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moved for summary judgment on the plaintiffs' first claim. Both trial courts granted summary judgment to the board, after finding the subsistence criteria consistent with the legislative intent "to provide for and protect personal use . . . by persons who reside in rural communities. . . . "

On appeal, Madison and Gjosund seek reversal of the two trial court decisions. They claim that the board did not act within the legislative authority granted by AS 16.05.251(b) and AS 16.05.940(22) and (23) when it adopted the ten characteristics ultimately codified as 5 AAC 01.597.[10]

II. STANDARD OF REVIEW

We first consider the appropriate standard of review for this case. The legislature enacted AS 16.05.251(b), which requires the board to adopt regulations permitting the taking of fish for "subsistence uses." The legislature then defined subsistence uses as "customary and traditional" uses in AS 16.05.940(23), but it never defined

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10. Madison and Gjosund also contend that the board exceeded its statutory authority under AS 16.05.251(a) when it established a personal use fishery to accommodate people excluded from the subsistence fishery by 5 AAC 01.597. Because we hold 5 AAC 01.597 invalid, we need not address the issue of the board's authority to establish a personal use fishery.

"customary and traditional." The board developed the ten criteria (now codified as 5 AAC 01.597) to identify customary and traditional uses qualifying for a subsistence priority under AS 16.05.251(b). Therefore, the board interpreted the 1978 subsistence law and devised its regulatory criteria accordingly.

In Kelly v. Zamarello, 486 P.2d 906, 917 (Alaska 1971), we stated that the "reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations." However, the issues in this case concern statutory interpretation of the words "customary and traditional" and the question whether the board has acted within the scope of its statutory authority. Such issues "fall into the realm of special competency of the courts." Alaska Public Utility Commission v. Municipality of Anchorage, 555 P.2d 262, 266 (Alaska 1976). See also State, Commercial Fisheries Entry Commission v. Templeton, 598 P.2d 77, 80 (Alaska 1979).

In this instance, we are dealing with a question of statutory interpretation and will apply the substitution of judgment standard.

> The substitution of judgment standard is applied when the questions of law presented do not involve agency expertise, and, thus, a court need not take the deferential stance embodied in the rational basis test. . . . The standard is appropriate where the

> knowledge and experience of the agency is of little guidance to the court or where the case concerns "statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience."

Earth Resources Co. v. State, Department of Revenue, 665 P.2d 960, 965 (Alaska 1983), quoting Kelly v. Zamarello, 486 P.2d at 916 (emphasis added). Application of this standard allows the reviewing court to substitute its judgment about a statute's meaning for the board's interpretation, even if the board's interpretation had a reasonable basis in law. In this case, both trial courts erred by applying the rational basis standard to the board's statutory interpretation.

III. LEGISLATIVE HISTORY OF THE 1978 SUBSISTENCE LAW

Before 1978, subsistence fishing was defined as fishing for "personal use and not for sale or barter." Formerly AS 16.05.940(17). The 1978 subsistence law redefined subsistence fishing as fishing for "subsistence uses." AS 16.05.940(22). "Subsistence uses" were defined as "the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption . . . and for the customary trade, barter or sharing . . . . " AS 16.05.940(23). The board argues that the legislature intended to narrow the scope of subsistence fishing to mean fishing by individuals residing in those

rural communities that have historically depended on subsistence hunting and fishing. Under this interpretation, the board asserts that its criteria are consistent with the legislature's intent.

The board's argument reveals a fundamental misconception about the structure of the 1978 subsistence law. There are potentially two tiers of subsistence users under AS 16.05.251(b). The first tier includes all subsistence users. Under the statute, all subsistence uses have priority over sport and commercial uses "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. . . ." AS 16.05.251(b). If the statutory priority given all subsistence users over commercial and sport users still results in too few fish for all subsistence uses, then the board is authorized to establish a second tier of preferred subsistence users based on the legislative criteria expressed in AS 16.05.251(b), namely, customary and direct dependence on the resource, local residency, and availability of alternative resources.

Criteria like the ten criteria of 5 AAC 01.597(a) could be used to distinguish first-tier general subsistence users from second-tier preferred subsistence users, since most of the criteria relate to either "customary and direct

dependence" or "local residency," two of the three criteria set out in AS 16.05.251(b). However, before there is any occasion to restrict subsistence fishing to second-tier preferred subsistence users as distinct from all subsistence users, the board must make two findings. It must find: (1) that it is necessary to restrict the taking of fish for sustained-yield purposes; and (2) that eliminating sport and commercial uses will not assure the maintenance of fish stocks on a sustained-yield basis and, thus, establishing a priority among subsistence users is also necessary. The board erred because it applied the ten criteria without making these findings.

The board argues that the words "customary and traditional" in AS 16.05.940(23) authorize it to define first-tier subsistence users by their area of residence. We reject this argument for several reasons. First, the argument ignores the two-tier structure of AS 16.05.251(b) that defines only the second-tier subsistence users in terms of residency. If the legislature had intended to define the class of first-tier general subsistence users by area of residence, it would not have expressed that factor with respect to only the second tier of preferred subsistence users. Moreover, the phrase "customary and traditional" modifies the word "uses" in AS 16.05.940(23). It does not refer to users. The 1978 subsistence law refers to

"customary users" at only one point, when it defines the preferred subsistence users of the second tier with the three statutory criteria in AS 16.05.251(b).

The House Special Committee on Subsistence drafted a letter of intent for House Bill 960[11] that supports our interpretation. With respect to AS 16.05.251(b) (which was § 6 of House Bill 960),[12] the letter of intent made clear the priority to be given subsistence uses in general over sport and commercial uses and explained the two-tier system among subsistence users.

> Sections six and seven: These two sections, which are virtually identical for the Boards of Fisheries and the Board of Game, are intended to statutorily set out the priority given to subsistence use of fish and game resources. . . . Further, these sections set forth a priority of users if restrictions are needed because of the unavailability of resources. The priority list is an attempt to insure that those with the most dependence upon the fish and game resources are the last to be restricted.
>
> If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations, or in order to assure that subsistence users may continue to take fish or game, it is the intent of the Committee that sports or commercial use be restricted before

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11. HB 960 became the 1978 subsistence law, ch. 151 SLA 1978.

12. The committee also intended to provide a priority for subsistence hunting in AS 16.05.255, as indica ed in § 6 of HB 960.

> subsistence use. If these restrictions are inadequate, restricting of subsistence use as well is authorized based upon the dependence on the resource, the local residence of the subsistence users, and the availability of alternate resources.

(Emphasis added).

Only in connection with AS 16.05.251(b) does the letter of intent discuss applying residence criteria to subsistence users, and it does so only with respect to second-tier subsistence users. With respect to the definition of subsistence uses in § 17 of House Bill 960 (now AS 16.05.940(23)), the letter of intent does not suggest that the phrase "customary and traditional" was meant to describe users as well as uses. The letter of intent states:

> Section seventeen: Subsection (26) defines what uses can be made of subsistence caught fish and game. It allows it to be used for direct personal or family consumption, for barter as defined in subsection (27) and for sharing the subsistence caught fish and game with other persons. This subsistence caught fish and game which is shared can then only be used for personal or family consumption. This subsection also broadens the definition of family to include the extended family situation.

The letter of intent clearly expressed the legislative resolve to establish a priority for subsistence use of fish and game. The 1978 subsistence law also increased the number of uses qualifying as subsistence fishing by including trade and barter.

The board based its restrictive regulation, 5 AAC 01.597, on the words "customary and traditional." The legislature did not define these words in the 1978 subsistence law. In such a case, reference to legislative history may provide an insight into the legislature's intent and a statute's meaning. North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978). In the House floor debate on House Bill 960, Representative Cotton introduced an amendment to delete the words "customary and traditional" from the statute. The floor manager of the bill, Representative Anderson, opposed the amendment in the following speech:

> The two words are used in this context to put some guidelines around the uses of Alaska's freedom of resources. What we were afraid of, it was brought to our attention by people who were concerned that this would leave the field of the definition wide open. That newcomers just coming to the State of Alaska would automatically be able to establish not only residency in 30 days, but be able to go out and state that they have a customary and traditional use of Alaska's fish and game resources. The use of customary and traditional also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with the aboriginal uses, but also those that have come in, those people who have come in later. . . . [T]he nonnative people in the State of Alaska have established customary and traditional uses of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game more clarification in the area, we have come up with the (inaudible) of customary and traditional rather than leaving that section

> wide open. The design is not to be restrictive but to provide guidelines and that is basically what I feel and many . . . members felt it was necessary in . . . adding or retaining those two words "customary and traditional."

(Emphasis added).

We consider statements made by a bill's sponsor in the course of legislative deliberations to be relevant evidence when a court is trying to determine legislative intent. Alaska Public Employees Association v. State, 525 P.2d 12, 16 (Alaska 1974). Anderson argued for the retention of "customary and traditional" for use as a guideline. His major concern focused on the potential pressure put on resources by newcomers. In his view, the words "customary and traditional" recognized and protected a historical subsistence use by both native and non-native Alaskans. The words were not intended to restrict subsistence use.

Another part of the House debate serves to clarify the statute's meaning. Representative Parr expressed concern that the board might use AS 16.05.251(b) to eliminate Fairbanks residents from subsistence use. Some Fairbanks residents often traveled to the Chitina Dip Net Fishery near the Copper River for their fishing. Representative Anderson responded to these concerns:

> If we get into a condition where the fish stock gets down to the point where there is no way that you can allow any take, the first people that you are going to cut off are the commercial and then the sports, first, and

> then the last people that you are going to cut off are the subsistence people who have the greatest reliance on the resource. . . . [I]f it were defined that dip net fishing were for subsistence uses and not for sale or any other purpose, that would be allowed and I would think that people from Fairbanks would fall under these categories. I don't know where else they would go to . . . where people from Fairbanks make it a custom to go down to the Chitina area and if it was determined that that resource was down to the point where only subsistence would be allowed, those people would be taken care of under this section. I don't see that it is eliminating.

(Emphasis added).

In the House debate, Anderson attempted to assure Parr that residents of urban Fairbanks could be considered priority subsistence users. Contrary to the board's interpretation of the subsistence statutes, there is no indication that legislators understood the 1978 subsistence law to restrict subsistence use to either a rural or a community context. In fact, the House debate indicates that the 1978 subsistence law was necessary to protect subsistence uses as a priority use of Alaska's fish and game resources. This intent is clearly expressed by the preamble to the subsistence law:

> [I]t 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.

(Emphasis added).

The legislative history indicates that the legislature intended to protect subsistence use, not limit it. The words "customary and traditional" serve as a guideline to recognize historical subsistence use by individuals, both native and non-native Alaskans. In addition, subsistence use is not strictly limited to rural communities. For these reasons, the board's interpretation of "customary and traditional" as a restrictive term conflicts squarely with the legislative intent.[13]

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13. The board notes that the words "customary and traditional" in the 1978 subsistence law were taken from § 703 of HR 39, 95th Congress, 2nd Session (1978), which Congress passed in modified form in 1980 as the Alaska National Interests Land Conservation Act (ANILCA), Public Law No. 96-487, 16 U.S.C. § 3113. Therefore, the board argues that the words in the Alaska act should have the same meaning as the words in the federal act and limit subsistence uses to residents of rural Alaska. We reject this argument for several reasons. First, § 703 of HR 39 in its 1978 form did not contain the "rural Alaska residents" limitation now found in 16 U.S.C. § 3113. Second, the Alaska House floor debate reveals that Representative Anderson, the bill's floor manager, understood the 1978 subsistence law to allow the urban residents of Fairbanks to qualify as general subsistence users. Finally, in the preamble to the 1978 subsistence law, the Alaska Legislature expressed its intent to "recognize the needs, customs and traditions of Alaskan residents." While the legislature declared that beneficial use of fish and game resources "by

(Footnote Continued)

IV. THE BOARD'S ADOPTION AND APPLICATION OF 5 AAC 01.597

We now turn to the board's interpretation of the 1978 subsistence law. In December 1980, the board met to examine the uses of salmon in Cook Inlet and to determine which uses would qualify for the subsistence use priority. Tom Lonner, the director of the subsistence section of the Alaska Department of Fish and Game, presented the department's recommendations on the subsistence statute. He suggested that the board begin its analysis of customary and traditional uses with an assessment of user profiles and use patterns on a case by case basis. Lonner noted that such information was most lacking in the major Cook Inlet subsistence fishery because of the rapid growth of subsistence uses in recent years, and that obtaining such information would be expensive.

The board did not follow Lonner's suggested approach.[14] After the board heard extensive testimony on subsistence use, its chairman appointed a committee,[15]

(Footnote Continued)

all state residents" should be carefully monitored and regulated, it did not express an intention to limit subsistence uses to rural Alaska residents.

14. A board member, Nick Szabo, stated that the board's limited budget prevented implementation of a case by case approach.

15. The board stipulated in 1982 that it violated

(Footnote Continued)

consisting of board members and staff, to identify subsistence uses of salmon in Cook Inlet. The committee drafted ten criteria to identify subsistence uses and presented them to the board.

Lonner worked with the committee to develop the ten criteria and explained them to the board. He stated: "These tenets here are . . . based on . . . the evidence about four relatively self-contained communities. . . . If, however, you have individual applicants, . . . this might not suffice as a test." Therefore, the board was fully aware of the limitations of the proposed criteria.

At its March 1981 meeting, the board received further testimony on uses of Cook Inlet salmon from the area advisory committees and several individual witnesses. After deliberation, the board decided to apply all of the ten criteria "to determine which uses are customary and traditional and therefore are eligible for the subsistence priority." Only the fisheries associated with Tyonek, English Bay and Port Graham met all ten criteria.

In its findings of fact, the board applied the ten criteria to individuals such as Madison and Gjosund. In particular, the individuals failed to meet the second

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(Footnote Continued)

AS 44.62.310-12 (public meeting provision) at its December 1980 meeting.

criterion: "A use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use."[16] The board found:

> Although some users have shown the existence of a community of interest (e.g., the Kenaitze Tribe and the Kachemak Bay Subsistence Group), these persons either are too widely dispersed or are too heterogeneous to be considered an identifiable community, subcommunity or group. On the evidence presented, the Board cannot conclude either that activities are conducted in common or that sharing or other group interchange occurs in relation to the resource.

In other words, an individual subsistence user (such as Madison or Gjosund) would not qualify for a subsistence use priority from the board unless he were part of an identifiable subsistence community or group.[17] Under the

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16. See 5 AAC 01.597 set out in n. 8 above.

17. In contrast, the Commercial Fisheries Entry Commission issues commercial fishing permits on an individual basis. See AS 16.43.250. We do not, however, read the words "customary and traditional" as a grant of authority to the Department of Fish and Game and the Board of Fisheries to impose a "grandfather" rights system with respect to subsistence users. Imposing an equitable system of grandfather rights is an extremely complicated task, as Alaska's experience with such a system in the commercial salmon and herring fisheries has demonstrated. See AS 16.43.010-990 and the numerous, and ever increasing, judicial decisions interpreting this act noted in the annotations. Such a system would also be extremely controversial. It is preposterous to suppose that the legislature intended to create such a system merely by using

(Footnote Continued)

board's regulation, many individual users who have historically depended on subsistence fishing are eliminated from subsistence use at the outset.

The board's regulation, 5 AAC 01.597, is inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing. The regulation exceeds the authority delegated to the board because it operates too restrictively in its initial differentiation between subsistence and non-subsistence uses. Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect.

The decision of the two trial courts that 5 AAC 01.597 is consistent with AS 16.05.251(b) and AS 16.05.940(22) and (23) is REVERSED.

(Footnote Continued)

the words "customary and traditional" in the definition of subsistence uses, with no more notice or guidance than is inherent in those words.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

On May 14, 1982, former Secretary of the Interior James Watt certified that the State of Alaska's subsistence program complied with the requirements of sections 803, 804 and 805 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. SS 3113, 3114 and 3115. Accordingly, the State has for the last three years assumed primary responsibility for the management of the program providing the preference for subsistence uses on the public lands in Alaska. Unfortunately, the Department of the Interior finds it necessary to advise you formally that the State subsistence program is no longer in compliance with the requirements of ANILCA as specified in Title VIII.

As you are aware, the Alaska Supreme Court, in Madison v. Alaska Department of Fish and Game, 696 P.2d 168, Op. No. 2911 (Alaska Feb. 22, 1985), invalidated a State Board of Fisheries regulation designed to determine eligibility for subsistence fishing in the Cook Inlet Region because the regulation was inconsistent with the State subsistence statute. This ruling held that under the State statute the subsistence preference must be extended to both "rural" and "urban" subsistence users. Because section 803 of ANILCA limits the subsistence preference to "rural Alaska residents," the Madison decision raised questions as to the continuing eligibility of the State to manage subsistence on public lands in Alaska under section 805(d) of ANILCA. In an effort to determine the State's views on this issue prior to Departmental action, I requested on April 7, 1985, the legal opinion of the State Attorney General on the effect of the Madison decision. To date we have received no formal response from the State on the effect of Madison on the State's eligibility under section 805(d) of ANILCA. We did receive a letter outlining the administrative actions taken by the State in the wake of Madison but it offered no opinion regarding compliance with Title VIII. Nonetheless, the absence of legislative action this year to amend the State subsistence statute to conform to ANILCA has confirmed our preliminary determination that the State is no longer in compliance with the requirements of section 805(d).

You are hereby advised that the State has until June 1, 1986, to revise its subsistence program to bring it back into compliance with the requirements of sections 803, 804 and 805 of ANILCA. Compliance will require that the subsistence preference be limited to those rural Alaska residents who customarily and traditionally make use of subsistence resources. If the State has not conformed its subsistence program to the requirements of ANILCA by that date, the Department will be obligated to discharge its obligations pursuant to section 805. As we noted to the State Boards of Fisheries and Game in 1982, there are various ways to comply with the requirements of section 805; the regime in force when the Madison decision was handed down represented one possible approach. I am confident and hopeful that the State can make the necessary changes in its program within this period, and I offer the full cooperation and assistance of the Department in this effort.

The Department has concluded that section 805(d) does not require an immediate Federal take over of the subsistence program, given the circumstances by which non-compliance with the ANILCA requirements has occurred. Section 805(d) provided the State with a one year period of grace following enactment of ANILCA in order to give the State an adequate amount of time to prepare and implement a program that met the requirements of ANILCA. After successfully establishing an adequate program, the State made a good faith effort to keep in compliance with the requirements of Title VIII of ANILCA. Indeed, the recent problems that have befallen the State's program have not been the result of legislative repeal of the program; instead, an unexpected State Supreme Court ruling in a case that was vigorously defended by the State has altered the State's subsistence program and created a non-compliance situation. Under these circumstances, we are persuaded that the spirit and intent of section 805(d) warrants a grace period in order to provide the State with a reasonable opportunity to make the necessary adjustments to its program. We have chosen as a deadline June 1, 1986, because it is roughly one year from the time the State legislature failed to rectify the State subsistence statute.

This course of action is further justified due to the fact that it appears unlikely that any adverse impact on rural subsistence uses will occur during the grace period. The State subsistence program will continue to ensure that the Title VIII class of rural subsistence users are able to hunt, trap, and fish for necessary resources. The problem is that the Madison decision permits urban residents to be included in the subsistence class, contrary to the requirement of ANILCA that the preference be limited to rural residents. My decision that a grace period is warranted would, of course, have to change if significant adverse impacts on rural, customary and traditional subsistence users and on subsistence resources subsequently become apparent.

I fully expect that the State, in cooperation with the Department, will bring its subsistence program back into compliance with the requirements of Title VIII of ANILCA prior to June 1, 1986. I have, however, directed the U.S. Fish and Wildlife Service, in cooperation with the Office of the Solicitor, to begin preparation of a contingency plan for providing the subsistence preference on public lands that meets the requirements of ANILCA. My goal is to ensure that, in the event that the State is not able to bring its program into compliance by June 1, 1986, the Department is ready and able to discharge effectively its obligations under sections 803, 804 and 805 of ANILCA.

As a matter of information, the Madison ruling does not expand eligibility to pursue subsistence activities in those national parks and monuments where subsistence taking is authorized. Eligibility to engage in subsistence activities within those units of the National Parks System in Alaska is still determined pursuant to Federal regulations issued in 1981, since the State of Alaska never sought to acquire control of this aspect of the ANILCA subsistence program.

I regret the unexpected decision by the Alaska Supreme Court in the Madison case that has moved the State subsistence program out of compliance with the requirements of ANILCA. I am confident, though, that the State will be able to bring its program back into compliance by within one year.

Sincerely,

Bill Horn

William P. Horn
Assistant Secretary
Fish and Wildlife and Parks

cc: AK Delegation
CHM-Sen Energy
CHM-House Interior
Ranking Minority of both Committees
Asst. Sec, Peter Myers, U.S. Dept. Agriculture

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MEMORANDUM

TO: Representative Ben Grussendorf
Speaker of the House

FROM: Representative Adelheid Herrmann
Co-Chair, House Resources Committee

DATE: April 29, 1985

SUBJECT: Chronology of Events on House Bill 288, An Act relating to the Taking of Fish and Game for Subsistence and Personal Use

As Co-Chair of the House Resources Committee, I would like to report to that I am satisfied that House Bill 288, an act relating to the taking of fish and game for subsistence and personal use, was given a thorough review in committee, and that ample time for public testimony was provided. We held a total of seven hearings on this bill, many lasting for hours at a stretch, and this is considerably more than the committee has devoted to any other bill this session. Extras meetings were scheduled in order to accommodate the interests of the public in this bill, and I am pleased to say, that despite the extra hours, the meetings were well attended by members.

Four of the seven hearings were statewide teleconferences that were devoted to taking testimony from the public. By way of the teleconference, the committee heard approximately ten hours of testimony from members of the public alone. In addition another seven hours were spent taking testimony from expert witnesses. Our final meeting was a marathon five hour meeting at which time we addressed all concerns and a total of nine amendments raised by committee members.

With the exception of the final hearing, all the other hearings were part of the teleconference network. Three of these were provided to give the public an opportunity to testify, and another three of these were made available so that the public could listen to the committee take testimony from expert witnesses. In addition, throughout the committee process written testimony and letters were reviewed and included as part of the record and as a part of members' files.

The committee heard from many in favor of the bill and from many against, but also from many who had no position but just comments or insights to offer. Testimony was taken from across the state and ended early on one occasion because no one else wished to testify, and was extended on another occasion in order to give everyone a chance to speak.

I was pleased that after these lengthy deliberations the committee saw fit to move the bill out as was indicated by a seven to one vote. The summary of the committee report with members signing with individual recommendations is discussed below.

Because of the interest in this legislation, I am providing an account of each meeting in summary form, and each amendment addressed by the committee. Should you find any additional information helpful, please do not hesitate to contact me.

1st Hearing

March 25, 1985
8:30 AM to 9:47 AM
1 hour and 15 minutes
Statewide Teleconference
Short statements by representatives of:
the Department of Fish and Game
the Department of Law
the Board of Fisheries
Opened up for witness testimony beginning with those witnesses present in Juneau
Witness Register and minutes attached
No action on the bill

2nd Hearing

March 26, 1985
8:30 AM to 9:58 AM
1 hour and 38 minutes
Statewide Participation Teleconference
Witness Register and minutes attached
No action on the bill

3rd Hearing

April 2, 1985
8:30 AM to 9:55 AM
1 hour and 25 minutes
Statewide Listen-In Teleconference
Testimony from attorneys involved in the case (other than the Attorney General): Chuck Robinson, Martin Friedman, and, Don Mitchell
No action on the bill

4th Hearing

April 4, 1985
8:39 AM to 11:54 AM
4 hours and 15 minutes
Testimony ended 35 minutes earlier than scheduled, witness testimony was exhausted.
Statewide Public Participation Teleconference
Draft Witness Register attached
No action on the bill

5th Hearing

April 8, 1985
5:30 PM to 9:07 PM
3 hours and 37 minutes
Scheduled time for testimony was extended to accommodate everyone who signed up to testify
Statewide Public Participation Teleconference
Draft Witness Register attached
No action on the bill

6th Hearing

April 9, 1985
8:32 AM to 9:58 AM
1 hour and 26 minutes
Statewide Listen-in Teleconference
Testimony from the Department of Fish and Game and the Department of Law
No formal action on the bill, although the committee did agree to drafting a committee substitute to include a definition of rural presented to the committee by Representative Goll. Representative Goll also suggested language for a letter of intent.

7th Hearing

April 13, 1985
1:13 PM to 6:10 PM
4 hours and 57 minutes
The committee addressed all amendments presented and a letter of intent. A summary of the ten amendments is provided below.
The committee moved to pass the bill out with individual recommendations and requested staff to redraft a letter of intent which was approved by the committee on Monday April 15.

For your convenience, I am providing the list below as a summary of the amendments addressed by the committee on this bill. For the purposes of this summary, the amendments are paraphrases. For the exact wording, please refer to the minutes.

Amendment 1

by Shultz: would have set a population limit of 5,000 to define rural communities.

failed by a 7 to 1 vote.

Amendment 2

by Shultz: would have included in the personal use fishery those fishing with hand held hook and line.

failed by a 5 to 3 vote.

Amendment 3

by Shultz: would have established a priority for allocating fish and game stocks for commercial uses by residency.

failed by a 6 to 2 vote.

Amendment 4

by Shultz: inserted the word "non-commercial" into the definition of subsistence uses so that subsistence would mean the "customary and traditional noncommercial uses of..resources..."

passed by a 5 to 3 vote.

Amendment 5

by Shultz: would have deleted language in the findings so that the paragraph would have addressed the importance of fish and game stocks to all Alaskans instead of those domiciled in rural communities or areas.

failed by a 6 to 2 vote.

Amendment 6

by Jenkins: would have defined priority as a preferred rather than as an "exclusive" use, and would have required that when restrictions were necessary that they be on a step by step basis.

failed by a 4 to 4 vote.

Amendment 7

by Sund: in the definition of subsistence uses this amendment changed "an Alaskan domiciled in rural areas of the state," to "a resident domiciled in a rural area of the state..;" also, added the following definition: "rural area" to means a community or area of the state in which the taking of fish or wildlife for personal and family consumption is a significant characteristic of the economy of the community or area."

passed by a 7 to 1 vote.

Amendment 8

by Shultz: would have added language to require that subsistence taking of the resource be "by customary and traditional methods."

failed by a 6 to 2 vote.

Amendment 9

by Jenkins: would have included a "sunset clause enacting this legislation until October 31, 1985 at which time it would be replaced with the existing law.

failed by a 6 to 2 vote.

Letter of Intent

the committee agreed to adopt the letter of intent conceptually. This was approved in final form on Monday, April 15. At the hearing April 13, the committee agreed to pass out the letter of intent by a 7 to 1 vote.

Motion to Pass the Bill

The motion to pass the bill from committee with individual recommendations was passed by a 7 to 1 vote.

Individual Recommendations on the Committee Substitute and the Letter of Intent

Representative Herrmann, Co-Chair - Do Pass
Representative Cato - Do Pass
Representative Thompson - Do Pass
Representative Sund - Do Pass
Representative Wallis - Do Pass
Representative M.W. Miller - Do Not Pass
Representative Drue Pearce - Do Not Pass Without Amendment
Representative Roger Jenkins - Do Not Pass
Representative Dick Shultz, Co-Chair - Do Not Pass Unless Amended

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 24, 1986

Honorable Tim Kelly
Chairman, Senate Rules Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 288 (Subsistence)

Dear Senator Kelly:

The subsistence bill (HB 288) has been transmitted to the Senate Rules Committee from the Judiciary Committee. Attached for your information is a briefing paper on the background of HB 288, which I introduced last year to solve the problems created by the Madison case. However, I have grave concerns about the recent Senate Judiciary Substitute for HB 288, which does not comply with ANILCA and which would result in federal takeover. (See the discussion in part VII of the attached background briefing.)

The federal government has indicated that it is gearing up to assume management of fish and wildlife on federal lands and waters -- which make up at least 60% of the state -- as of June 1, unless Alaska's statutes are brought into alignment with the requirements of the federal subsistence law. I therefore strongly urge your committee to adopt a substitute for HB 288 that deletes the language in the Judiciary Substitute on page 4, lines 10 through 27, and to pass it on to the Senate floor as soon as possible. Such an amendment is essential to achieve a bill that is constitutional, enforceable, complies with ANILCA, and returns to the Boards of Fisheries and Game the flexibility to treat all Alaskans fairly.

Sincerely,

Bill Sheffield
Governor

Enclosure

Background Briefing on

HB 288 (Subsistence)

I. Introduction

In February 1985 the Alaska Supreme Court interpreted the state subsistence law for the first time in Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). The decision caused numerous problems for the state, which the governor sought to address in House Bill 288. The bill passed the House in 1985 and the Senate is currently considering it. This analysis describes the effect of Madison, the goals of the Governor's bill, how the Senate Resources Committee substitute for HB 288 would work if enacted, and the serious problems with the Senate Judiciary Committee substitute.

II. The Situation Before Madison

A. The state statutes: In 1978, the legislature enacted a state subsistence law which did four things.

1. It defined subsistence uses as "the customary and traditional uses" of fish and game for

food, clothing, trade and other specified purposes.

2. It required the Boards of Fisheries and Game to authorize subsistence hunting and fishing, unless sustained yield would be threatened.

3. It required that in cases of relative resource shortage, subsistence uses would have priority over other uses.

4. In situations where only subsistence uses could be authorized and not all those eligible for subsistence could be allowed to hunt and fish, it required that the boards determine who should be authorized to harvest based on three criteria: dependence, local residency, and available alternatives.

B. The boards' interpretation: The boards adopted a joint procedural regulation interpreting the subsistence law. The regulation did several things.

1. It limited subsistence uses to "customary and traditional uses by rural Alaska residents."

2. It listed eight criteria the boards would use to identify subsistence uses of a community or area, such as skills being passed from generation to generation, and reliance on a wide diversity of resources.

3. It clarified that the boards would provide a reasonable opportunity for subsistence, unless the resource would be jeopardized.

4. It clarified that subsistence uses could not be cut back until all other uses were first cut back, and, if necessary, eliminated. Subsistence uses would be the last to go in times of limited resources.

C. Personal use: The Board of Fisheries in regulation established the personal use fishing category, so that people from areas which did not have subsistence uses (for example, the Fairbanks people who fish at Chitina) would be able to harvest fish with efficient means, such as nets, for their own use, without a priority. The board could allocate among personal use, sport, and commercial fishing in its reasonable discretion in any particular situation.

III. Madison

A. The decision: The Alaska Supreme Court ruled that the state legislature in 1978 had not intended that subsistence be limited to rural customary and traditional uses, and did not mean for it to be authorized on a community or area basis.

B. ANILCA consequences: ANILCA allows the state to continue managing fish and game on all land and water in Alaska if the state provides in a law of general applicability, among other things, the same definition of subsistence uses as appears in ANILCA, "customary and traditional uses by rural Alaska residents" of fish and game.

C. Harvest disruptions: Madison in combination with State v. Eluska 698 P.2d 174 (Alaska App. 1985) resulted in extensive disruptions in 1985 of harvest opportunities.

1. Eluska held that the Board of Game had to have a separate set of regulations for subsistence uses, and could not simply accommodate subsistence through the general hunting regulations, and it also held that unless subsistence hunting regulations were

adopted, people could raise the "subsistence defense" in prosecutions for out-of-season hunting.

2. Since Madison meant that hunting by all Alaskans for food was subsistence hunting, action by the Board of Game in response to Eluska resulted in numerous "tier 2" hunts.

   a. The statutes' three criteria (dependency, local residency, and alternative resources) were used in a point system to rank everyone who wanted to participate in those hunts and to decide who could participate.

   b. The board could not after Madison use permit drawing lotteries, which had been a standard tool in selecting which non-rural Alaskans could hunt, for example, the Nelchina caribou.

3. Further disruptions can be expected, since at least one lower court has interpreted Madison to give sport fishing by Alaska residents a priority over commercial fishing. State v.

Skuse, 3KN-85-1111 CR (January 17, 1986).

IV. The Governor's Bill

Shortly after Madison, the Governor introduced HB 288, designed solely to address the problems created by Madison.

A. It would amend the definition of "subsistence uses" in statute to clarify that they are the customary and traditional uses by rural Alaska residents of fish and game.

B. It would add a definition of "personal use fishing" to the statutes to provide a category for non-rural Alaskans to harvest fish for their own use by efficient means, such as nets.

1. For example, the residents of Fairbanks and other parts of Alaska have long fished with dip nets at Chitina for salmon, and the residents of Kenai and Anchorage have long fished with gill nets in Cook Inlet for salmon.

2. The category would be used in the board's discretion on a situation by situation basis, along with sport and commercial fishing, and none would automatically be the last priority, nor the second priority to subsistence.

V. The Senate Resources Substitute Compared to the Governor's Bill

A. Similarities: The Senate Resources Substitute does accomplish the two necessary results which the Governor's bill addressed. It:

1. Adds a clarification that "subsistence uses" are uses of fish and game by rural Alaska residents.

2. Establishes as a definition of "personal use fishing" in statute.

B. Differences: The Senate Resources Substitute also substantially reorganizes the current statutes in ways not necessary to address Madison. It additionally provides the following:

1. Requires the boards to identify fish stocks and game populations used for subsistence.

   a. This should not result in ANICLA problems if the identification process takes into account the fluctuations which Congress recognized are inherent in subsistence uses, which are often dependent on the sporadic movement of game over time (e.g. the varying migration patterns of caribou).

   b. This should not result in implementation problems if the intent is an ongoing identification process as data becomes available.

2. Authorizes the boards to establish an administrative appeal process.

   a. This could be cumbersome to implement.

   b. This would be redundant to the reconsideration and petition procedures already in existence.

3. Prohibits the use of the "subsistence defense" by individuals being prosecuted for violations of a statute or regulation.

   a. People who feel the regulations do not adequately accommodate a reasonable opportunity for subsistence may submit a proposal or a petition to the appropriate board requesting change.

   b. People still unsatisfied by the board response may file a civil suit challenging the regulation.

4. Mandates that the boards require subsistence permits in many situations where the boards may not find that useful.

   a. The boards already may require subsistence permits when useful.

   b. This would burden the public with extra paperwork.

   c. This could be difficult to implement and administer, if the boards required

individual permits in all cases instead of community or area permits.

5. Requires the Board of Fisheries to adopt criteria upon which to base its allocation decisions.

6. Makes explicit the existing requirement that non-subsistence uses -- sport, commercial, and personal use -- be treated fairly.

7. Provides that Alaska residents have a preference over non-state residents in the use of moose, caribou, elk, and deer consistent with and in addition to the subsistence preference.

VI. The Senate Resources Substitute: How Subsistence Uses Would Be Identified and Regulated

A. The Boards of Fisheries and Game would be required to adopt subsistence regulations

1. The Senate Resources Substitute requires the Boards of Fisheries and Game to adopt subsistence fishing and hunting regulations for each fish stock and game population which

has been subject to subsistence uses, and for which there is a "harvestable portion." Subsistence regulations would have to provide a reasonable opportunity to satisfy subsistence uses (AS 16.05.258(c)).

2. The bill also clarifies that subsistence hunting and fishing are subject to reasonable regulation of seasons, catch or bag limits, and methods and means (As 16.05.258(f)).

B. The bill sets out procedural requirements for the boards to follow in developing subsistence regulations

1. The bill requires the boards to make several specific findings in adopting subsistence regulations. Under AS 16.058(a)and(b), the boards must;

   a. identify the specific fish stocks and game populations or portions of stocks and populations which have been customarily and traditionally used for subsistence in each rural area;

b. determine what portion, if any, of these stocks and populations can be harvested consistent with sustained yield;

c. determine how much of the harvestable portion is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

2. In making these findings the boards will have to identify, by community or area, the residents "domiciled in a rural area of the state" who are engaged in subsistence uses of the fish stocks or game populations for which regulations are being developed. This will require the boards to determine which areas of the state are rural and which uses of fish and game are subsistence uses.

C. The bill changes the definition of "subsistence uses" and adds a definition of "rural area."

1. "Subsistence uses" are defined as the "noncommercial, customary and traditional uses of wild renewable resources by a resident domiciled in a rural area of the

state for direct personal or family consumption as food, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption" (AS 16.05940(23)). (The new portions are underlined.)

2. "Rural area" is defined in the bill as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principle characteristic of the economy of the community or area" (AS 16.05.940(23)). This is very similar to the definition used in the Governor's bill, except for the term "principal", which replaced the term "significant" in the Governor's bill.

D. The boards could use the eight criteria to identify subsistence uses and rural areas.

1. The Senate Resources version clarifies that definition of subsistence uses has been narrowed to rural areas, as the boards were doing by regulation before the Madison decision. The boards could therefore go back to identifying subsistence uses using the eight criteria set out in the joint boards procedural regulation (5 AAC 99.010) discussed in II(B) above.

2. The boards could therefore implement this section of the bill by using the eight criteria, or a similar regulation, to determine, area by area, which uses of fish and game qualify as subsistence uses by the people living in the area.

3. This section also clarifies that the boards have the authority and flexibility to evaluate the facts and determine that there are no subsistence uses on some stocks or populations or portions of stocks or populations. For example if bison, sheep or goat populations are not customarily and traditionally used by residents of rural areas the Board of Game does not need to

adopt subsistence regulations for these populations.

4. If there are customary and traditional uses by particular communities or areas of stocks or populations the boards must provide reasonable opportunities for rural residents in those areas to satisfy their subsistence uses.

5. In making the required findings, the boards would rely heavily on information from the public, the fish and game advisory committees, the regional councils, and the Department of Fish and Game, including the Division of Subsistence.

6. The boards would have to determine, based on this information, whether regulations provide a reasonable opportunity to satisfy subsistence uses, or whether they restrict ("significantly impair") subsistence uses.

E. <u>The bill continues to provide a preference for subsistence uses.</u>

1. The preference for subsistence uses would operate as it does in the existing statute.

2. Non-subsistence uses of fish stocks and game populations can be authorized by the boards as long as there is enough of the resource to accommodate subsistence uses.

3. If there is not enough of a fish stock or game population to accommodate all consumptive uses, then regulations must give subsistence uses a preference over other consumptive uses and provide a reasonable opportunity to satisfy the subsistence uses (AS 16.05.258 (c)). This situation, when all subsistence uses can be accommodated, has been called "Tier One."

4. The boards can use a wide range of regulatory options to provide for subsistence uses and the Tier One preference, including limiting transportation methods, providing winter hunting seasons, and providing different seasons or larger bag limits to rural residents.

5. All non-subsistence hunting or fishing must be closed before subsistence uses can be restricted ("significantly impaired").

6. If it is necessary to restrict ("significantly impair") subsistence uses in order to assure sustained yield or continue subsistence uses, the boards must distinguish among subsistence users by applying the following criteria:

   a. customary and direct dependence on the fish stock of game populations as the mainstay of livelihood;

   b. local residency; and,

   c. availability of alternative resources.

7. The situation where not all subsistence users can hunt or fish has been called Tier 2. With a rural definition Tier 2 situations would not occur in as many areas, or be as disruptive as they were in 1985 under Madison, because the group to be protected would be so much smaller.

VII. The Senate Judiciary Welfare Amendment

The Senate Judiciary Committee amended the Senate Resources Substitute to provide that people whose family's gross income is above 130% of the federal poverty level (which changes depending on other indices) will not qualify for subsistence hunting and fishing. This raises the following major problems.

1. An income level test is inconsistent with ANILCA, and would mean federal takeover. Congress clearly stated that ANILCA:

   "requires that regulatory systems which employ income requirements not be imposed upon rural residents. Income requirements are by their very nature capricious classifications in rural Alaska..."

   126 Cong. Rec. H10546 (daily ed. Nov. 12, 1980).

2. An income level test will result in families making more than the specified amount a year no longer qualifying for subsistence hunting and fishing even if they had relied upon subsistence in the past.

3. Any income level test is likely to violate equal protection.

   a. Any income chosen is likely to be arbitrary and not linked to patterns of use and reliance on fish and wildlife.

   b. Great variances in income, employment opportunities, and cost of living in different areas of the state would make it impossible to establish a single state-wide standard of economic need which would treat people similarly situated to fish and game resources alike.

4. A definition based on income is not consistent with reality in bush areas of Alaska.

   a. Often the most successful members of communities are the most productive in terms of income and in terms of harvest, which is shared throughout the community.

   b. In bush Alaska, even people with reasonably high incomes do not have

supplies available to buy with the money.

c. Hunting and fishing is not viewed as a subsidy, but rather as a way of life, in those bush areas.

d. A definition based on need would disrupt long established social and economic patterns in those bush areas.

5. Administrative problems would arise in constructing a system which would accurately identify individuals eligible under some kind of income level test; a system which was geared to be accurate would also be intrusive into people's lives in that some verification of income level might be necessary.

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510

April 29, 1986

The Honorable Ben Grussendorf
Speaker of the House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ben:

As the end of your session draws near, I am growing increasingly concerned that the Legislature may not take final action to bring Alaska's existing subsistence law into compliance with the subsistence title of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). As you know, if the Legislature does not act by June 1, the federal government will be required to assume regulatory control of fishing and hunting on federal lands in Alaska to ensure the continuation of the federal subsistence preference. Such a takeover would have a devastating effect on state control of fish and wildlife management in Alaska.

From the moment Alaska became part of the Union, as Alaskans, we have had to fight to retain traditional state fish and wildlife management authority. The Statehood Act included a provision that expressly delayed transfer of that authority to the new State of Alaska until the Secretary of the Interior certified to Congress that the Alaska State Legislature had made adequate provision for the conservation of Alaska's fish and wildlife resources. At that time, I was an assistant to the Secretary and obtained certification rapidly. Our new state then went on to build a management program that achieved worldwide recognition.

The second great challenge to Alaska's traditional fish and wildlife management authority came in the late 1970s during the Alaska lands controversy. Maintenance of that authority on all lands in Alaska was one of the major goals of the Alaska Lands Resolution that our Legislature adopted in 1979.

The extreme environmentalist bloc that dominated consideration of the Alaska lands issue in the House of Representatives refused to affirm state management authority and proposed granting the Secretary of the Interior new authority to close federal lands in Alaska to hunting and fishing. Through great effort, Alaska's Congressional Delegation was eventually able to overcome this bloc and secure the inclusion of language in ANILCA that recognized and affirmed the traditional authority of the State to manage fish and wildlife on federal lands within its borders, subject to the provisions of ANILCA's subsistence title.

I opposed the addition of a comprehensive federal subsistence title to the Alaska lands bill. (You'll recall that the State adopted its own comprehensive subsistence preference program in 1978 before the passage of ANILCA in 1980.) When it became clear that a comprehensive subsistence title would be included in the final bill, the Alaska Congressional Delegation did all we could to limit the impact of that title on state fish and wildlife management authority. As enacted into law, the subsistence title did not require the State to change its subsistence law. The Interior Department was able to certify state compliance with the federal subsistence preference without requiring changes in state statutes.

The subsistence title requires federal intervention only if Alaska fails to maintain a subsistence program that gives preference to customary and traditional uses of fish and wildlife by rural Alaska residents. The State has substantial discretion to define the scope of this preference.

The subsistence title does not immunize subsistence activities from state regulation, nor does it grant rural Alaska residents an absolute right to take as much fish and wildlife as they want. The State is completely free to regulate subsistence activities to prevent waste and to maintain the health of wildlife and fish populations. The only limitation imposed on the State's authority is that during a period when harvest of a fish or wildlife population must be restricted for biological reasons, the traditional and customary level of nonwasteful subsistence use of the resource must be the last consumptive use reduced.

Sports hunters and fishermen will be the big losers if Alaska does not meet the June 1 deadline for compliance with the federal subsistence preference. The Fish and Wildlife Service has informed my office that even if a federal takeover proceeded smoothly -- which is unlikely -- sports hunting and fishing seasons throughout Alaska would be closed during the transition period. It could take years to straighten out the regulatory mess created by a federal takeover. And, regardless of what happened to sports hunting and fishing, subsistence hunting and fishing would continue.

Over the long term, a federal takeover will seriously erode the principle of state primacy in fish and wildlife management -- a principle that we have defended, at considerable cost, since statehood. First, the longer such a takeover persists, the more accustomed federal land managers will become to intervening in state fish and wildlife management decisions. Even if the takeover eventually ends, that precedent will haunt us for decades to come.

Second, nothing in existing law provides for a return of management authority to the State after a federal takeover has occurred. In my judgment, if the State forfeits its present authority by failing to maintain a state subsistence preference that complies with ANILCA, powerful extremist groups will argue in the courts and in Congress that the Department of the Interior must retain that authority permanently.

Third, even if management authority can eventually be returned to the State, the Interior Department will still have to certify the State's compliance with the federal subsistence preference. Obviously, that means that the Legislature will have to approve a new subsistence law. If control of the Interior Department shifted after the 1988 elections in a way that greatly increased the influence of the extreme environmentalists, the certification process would, I feel, be used to extract major resource management concessions from our state.

You know that I try to refrain from comment on matters pending before the Legislature. I speak in this case only because of the substantial federal issues involved in the subsistence debate.

If a federal takeover occurs, the Legislature will have to approve a new subsistence law in order to regain Alaska's fish and wildlife management authority. In light of that fact, I cannot understand the logic of allowing a federal takeover now that will permanently damage the principle of state primacy in fish and wildlife management. The Legislature can eliminate that threat this year by approving a bill that will restore the state subsistence preference program so that it once again shields Alaska from a federal takeover under ANILCA.

I request that I be given an opportunity to appear before a Joint Session of this Legislature on May 9, 1986, to discuss the subsistence issue <u>if</u> action on a bill to bring Alaska into compliance with federal law has not been completed before that date. I seek this opportunity to make one last attempt to answer any questions that individual legislators may have about the federal implications of the subsistence issue. Questions, if such an appearance becomes necessary, ought to limited to that subject.

I do not make this request lightly. To me, a federal takeover would be a catastrophe for our state. It would also be an enormous victory for the extremists who have tried since statehood to deny Alaskans control over our own natural resources.

With best wishes,

Cordially,

<u>P.S.</u>: An identical letter has been sent to the Honorable Don Bonnett, President of the Alaska State Senate. Either or both of you may release this letter.

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510

APR 29 1986

April 29, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
[illegible]
Juneau, Alaska 99811

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From the moment Alaska became part of the Union, as Alaskans, we have had to fight to retain traditional state fish and wildlife management authority. The Statehood Act included a provision that expressly delayed transfer of that authority to the new State of Alaska until the Secretary of the Interior certified to Congress that the Alaska State Legislature had made adequate provision for the conservation of Alaska's fish and wildlife resources. At that time, I was an assistant to the Secretary and obtained certification rapidly. Our new state then went on to build a management program that achieved worldwide recognition.

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The extreme environmentalist bloc that dominated consideration of the Alaska lands issue in the House of Representatives refused to affirm state management authority and proposed granting the Secretary of the Interior new authority to close federal lands in Alaska to hunting and fishing. Through great effort, Alaska's Congressional Delegation was eventually able to overcome this bloc and secure the inclusion of language in ANILCA that recognized and affirmed the traditional authority of the State to manage fish and wildlife on federal lands within its borders, subject to the provisions of ANILCA's subsistence title.

I opposed the addition of a comprehensive federal subsistence title to the Alaska lands bill. (You'll recall that the State adopted its own comprehensive subsistence preference program in 1978 before the passage of ANILCA in 1980.) When it became clear that a comprehensive subsistence title would be included in the final bill, the Alaska Congressional Delegation did all we could to limit the impact of that title on state fish and wildlife management authority. As enacted into law, the subsistence title did not require the State to change its subsistence law. The Interior Department was able to certify state compliance with the federal subsistence preference without requiring changes in state statutes.

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Sports hunters and fishermen will be the big losers if Alaska does not meet the June 1 deadline for compliance with the federal subsistence preference. The Fish and Wildlife Service has informed my office that even if a federal takeover proceeded smoothly -- which is unlikely -- sports hunting and fishing seasons throughout Alaska would be closed during the transition period. It could take years to straighten out the regulatory mess created by a federal takeover. And, regardless of what happened to sports hunting and fishing, subsistence hunting and fishing would continue.

Over the long term, a federal takeover will seriously erode the principle of state primacy in fish and wildlife management -- a principle that we have defended, at considerable cost, since statehood. First, the longer such a takeover persists, the more accustomed federal land managers will become to intervening in state fish and wildlife management decisions. Even if the takeover eventually ends, that precedent will haunt us for decades to come.

Second, nothing in existing law provides for a return of management authority to the State after a federal takeover has occurred. In my judgment, if the State forfeits its present authority by failing to maintain a state subsistence preference that complies with ANILCA, powerful extremist groups will argue in the courts and in Congress that the Department of the Interior must retain that authority permanently.

Third, even if management authority can eventually be returned to the State, the Interior Department will still have to certify the State's compliance with the federal subsistence preference. Obviously, that means that the Legislature will have to approve a new subsistence law. If control of the Interior Department shifted after the 1988 elections in a way that greatly increased the influence of the extreme environmentalists, the certification process would, I feel, be used to extract major resource management concessions from our state.

You know that I try to refrain from comment on matters pending before the Legislature. I speak in this case only because of the substantial federal issues involved in the subsistence debate.

If a federal takeover occurs, the Legislature will have to approve a new subsistence law in order to regain Alaska's fish and wildlife management authority. In light of that fact, I cannot understand the logic of allowing a federal takeover now that will permanently damage the principle of state primacy in fish and wildlife management. The Legislature can eliminate that threat this year by approving a bill that will restore the state subsistence preference program so that it once again shields Alaska from a federal takeover under ANILCA.

I request that I be given an opportunity to appear before a Joint Session of this Legislature on May 9, 1986, to discuss the subsistence issue if action on a bill to bring Alaska into compliance with federal law has not been completed before that date. I seek this opportunity to make one last attempt to answer any questions that individual legislators may have about the federal implications of the subsistence issue. Questions, if such an appearance becomes necessary, ought to be limited to that subject.

I do not make this request lightly. To me, a federal takeover would be a catastrophe for our state. It would also be an enormous victory for the extremists who have tried since statehood to deny Alaskans control over our own natural resources.

With best wishes,

Cordially,

TED STEVENS

P.S.: An identical letter has been sent to the Honorable Ben Grussendorf, Speaker of the Alaska State House of Representatives. Either or both of you may release this letter.

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M February 26, 1986

TO: Senator Jan Faiks

FROM: Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

RE: Kenai River Special Management Area

As you know, the conflicts along the Kenai River led to the creation of the Kenai River Special Management Area by the legislature in 1984. The desire was to have one agency responsible for the management, and this task fell to the Department of Natural Resources. The planning process is continuing, and a draft plan is due this summer.

A 19-member Kenai River Advisory Board was established that included people from state agencies, municipalities, special interest groups, and local citizens. The Board further established subcommittees, and additional local citizens became involved. As you know public hearings were held throughout the Kenai Peninsula and in Anchorage to gather local comments and recommendations. The Board then advised the Commissioner of Natural Resources that even before the final plan was adopted, regulations should be adopted this summer to restrict outboard motor horsepower on the river.

The Commissioner of Natural Resources then held public hearings on the Kenai Peninsula and Anchorage on these regulations. After extensive public involvement the Commissioner adopted the present horsepower limitations.

The public continues to be involved with this process, as the Kenai River Advisory Board is still active in the development of the Kenai River Special Management Area Plan. This plan will be subject to further public hearings this summer. If you feel that significant errors have resulted from this public planning process, I would be very willing to work with you in trying to find a solution.

With the limited time available before the end of the session and the public hearing coverage that would be necessary on the Kenai Peninsula and in Anchorage, I am concerned that our efforts could not be as extensive as the planning process now in place. With limited time, I am concerned that any efforts we could make could not duplicate the comprehensive attention already given to this issue.

Because of the substantial number of bills on such major statewide issues as subsistence, local hire, and natural resource development, scheduling of those bills must be a priority. Since there is no legislation before the Senate Resources Committee dealing with the Kenai River issue at the present time and there will be a continuing opportunity for public hearings on the local level, I do not feel justified in denying a hearing to other legislation already before the committee. However, if you feel that legislation is necessary regarding the Kenai River Special Management Area, and sponsor such legislation, I'm sure the Senate Resources Committee would hold hearings expeditiously.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

February 19, 1986

MEMORANDUM

TO: Senator Sturgulewski, Chairman
Senate Resources Committee

FROM: Senator Jan Faiks

SUBJECT: Hearing on Kenai River Regulations

I have received countless calls, letters, and POM's from constituents who are upset with DNR's proposed regulations to limit the size of outboard motors on the Kenai River.

Thus, I would appreciate your scheduling a public hearing on this issue before the Resources Committee. Since most of the complainants are from the Anchorage area, it may be appropriate to schedule the meeting up there.

Thank you.

OUT OF SESSION
1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

More copies - I will on hand

The Senate Resources committee substitute which we will be considering today, and its sectional, has been sent to all teleconference sites which have telescan abilities. The bill is being pouched to other sites and should be there tomorrow. For those persons at sites without telescan facilaties, you should have no problem following along on the markup of the bill labled S.R.C. Work Draft 2/7/86 which was distributed to all sites last week.

Before we start testimony, I would like to say a few words about the committee substitute you have before you.

I feel it is vital we take a sensible approach to subsistence that protects people truly dependent on fish and game, protects the rights of all Alaskans to hunt and fish, and ensures retention of state control of our resources.

Some people would like subsistence restored to its prior status, while others want to ignore federal law and pretend subsistence doesn't exist. Neither view is realistic.

When the Supreme Court rendered the Madison Decision, it let subsistence out of the box. Politically, it will never again fit back into that same box.

To invite federal take over of our fish and game in over eighty percent of Alaska, because we fail to act, makes no sense. Some argue, correctly, that the federal government doesn't have the money or manpower to effectively manage our fish and game. Unfortunately, that only guarantees that the feds will do a bad job, not that they won't take over.

I think this ~~This~~ bill is fair, constitutional, enforceable, and complies with ANILCA. It ~~will~~ can ensure our continued management of our own resources. ~~It is a necessity for our state.~~

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 18, 1985

Honorable Peter Goll
Chairman, House Special Committee
on Fisheries
Alaska State Legislature, Pouch V
Juneau, Alaska 99811

Dear Mr. Goll:

Thank you for your letter of April 1 regarding the State of Alaska's subsistence program and the recent Madison decision. In early 1982, the Department of the Interior certified that Alaska's subsistence program was in compliance with Title VIII of the Alaska Lands Act (ANILCA). This action followed extensive consultation between the State authorities and the Department. We had advised the State that the program which was certified (and the focus of the Madison case) was not the only approach that would comply with Title VIII. Although the focus during recent years has been on the urban and rural classifications, ANILCA specifies that rural residency is not the only criterion to be used in determining eligibility for the preference for nonwasteful subsistence taking. Section 803 provides that eligibility for the preference may be limited to those rural residents for whom subsistence is customary and traditional.

Our preliminary review of the Madison decision indicates that it puts the State in a position of non-compliance. The decision appears to require that, under Alaska law, the subsistence preference be extended to urban residents--an extension barred by Title VIII. We have written your Attorney General and asked for his opinion on this preliminary assessment. We prefer not to make a final ruling on the effect of a State of Alaska court decision which focused solely on a State statute and State implementing regulations without the views of Alaska's chief legal officer.

If our final determination remains the same as our preliminary assessment, we would afford the State an opportunity to correct the program deficiencies. Since the apparent non-compliance is the result of an unexpected court ruling rather than willful action by the State's executive or legislative branches, we are persuaded that Title VIII implicity requires us to provide the State with a reasonable opportunity to take appropriate corrective action. Efforts by the State to comply with the spirit if not the letter of Title VIII would lend support to this approach. Consequently, the Department has no immediate plans to undertake activities to discharge its obligations under Sections 805 (a), (b), and (c) if it is finally determined that the Madison decision puts the State in non-compliance and there are indications that the State will act to come into compliance. Please note, however, that this course of action is not completely free of risk. It is possible someone could pursue the judicial remedy specified in Section 807 and argue that we must take immediate action under Sections 805 (a), (b), and (c). Should a Federal court agree with that assertion, the Department could be compelled to assume subsistence management on public lands notwithstanding our decision to afford the State an opportunity to come back into compliance with Title VIII.

You posed a series of questions regarding how we would take action pursuant to Section 805. Since we have not yet prepared plans for assumption of subsistence management, many of your questions cannot be answered. Nonetheless, it is likely that some form of NEPA compliance will be required. We could however, invoke the emergency rulemaking authorities under the Administrative Procedures Act to save additional time.

If Federal action is required, coordination with the State would be extremely important since the one-third of Alaska that is non-Federal land would remain subject to State fish and game management. The resulting dual management scheme would cause many problems and is one of the primary reasons why we are strongly supportive of continued State management and hope that the State will cure the apparent deficiencies created by the Madison decision.

You also inquired about an arrangement, following Federal action, under which the State would continue on-the-ground management of fish and wildlife resources under the aegis of the Federal Government. The legality of such an arrangement is currently

under review but your Department of Fish and Game might be barred from complying with the statutorily-required Federal directions if existing State law did not permit distinctions to be made between customary and traditional rural subsistence users and other users of fish and wildlife resources.

Your last question addressed the Department's ability to discharge the management responsibilities it might have to assume under Section 805. Presently we do not have such capabilities; however, we shall take all required steps to acquire such capability if necessary to fulfill our legal obligations.

I trust that this is responsive to your concerns. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

William P. Horn

DEPUTY UNDER SECRETARY

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

April 1, 1985

Mr. Bill Horn
Deputy Undersecretary
Department of the Interior
Washington, D.C. 20240

Dear Mr. Horn:

A recent ruling by the Alaska Supreme Court striking down regulations governing subsistence fishing in Cook Inlet has resulted in the submission of Legislation modifying the state's subsistence law. State compliance with the provisions of ANILCA is an issue that concerns many lawmakers as the legislation is being dealt with in committee.

A timely response by Department of the Interior to the following issues would help the Legislature in its deliberations.

1) Has the Department of Interior reviewed the Madison decision? If so, has it made a determination of whether it would put the state in the position of non-compliance with ANILCA?

2) What kinds of situations would put Alaska in non-compliance with ANILCA?

If the courts or federal government determines the state is not in compliance with ANILCA and the federal government steps in to manage fish and wildlife on federal lands:

1) What kind of regulation promulgating process would the Department of the Interior undertake for fish and game management? Do you envision a NEPA-type process? If so, how long would it take from regulation proposal to enactment?

2) How would the Department of the Interior coordinate its fish and wildlife management on federal areas with state management within state jurisdiction? Does Interior envision problems with a dual management system?

3) Would Interior opt for a management approach where the state continues to be the fish and wildlife manager with federal approval?

4) Does Interior have the in-house expertise to adequately handle the management responsibilities that it might be delegated?

I respectfully request your prompt response to these questions as the subsistence Legislation is under consideration in the House. Please contact me if you need clarifications. Thank you for your consideration of my informational request.

Sincerely,

Representative Peter Goll
Chairman, House Special Committee on Fisheries

RURAL ALASKA RESOURCES ASSOCIATION
P.O. BOX 3-3908
ANCHORAGE, ALASKA 99501-3908
(907) 279-2511

September 4, 1985

Honorable Arliss Sturgulewski
Alaska State Senate
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99802

RE: Proposed Subsistence Amendments to Title XVI

Dear Senator Sturgulewski:

For the Rural Alaska Resources Association I recently presented testimony to the Senate State Affairs Committee regarding proposed amendments to Alaska Statutes Title XVI, Fish & Game, concerning subsistence.

I have enclosed a copy of that statement plus an adendum to the original statement. The latter addresses the need to also amend the statute to authorize the state's system of regional fish and game councils. Regional councils are already in place and functioning, but Alaska Statutes Title XVI is absent any mention of them, while federal law (ANILCA, P.L. 96-487, Dec. 2, 1980) does, in fact authorize regional councils. In summary, the State of Alaska is not only not in conformance with federal law regarding subsistence priority, but seems clearly also not fully consistent with federal law in the matter of regional councils.

This is a relatively simple matter to tend to now. Please let me know if we can assist you in any manner to help achieve a satisfactory resolution of the entire matter. To the extent that "RARA" is a statewide rural subsistence umbrella organization I feel that we can network information and provide helpful information back to you.

Please contact me as noted below, or our RARA staff person, Vernita

Zilys at the letterhead address or telephone.

Thank you.

Sincerely,

RURAL ALASKA RESOURCES ASSOCIATION
Jim Kowalsky, Chairman
c/o Tanana Chief's Conference, Inc.
Doyon Building
201 1st Avenue
Fairbanks, Alaska 99701
Phone: 452-8251 ext. 220

JK:de

February 20, 1986

Mr. Ron Williams
Grand Camp President
Alaska Native Brotherhood
318 West Willoughby Avenue
Juneau, AK 99801

Dear Mr. Williams:

Thank you for your letter of February 3. You asked how the state is preparing to respond if the federal government intervenes in fish and game management after June 1 if it determines that Alaska has failed to bring its subsistence law into conformance with Alaska National Interest Lands Conservation Act (ANILCA) Title VIII.

The questions you raise are very important ones. I am deeply concerned that both fish and game resources and Alaskan users will suffer if the basic authority to manage resident fish and game is divided between the state and federal governments. While we have not had further formal communication with the U.S. Department of Interior about the approach it will take if the state law is not amended, we understand that it is in the preliminary stages of developing emergency plans. However, the great number of uncertainties and the complexity of the legal and political issues make it difficult for either the state or the federal government to develop realistic contingency plans.

One area of uncertainty, of course, is how the state and the federal governments will deal with the Alaska Federation of Natives' petition requesting that the Alaska Boards of Fisheries and Game regulate hunting and fishing on the federal public lands directly under ANILCA, applying the federal subsistence standards. As you know, the joint boards deferred action on this petition to give the Legislature time to take corrective action.

Another major unresolved question is where the federal government's authority to protect subsistence uses applies. For example, in the case of fish stocks or wildlife populations used for subsistence on federal public lands which also migrate across state lands, it is not clear whether federal regulations and allocations take precedence over state regulations on state and private lands. This question has major implications for Alaska's

ability to regulate its sport, commercial, and subsistence fisheries, as well as hunting for migratory wildlife such as caribou.

Your letter mentions the possibility of the state contracting or developing a cooperative agreement with the federal government to carry out federal regulations. If the Department of the Interior continues to find Alaska out of compliance with ANILCA, we will certainly explore every possible avenue for avoiding disruption of fish and game management. While we expect to continue to have a good cooperative working relationship with federal agencies, eventually the courts would probably play a significant part in defining the federal role. However, there are some complex issues that may be difficult to resolve even with good working relationships between agencies.

Contracting, for example, could pose several problems. First, depending on the services needed, it is possible that the federal government would not legally be able to delegate certain types of responsibilities to the state. Second, the state may not be able to perform certain functions if they are not authorized by state law, or if state and federal law conflict. Third, a major question in this time of declining budgets for both the state and federal agencies is whether the federal government would have money available to reimburse the state for services, especially since the effects of non-compliance would be statewide. For example, Congress has never met even its current obligations under ANILCA §805(e) to reimburse the state for half of the expenses incurred in subsistence management.

These uncertainties continue to argue strongly for legislative resolution this session. House Bill 288, which I introduced last year, is still the most straightforward way to solve the problem. However, I am confident that we can work with the Legislature to get a workable bill that will protect subsistence uses in rural Alaska, is constitutional and enforceable, will allow the state to retain fish and game management throughout Alaska, and will provide fair hunting and fishing opportunities for all Alaskans. Thank you for your continuing support and efforts.

Sincerely,
/s/ Bill Sheffield

Bill Sheffield
Governor

cc: Senator Mitch Abood
Representative Jack Fuller
Representative Peter Goll
Representative Adelheid Herrmann

bcc: Don W. Collinsworth
BS/DWC/SRB/sj

2 July 1985
PO BOX 75067
Fairbanks, AK 99707
Ph: 907-479-3044

STATE of ALASKA
Ester C. Wunnicke - commissioner
Pouch 7-034
Anchorage, AK 99510

Ref: Amendments to Regulations
11 ACC 83.700 ----------

Dear Commissioner,

Please accept this letter as "COMMENTS" on the proposed amendments to the Regulations.

The majority of the leases to be effected by these proposed changes were leased in State Sale No. 31 on September 16, 1980 by a group of individuals from Fairbanks, Alaska.

The terms set forth by the State were the best terms the State has ever received. 20% Royalty and 30% NPSL as a ten year lease with a five year work commitment.

In the year 1980 the state Department of Natural Resources were so enchanted with the world oil crisis and what it ment to Alaska that DNR predicted and published in their reports that oil would reach $90.00 a barrel before the year 1990. Under this scenario the lease terms were justified or maybe leaned to favor the leaseholder. Today things have changed dramatically with current predictions of oil prices dropping to $20.00 or even $15.00 per barrel. Now with changing world oil markets the terms of these leases are not realistic.

Today, in every form of world trade, marketing, industry, union, employement and etc., it is common to renegotiate any issue that has changed critically and adjust the benefits of one or both sides of the issue.

I, as a citizer of Alaska feel the work commitments for these leases could be dropped completely without any loss of face to the State of Alaska.

If the present lease holders can produce any of these leases then Alaska will receive revenue under present terms. If the lease holders cannot produce the leases will terminate but in the mean time DNR has received $3.00 per acre rentals and hopefully the world oil market will again favor Alaska by 1990.

If a moratorium were placed on the work commitment for these leases, I believe the Governor of Alaska, the State Legislation and the people of Alaska would applaud you for this consideration.

Very truly yours,

James C. Long

cc: Governor B. Sheffield
other parties

Post Office Box 2699
Fairbanks, AK 99707
June 24, 1985

State of Alaska
Department of Natural Resources
Office of The Commissioner
Pouch 7-034
Anchorage, Alaska 99510

Dear Commissioner Wunnicke:

With reference to Cliff Burglin's letter of June 11, 1985 to you and your letter of June 13, 1985 to him, I am wondering why the proposed amendments weren't dealt with when Senate Bill #232 was being discussed prior to being passed and signed by Governor Sheffield on June 2, 1985 and what caused them to suddenly take on so much importance after the bill was signed into law.

According to your time-schedule we would, at best, have only two months and that can go fast with delays, etc. November 1st is the dead-line and if the leases are not renewed or extended, a lot of people will have lost a great deal of money. If they are extended at the last minute, we still have to line up rent renewal cash, and I personally would suffer a tremendous hardship having had no income in almost 8 years.

I'm enclosing a copy of Brian Burglin's rough-draft to show you how we feel about the 100,000 bond for every lease. On a unit perhaps but not every lease.

My proposal is that you grant the two-year extensions now as per Senate Bill #232. That would give you two years to evaluate the amendments without having to work under pressure of time, allowing you to come up with a solution to the problem that would be more equitable and agreeable to all parties concerned. It would also give us the assurance needed to continue to help develop Alaskan Resources by Alaskans who would otherwise not know who or what in the Alaskan government they could trust or rely on in the future.

A number of people involved with the leases including the Burglins were born and raised up here, others have lived here most of their lives, and I have lived here over 29 years so we are not "Johnny-Come-Latelys" or "fly-by-nighters".

Sincerely yours,

James R. Johnson

James R. Johnson

FAIRBANKS, AK.
6/18/85

State of Alaska
Department of Natural Resources
Pouch 7-005
Anchorage, Alaska 99510

Dear Commissioner Wunnicke:

I wish to comment on the proposed amendments to the regulations concerning Senate Bill #232 which was recently signed into law by the Governor on June 2, 1985.

I strongly object to any bonding penalties on each and every lease to be considered for a work commitment waiver. It is impossible to acquire enough knowledge before drilling initial exploratory wells to determine exactly what type of work commitment for each lease will be required. To require bonding or specific plans on adjacent, adjoining leases before analyzing information from initial exploratory wells I feel would not be prudent or in the best interest of the State of Alaska or the lessees. I do agree a plan to develop should be put forth by the applicant to the Commissioner. These plans should give the lessee the opportunity to unitize, form P.A.'s or form drilling blocks should an initial exploration program prove successful. I feel this would lessen environmental impact on the area and will also make development of adjacent and adjoining leases more economically feasible. To force the drilling of every lease is not only unsound financially but against all of the State's prior decisions environmentally. This plan should also extend to the lessees their right to terminate their lease with the State of Alaska without penalty should the information from initial exploration indicate further development to be unreasonable and uneconomic.

I feel this would be in the best interest of the State of Alaska and lessees for it would not promote needless drilling and development work on the exploration areas.

Sincerely, James R. Johnson

I did not write this but agree with it completely. It was a rough draft drawn up by Brian Burglin.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH 7-005
ANCHORAGE, AK 99510
PHONE: (907) 276-2653

June 13, 1985

Mr. Cliff Burglin
Land Consultant
P.O. Box 131
Fairbanks, AK 99707

Dear Mr. Burglin:

This is to acknowledge receipt of your written request for two-year waivers of the work commitments for thirty-seven of your North Slope oil and gas leases. For the reasons which I will explain below, it is premature to act on your request at this time.

As you are probably aware, the department just last week published draft amendments to 11 AAC 83.700, the regulations which govern the administration of work commitments. As a result of the passage of Senate Bill 232, I anticipate that there will be numerous requests for work commitment waivers before the end of this October, and that each of those requests will be based upon unique factual circumstances.

Consequently, in the interest of assuring equitable review for all requests, I feel that it is important that each lessee be provided a clear indication of the standards under which the department will review each request. I believe the most effective way of accomplishing this is through the expedited adoption of these amendments to the regulations.

Public hearings on the proposed amendments are scheduled in Fairbanks and Anchorage during the first week of July. Following those meetings, it is my intent that the regulations be adopted as quickly as possible. I anticipate that the Department of Law will complete its review and submit the regulations to the Lieutenant Governor by August 1, 1985. If this schedule can be maintained, the regulations should become effective September 1.

It would then be timely to consider your request for waivers in early September following the adoption of the amendments. At that time you can submit written waiver requests which provide the information specified by the regulations, as they are ultimately adopted.

In case you failed to receive a copy of the proposed amendments, I have attached a copy for your review. If you have any additional questions, please feel free to call.

Sincerely,

Esther C Wunnicke

Esther C. Wunnicke
Commissioner

Attachment as stated

cc: Kay Brown
Mark Worcester

-J56LH

Cliff, your June 3 letter to me was delivered to Division of Oil and Gas June 12. Esther

C. Burglin
Land Consultant
P.O. Box 131
Fairbanks, Alaska 99707
(907)452-5149

June 11, 1985

Commissioner Wunnicke
Pouch 7-034
Anchorage, Alaska 99510

Dear Commissioner Wunnicke:

SB 232 clearly gives you the power to waive onerous work commitments on 10 year leases for Sales 30 and 31. Without this bill you have already waived work commitments for Amoco, Amerada Hess and others. This bill does not give you the power or permission to write regulations or law. If it did, there would be no need for the legislature.

I am enclosing a copy of your proposed regulations concerning this bill to all of the legislators. As far as I am concerned your intent is very clear. You intend to stall through bureaucratic implementation the clear intention of the legislature and legislation.

If the legislators allow you or anyone else to get by with these tactics, they should resign because obviously there is no need for them.

Isn't this blatant discrimination? J.R.G.

Sincerely,

C. Burglin

CB/mbg

enclosures

copies- all interested parties

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH 7-005
ANCHORAGE, AK 99510
PHONE: (907) 276-2653

June 6, 1985

Dear Alaskans:

The Alaska Department of Natural Resources, Division of Oil and Gas, is proposing to amend the regulations governing work commitments of State oil and gas leases (Title 11, Chapter 83, Article 7 of the Alaska Administrative Code). This change in the regulations is being made to implement Senate Bill No. 232, which was passed by the legislature on May 12, 1985, and signed into law by the Governor on June 2, 1985.

The effect of Senate Bill No. 232 is to permit the Commissioner of the Department of Natural Resources to waive work commitments attached to oil and gas leases for a period of up to two years under certain circumstances. The amendments to the regulations being considered will set out the criteria the Commissioner will use in determining whether such a waiver of work commitment is justified, the terms under which such a work commitment waiver will be granted, and the procedure for application for waiver of a work commitment.

A copy of the proposed amendment to the regulations is attached. Language proposed to be added to the existing regulations is underlined. Ellipses in the form of three hyphens (- - -) indicate that intervening unchanged subsections of the regulations have been omitted.

You are invited to comment on the proposed amendments to the regulations. Comments must be in writing and must be received by the Division of Oil and Gas by July 12, 1985 to be considered. All written comments should be addressed to the Alaska Department of Natural Resources, Division of Oil and Gas, Pouch 7-034, Anchorage, AK 99510, Attn: Catherine Fortney. Additional copies of the proposed regulations may be obtained from the same address.

The Division of Oil and Gas will also hold public hearings on these regulation changes on the following dates:

ANCHORAGE
Date: July 2, 1985
Time: 10:00 A.M.
Place: Conference Room
Mountain View Library
120 S. Bragaw Street

FAIRBANKS
Date: July 1, 1985
Time: 1:30 P.M.
Place: Conference Room
North Star Borough Library
1215 Cowles Street

ncerely,

Esther C. Wunnicke

her C. Wunnicke, Commissioner
ska Department of Natural Resources

CHAPTER 83. OIL AND GAS LEASING.

Article

- - -
7. Work Commitment (11 AAC 83.700 -- 11 AAC 83.705)
- - -

ARTICLE 7. WORK COMMITMENT.

Section
700. Work commitment
705. Work commitment modification

11 AAC 83.700 is amended to read as follows:

11 AAC 83.700. WORK COMMITMENT. (a) If a work commitment is a condition of the lease, the work commitment will be specified in terms to be announced by the commissioner of the Department of Natural Resources (commissioner) in the notice of sale for the original term of the lease. The stipulated commitment will state the minimum annual requirement for exploration and development commitment on a specific lease. The lessee shall file annual reports with the commissioner substantiating adherence to the work commitment terms.

(b) The commissioner will, at his discretion, alter or abrogate the terms of the work commitment if

(1) the lessee presents evidence that the lease will be unproductive and/or uneconomic under the terms of the work commitment;

(2) the lessee presents evidence that the existing terms of the work commitment cannot be performed by reason of war, riots, acts of God, unusually severe weather, or any other cause beyond the lessee's reasonable ability to foresee or control (including delays caused by judicial decisions or lack of them), whether similar to those enumerated or not;

(3) the lessee becomes party to a un greement; or

(4) the lessee relinquishes the lease.

(c) The commissioner may waive for up to two years any work commitment imposed on a lease under subsection (a) of this section if the commissioner makes a written finding either that conditions preventing fulfillment of the work commitment were beyond the lessee's reasonable ability to foresee or control, or that the lessee has demonstrated through good faith efforts the intent and ability to fulfill the terms of the work commitment during the term of the waiver. The commissioner will consider the following factors when determining whether a lessee has demonstrated the intent and ability to fulfill the terms of a work commitment during the term of any waiver that may be granted

(1) whether the lessee has undertaken appropriate actions to fulfill the work commitment, including the acquisition of necessary permits, materials, and financing required to meet the work commitment;

(2) reasons why the lessee did not meet the terms of the work commitment during its initial term;

(3) the lessee's specific plans and actions taken to meet the work commitment during the term of the waiver; and

(4) the fulfillment or lack of fulfillment of other work commitments or similar obligations by the lessee within th state.

(d) As a condition of waiver of any term of a minimum work commitment under subsection (c) of this section the commissioner will require the lessee to post a performance bond of $100,000 to ensure the fulfillment of the work commitment during the period of waiver. The bond will be returned to the lessee if the work commitment is fulfilled by the end of the waiver period,

and will be forfeited automatically to the state if the work commitment is not fulfilled by the end of the waiver period. A separate bond will be required for each lease for which a waiver of a work commitment is granted.

(e) If a lessee fails to meet any term of a work commitment by its due date, including any additional period granted by extension, alteration, or waiver, the lease will automatically terminate. In addition, any penalty provisions established by the commissioner in the work commitment stipulation, or as a condition to any extension, alteration, or waiver, will take effect immediately if the work commitment is not completed by its due date, including period of extension and waiver. [FAILURE TO COMPLY WITH THE MINIMUM ANNUAL WORK COMMITMENT CONSTITUTES GROUNDS FOR FORFEITURE OF THE LEASE.] (Eff. 11/9/79, Register 72; am / / Register)

Authority: AS 38.05.020
AS 38.05.180

11 AAC 83.705 is amended to read as follows:

11 AAC.83.705. WORK COMMITMENT MODIFICATION. (a) Application for modification under AS 38.05.180(h) must comply with 11 AAC 88.105 and must

(1) state all the facts that may entitle the applicant to modification;

(2) state location and status of all past and present activities on the lease;

(3) contain a detailed report of all activity on the lease preceding the filing of the application and include an accounting for all expenses and costs of operating the lease;

(4) be d not later t 30 days before the existing deadline for the fulfillment of the term of the w k commitment;

(5) address all pertinent factors listed in 11 AAC 83.700(b) or 11 AAC 83.700(c), as appropriate; and

(6) in connection with applications for waivers under 11 AAC 83.700(c), affirm the lessee's readiness and ability to post a performance bond.. (Eff. 11/9/79, Register 72; am / / Register)

Authority: AS 38.05.020
AS 38.05.180

2366A

C. Burglin
Land Consultant
P.O. Box 131
Fairbanks, Alaska 99707
(907)452-5149

June 3, 1985

Esther Wunnicke
Commissioner of Natural REsources
Pouch 7-034
Anchorage, Alaska 99510

Re: Extension of Oil and Gas Leases

Dear Commissioner Wunnicke:

Under the terms of Senate Bill No. 232, we are formally requesting a waiving of the work commitment for two years on the following leases, as of November 1, 1985:

ADL#'s: 318612, 318613, 318618, 318620, 318621, 318623, 318624, 318626, 318631, 318632, 318635, 318639, 318651, 318652, 318653, 318654, 318655, 318659 318660, 318661, 318662, 318663, 318664, 318665, 318666, 318667, 318668, 318669, 318670, 318671, 318674, 318677, 318678, 318680, 318681, 318682, 318558

We justify this request on the basis of an extensive drilling program for these leases plus extensive work and evaluation already done plus unit applications that have been applied for and are under discussion with your office at this time.

We see no reason for the leases not to be extended within the next ten days. Please let us know, in writing, by June 15, whether or not this extension will be granted.

Sincerely yours,

C. Burglin

CB/mbg

Offered: 5/11/85
Referred: Rules

Original sponsor: Rules/Governor

IN THE SENATE BY THE RULES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 232 (Rules) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to minimum work commitments in oil and gas leases; and providing for an effective date."

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

* Section 1. AS 38.05.180(h) is amended to read:

(h) The commissioner may include terms in any oil and gas lease imposing a minimum work commitment on the lessee. These terms shall be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If [SHOULD] it is [BE] demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. The commissioner may waive for a period not to exceed one two-year period any term of a minimum work commitment if the commissioner makes a written finding either that conditions preventing drilling or exploration were beyond the lessee's reasonable ability to forsee or control or that the lessee has demonstrated through good faith effort an intent and ability to drill or develop the lease during the term of the waiver.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
DIVISION OF BOARDS

BILL SHEFFIELD, GOVERNOR

BOX 3-2000
JUNEAU, ALASKA 99802
PHONE (907) 465-4110

August 27, 1986

Dear Reviewer:

Enclosed is information describing the subsistence law adopted by the 1986 Legislature and how the Boards of Fisheries and Game will implement it. At their joint meeting in Anchorage November 23-26, the boards will determine what communities or areas in the state have economies in which non-commercial customary and traditional use of fish and wildlife for personal or family consumption is a principal characteristic. These areas will be considered "rural areas" for purposes of the subsistence law. The Legislature clarified that subsistence uses occur only in rural areas.

Written public comments on rural designations and oral testimony will be taken at the board meeting. The boards need a wide variety of information about fish and wildlife use and its role in the economies of Alaskan communities in order to make these decisions. They will be using information from the Alaska Department of Fish and Game and other agencies, but they also need to hear from fish and game advisory committees, regional advisory councils, and other members of the public about the significance of fish and wildlife to their local economies.

If you wish to have your written comments included and indexed in the board's working books, they must be delivered to the Alaska Department of Fish and Game, Division of Boards, P. O. Box 3-2000, Juneau, AK 99802 before November 17, 1986. Further sources of information about the board process are listed at the end of the enclosed report.

ıcerely,

Don Collinsworth
Commissioner

Enclosure

ALASKA'S NEW SUBSISTENCE LAW--
WHAT DOES IT MEAN AND HOW DOES IT WORK?

Alaska Department of Fish and Game

August 27, 1986

In May 1986, the Alaska Legislature adopted several major changes to the state's subsistence law. These changes ensured that the state retained management of fish and game on all lands in Alaska. In June 1986, the Board of Game held an emergency meeting and eliminated the controversial Tier II hunting regulations. The emergency meeting provided some experience in implementing the new law.

Beginning with the next meeting of the Joint Board in November, both the Board of Fisheries and the Board of Game will begin to implement routinely the requirements of the new subsistence law, which are similar, but not identical to, the boards' approach before the Madison decision by the Alaska Supreme Court in 1985.

This report describes the subsistence law and how it works. It is intended to give the public, including fish and game advisory committee members, the information they need to participate in the board process.

WHAT DOES THE NEW SUBSISTENCE LAW REQUIRE?

The changes made in 1986 clarified what the Legislature intended the subsistence law to do. They confirmed that the Boards of Fisheries and Game should identify subsistence uses as customary and traditional uses of fish and game by people living in rural communities and areas. They also confirmed that hunting and fishing regulations should provide for subsistence uses. And they confirmed that subsistence has a preference over other uses when there is a resource shortage.

Under the new law, for a use of fish and game to be a subsistence use, the boards must make findings:

1) that the area or community where the use occurs is "rural," that is, noncommercial, customary and traditional use of fish and game for personal and family consumption is a principal characteristic of its economy; and

2) that the use by an area or community of the particular game population or fish stock is customary and traditional, as determined under the eight criteria in 5 AAC 99.010 (Enclosure 1).

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Offered: 5/11/85
Referred: Rules

Original sponsor: Rules/Governor

IN THE SENATE BY THE RULES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 232 (Rules) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to minimum work commitments in oil and gas leases; and providing for an effective date."

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

* Section 1. AS 38.05.180(h) is amended to read:

(h) The commissioner may include terms in any oil and gas lease imposing a minimum work commitment on the lessee. These terms shall be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If [SHOULD] it is [BE] demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. The commissioner may waive for a period not to exceed one two-year period any term of a minimum work commitment if the commissioner makes a written finding either that conditions preventing drilling or exploration were beyond the lessee's reasonable ability to forsee or control or that the lessee has demonstrated through good faith efforts an intent and ability to drill or develop the lease during the term of the waiver.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

6/25/85

Dear ~~Senator~~ Skurzelewski,

Anything you have done or will do on our behalf in this matter will be appreciated and remembered.

Sincerely, James R. Johnson

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF BOARDS

BILL SHEFFIELD, GOVERNOR

BOX 3-2000
JUNEAU, ALASKA 99802
PHONE (907) 465-4110

August 27, 1986

Dear Reviewer:

Enclosed is information describing the subsistence law adopted by the 1986 Legislature and how the Boards of Fisheries and Game will implement it. At their joint meeting in Anchorage November 23-26, the boards will determine what communities or areas in the state have economies in which non-commercial customary and traditional use of fish and wildlife for personal or family consumption is a principal characteristic. These areas will be considered "rural areas" for purposes of the subsistence law. The Legislature clarified that subsistence uses occur only in rural areas.

Written public comments on rural designations and oral testimony will be taken at the board meeting. The boards need a wide variety of information about fish and wildlife use and its role in the economies of Alaskan communities in order to make these decisions. They will be using information from the Alaska Department of Fish and Game and other agencies, but they also need to hear from fish and game advisory committees, regional advisory councils, and other members of the public about the significance of fish and wildlife to their local economies.

If you wish to have your written comments included and indexed in the board's working books, they must be delivered to the Alaska Department of Fish and Game, Division of Boards, P. O. Box 3-2000, Juneau, AK 99802 before November 17, 1986. Further sources of information about the board process are listed at the end of the enclosed report.

Sincerely,

Don Collinsworth
Commissioner

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Under the new law, for a use of fish and game to be a subsistence use, the boards must make two findings:

1) that the area or community where the use occurs is "rural," that is, noncommercial, customary and traditional use of fish and game for personal and family consumption is a principal characteristic of its economy; and

2) that the use by an area or community of the particular game population or fish stock is customary and traditional, as determined under the eight criteria in 5 AAC 99.010 (Enclosure 1).