commercially until the late fall, when they again subsistence fished for their winter food supply. In recent years the Board of Fisheries allocated early and late runs to sport fishermen and the large mid-season runs to commercial interests. The result, at least in Cook Inlet, was the subsistence fisheries are directed upon the small runs given to sport fishermen rather than the huge mid-season runs which have a commercial priority.

7. POSITION STATEMENT

Certain areas exist where the fishery resources are so sensitive that the efficient harvest methods associated with subsistence fish (gill nets) would destroy those resources. The Board of Fisheries must continue to have the authority, upon a formal finding of fact, to close such areas to subsistence fishing while still allowing less efficient methods, such as pole and line.

BACKGROUND

An example of this program is the trophy Rainbow trout streams of the Illiamna Lake Drainage. Trout in these streams grow very slowly with some large trout being over 10 years of age. These trout also occur in limited numbers. Counts by Alaska Department of Fish and Game personnel have, during some years and in some streams, found less than

1,000 adult trout. About 1975 one gill net, set illegally during one night, caught nearly ten percent of the adult Rainbow trout in Lower Talaric Creek. The Board of Fisheries has recognized the fragile state of the Rainbow trout resource in that area, and current regulations allow only one Rainbow trout to be taken per day; no bait or treble hooks are allowed to reduce incidental hooking mortality. Gill nets have been banned in and near these streams for approximately 10 years. However, since subsistence fisheries were allowed in these areas at one time, the Madison decision appears to grant priority to the use of subsistence gill nets over pole and line angling.

8. POSITION STATEMENT:

The the definition of subsistence gear in AS 16.05.940(22) is proper and should not be amended. That definition does not normally allow pole and line to be used as subsistence gear.

BACKGROUND

We strongly believe that pole and line should not be included for subsistence use for several reasons:

(1) The present problem with subsistence is principally that one Alaskan has been given priority over another Alaskan based solely on where he lives. We disagree with that concept. Including pole and line users in subsistence would simply increase the problem by giving more people a priority. We call for a major reduction in the number of people having a priority or preference. We have, since 1978, disagreed with the concept of giving priority to one person over another. Adding pole and line would be nothing more than giving sport fishermen a priority over commercial users. We reject that premise.

(2) Pole and line subsistence users would create an enforcement nightmare. How would we distinguish between subsistence harvesters and sport (non-resident?) fishermen?

9. POSITION STATEMENT

That a set of personal-use fishing regulations is needed to allow the harvest of fish, when they occur in numbers in excess to escapement and commercial/consumptive needs.

BACKGROUND

In many areas of the state, large numbers of fish (commonly salmon) occur which are excess to spawning needs and are not harvested by commercial, subsistence, or sport fishermen. Personal-use regulations may be an ideal tool for the Board of Fisheries to allow the harvest of the fish on an equal priority basis with other user groups. Personal-use regulations were created by the Board of Fisheries for exactly this purpose. However, the Madison decision vastly expanded subsistence qualifications, and personal-use harvesters have now been included in subsistence with a priority over other users. The

legislature should enact personal-use regulation, by statute, or permit harvest of fisheries resources on an equal priority basis.

10. POSITION STATEMENT

Rainbow/Steelhead trout shall not be subject a subsistence priority. The Board of Fisheries shall continue to have the authority to allocate the harvest of this species to any user group without priority on a case by case basis.

BACKGROUND

Despite Alaska's reputation as having some of the world's best Rainbow fishing, Rainbow trout in this state are limited both in number and location. Only in Bristol Bay and Cook Inlet do major numbers of Rainbow trout occur. For 1983, the latest year for which complete catch data exist, the entire statewide Rainbow harvest was less than 175,000 fish. Approximately 125,000 of these fish were from Cook Inlet waters, and over half of the statewide total were small stocked trout from lakes adjacent to urban centers.

Rainbow trout in Alaska are not only limited in number, they are slow-growing, and stocks are very easily damaged. In recognition of these facts, the Board of Fisheries regulates wild Rainbow stocks with very stringent bag limits, in many cases allowing only one trout per day,

11. POSITION STATEMENT

Subsistence fishing in Cook Inlet waters should be limited to the areas adjacent to English Bay, Port Graham, and Tyonek, as previously designated by the Board of Fisheries. All other non-commercial net fishing in Cook Inlet should be conducted under personal-use regulations.

BACKGROUND

This is the only recommendation of the Alaska Sportfishing Association relating to a specific area of the state. We must face the fact that Cook Inlet is unique. Over half the state's population resides in this drainage. Most of these people have access only to Cook Inlet fishery stocks. According to Fish and Game data, approximately 140,000 sport fishermen and several thousand commercial fishermen utilize Cook Inlet fisheries, in addition to persons wishing subsistence fishing privileges.

Regulations promulgated by the Board of Fisheries, after passage of the 1978 subsistence law, restricted gill net subsistence fishing to remote villages of Cook Inlet. These regulations successfully avoided the intense conflict which resulted when priority mandated subsistence gill netting was opened in high-use waters accessible to the Cook Inlet highway systems.

We have no objection to continue subsistence harvests by any Alaskan in the three communities noted above. However, in basic fairness to all Alaskans living in Cook Inlet and to avoid the inevitable future chaotic controversy associated with priority mandated gill net fisheries, in the remainder of Cook Inlet subsistence fisheries should not be permitted. We wish to make clear that we believe that gill net, or dip net fisheries, may be desirable in certain times and for sites in Cook Inlet waters. However, it is critical that these fisheries be permitted on a non-priority basis by the Board of Fisheries under personal-use regulations. If the subsistence amendment law is properly written, this would actually be a conclusion arrived at by the Board of Fisheries as a result of limiting criteria.

Jeanine Kennedy then took the stand in favor of rural subsistence. Stated that she believed the Natives in the rural areas would be willing to share, after they got their share.

Terrie Gottstein then followed and believed that subsistence users should be given priority if dependent on the natural resources. Senator Abood noted that many non-native residents don't feel this way, but they in no way wish to interfere with those who depend on subsistence, but rather only want their fair share.

Senator Vic Fischer wanted to know why rural users should be given priority over urban users when urban users are not totally against rural users. Abood then questioned what is the true need in the Rural areas?

Mr. Hank Otrowski then took the stand and told the committee that he felt this hearing was a public farce. Senator Abood then called Mr. Otrowski out of order and after Mr. Otrowski failed to comply with the Chairman's request, Senator then called a recess and ask Mr. Otrowski to step down from witness chair.

Mr. Thomas Stevens, Chairman of the Anchorage Fish and Game Advisory Committee spoke on behalf of this organization. Started by saying that the Tier II hunts as they are now being conducted are a sham. He requested that two documents containing the minutes from two previous meetings of the Advisory Committee be added to the minutes of this hearing. The documents are as follow

#### ANCHORAGE ADVISORY COMMITTEE MEETING

A special meeting of the Anchorage Fish and Game Advisory Committee meeting was held on August 19, 1985 at 7:00 PM at East High Auditorium. The meeting was advertised in both Anchorage papers for 5 days prior to the meeting, and in public service announcement on 8 radio stations.

Those present were:

Jeff Parker  
William Partlett

Ribert Eutt  
Denny Daigger  
Richard Johnson  
Cindy Lowery —  
David Sipos  
Stan Smith  
Tim Stevens

In addition, 150 interested persons were present and gave public testimony concerning Tier II hunts. Fish and Game personnel were present from Game Division, Subsistence Division and Boards and participated in the meeting.

Following approximately 4 hours of testimony and after receiving biological data from Division of Game that the closure will cause no biological harm to any of the herds involved, Denny Daigger moved that the Anchorage Fish and Game Advisory Committee request that the Department of Fish and Game effect an immediate emergency closure of all Tier II permit hunts under the concurrent jurisdiction of the Anchorage committee hunts based on the overwhelming testimony of 150 individuals at the public meeting held August 19, 1985 and 400 individuals polled at the public forum August 14. Conservation and wise use of the resource are the foundation of the public testimony.

Seconded by Bill Partlett.

The tier II hunts for immediate emergency closure are:

<u>Units</u>	<u>Hunt Number</u>	<u>Species</u>
6C	967	Moose
6C	968	Moose
7	501	Caribou
7 & 15E	831	Goat
	834	Goat
	835	Goat
	843	Goat
	855	Goat
7 & 14C	910	Moose
	911	Moose
8	872	Goat
11	406	Eison

	510	Caribou
13 & 24E	515	Caribou
	562	Caribou
14A	919	Moose
	920	Moose
14C	923	Moose
	978	Moose
	974	Moose
	975	Moose
14C	925	Moose
	927	Moose
	928	Moose
15E	930-939	Moose
16E	981	Moose
	982	Moose
13	1102	Sheep
	1150	Sheep
	1103	Sheep
	1104	Sheep
14A	1110	Sheep
14C	1130-1135	Sheep

The decision was based on conservation of the resource, defined as the most good for the most people for the longest period of time I.E. conservation on the sustained yield principal.

The vote was as follows:

<u>Name</u>	<u>Yes</u>	<u>No</u>
Cindy Lowery		X
Jeff Parker		X
Dave Sipos		X

Stan Smith	X
Bill Bartlett	X
Robert Putt	X
Dennis Daigger	X
Richard Johnson	X
Tim Stevens	X

Total Membership of Anchorage Advisory Committee	<u>15</u>
Majority of Members	<u>8</u>
Members Present	<u>9</u>
Number voting in favor of emergency closure	<u>6</u>

Three members of the committee (Mark Neuman, John Toenes, and Dan Schwarzer) voted by proxy in favor of the closure; however, their votes were not considered by the committee due to the fact that proxy votes would not be allowed.

Signed Tim Stevens, Chairman

notarized by Dorothy Labb, Notary Public

ANCHORAGE ADVISORY COMMITTEE  
August 19, 1985

7:15 PM Meeting called to order by chairman.

Members Present

Tim Stevens--Food Broker  
 Jeff Prker--Attorney  
 Richard Johnson  
 Bill Bartlett--Commercial Fisherman  
 Denny Daigger--DNR  
 Stan Smith--Wildlife Clubs  
 Dave Sipos--Non-consumptive User  
 Cindy Lower--Field Representative  
 for Greenpeace

Members Absent

Ron Swanson  
 Wayne Hall  
 Marilyn Hauser-excused  
 Bruce Griggs-excused  
 Dan Schwarzer-excused  
 Mark Neuman-excused  
 John Toenes-excused  
 Ken Wynn

Robert Putt-- Commercial Fisherman

Mitch Abood will hold teleconference Wednesday at the National Guard Armory, Tuesday, August 27th and Wednesday, August 28th.

Public Testimony

Sam McDowell Urged everyone to get involved - said Anchorage Advisor Committee should not accept emergency regulations - Anchorage members should be fired if they do. Spoke of Natives trying to take away hunting and fishing rights. Tier II hunts should be cancelled.

Dale Pondurant Wants cancellation this year of all subsistence hunts. They are unconstitutional, both state and federal. His temporary restraining order was denied - Judge Ripley supported questioning of states hunts - but he would not sign for it. Claims Fish and Game said during the hearing there would be biological harm if hunt was stopped. Doesn't believe there is any danger to resource. Want hunts closed down until law is constitutional. Want to get rid of state subsistence law. Doesn't want Tier II permit hunts I.E. wants all Alaska residents to be able to put in for a hunt. Tier II hunts do not allow everyone in the state to apply. Game are common property resource - everyone in state has right to hunt. Alaska is only state with Feds telling us what to do with our fish and game.

Warren Olsen Anchorage, Juneau, Fairbanks, and Ketchikan are not able to take part in any Tier II subsistence hunts. Anchorage Advisory Committee is spinning its wheels. Give strong message to Governor and legislature that we have been disenfranchised. Double standard for Natives.

Jerry Leubke Paxson Advisory Committee Chairman. Read minutes from their meeting re emergency closures of 913W and 515. Anyone can get foodstamps. Would prefer to see a season of 10 days for everyone - not a select permit hunt for a few.

Gordon Culpepper Read an editorial from Times. Alaskans divided - pitting races against each other - now permits are being issued by race. August 15 editorial Anchorage Times. Close all subsistence hunts. Subsistence hunters should have to turn over hide, antlers, hooves, because you can't eat it. Wants to return to the system of last year. (Pre-Madsion)

Lyle Montgomery Rural Alaska is just a place for people to live where they don't want to work. Too many people. Go back to laws before 1978. Cancel the hunts.

Al Stevens Strongly recommend closure of Tier II hunts. Wants audience polled for support.

Eud Tiche Subsistence drawing hunts should be done away with. The system has split up his household. Members not treated equally. Geese are being killed by Natives. Natives get free hospital, foodstamps, etc., now they have first shot of game and fish. Put everyone's name in hat. People who need meat should get road kills. Fish and Game shouldn't be political - should be left to competent biologists.

Paul Woodward Everyone should join the Southcentral Outdoor Council. Greenpeace, Sierra Club and other environmental groups do not represent hunters and fishermen - they should be removed from advisory council. Robert Putt said everyone has to be treated equally. Chair explained make-up of committees - non-consumptive users, too.

Chair asked for show of hands for closing Tier II - unanimous. No hands for continuing Tier II hunt.

Jim Cline Rural people choose to live where there are not jobs and then complain because they don't have money for food. Close all Tier II hunts - and next year open to all hunters equally.

Jim Stubbs Alaska is saying we aren't created equal. Do away with Tier II hunts - discrimination. Fish and Game has fine biologists but Juneau won't let them work.

Dom Skidmore Equal opportunity for permits.

Jim Haverd Got a Tok management area sheep permit - will not use it - doesn't believe there is such a thing as subsistence. Believes there is subsistence waste. Polar bears, walrus wasted for hides and tusks. Tier II should be stopped.

Jim Achison There is provision in law for kill for need.

Patrick Wright Was subsistence user right in Anchorage - fished at Pt. Woronzoff, Pt. McKenzie, and trapped hillside. Rights are being infringed on.

Rod Mulis Rural man shouldn't have any advantage over urban. Throw out subsistence permits hunts. Native land claims act was never settled - whites are still paying.

Jay Cross (Part Native) No real subsistence anywhere. If the Natives want to go to subsistence use, let them use woven nets, spears and bidarkas. There is no real subsistence with ATV's and 3-wheelers. Tyoneks will sell you king salmon for \$10.

10:00 lot of audience gone - 75-80 people left.

Joe Sheehan From Delta. Been on advisory committee in Delta. Alaska has changed over the years - game is managed for sustained consumption and used by all the people. No one can define subsistence. He says advisory committees up in the interior are voting to close hunts. Board of Game has been weak. It will get worse - not better. Recommended advisory committees publish in papers who got permits.

Mike Layton Go to the teleconference next week. Wants to be on the Anchorage Advisory Committee.

David Neese Against Tier II. Doesn't think bison should be subsistence - they are transplanted from lower 48. Go to newspapers - publicize. Anchorage members have to come from this group.

Doug Wheatin We're being divided - we have to stop it before it gets worse. This is the worst discrimination.

10:35 PM Closed public forum.

Committee Chairman questions to Sterling Eide: "Could the closure of the hunts result in biological damage to the Tier II hunts in Question?"

Eide: No, but all hunts are not same - some are trophy (archery), some are purely subsistence (cows.)"

Daigger asked if the Game Board established Tier II hunts based on a consensus of attorney general's opinion or just one individual attorney general.

Eide: "Don't know - opinion was prepared by AG's office prior to meeting."

Hunts in Anchorage (airport - hillside, Ft. Richardson), "Does harvest have to take place for biological reasons?"

"Not necessarily for biological - but for the good of the Anchorage residents - road kills - confrontation of moose-child. Some hunts are "aesthetic" not biological. 50" bulls, full curl rams. Some herds need reduction to grow."

Jim Fall "Nelchina - had a subsistence hunt prior to '85 permit hunts. Can't speak on all areas, but from his own knowledge, closing some hunts would be a hardship in 16P and Nelchina. Subsistence Division doesn't weigh individual "need" only how the local fish and game resource is used by the community. Not whether the people would starve without it. Dependency of community on resource."

"Was it necessary to provide across the board permits to put food on the table of subsistence users?"

Fall answered, "Things seemed to be going well before the Tier II hunts. What percent of applications were validated for truthful answers."

Question: "Was data on Tier II permit applications verified?"

Eide "Only two questions can be verified. Residency and number of years taken animal in hunt in past. Other questions are subjective - applicant must make determination re dependence on resource, income, etc."

Question: "Is there biological emergency to back closure?"

Eide "If there questions is, Will the animal population go into a decline because of these hunts? Absolutely not."

Explanation of difference between Tier I and Tier II. Tier II hunts are based on 3 criteria set out in statutes.

Parker "Would oppose the hunts based on objections to what we feel these hunts are all about. Urge board to work with legislature to get

laws back to pre-Madison. (Doesn't believe there is true emergency need to close hunt.) Same numbers of animals as has been harvested in past. Can tell commissioner we find status of these hunts objectionable - do everything to see that these hunts are eliminated in future."

Daigger "Same number of animals, but different people taking them. Stop hunts." Makes motion: "I move that the Anchorage Fish and Game Advisory Committee request that the Department of Fish and Game effect an immediate emergency closure of all Tier II hunts under the concurrent jurisdiction of this committee based on the overwhelming testimony of 150 individuals at the public meeting held in August, 1985 and 400 individual at the public forum held August 14. Conservation and wise use of the resource are the foundation of the public testimony."

Seconded by Bill Bartlett.

The paradox caused by creating full curl sheep subsistence hunts, 50 inch bull moose subsistence hunts, and transplanted species subsistence hunts completely destroys the credibility of the majority of the so-called Tier II subsistence hunts scheduled for 1985.

Listed below is the roll-call vote:

Against

Cindy Lowery  
Jeff Parker  
Dave Sipos

For

Stan Smith  
Bill Bartlett  
Robert Futt  
Dennis Daigger  
Richard Johnson  
Tim Stevens

Meeting adjourned

Signed Tim Stevens, Chairman

Mr. Stevens then went on to state that only a small amount of people truly depended on subsistence. Some of the permits that were used were not checked for validity and this was a black mark on the Fish and Game Board. A solution for issue is needed as soon as possible, due to the fact that it is causing the State a lot of headaches.

Mr. Archie Gottstein then took the stand and remarked that he felt that the Federal Government to be present when dealing with this matter. He suggested that the State stay out of the whole issue and let the Federal Government handle it.

Senator Abood noted that the Federal government was involved and that the legislature was complying with them.

Recess until 6:30PM