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management and research actions that are needed to protect and recover the species. The Office of Sea Otter Coordination (OSOC) was created in 1984 for the purpose of implementing an effective and coordinated recovery program.

The southern sea otter was reduced to possibly as few as 30-50 animals at the turn of the century as a result of overharvest by the commercial fur trade industry. Although this population apparently increased at about five percent per year from 1914 until the mid 1950's, surveys conducted by the California Department of Fish and Game (CDF&G) and the Service have not detected any increase in the population in recent years and even suggest a possible modest decline. Population surveys conducted in 1984 by the CDF&G and the Service resulted in actual counts of 1,203 and 1,304 sea otters, respectively.

Five-Year Status Review. The Five-Year Status Review required by the ESA was completed in 1984. It assessed the status of the southern sea otter after five years of Federal protection under the Act. The review also addressed two petitions: one to delist the sea otter (submitted jointly by Save Our Shellfish, the Greater Los Angeles Council of Divers and the Pacific Legal Foundation) and one to reclassify it as endangered (submitted by Friends of the Sea Otter). A comprehensive assessment of all pertinent issues relevant to the contemporary status of the sea otter was made. Based on the findings pursuant to Section 4(b)(3)(B) and Section 4(c)(2)(B) of the ESA, the Service determined that the southern sea otter is appropriately classified as a threatened species. The principal threats to the population are: potential contamination of individuals and/or habitat by accidental oil spills, incidental take in gill and trammel nets, increases in toxic pollutants within its range, and intentional shooting. The classification as threatened is appropriate because the Service is implementing an active recovery program.

Translocation. A primary goal of the MMPA is to restore marine mammal populations that have diminished below their Optimum Sustainable Population (OSP) levels. The Southern Sea Otter Recovery Plan identifies research and management actions considered necessary for the conservation of the southern sea otter as well as steps necessary to determine and attain the OSP level. One of the primary goals is to conduct appropriate research and take appropriate management actions to establish at least one additional colony of sea otters at a site sufficiently distant from the extant population in order to preserve a portion of the population in the event of a catastrophic oil spill. The research associated with translocation will aid the Service in evaluating the impacts on the ecosystem of reestablishing a sea otter population in unoccupied historical habitat, the effectiveness of containing a translocated population, and the population dynamics of a reestablished population. Results will be useful in determining OSP and assessing the need for, and likely consequences of, future translocations. Steps have been taken toward the establishment of an additional sea otter colony.

For the purpose of identifying potential translocation sites, the Service in 1983 contracted with J. L. Dobbins Associates, Inc., to compile and analyze available biological, ecological and socioeconomic information for the Pacific coast of Washington, Oregon and California. The analysis included such subjects as habitat suitability for supporting otters, present and proposed oil and gas development, other resource conflicts, and potential of natural barriers to contain the population's expansion. The analysis culminated in May 1984 with the publication of Compilation and Mapping of Available Biological, Ecological and Socio-Economic Information Bearing on the Protection, Management and Restoration of the Southern Sea Otter. Four sites (San Nicolas Island, Ventura County, California; the northern coast of California; the southern coast of Oregon; and the northern coast of Washington) showed the most promise as translocation sites.

Because of the controversial nature and potential environmental impacts of a sea otter translocation, the Service decided to prepare an Environmental Impact Statement (EIS) to evaluate various issues, alternatives and consequences associated with a translocation and to seek public input to the decision-making process. A Notice of Intent to prepare an EIS was published June 27, 1984, and scoping meetings were held on July 23 (Santa Barbara) and July 25 (Monterey).

The most frequently raised issues regarding the translocation involved economic impacts on commercial shellfish fisheries and oil development, risks of oil spills to sea otters, the need for a plan to contain the translocated population, threats of environmental contaminants to the sea otter, economic impacts on kelp harvesting, the need to establish a reserve breeding colony, the need for a law enforcement plan, and the need for a public education program.

An Interagency Project Review Team (IPRT) was established to provide assistance in defining issues and alternatives as well as to provide suggestions concerning the content of the EIS. The IPRT is comprised of Federal and State officials including representatives of the Service, MMS, MMC, National Oceanic and Atmospheric Administration, U.S. Coast Guard, CDF&G, California Fish and Game Commission, California Coastal Commission and California State Lands Commission. Meetings (open to the public) were held August 6 and October 4, 1984, in San Francisco, and November 8, 1984, in Sacramento.

In addition to personnel from the Service's OSOC, the Division of Wildlife Research and the Division of Program Plans, the drafting of the EIS has also been carried out through a Cooperative Agreement with the University of California-Santa Cruz. To assure technical accuracy of the draft EIS the Service has also selected an Expert Review Group comprised of experts in physical oceanography, modelling risks of marine pollution, marine ecology, marine mammal behavior/population dynamics and marine socio-economics. This group was selected to provide objective, impartial review and commentary on the draft and preliminary final EIS.

By the end of 1984, a complete working draft of the EIS had been completed. The draft EIS was scheduled for release to the public before the end of this fiscal year.

In conjunction with the EIS, the Service is preparing a proposed rulemaking and translocation plan for establishing an experimental population of sea otters, as authorized by Section 10(j) of the ESA. The translocation plan will serve as the basis for requesting a research permit under Section 101(a) of the MMPA.

In 1984 the Service, the MMC and the CDF&G intensified their efforts to determine why the sea otter population has not expanded in the past decade. Preliminary data indicated that commercial gill and trammel nets were incidentally entangling and drowning a significant number of southern sea otters. In September of this year CDF&G completed a preliminary analysis of data collected over the last three years and released the information at a public meeting in Morro Bay. The report indicated that otter mortality throughout its range is substantial, estimating that an average of 105 otters per year had drowned since 1973. This rate of loss means that 5-10 percent of the population may be drowning in nets each year. Continuation of this level of mortality seriously threatens the recovery of sea otters and if the situation is left unchecked, could result in the reclassification of the southern sea otter to an endangered status.

The CDF&G held public meetings in Morro Bay (September 11 and October 29, 1984) and Monterey (October 2, 1984) to give fishermen, conservation groups and other concerned citizens the opportunity to comment and offer recommendations on ways to eliminate accidental drowning of sea otters in commercial fishing nets. Since incidental take is significantly impacting the sea otter population CDF&G, on January 27, 1985, invoked a temporary emergency closure of the sea otter range to gill and trammel net fishing until long term legislative solutions to the entanglement problems can be implemented.

State Senate Bill 89 was introduced on December 20, 1984, as a legislative solution to entanglement. The Bill, which proposed to ban the use of all large mesh (larger than three inches) entangling fishing nets within the 15 fathom depth curve throughout the sea otter's range, was approved by the Senate on March 14, 1985. The State Assembly approved an amended version (increasing net mesh size to 3.5 inches) on May 9, 1985. If the Senate concurs on the new version, it will be sent to the Governor for signature.

Section 7 Consultations. Pursuant to Section 7 of the ESA, the Service reviews federally funded, conducted or permitted activities which may affect the southern sea otter and issues Biological Opinions and recommendations to minimize impacts. In 1984, the Service issued two non-jeopardy opinions to the MMS for proposed offshore oil and gas development and production. The first consultation (March 14, 1984) involved proposed oil

development and production in the Santa Ynez Unit of the Santa Barbara Channel, California. The data suggested that the probability is low that an oil spill resulting from the project would reach the southern sea otter range along the central California coast or San Nicolas Island (a potential translocation site).

The second consultation (October 31, 1984) involved proposed oil development and production in the Point Arguello Field. This project is located approximately 30 miles south of the southern extent of the current sea otter range (Santa Maria River). The draft EIS for the proposed production plan predicted that the likelihood of a spill occurring and contacting the sea otter range is very low (less than 0.1 percent per spill). Because of the low probability of a spill and the low numbers of otters in the southern portion of the range, a local spill in the project area is not likely to have a significant adverse impact on the sea otter population at this time.

The Service also issued a non-jeopardy Biological Opinion to the Corps of Engineers (COE) on October 24, 1984, regarding maintenance dredging of Morro Bay, San Luis Obispo County, where up to 60 otters have occurred during the past year.

Permits. During the 1984 reporting period, the OSOC worked closely with the Federal Wildlife Permit Office on the issuance of sea otter research permits. Sea World, Inc., of San Diego, California, received authorization to take one male sea otter for scientific research involving captive propagation and reproductive studies.

Another permit issued to Don Siniff of the University of Minnesota involved experimental telemetry studies using radio implants. The research is funded by the MMS and designed to provide more information on southern sea otter reproduction, mortality and behavior (e.g., movement patterns). After issuance of the telemetry permit, during the period of March 1984 through July 1984, an experienced veterinarian surgically implanted radio transmitters into the peritoneal cavity of five southern sea otters. To date, none of these sea otters show any adverse effects from the implants. One otter is missing and believed drowned in a gill or trammel net. Information on energy budgets, activity patterns, and behavior has been collected.

Section 6. The Service provided funding to CDF&G through Section 6 (Grant-in-Aid to the States) of the ESA. Methods for containing sea otters and controlling their movements were studied by CDF&G with these funds. This program was initiated in recognition that protection of sea otters from oil spills and managing a new colony of sea otters would be enhanced with the development of means to control their movement. The 1984 studies were designed to examine the feasibility of herding otters (using a variety of acoustic devices) and to improve methods of capturing sea otters.

The results of the acoustic herding tests (a one year study) indicated that the test animals were aware of the stimuli but the level of intensity was not sufficient to elicit a directional or avoidance response. The results indicate that herding, structured as it was in this effort, will probably not prove viable as a technique for clearing areas which have been occupied for long periods of time. Isolated kelp beds can be cleared for short periods of time, however.

The development of effective methods of capturing otters requires several years of study. Development of rapid and effective capture techniques is vital to sea otter management and recovery. Rapid capture of specific otters could facilitate the removal of otters from an area in imminent danger of oil contamination. If translocation plans are implemented, a certain age and sex ratio must be achieved for the group of otters selected as the nucleus of the new breeding colony. Again related to translocation, otters that stray from the translocation site would be captured and returned to either the translocation site or the original capture site. The capture and recapture of otters is also necessary to monitor the progress of research animals, tag, and take body weights and measurements.

Section 6 funds are also being used to obtain an index of the sea otter mortality rate and to determine the causes of death. The CDF&G program involves sea otter carcass salvage and observation of incidental take of sea otters in commercial fishing nets.

The carcass salvage program involves computer cataloging of all verified observations of dead sea otters. Necropsies are performed on fresh carcasses; those animals suspected of being shot are X-rayed. During the reporting period, 131 sea otter mortalities were reported by salvage personnel. Of the 131 animals that were recovered, 24 animals were known to have died directly or indirectly by human causes (18 by gill net operations and 6 by gun shot wounds). A large percentage of the salvaged otters were classified as "unknown" for cause of death. It is believed that a large number (105) of these "unknown" cases were drowned in gill and trammel nets.

Manatee

Service and University of Miami salvage personnel recovered a record 131 manatee carcasses in 1984. Results of necropsies indicated the following causes of death: 35 (27 percent) boat/barge collision; 3 (2 percent) crushed/drowned in flood gates in canal locks; 1 (1 percent) human poaching; 26 (20 percent) dependent calves; 25 (19 percent) natural causes; 40 (30 percent) undetermined; and 1 (1 percent) non-related, not examined. While 21 cold-related mortalities partially account for the high total mortality figure, the 35 boat/barge mortalities reflect a record number in this category and are more than double the 1983 level.



Fresh, fatal boat collision propeller wounds on a West Indian manatee.
U.S. Fish and Wildlife Service photo.

A variety of materials continued to be collected from carcasses for study by cooperating scientists. External measurements, photographs and notes were taken for each salvaged carcass. While in the past the complete skeletons were cleaned and sent to museums, this year only skeletons from carcasses in select size classes were curated with the emphasis being on finding appropriate repositories for the large number of curated skeletons already stored at the Sirenia Project laboratory in Gainesville, Florida.

This year an agreement was reached with the Florida Department of Natural Resources (FDNR) to assume responsibility for the salvage program in 1985. The shift of responsibility will occur over a transition period and be completed by July 1, 1985. The Service also has provided \$106,000 in ESA Section 6 funds to FDNR for the salvage program over a three-year period.

Coordination with the COE continued in an effort to minimize manatee mortality in water control structures and navigation locks operated by that agency. While the reduction in this category of deaths from six in 1983 to three in 1984 would appear to indicate progress, it cannot be related to any action on the part of the COE. Although the COE did install screens at the St. Lucie lock in May 1983 in an effort to reduce mortalities, two mortalities subsequently occurred at this lock. Based on a review and analysis of 1984 lock mortality data relative to current COE operation practices, the Service has renewed its effort to focus COE attention on devising a solution to the lock mortality problem.

Through a cooperative agreement with the Florida Cooperative Fish and Wildlife Research Unit (FCFWRU), the Service funded Dr. Jane Packard to prepare a draft "Proposed Research/Management Plan For Crystal River Manatees" (see 1980 and 1982 Annual Reports). The draft research/management plan, distributed for review in early 1984, consists of three volumes: an illustrated executive summary; the technical plan in loose-leaf format and a compendium of background material. Land-use planning techniques were used to map manatee habitat, human activities and to examine the overlap. Throughout the project, emphasis has been given to encouraging local participation and responsibility in making land-use decisions that affect manatees and their habitat. Local citizens and city, county, regional and State agencies contributed information used to define problems and opportunities for resolution of these problems. The Service has considered all responses from reviewers, and a Service position on the plan will be announced by the Regional Director in Atlanta by mid 1985.

The Service continued to fund other manatee studies at the FCFWRU. These studies, also conducted by Dr. Packard, involved an assessment of techniques for manatee population surveys, development of a standardized population survey technique, and a review of manatee marking techniques. Dr. Packard's research resulted in two research reports in 1984: "Report No. 6, Review of Manatee Marking

Techniques," and "Report No. 5, Factors Influencing Indices of Manatee Abundance in the Ft. Myers Region, Winter 1983/84." Continued field trials during the winter of 1984/85 will hopefully result in a refined methodology which, with appropriate modification, can be applied at several locations within Florida and form the basis for a statewide population index. This, in turn, will enable the Service to determine manatee population trends.

Researchers at the Service's Sirenia Project laboratory continued studies of basic reproductive and behavioral characteristics of manatees individually recognized by unique scar patterns. These studies continue to provide valuable information germane to understanding reproductive characteristics as they relate to manatee population biology. A female observed at Blue Spring this year appeared to be pregnant at three years of age, which is two years younger than pregnant females observed at Crystal River two years ago. However, if she was actually pregnant, she failed to have a successful birth. Data analysis on reproduction is nearly complete, and a manuscript is in preparation. The Service will continue monitoring the Crystal River population and a tentative agreement has been reached with FDNR to assume monitoring the Blue Spring population for the purpose of gathering data on various population parameters.

The Manatee Identification Catalog initiated in 1981 was updated and now includes three years of data from statewide observations. This study, funded by the Service and Florida Power and Light Company, has proved to be particularly useful in documenting long distance manatee movements throughout the State. Thus far, 746 individual manatees have been included in the catalog, providing some indication that the Florida population of manatees may be larger than the frequently reported figure of 1,000.

A major achievement this year was the successful development of a saltwater radio transmitter. Last winter 14 manatees were fitted with the tethered, floating transmitter at Crystal River, and based on these trials and subsequent modifications a reliable transmitter is available for field research to determine manatee distribution and movements in southwest Florida in 1985. As a result of these field trials on Crystal River manatees and aerial surveys flown by staff at the Chassahowitzka National Wildlife Refuge (NWR), valuable information was also gained on manatee movements in the south Big Bend area which will prove extremely useful as the Service assesses the need for additional habitat protection in that area. Service manatee researchers also collaborated with Florida State Museum researchers under contract with the U.S. Navy in efforts to determine manatee distribution in Puerto Rico in general and more specifically at the Roosevelt Roads Naval Base. These studies were completed in March 1985, and a final report is due by June 1985.

The Service continues to pursue acquisition of approximately three acres of water bottoms adjacent to the Crystal River NWR. Control of the water bottoms is necessary to post a manatee



A West Indian manatee being fitted with a tethered, floating transmitter in the Crystal River, Citrus County, Florida. U.S. Fish and Wildlife Service photo.

sanctuary area. Appraisals are being completed to determine a fair market price. Presently the bottoms continue to be leased from the owner during the winter months. An environmental assessment and initial planning have been completed for acquisition of a site and facilities on Kings Bay for a refuge headquarters and interpretive center.

During the report period, the Service conducted 33 formal endangered species consultations for actions that might impact the West Indian manatee. This is a major increase from the five formal consultations in 1983, reflecting an increased awareness by the COE and increasing development pressures in Florida. Consultations are required under Section 7 of the ESA for actions that are federally funded, authorized or carried out that may affect a listed species or its critical habitat. Consultations result in biological opinions which are issued by the Service's Washington Office, regional offices, and/or field stations. The results of biological opinions, although not binding, must be considered before decisions are made. Since manatees are distributed throughout most of Florida's estuaries, bays and coastal waters, a considerable number of Federal actions affect these marine mammals. Most of the consultations conducted during the reporting period were with the COE and concerned proposed construction or expansion of boating facilities. The Service in 1984 issued one finding of "will promote the conservation," 29 findings of "is not likely to jeopardize," and three findings of "is likely to jeopardize" the continued existence of the West Indian manatee.

The Service continues to support the Manatee Rescue Contingency Plan conducted through cooperative agreements with Sea World and Miami Seaquarium. The agreements provide for rescue services and rehabilitation for injured or distressed manatees. The Service has renewed the agreements with these two organizations for 1985.

The FDNR, through the Florida Marine Patrol, continued to operate the toll-free "Resource Alert Watch Line" whereby people in Florida can report observations of injured, distressed or dead manatees. If the reports are valid, Marine Patrol notifies the Service's Jacksonville field station of injured or distressed animals or it tows and secures the carcasses of dead animals and notifies one of the three salvage/necropsy teams.

The FDNR manatee program received a large boost this year with a new source of funds available from the Boating Improvement Fund. The Service is cooperating fully with FDNR as they shape their manatee program and assume an expanding role in the conservation of the manatee.

Dugong

Dugongs occur in limited numbers throughout Indonesia including Palau Island, Trust Territories of the Pacific Islands. This island group has opted for Republic status under the Compact of Free Association between the United States of America and the Trust Territories.

The Service has executed a Memorandum of Understanding (MOU) with the Republic of Palau providing for technical assistance in resource conservation. An item in the MOU is the provision for review of research proposals. This provision was included at the specific request of the Republic of Palau. They do not presently have the staff to make these evaluations or to conduct baseline studies of their resources.

Aerial surveys and citizen interviews designed to determine the distribution and status of dugongs around the Island of Palau were completed. The Service continues to assemble literature on the distribution and status of dugongs.

Traditionally, the dugong had high cultural significance to the Palauans, as well as affording a good source of protein. A bracelet made from the atlas vertebra of a dugong could be worn only by the chiefs of villages or municipalities, and as a consequence, the dugong was effectively conserved by the chief. At the present, the role of traditional chiefs has been greatly diminished resulting in little protection for this species.

Modern technology (speed boats, explosives, spear guns, etc.) has also had a tremendous impact on the taking of this species. The limited resources of the Republic of Palau are insufficient to promote protection of the dugong from illegal taking.

Unregulated taking of the dugong has become critical. There is substantial disagreement among Palauans and outside researchers on the number of dugongs present in Palau. Aerial surveys made by Brownell, Anderson, Owen, and Ralls in 1977 and 1978 led them to estimate that the population consisted of not more than 50 individuals, substantially less than estimates offered by most local residents. An additional survey was conducted by Service personnel in 1983, which indicates that the population size probably remains about the same. Certainly, there has not been any improvement in the situation. Data from this survey will be analyzed along with those from previous surveys and a more detailed report will be presented in the future. Brownell, et al., speculated that even if there were 150 animals, the estimated poaching rate of 20 dugongs per year probably exceeded annual recruitment. Therefore, the Palau dugong population could be exterminated by the end of this century.

Service efforts have been directed towards developing a census methodology that is understood and accepted by the Palauans. Without this acceptance, any results derived will be suspect. However, this effort has not been a sustained one due to insufficient resources. An effective methodology which incorporates the observations and concerns of the Palauans is essential. Unless the fragile nature of this isolated dugong population can be clearly demonstrated to the Palauans, any effort to promote conservation of the dugong will be virtually ineffectual.

Two formal Section 7 consultations under the ESA were completed during 1984. Both involved applications received from the COE requesting permits for dredge and fill activities in the Republic of Palau. Both biological opinions issued by the Service concluded that the actions were not likely to jeopardize the continued existence of the dugong.

Hawaiian Monk Seal

Endangered species funding in 1984 for the Hawaiian monk seal was utilized in support of the Service's Field Station at Tern Island, French Frigate Shoals (FFS). Service activities in relation to monk seals focused on management studies at FFS and Laysan Island, and on cooperative research projects with the NMFS in the Hawaiian Islands NWR and Johnson Atoll NWR.

The Refuge staff operated the Tern Island facility throughout 1984, and, in so doing, provided an opportunity to continue management studies initiated in 1979. The seal population using Tern Island was monitored via surveys conducted every four days. The location of all animals identifiable by scars or other marks was recorded. Monthly atoll surveys of the other islets were also made by boat from Tern Island. A Service volunteer at Tern



Hawaiian monk seals on a beach in the Hawaiian Islands National Wildlife Refuge. U.S. Fish and Wildlife Service photo.

Island assisted in the census and individual identification of seals that haul out there. Service personnel also served on the Monk Seal Recovery Team which met during the year.

Data collected by NMFS and FWS personnel during October 1983 - September 1984 indicate that pup production was up from the previous year (estimated 106 vs. 90 pups), and the number of seals hauling out on Tern Island continues to increase; more than 100 seals were observed hauled out during surveys conducted in 1984. Seal surveys at FFS in 1984 included continuation of the aerial photo project begun in 1981. During supply flights to Tern Island, all sandy islets at FFS were photographed using 35mm slide film. The objectives of this project are to monitor abundance and distribution of seals within the atoll, to derive an estimate (or index) of pup production, to estimate age (size) structure of the population, and to monitor habitat conditions and habitat selection by seals. December 23, 1984, was the last day of this aerial monk seal pilot survey. FWS personnel have compiled all aerial photo data and will now analyze that information to determine if the aerial photo survey has met program objectives. If determined to be effective, aerial surveys will be continued in the future when NMFS long-term studies are not taking place on the atoll. During 1985, NMFS personnel will be at the atoll conducting studies to determine the population and production of monk seals.

Special Use Permits were issued to the NMFS for cooperative monk seal studies conducted in the Hawaiian Islands NWR. These studies involved field camps on three remote Refuge islands and NMFS personnel stationed at FFS. The primary purpose of these studies was to assess populations and production of seals through tagging. At Laysan Island, efforts were concentrated on documenting mobbing behavior of adult male monk seals so as to identify individual adult males involved in such attacks. Marine debris that would entangle seals was destroyed and samples were taken for analysis of origin. Field camps were established at Necker Island (June 20-28 and August 5), Laysan Island (May 29-August 7 and October 22-November 6), Lisianski Island (July 2-August 6), and Pearl and Hermes Reef (July 3-August 5). NMFS personnel were stationed at Tern Island at FFS from January 1-27 and March 7-August 31.

Other cooperative studies involved the capture and removal of six underdeveloped pups from FFS for transfer and headstarting at Kure Atoll; one underdeveloped pup was transported to the Waikiki Aquarium for research purposes. Five of the six seals taken for rehabilitation survived through 1984. These remain in Honolulu pending screening for disease. The male pup will be retained in captivity. Ten adult seals which were identified by NMFS personnel as mobbers were captured on Laysan Island during October 1984. Nine of these survived, and were later transferred to and released at Johnston Atoll NWR on November 9 in an attempt to reduce the frequency and severity of mobbing incidents. By the end of 1984, none of the seals had been recently sighted after their release. An extensive coordination effort was

required for this project between the Service, Defense Nuclear Agency, U.S. Air Force and NMFS.

Monk seal field surveys were conducted on Nihoa and Midway by FWS personnel. Field efforts on Midway also included coordination with the U.S. Navy and the contractor to minimize conflicts with monk seals. A proposal to develop an overlay NWR on Midway is presently being negotiated with U.S. Navy staff. A cooperative agreement involving U.S. Navy lands was finalized between the NMFS, FWS and U.S. Navy.

The Service continued work on a Refuge Master Plan for the Hawaiian Islands NWR. The Master Plan includes long range management alternatives for FWS in view of its importance to monk seals and monk seal recovery efforts. Intra-Service formal consultation as required by Section 7 of the ESA was initiated to assess the impact of the Master Plan on the monk seal. The biological opinion issued by the Service's Regional Director in Portland concluded that the adoption and implementation of the Plan would promote the conservation of the species.

John Shively, representing the NANA Corporation and the Alaska Federation of Natives, is an excellent summation of the evolution of the "Nativeness" issue in the House to which I would direct any member interested in more information on this subject.

Because of the Governor's objections, we adopted (and the bill retains) a racially-neutral approach to the subsistence allocation issue. Subsistence uses are defined as the customary and traditional uses of wild, renewable resources for personal and family consumption by all residents of rural Alaska, Native and non-Native alike. Subsistence uses by rural residents shall have a priority over the taking of renewable resources by non-rural residents of Alaska, non-residents of Alaska, and aliens.

If in a particular instance a particular fish or wildlife population cannot even safely sustain a harvest only by rural residents engaged in subsistence uses, then priorities among such rural residents will be established on the basis of the racially-neutral criteria of local residency, availability of alternative subsistence and other food resources other than the resource being allocated, and the degree of dependency of individual rural residents on the allocated resource as the mainstay of livelihood. The neutral criteria will be applied evenhandedly to all rural residents, Native and non-Native alike, who harvest the allocated resource for subsistence uses.

Although I will address the operation of the subsistence priority later in my remarks, I raise the history of the subsistence priority here to point out that while the statutory allocation scheme is racially neutral, its application may result in instances in which significantly more Natives than non-Natives may be afforded access to a particular subsistence resource. Such a result will be consistent with a statutory approach based, as the subsistence title is, upon the constitutional authority of the Congress to manage Native affairs.

However, Mr. Speaker, I would hasten to emphasize that it is also true that a racially-imbalanced allocation system may result from time to time not because the subsistence priority favors Natives over non-Natives, but merely (as is a well-recognized fact of life) the vast majority of the residents of rural Alaska happen to be Alaska Natives.

For example if there are only six communities in a particular State game management unit, all of which are Alaska Native villages in which Alaska Natives predominate in the population, and the biologists determine that the local moose herd cannot safely sustain a harvest greater in size than the number normally harvested by residents of the local area for subsistence uses, then the subsistence priority requires the State to adopt regulations which restrict moose hunting within that game management unit to only the residents of that unit. The responsibility of the Federal Government to protect Alaska Native subsistence activities will be met, but all non-Native residents of the area will be treated in a manner identical to that of their Native neighbors. In other words, the criteria used to allocate access to the moose in my example is based upon "residency," with all similarly situated residents treated in an identical manner. It also should be noted that the residency component in the subsistence priority, both rural residency and local residency, is not intended to impose a durational residency requirement.

Mr. Speaker, there is another significant reason to emphasize that the subsistence title and the subsistence provisions in other titles are enacted based upon our constitutional authority to manage Indian affairs. The so-called "(d)(2)" issue in general, and the subsistence title and other subsistence provisions of this bill in particular, are

derivative of the Alaska Native Claims Settlement Act. The Federal courts have consistently recognized the Settlement Act to be Indian legislation, entitled to all of the legal presumptions and statutory interpretations associated with that generic class of statutes. While the Alaska National Interest Lands Conservation Act obviously is not Indian legislation in its entirety, the subsistence title and the other subsistence related provisions are. And under well-recognized canons of statutory construction, any ambiguities in the title and other provisions must be resolved in favor of the Alaska Native people.

This result is also consistent with the Congressional policy established by section 802(1) that the management of the public lands shall cause the least adverse impact possible on rural residents who depend upon subsistence uses. This policy requires that administrative structures and regulations for conservation system units, including national parks and monuments, shall be established and implemented in a manner consistent with the protection and continuation of Alaska Native culture and Native subsistence activities.

Consequently, in general, no permit or quota system for the subsistence use of wildlife within national parks and monuments and other conservation system units should be imposed on rural residents unless necessary to protect the continued viability of a particular wildlife population, and then only with respect to that particular population. However, trapping and other customary trading activities may be an exception to this general rule.

The policy also 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, and consequently can be invidiously destructive to Alaska Native culture. To key eligibility to harvest wildlife within a national park, for example, upon a determination of whether a resident of a Native village was able to secure temporary employment away from his village, has a wife who is a health or teacher's aide with a steady source of income, or has a job in the village as a corporation officer or power plant operator, is to key eligibility on criteria which embody the seeds of destruction of Native culture sown in the guise of regulation. Such regulatory structures may be bureaucratically convenient but represent a disrespect for the Alaska Native culture, and the community cohesion which is one of its greatest attributes, which we have gone to great lengths throughout the Alaska lands bill to protect. It is the intent of the bill in general, and the subsistence title in particular, so far as possible to allow the Alaska Native people to choose for themselves the direction and pace, if any, of the evolution of their own culture.

Mr. Speaker, I also would like to briefly review the requirements imposed on the subsistence management system by the subsistence priority established in section 804. Section 804 is based upon section 704(b)(5)(B) and (C) of the version of H.R. 39 passed by the House during the 95th Congress. The only major difference between any of the subsistence preference sections has been the inconsistent use of the words "preference" and "priority". Mr. Speaker, in terms of the legal effect of the section I do not believe that there has ever been any intent to alter the legal requirements of the section by the use of one, as opposed to the other, of these two terms. Rather, this difference reflects the idiosyncratic styles of the various committee draftsmen. Consequently, I do not believe that the State of Alaska need modify its State subsistence statute, which uses the term "priority", in order to be in compliance with the "preference" requirement of section 804. However, the State statute may need to be modified to comply with other

requirements of both section 804 and other provisions of the title.

The subsistence preference applies to individual wildlife populations and fish, and State regulation of the taking of each population and stock must be consistent with section 804.

The State must first identify the customary and traditional subsistence uses of each population and stock by rural residents. It should be emphasized that this evaluation must be based upon subsistence use, not upon any form of economic or other need. It also should be emphasized that the level of subsistence uses by rural residents of particular wildlife populations and fish may have been repressed by State regulatory activities and, consequently, recent historical levels of harvest of a particular population or stock may not accurately reflect the normal level of the customary and traditional subsistence use of such population.

The King salmon fishery on the west side of Cook Inlet and the caribou harvest in the Copper River area are two recent examples of this situation. From 1964 until this past June, when the subsistence King salmon fishery was finally opened to the residents of the village of Tyonek by a State court order implementing the State subsistence statute, the residents of that village have been prohibited from harvesting a subsistence resource which prior to 1964 had been harvested for generations. Obviously, an analysis of the customary and traditional subsistence use of King salmon by residents of the village of Tyonek over even the past ten years would result in a determination that King salmon are not a customary and traditional subsistence resource of that village, a determination which would be erroneous.

Because of the decline of the caribou population in the Copper River area, the State reduced the total harvest of the population and established a lottery in which the residents of villages in the Copper River area have had to compete against sport hunters from around the State for a caribou hunting permit. Any analysis of the level of customary and traditional subsistence use of caribou by rural residents in the Copper River area will produce a figure far below the normal customary and traditional subsistence use of the resource which would have resulted if the State had not imposed a regulatory system on the rural residents of the area which subordinated subsistence uses to the needs of urban sport hunters.

Mr. Speaker, similar examples are too numerous to mention. The point I am making is that the subsistence priority requires the State of Alaska to determine the customary and traditional subsistence use of a particular wildlife population or fish which would have reasonably been made by rural residents if their subsistence uses had consistently been respected and adequately protected by State regulation.

It also should be noted that customary and traditional subsistence uses must be evaluated on a community or area basis, rather than an individual basis. If not, our commitment in this legislation to the protection of the Alaska Native subsistence way of life would be terminated in one generation as rural residents with established subsistence uses pass away and their descendants with no established customary and traditional uses take their place in the subsistence cycle.

As I have mentioned earlier, and as the subsistence title itself specifically states, it is the intent of this legislation to protect the Alaska Native subsistence way of life, and the Alaska Native culture of which it is a primary and essential element, for generation upon generation, for as long as the Alaska Native people themselves choose to participate in that way of life, and to leave for the Alaska Native people themselves, rather than to Federal and State resource

ALASKA LANDS CONSERVATION ACT

P.L. 96-487

[page 233]

should be noted that a recommendation of a regional council pursuant to Section 305 would not be supported by substantial evidence if the recommendation is inconsistent with the conservation of healthy populations of fish and wildlife. The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and manipulation of the components of the ecosystem.

Definition of "Subsistence Uses"

Although many residents of cities such as Ketchikan, Juneau, Anchorage, and Fairbanks harvest renewable resources from the public lands for personal or family consumption, by its very nature a "subsistence use" is something done only by Native and non-Native residents of "rural" Alaska. The Committee adopted an amendment to clarify this point by limiting application of the definition to areas of "rural" Alaska including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other Native and non-Native villages scattered throughout the State. However, the Committee does not intend to imply that the rural nature of such communities is a static condition; the direction of the economic development and rural character of such communities may change over time. It should be emphasized that this amendment is not intended to impose a "durational" rural residency requirement in the definition or impede the traditional movement of Alaska residents between the rural areas and the major population centers and vice versa. Nor does the amendment prohibit the taking of fish and wildlife on certain public lands by normal residents. Rather, nonsubsistence uses may continue in accordance with existing law but do not enjoy any preference on the public lands, and, consequently, may be restricted pursuant to Section 804 when necessary to protect subsistence resources or to ensure the satisfaction of the subsistence needs of rural residents.

LEGISLATIVE HISTORY

P.L. 96-487

[page 234]

The definition has been modified to eliminate the "for personal or family consumption" limitation upon the taking of wild, renewable resources for "customary trade". The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses". The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title.

Local And Regional Participation

An amendment to section 805 clarifies that regardless of whether the regional council system is established by the Secretary or the State, the relationship between the regional councils and the Secretary or the State is the same; that is, either the Secretary or the State may choose not to follow a recommendation made by a council if the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. Another important amendment clarifies that if the State enacts and implements laws of general applicability which satisfy the requirements of Sections 803, 804, and 805, then, unless and until repealed, such State laws shall supersede Sections 803, 804, and 805 insofar as such sections govern State responsibility for the taking of fish and wildlife on the public lands for subsistence uses.

Judicial Enforcement

The major amendment to Section 807 clarifies that while the Secretary is not required to hold a hearing (either informal or pursuant to formal procedures set forth in the Administrative Procedures Act) prior to bringing a civil action against the State on behalf of a local committee or regional council, he is required, prior to bringing such action, to make a determination in writing setting forth substantial evidence that the State has failed to make adequate and timely provision of the subsistence preference after having been provided a reasonable opportunity to do so, and that such failure threatens the ability of local residents to satisfy their subsistence needs.

Subsistence and Land-Use Decisions

The Committee adopted two important technical amendments to Section 810. The first substitutes the well-recognized legal standard of "reasonable" in place of "adequate" to describe the steps which the head of a Federal agency must take to minimize adverse impacts on subsistence uses prior to permitting a withdrawal, reservation, lease, permit, or other use, occupancy, or disposition of the public lands which would significantly restrict subsistence uses, although it should be recognized that steps which are "inadequate" to minimize adverse impacts will rarely be "reasonable" within the meaning of this section. The second amendment clarifies that the requirements of Section 810 are "procedural" in that until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses.

SUBSISTENCE

Miscellaneous

(FILE 1)

CORRECTION

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

SUBSISTENCE

Miscellaneous

(FILE 1)

THE
CONSTITUTION
of the
STATE OF
ALASKA



Any qualified voter may apply to
urt to compel the governor, by
therwise, to perform his reappor-
or to correct any error in redis-
ortionment. Application to compel
o perform his reapportionment
iled within thirty days of the expi-
of the two ninety-day periods
article. Application to compel cor-
ror in redistricting or reapportion-
ed within thirty days following the
iginal jurisdiction in these matters
in the superior court. On appeal,
be reviewed by the supreme court
l the facts.

LE VII

ON, AND WELFARE

The legislature shall by general law
intain a system of public schools
ren of the State, and may provide
educational institutions. Schools
so established shall be free from
. No money shall be paid from
the direct benefit of any religious
ducational institution.

The University of Alaska is hereby
state university and constituted a
It shall have title to all real and
/ now or hereafter set aside for or
its property shall be administered
ccording to law.

The University of Alaska shall be
oard of regents. The regents shall
the governor, subject to confirma-
ty of the members of the legisla-
on. The board shall, in accordance

Public
Health
Public
Welfare

with law, formulate policy and appoint the presi-
dent of the university. He shall be the executive
officer of the board.

SECTION 4. The legislature shall provide for the
promotion and protection of public health.

SECTION 5. The legislature shall provide for
public welfare.

ARTICLE VIII

NATURAL RESOURCES

Statement
of Policy

SECTION 1. It is the policy of the State to en-
courage the settlement of its land and the develop-
ment of its resources by making them available for
maximum use consistent with the public interest.

General
Authority

SECTION 2. The legislature shall provide for the
utilization, development, and conservation of all
natural resources belonging to the State, including
land and waters, for the maximum benefit of its
people.

Common
Use

SECTION 3. Wherever occurring in the natural
state, fish, wildlife, and waters are reserved to the
people for common use.

Sustained
Yield

SECTION 4. Fish, forests, wildlife, grasslands,
and all other replenishable resources belonging to
the State shall be utilized, developed, and main-
tained on the sustained yield principle, subject to
preferences among beneficial uses.

Facilities
and
Improvements

SECTION 5. The legislature may provide for
facilities, improvements, and services to assure
greater utilization, development, reclamation, and
settlement of lands, and to assure fuller utilization
and development of the fisheries, wildlife, and
waters.

State Public
Domain

SECTION 6. Lands and interests therein, in-
cluding submerged and tidal lands, possessed or

1/15/85

WORK DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fishing and hunting; and providing for an effective date."

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

* Section 1. FINDINGS AND INTENT. (a) Sound management of fish and wildlife is more likely to be achieved if the management of fish and wildlife, including allocation among different uses, is done on a biological basis, rather than on the basis of land ownership.

(b) Maintaining healthy populations of fish and wildlife is important to the state because healthy populations provide opportunities for a subsistence life style, for trophy and other sport hunting and fishing, for commercial fishing and for wildlife viewing.

(c) To assure that these opportunities remain reasonably available it is necessary

(1) that there be an equitable balance among sport, commercial, subsistence, and nonconsumptive needs;

(2) that, when all consumptive uses of fish and game cannot be accommodated without harming the resource, there be a reasonable preference for subsistence use of fish stocks and game populations that are important to subsistence uses;

(3) that the Board of Fisheries and the Board of Game have the authority, flexibility, and information needed to maintain sustained yield, healthy populations, and opportunities for subsistence, sport, commercial and other consumptive and nonconsumptive uses of fish and game; and

(4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.050 is amended by adding new paragraphs to read:

3 (14) make recommendations to the Board of Fisheries and the
4 Board of Game regarding the adoption, amendment, and repeal of regu-
5 lations;

6 (15) provide information to the Board of Fisheries and the
7 Board of Game as needed to carry out their statutory duties.

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

9 (a) The Board of Fisheries may adopt regulations it considers
10 advisable in accordance with the Administrative Procedure Act (AS 44.-
11 62) for

12 (1) setting apart and designating fish reserve areas,
13 refuges and sanctuaries in the waters of the state over which it has
14 jurisdiction, subject to the approval of the legislature;

15 (2) managing fish reserve areas, refuges and sanctuaries;

16 (3) establishing open and closed seasons and areas for the
17 taking of fish;

18 (4) [(3)] setting quotas, bag limits, harvest levels,
19 escapement levels, and sex, [AND] size, age, and other limitations
20 pertaining to [ON] the taking of fish;

21 (5) [(4)] establishing the means and methods, including
22 gear, tackle, and vessels, employed in the pursuit, capture, and
23 transport of fish;

24 (6) [(5)] establishing marking and identification require-
25 ments for means used in pursuit, capture, possession, tagging, and
26 transport of fish;

27 (7) [(6)] classifying as commercial fish, sport fish,
28 personal use fish, subsistence fish, indigenous fish, exotic fish,
29 nonindigenous fish, hatchery fish, or predators or other categories

1 essential for regulatory purposes; a fish stock may be the subject of
2 more than one classification;

3 (8) protecting, maintaining and improving watersheds [(7)
4 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
5 conservation, protection, use, disposal, propagation, and stocking of
6 fish; watershed and habitat regulations may be adopted under this
7 paragraph only after consultation with the Department of Natural
8 Resources;

9 (9) [(8)] investigating and determining the extent and
10 effect of disease, predation, and competition among fish in the state,
11 and exercising control measures considered necessary to the resources
12 of the state;

13 (10) [(9)] prohibiting and regulating the live capture,
14 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
15 eggs;

16 (11) [(10)] establishing seasons, areas, quotas and methods
17 of harvest for aquatic plants;

18 (12) [(11)] establishing the times and dates during which
19 the issuance of fishing licenses, permits and registrations and the
20 transfer of permits and registrations between registration areas is
21 allowed; however, this paragraph does not apply to permits issued or
22 transferred under AS 16.43;

23 (13) designating and regulating special fishing areas,
24 including personal use areas, trophy management areas, catch-and-
25 release areas, and children's fishing areas, and designating stocks in
26 those areas for which special management is appropriate;

27 (14) establishing a procedure for administrative appeal of
28 board decisions; and

29 (15) regulating commercial, sport, subsistence, and personal

1 use fishing as needed for the conservation, development and utiliza-
2 tion of fisheries.

3 * Sec. 4. AS 16.05.255(a) is amended to read:

4 (a) The Board of Game may adopt regulations it considers advis-
5 able in accordance with the Administrative Procedure Act (AS 44.62)
6 for

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

10 (2) managing game reserve areas, refuges and sanctuaries;

11 (3) establishing open and closed seasons and areas for the
12 taking of game;

13 (4) [(3)] establishing the means, [AND] methods, marking,
14 and identification requirements employed in the pursuit, capture,
15 possession, tagging and transport of game;

16 (5) [(4)] setting quotas, bag limits, harvest levels, and
17 sex, age, [AND] size, and other limitations on, and game population
18 goals pertaining to, the taking of game;

19 (6) [(5)] classifying game as game birds, song birds, big
20 game animals, fur bearing animals, predators or other categories;

21 (7) [(6)] methods, means, and harvest levels necessary to
22 control predation and competition among game in the state;

23 (8) protecting, maintaining, and improving watersheds [(7)
24 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
25 ment, conservation, protection, use, disposal, propagation and stock-
26 ing of game; watershed and habitat regulations may be adopted under
27 this paragraph only after consultation with the Department of Natural
28 Resources;

29 (9) [(8)] prohibiting the live capture, possession,

1 transport, or release of native or exotic game or their eggs;

2 (10) [(9)] establishing the times and dates during which the
3 issuance of game licenses, permits and registrations and the transfer
4 of permits and registrations between registration areas and game
5 management units or subunits is allowed;

6 (11) regulating sport hunts and subsistence hunts as needed
7 for the conservation, development, and utilization of game and nongame
8 species.

9 * Sec. 5. AS 16.05 is amended by adding new sections to read:

10 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
11 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
12 Fisheries and the Board of Game shall:

13 (1) estimate the amount of fish and game needed to provide
14 a reasonable opportunity for rural residents to continue to engage in
15 a customary and traditional subsistence way of life; determinations
16 shall be based on research, analysis, comments, and recommendations of
17 the department;

18 (2) identify and designate the areas used for subsistence
19 harvest, and areas formerly used for subsistence harvest, according to
20 fish stock and game population, and according to subsistence user
21 population; the zones may overlap where different groups of subsis-
22 tence users have customarily and traditionally used the same areas;

23 (3) identify fish stocks and game populations that custom-
24 arily and traditionally have been used by, and are important to, rural
25 residents for subsistence use.

26 (b) The Board of Fisheries or the Board of Game shall assess the
27 biological status of, respectively, the important subsistence fish
28 stocks and the important subsistence game populations in the use
29 zones, and shall determine whether a surplus may be harvested during

1 a regulatory year consistent with the sustained yield principle, sound
2 management principles, and the maintenance of healthy fish stocks, and
3 other wildlife populations.

4 (c) After identifying the important subsistence fish stocks or
5 game populations, the appropriate board shall determine the amount of
6 harvestable surplus of the stock or population that will provide a
7 reasonable opportunity to engage in customary and traditional subsis-
8 tence uses of the stocks or populations.

9 (d) The Board of Fisheries and the Board of Game shall adopt
10 regulations, in accordance with the Administrative Procedure Act
11 (AS 44.62), for subsistence fishing and subsistence hunting unless
12 adoption of the regulations could jeopardize or interfere with the
13 maintenance of fish stocks, game populations, or other wildlife popu-
14 lations on a sustained-yield basis, or could be inconsistent with
15 sound management principles or with the maintenance of healthy fish
16 stocks, game populations, or other wildlife populations. The regula-
17 tions may be the same as, different from, or in addition to regula-
18 tions governing other consumptive uses of the stocks or populations.

19 (e) Except as otherwise provided in this chapter or in other
20 state or federal laws, subsistence fishing and subsistence hunting is
21 accorded a preference over other consumptive takings and uses of fish,
22 game, or other wildlife. Whenever it is necessary, after reasonably
23 regulating seasons, bag or catch limits, and means and methods, to
24 further restrict subsistence fishing or subsistence hunting to protect
25 the continued health and viability of a fish stock or game population,
26 assure sound management, assure the maintenance of a fish stock or
27 game population on a sustained-yield basis, or protect continued
28 future subsistence fishing or subsistence hunting, the preference may
29 be limited by applying the following criteria:

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

3 (2) local residency; and

4 (3) availability of alternative resources.

5 (f) Each board may adopt regulations under this chapter that
6 authorize taking for nonsubsistence uses a stock or population iden-
7 tified as important for subsistence use, to the extent that the non-
8 subsistence uses do not jeopardize or interfere with sound management
9 principles, sustained yield, the maintenance of healthy populations,
10 or the opportunity for taking these resources for subsistence uses
11 under this chapter.

12 (g) The boards, acting jointly, shall adopt regulations that
13 establish criteria that the boards must consider when defining and
14 identifying customary and traditional subsistence uses and customary
15 and traditional subsistence use areas. The regulations may include,
16 but need not be limited to, the following criteria:

17 (1) long-term, consistent patterns of use recurring in
18 specific seasons each year;

19 (2) use patterns consisting of methods and means of harvest
20 characterized by efficiency and economy of effort and cost, and condi-
21 tioned by local circumstances;

22 (3) the consistent harvest and use of fish or game that is
23 near, or reasonably accessible from, the user's residence;

24 (4) use patterns that include the handing down of knowledge
25 of fishing or hunting skills, values, and lore from generation to
26 generation;

27 (5) use patterns in which the hunting or fishing effort or
28 the products of that effort are distributed or shared among others
29 within a definable community of persons, including customary trade,

1 barter, sharing, and gift-giving; customary trade does not include
2 significant commercial enterprises; an area may include specific
3 villages or towns with a historical dependence on subsistence uses;

4 (6) use patterns that include reliance for subsistence
5 purposes on a wide diversity of the fish and game resources of an area
6 and provide substantial economic, cultural, social, and nutritional
7 elements of the life of area residents; and

8 (7) lack of a developed cash economy that could provide all
9 residents of the area a reasonable opportunity for participation.

10 (h) If the appropriate board determines that (1) a particular
11 fish stock or game population is not a customary and traditional
12 subsistence resource or not a significant source of subsistence use
13 and (2) subsistence is not the best use of that fish stock or game
14 population, the board may provide that the fish stock or game popu-
15 lation may not be taken under subsistence regulations, but may be
16 taken under other regulations. The Board of Fisheries may shift
17 subsistence use of a fish stock to a suitable prior or contempora-
18 neous stock of the same or a different species. The Board of Game may
19 shift subsistence use of a game population to another population if a
20 suitable alternative population of the same or a different species is
21 available.

22 (i) The subsistence preference shall provide a reasonable oppor-
23 tunity for subsistence fishing or subsistence hunting. The preference
24 may vary, may be graduated, and may be balanced against the degree of
25 economic and traditional dependence on the resource in question. If
26 dependence on the resource in question is high, the preference shall
27 provide a full opportunity for satisfaction of subsistence needs,
28 including potentially exclusive subsistence use when a resource
29 shortage occurs. If dependence on the resource in question is low,

1 the preference may be less and need not be potentially exclusive. As
2 the degree of dependence varies, the degree of the preference may vary
3 accordingly.

4 Sec. 16.05.259. JUDICIAL APPEAL OF REGULATORY ACTIONS. An
5 aggrieved person must exhaust all administrative remedies before
6 bringing a legal action challenging the adoption or repeal of a regu-
7 lation of the Board of Fisheries or the Board of Game.

8 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

9 (c) The Board of Fisheries and the Board of Game may adopt
10 regulations, under the Administrative Procedure Act (AS 44.62), pro-
11 viding for the issuance and expiration of subsistence fishing permits,
12 subsistence hunting permits, and combination subsistence fishing and
13 hunting permits as needed for authorizing, regulating and monitoring
14 the subsistence harvest of fish and game. The boards shall adopt
15 these regulations when the subsistence preference requires a reduction
16 in the harvest of a fish stock or game population by nonsubsistence
17 users, or when special seasons, bag limits or other provisions are
18 necessary, to provide a reasonable opportunity for subsistence tak-
19 ings. A permit program need not be established in any particular area
20 of the state or for any particular fish stock or game population
21 unless circumstances warrant.

22 (d) The commissioner shall administer subsistence permit pro-
23 grams that may be established. The commissioner may appoint and
24 authorize compensation of persons to take applications and issue
25 permits and tags, and may require reports, as provided for licenses
26 and tags under AS 16.05.360 - 16.05.390.

27 (e) This section may not be construed as altering other require-
28 ments of state or federal law for licenses, permits, stamps, tags, or
29 seals.

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

2 (22) "subsistence fishing" means the nonwasteful taking of,
3 fishing for, or possession of fish, shellfish, or other fisheries
4 resources in accordance with regulations adopted under AS 16.05.258
5 for subsistence uses with gill net, seine, fish wheel, long line, or
6 other methods and means defined by the Board of Fisheries;

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

8 (23) "subsistence uses" means the nonwasteful, customary and
9 traditional uses by residents of rural subsistence areas in Alaska of
10 wild, renewable resources for direct personal or family consumption as
11 food, shelter, fuel, clothing, tools, or transportation, for the
12 making and selling of handicraft articles out of nonedible by-products
13 of fish and wildlife resources taken for personal or family consump-
14 tion, and for the customary trade, barter, or sharing for personal or
15 family consumption; in [FOR THE PURPOSES OF] this paragraph, "family"
16 means [ALL] persons related by blood, marriage, or adoption, and a
17 [ANY] person living in [WITHIN] the household on a permanent basis;

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

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

21 (29) "game population" means a group of game animals of a
22 single species or geographic subgroup;

23 (30) "nonwasteful" means making reasonable use of a har-
24 vested fish or game animal or most of its parts;

25 (31) "residents of rural subsistence areas" means state
26 residents domiciled in rural areas of the state that the Board of
27 Fisheries and the Board of Game determine, under AS 16.05.258, are
28 customary and traditional subsistence use areas;

29 (32) "subsistence hunting" means the nonwasteful taking of

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game animals by a person qualified under AS 16.05.258 for subsistence uses by methods and means defined by the Board of Game.

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

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

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fishing and hunting; and provid-
7 ing for an effective date."

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

9 * Section 1. FINDINGS AND INTENT. (a) Sound management of fish and
10 wildlife is more likely to be achieved if the management of fish and wild-
11 life, including allocation among different uses, is done on a biological
12 basis, rather than on the basis of land ownership.

13 (b) Maintaining healthy populations of fish and wildlife is important
14 to the state because healthy populations provide opportunities for a sub-
15 sistence life style, for trophy and other sport hunting and fishing, for
16 commercial fishing and for wildlife viewing.

17 (c) To assure that these opportunities remain reasonably available it
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,
20 subsistence, and nonconsumptive needs;

21 (2) that, when all consumptive uses of fish and game cannot be
22 accommodated without harming the resource, there be a reasonable preference
23 for subsistence use of fish stocks and game populations that are important
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the
26 authority, flexibility, and information needed to maintain sustained yield,
27 healthy populations, and opportunities for subsistence, sport, commercial
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

16.05.050 (P4) New Sections

The Board of Fish and Game
Make recommendations to the

regarding adoption, amendment and repeal of ~~the~~ regulations
Regarding all fish, wildlife or fish or wildlife mgmt.

(15) Provide information to the Board of Fish and Game
needed for them to carry out their statutory
mandatory duties.

authority to establish subsistence permit programs.

* Sec. 2. AS 16.05.094 is amended to read:

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

(1) compile and analyze existing data and data gathered in future studies, and conduct studies to gather information, including data from subsistence users, the public, other divisions of the department, and other state or federal agencies, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state; while analyzing and studying, the division shall, as clearly as possible, identify

concern about judgement aspects
impair perception of objectivity
provide info to board

(A) the species, stocks, and populations of fish and wildlife used for customary and traditional subsistence in each area of the state;

(B) the degree of significance that these species, stocks, and populations have to customary and traditional subsistence in each area of the state;

(C) the customary and traditional subsistence uses of fish and wildlife by species, stock, and population in each area of the state;

(D) the areas used for subsistence harvest, and areas formerly used for subsistence harvest, according to

(i) fish stock and wildlife population; and

(ii) subsistence user population;

(E) the areas, watersheds, flyways, and other habitats, whether or not within the state, used by fish and wildlife that are subject to subsistence uses; in identifying these habitats, the division shall seek the assistance of other divisions of the department, and other state or federal agencies having

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jurisdiction over fish and wildlife;

(F) the effect, if any, that subsistence use of each species, stock, or population has on the maintenance of healthy populations, on the sustained yield of these species, stocks, or populations, on other subsistence users, and on sport or commercial users whether or not in the state; in identifying these effects, the division shall seek the assistance of other divisions of the department and other state or federal agencies having jurisdiction over fish and wildlife;

Bio?is

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

(A) species, stock, or population of fish and wildlife;

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expansive

(B) population of customary and traditional subsistence users; and

(C) subsistence use area;

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

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

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

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

1 the division shall consult with appropriate divisions of the depart-
2 ment and, when appropriate, with other state or federal agencies
3 having jurisdiction over fish and wildlife; recommendations must be
4 approved by the commissioner;

5 ✓ (7) participate with other divisions of the department and
6 with other departments of state and federal government in the prepara-
7 tion of statewide, [AND] regional, or area management plans affecting
8 fish and wildlife and their habitats so that those plans recognize
9 [REORGANIZE] and incorporate the needs of subsistence users of fish
10 and game.]

11 * ~~Sec. 3~~ AS 16.05.251(a) is amended to read:

12 (a) The Board of Fisheries may adopt regulations it considers
13 advisable in accordance with the Administrative Procedure Act (AS 44.-
14 62) for

15 (1) setting apart and designating fish reserve areas,
16 refuges and sanctuaries in the waters of the state over which it has
17 jurisdiction, subject to the approval of the legislature;

18 < (2) managing fish reserve areas, refuges and sanctuaries; >

19 (3) establishing open and closed seasons and areas for the
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,
22 escapement levels, and sex, [AND] size, age, and other limitations
23 pertaining to [ON] the taking of fish [in waters subject to state
24 jurisdiction;] ?

25 (5) [(4)] establishing the means and methods, ^{including} such as gear,
26 tackle and vessels employed in the pursuit, capture, and transport of
27 fish;

28 (6) [(5)] establishing marking and identification require-
29 ments for means used in pursuit, capture, possession, tagging, and

1 in those areas for which special management is appropriate;

2 (14) establishing a procedure for administrative appeal of
3 board decisions; and

4 (15) regulating commercial, sport, subsistence, and personal
5 use fishing as needed for the conservation, development and utiliza-
6 tion of fisheries.

7 * Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-
9 able in accordance with the Administrative Procedure Act (AS 44.62)
10 for

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

14 (2) managing game reserve areas, refuges and sanctuaries;

15 (3) establishing open and closed seasons and areas for the
16 taking of game;

17 (4) [(3)] establishing the means, [AND] methods, marking,
18 and identification requirements employed in the pursuit, capture,
19 possession, tagging and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and
21 sex, age, [AND] size, and other limitations on, and game population
22 goals pertaining to, the taking of game;

23 (6) [(5)] classifying game as game birds, song birds, big
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation and

1 stocking of game; watershed and habitat regulations may be adopted
2 under this paragraph only after consultation with the Department of
3 Natural Resources;

4 (9) [(8)] prohibiting the live capture, possession, trans-
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the
7 issuance of game licenses, permits and registrations and the transfer
8 of permits and registrations between registration areas and game
9 management units or subunits is allowed;

10 (11) regulating sport hunts and subsistence hunts as needed
11 for the conservation, development, and utilization of game and nongame
12 species.

13 Sec. 5. AS 16.05 is amended by adding new sections to read:

14 *from problems of complexity*
15 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONA
16 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
17 Fisheries and the Board of Game, *separately or jointly - decided by the Board*
18 [acting jointly], shall:

19 (1) estimate the amount of fish and game needed to provide
20 a reasonable opportunity for rural residents to continue to engage in
21 a customary and traditional subsistence way of life; determinations
22 shall be based on research, analysis, comments, and recommendations of
23 *level of detail unnecessary* the [subsistence division] *Department of Fish + Game.*

24 (2) identify and designate the areas used for subsistence
25 harvest, and areas formerly used for subsistence harvest, according to
26 fish stock and game population, and according to subsistence user
27 population; the zones may overlap where different groups of subsis-
28 tence users have customarily and traditionally used the same areas;

29 (3) identify fish stocks and game populations that custom-
arily and traditionally have been used by, and are important to, rural
residents for subsistence use.

need better linkage between findings + Regs

1 (b) The Board of Fisheries or the Board of Game shall assess the
2 biological status of, respectively, the important subsistence fish
3 stocks and the important subsistence game populations in the use
4 zones, and shall determine whether a surplus may be harvested during
5 a regulatory year consistent with the sustained yield principle, sound
6 management principles, and the maintenance of healthy fish stocks,
7 game populations, or other wildlife populations.

8 (c) After identifying the important subsistence fish stocks or
9 game populations, the appropriate board shall determine the amount of
10 harvestable surplus of the stock or population that will provide a
11 reasonable opportunity to engage in customary and traditional subsis-
12 tence uses of the stocks or populations.

13 (d) The Board of Fisheries and the Board of Game shall adopt
14 regulations, in accordance with the Administrative Procedure Act
15 (AS 44.62), for subsistence fishing and subsistence hunting unless
16 adoption of the regulations could jeopardize or interfere with the
17 maintenance of fish stocks, game populations, or other wildlife popu-
18 lations on a sustained-yield basis, or could be inconsistent with
19 sound management principles or with the maintenance of healthy fish
20 stocks, game populations, or other wildlife populations. The
21 regulations may be the same as, different from, or in addition to
22 regulations governing other consumptive uses of the stocks or
23 populations.

24 *post*
25 *3 mi limit*
26 (e) Except as otherwise provided in this chapter or in other
27 state or federal laws, subsistence fishing and subsistence hunting [on
28 land or water subject to state jurisdiction is accorded a subsistence
29 preference over other consumptive takings and uses of fish, game, or
other wildlife. This preference is not a preference over
nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially
2 unrelated to customary and traditional subsistence needs, or over the
3 taking, capture, tagging, or transport of fish, game, or other
4 wildlife for biological or management purposes, or over nonconsumptive
5 uses of game in areas, such as national parks, that are open only to
6 subsistence hunting.][?] Whenever it is necessary to restrict subsistence

7 fishing or subsistence hunting [on land or water subject to state
8 jurisdiction] to protect the continued health and viability of a fish
9 stock, game population, or other wildlife population, assure sound
10 management, assure the maintenance of a fish stock or game population
11 on a sustained-yield basis, or protect continued future subsistence
12 fishing or subsistence hunting,] the preference may be limited by
13 applying the following criteria:

- 14 (1) customary and direct dependence on the fish stock or
15 game population as the mainstay of livelihood;
16 (2) local residency; and
17 (3) availability of alternative resources.

18 (f) Each board may adopt regulations under this chapter that
19 authorize taking for nonsubsistence uses a stock or population iden-
20 tified as important for subsistence use, to the extent that the non-
21 subsistence uses do not jeopardize or interfere with sound management
22 principles, sustained yield, the maintenance of healthy populations,
23 or the opportunity for taking these resources for [customary and
24 traditional] subsistence uses under this chapter.

25 (g) The boards, acting jointly, shall adopt regulations that
26 establish criteria that the boards must consider when defining and
27 identifying customary and traditional subsistence uses and if appro-
28 priate customary and traditional subsistence use areas. The regula-
29 tions may include, but need not be limited to, the following criteria:

beyond reasonable
regulations
on seasons
by limits of
methods & means

Implicit?

clarity

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

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

5 2 (3) [a] use pattern, consisting of methods and means of har-
6 vest characterized by efficiency and economy of effort and cost, and
7 conditioned by local circumstances;

8 3 (4) the consistent harvest and use of fish or game that is
9 near, or reasonably accessible from, the user's residence;

10 (5) the means of handling, preparing, preserving, and
11 storing fish or game that has been used traditionally by past genera-
12 tions, but not excluding appropriate recent technological advances;

13 (d) a use pattern that includes the handing down of knowl-
14 edge of fishing or hunting skills, values, and lore from generation to
15 generation;

16 (e) a use pattern in which the hunting or fishing effort or
17 the products of that effort are distributed or shared among others
18 within a definable community of persons, including customary trade,
19 barter, sharing, and gift-giving; customary trade does not include
20 significant commercial enterprises; a ^{men} [community] may include specific
21 villages or towns, with a historical ^{dependence on} [preponderance] of subsistence
22 use, and encompasses individuals, families, or groups who meet the
23 criteria described in this subsection; and

24 (f) a use pattern that includes reliance for subsistence
25 purposes on a wide diversity of the fish and game resources of an area
26 and provides substantial economic, cultural, social, and nutritional
27 elements of the subsistence user's life.

28 (h) If the appropriate board determines that (1) a particular
29 fish stock or game population is not a customary and traditional

1 subsistence resource or not a significant source of subsistence use
2 and (2) subsistence is not the best use of that fish stock or game
3 population, the board may provide that the fish stock or game popu-
4 lation may not be taken under subsistence regulations, but may be
5 taken under other regulations. // The Board of Fisheries may shift
6 subsistence use of a fish stock to a suitable prior or contempora-
7 neous stock of the same or a different species. The Board of Game may
8 shift subsistence use of a game population to another population if a
9 suitable alternative population of the same or a different species is
10 available. *define suitable*

11 (i) Each board may adopt regulations, under the Administrative
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for
13 subsistence uses by persons who have not qualified previously for
14 subsistence takings.

15 (j) The subsistence preference shall provide a reasonable oppor-
16 tunity for subsistence fishing or subsistence hunting. The preference
17 may vary, may be graduated, and may be balanced against the degree of
18 economic and traditional dependence on the resource in question. If
19 dependence on the resource in question is high, the preference shall
20 provide a full opportunity for satisfaction of subsistence needs,
21 including potentially exclusive subsistence use when a resource
22 shortage occurs. If dependence on the resource in question is low,
23 the preference may be less and need not be potentially exclusive. As
24 the degree of dependence varies, the degree of the preference may vary
25 accordingly.

26 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
27 and the Board of Game, acting jointly, shall establish an appeal
28 procedure for persons aggrieved by the adoption or repeal of a fishing
29 or hunting regulation. An aggrieved person must exhaust this

1 administrative remedy before bringing a legal action challenging the
2 adoption or repeal of the regulation.

3 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-
6 viding for the issuance and expiration of subsistence fishing permits,
7 subsistence hunting permits, and combination subsistence fishing and
8 hunting permits as needed for authorizing, regulating and monitoring
9 the subsistence harvest of fish and game. The boards shall adopt
10 these regulations when the subsistence preference requires a reduction
11 in the harvest of a fish stock or game population by nonsubsistence
12 users, or when special seasons, bag limits or other provisions are
13 necessary, to provide a reasonable opportunity for subsistence tak-
14 ings. A permit program need not be established in any particular area
15 of the state or for any particular fish stock or game population
16 unless circumstances warrant.

17 (d) Each board may establish programs ^{for} [to] issue ^{ance of} subsistence
18 permits [to individuals, groups, communities, villages, or areas.]
19 Nothing in this section shall be construed as altering other require-
20 ments of state or federal law for licenses, permits, stamps, tags, or
21 seals.

22 (e) With the assistance of the department, the boards shall
23 provide reasonable public notice of the following information to users
24 of a group, community, village, or area subsistence permit:

25 (1) the terms of the permit;

26 (2) the fish stocks and game populations authorized to be
27 taken under the permit;

28 (3) the subsistence use areas covered by the permit.

29 [(f) The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
2 Native Claims Settlement Act) and community, postal, media, or other
3 services appropriate for providing notice under (e) of this section.]

4 (g) The commissioner shall administer subsistence permit pro-
5 grams that may be established. The commissioner may appoint state
6 employees or other persons to take applications and issue permits and
7 tags. A person appointed by the commissioner, may administer oaths
8 for permit and tag applications. The commissioner or the appropriate
9 board may require a report from persons using a permit concerning the
10 time, manner, and place of taking fish and game, the kinds and
11 quantity taken, and other information helpful in administering the
12 fish and game resources of the state. Except for state employees, a
13 person appointed by the commissioner under this subsection is entitled
14 to compensation of \$50 per year or \$1 for each permit or tag issued,
15 whichever is greater.

16 (h) A person who holds a limited entry permit may not engage in
17 subsistence fishing for a species of fish authorized under the limited
18 entry permit unless the person proves to the satisfaction of the
19 commissioner's appointee that

20 (1) the limited entry permit was not and will not be used
21 during the season in which the subsistence fishing occurred or is to
22 occur;

23 (2) the species of fish was not taken under the limited
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry
26 permit was used or kept for personal or family consumption, the person
27 needs additional subsistence fish of the same species for reasons
28 approved by the department.

29 Sec. 7. AS 16.05.930(e) is amended to read:

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

9 * Sec. 8. AS 16.05.940(22) is amended to read:

10 *the out ind.* (22) "subsistence fishing" means the nonwasteful taking of,
11 *bins* fishing for, or possession of fish, shellfish, or other fisheries
12 *work* resources by a person qualified under AS 16.05.258 for subsistence
13 uses with gill net, seine, fish wheel, long line, or other methods and
14 means defined by the Board of Fisheries;

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

16 (23) "subsistence uses" means the nonwasteful, customary and
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable
18 resources for direct personal or family consumption as food, shelter,
19 fuel, clothing, tools, or transportation, for the making and selling
20 of handicraft articles out of nonedible by-products of fish and wild-
21 life resources taken for personal or family consumption, and for the
22 customary trade, barter, or sharing for personal or family consump-
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]
24 persons related by blood, marriage, or adoption, and a [ANY] person
25 living in [WITHIN] the household on a permanent basis;

26 * Sec. 10. AS 16.05.940 is amended by adding new paragraphs to read:

27 (28) "fish stock" means a species, subspecies, geographic
28 grouping or other category of fish manageable as a unit, [that, at any
29 time during any season of the year, may be found in water subject to

1 state jurisdiction;

2 (29) "game population" means a group of game animals of a
3 single species or subgroup [whose members in whole or in part use, or
4 may be found at any time or during any season of the year in or on,
5 land, air, or water subject to state jurisdiction;]

6 (30) "nonwasteful" means making reasonable use of a har-
7 vested fish or game animal or most of its parts;

8 (31) "resident of rural Alaska" means a state resident
9 engaged in customary and traditional subsistence as a way of life;

10 *take out* (32) "subsistence hunting" means the nonwasteful taking of
11 *incl. bias* game animals by a person qualified under AS 16.05.258 for subsistence
12 uses by methods and means defined by the Board of Game.

13 * Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257(b) are re-
14 pealed. *Repeal all*

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

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18 domiciled in a rural area of the state that is
19 determined to be a customary and traditional
20 subsistence use area by the Boards of Fish and
21 Game under AS 16.05.258.
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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fishing and hunting; and provid-
7 ing for an effective date."

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

9 * Section 1. FINDINGS AND INTENT. (a) Sound management of fish and
10 wildlife is more likely to be achieved if the management of fish and wild-
11 life, including allocation among different uses, is done on a biological
12 basis, rather than on the basis of land ownership.

13 (b) Maintaining healthy populations of fish and wildlife is important
14 to the state because healthy populations provide opportunities for a sub-
15 sistence life style, for trophy and other sport hunting and fishing, for
16 commercial fishing and for wildlife viewing.

17 (c) To assure that these opportunities remain reasonably available it
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,
20 subsistence, and nonconsumptive needs;

21 (2) that, when all consumptive uses of fish and game cannot be
22 accommodated without harming the resource, there be a reasonable preference
23 for subsistence use of fish stocks and game populations that are important
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the
26 authority, flexibility, and information needed to maintain sustained yield,
27 healthy populations, and opportunities for subsistence, sport, commercial
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

try - detailed v. general charge

1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.094 is amended to read:

3 [Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND
4 FISHING. The division of subsistence hunting and fishing shall

5 (1) compile and analyze existing data and data gathered in
6 future studies, and conduct studies to gather information, including
7 data from subsistence users, the public, other divisions of the de-
8 partment, and other state or federal agencies, on all aspects of the
9 role of subsistence hunting and fishing in the lives of the residents
10 of the state; while analyzing and studying, the division shall, as
11 clearly as possible, identify

12 try
13 concern about
14 judgement
15 aspects
16 impair
17 perception
18 of objectivity
19 provide
20 input to
21 board

12 (A) the species, stocks, and populations of fish and
13 wildlife used for customary and traditional subsistence in each
14 area of the state;

15 - (B) the degree of significance that these species,
16 stocks, and populations have to customary and traditional subsis-
17 tence in each area of the state;

18 - (C) the customary and traditional subsistence uses of
19 fish and wildlife by species, stock, and population in each area
20 of the state;

21 (D) the areas used for subsistence harvest, and areas
22 formerly used for subsistence harvest, according to

23 (i) fish stock and wildlife population; and

24 (ii) subsistence user population;

25 - (E) the areas, watersheds, flyways, and other habi-
26 tats, whether or not within the state, used by fish and wildlife
27 that are subject to subsistence uses; in identifying these habi-
28 tats, the division shall seek the assistance of other divisions
29 of the department, and other state or federal agencies having

cause problems to talk
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jurisdiction over w.l.

1 jurisdiction over fish and wildlife;

2 (F) the effect, if any, that subsistence use of each
3 species, stock, or population has on the maintenance of healthy
4 populations, on the sustained yield of these species, stocks, or
5 populations, on other subsistence users, and on sport or commer-
6 cial users whether or not in the state; in identifying these
7 effects, the division shall seek the assistance of other divi-
8 sions of the department and other state or federal agencies
9 having jurisdiction over fish and wildlife;

610?5

10 (2) quantify or estimate the amount, nutritional value, and
11 extent of dependence on food acquired through subsistence hunting and
12 fishing according to

13 (A) species, stock, or population of fish and wild-
14 life;

15 (B) population of customary and traditional subsis-
16 tence users; and

17 (C) subsistence use area;

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

20 (4) assist the department, the Board of Fisheries, and the
21 Board of Game in determining what uses of fish and game, as well as
22 which users and what methods, should be termed customary and tradi-
23 tional subsistence uses, users, and methods;

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

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

prohib
expansive

1 the division shall consult with appropriate divisions of the depart-
2 ment and, when appropriate, with other state or federal agencies
3 having jurisdiction over fish and wildlife; recommendations must be
4 approved by the commissioner;

5 ✓ (7) participate with other divisions of the department and
6 with other departments of state and federal government in the prepara-
7 tion of statewide, [AND] regional, or area management plans affecting
8 fish and wildlife and their habitats so that those plans recognize
9 [REORGANIZE] and incorporate the needs of subsistence users of fish
10 and game.]

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

12 (a) The Board of Fisheries may adopt regulations it considers
13 advisable in accordance with the Administrative Procedure Act (AS 44.-
14 62) for

15 (1) setting apart and designating fish reserve areas,
16 refuges and sanctuaries in the waters of the state over which it has
17 jurisdiction, subject to the approval of the legislature;

18 (2) managing fish reserve areas, refuges and sanctuaries;

19 (3) establishing open and closed seasons and areas for the
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,
22 escapement levels, and sex, [AND] size, age, and other limitations
23 pertaining to [ON] the taking of fish in waters subject to state
24 jurisdiction;

25 (5) [(4)] establishing the means and methods, such as gear,
26 tackle and vessels employed in the pursuit, capture, and transport of
27 fish;

28 (6) [(5)] establishing marking and identification require-
29 ments for means used in pursuit, capture, possession, tagging, and

fig. gov's off. - deemphasis on personal use

1 transport of fish;

2 (7) [(6)] classifying as commercial fish, sport fish,
3 personal use fish, subsistence fish, indigenous fish, exotic fish,
4 nonindigenous fish, hatchery fish, or predators or other categories
5 essential for regulatory purposes; a fish stock may be the subject of
6 more than one classification;

7 (8) protecting, maintaining and improving watersheds [(7)
8 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
9 conservation, protection, use, disposal, propagation, and stocking of
10 fish; watershed and habitat regulations may be adopted under this
11 paragraph only after consultation with the Department of Natural
12 Resources; >

13 (9) [(8)] investigating and determining the extent and
14 effect of disease, predation, and competition among fish in the state,
15 and exercising control measures considered necessary to the resources
16 of the state;

17 (10) [(9)] prohibiting and regulating the live capture,
18 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
19 eggs;

20 (11) [(10)] establishing seasons, areas, quotas and methods
21 of harvest for aquatic plants;

22 (12) [(11)] establishing the times and dates during which
23 the issuance of fishing licenses, permits and registrations and the
24 transfer of permits and registrations between registration areas is
25 allowed; however, this paragraph does not apply to permits issued or
26 transferred under AS 16.43;

27 (13) designating and regulating special fishing areas,
28 including personal use areas, trophy management areas, catch-and-
29 release areas, and children's fishing areas, and designating species

1 in those areas for which special management is appropriate;

2 (14) establishing a procedure for administrative appeal of
3 board decisions; and

4 (15) regulating commercial, sport, subsistence, and personal
5 use fishing as needed for the conservation, development and utiliza-
6 tion of fisheries.

7 * Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-
9 able in accordance with the Administrative Procedure Act (AS 44.62)
10 for

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

14 (2) managing game reserve areas, refuges and sanctuaries;

15 (3) establishing open and closed seasons and areas for the
16 taking of game;

17 (4) [(3)] establishing the means, [AND] methods, marking,
18 and identification requirements employed in the pursuit, capture,
19 possession, tagging and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and
21 sex, age, [AND] size, and other limitations on, and game population
22 goals pertaining to, the taking of game;

23 (6) [(5)] classifying game as game birds, song birds, big
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation and

1 stocking of game; watershed and habitat regulations may be adopted
2 under this paragraph only after consultation with the Department of
3 Natural Resources;

4 (9) [(8)] prohibiting the live capture, possession, trans-
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the
7 issuance of game licenses, permits and registrations and the transfer
8 of permits and registrations between registration areas and game
9 management units or subunits is allowed;

10 (11) regulating sport hunts and subsistence hunts as needed
11 for the conservation, development, and utilization of game and nongame
12 species.

13 Sec. 5. AS 16.05 is amended by adding new sections to read:

14 *frs problems of complexity* Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
15 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
16 Fisheries and the Board of Game, acting jointly, shall:

17 (1) estimate the amount of fish and game needed to provide
18 a reasonable opportunity for rural residents to continue to engage in
19 a customary and traditional subsistence way of life; determinations
20 shall be based on research, analysis, comments, and recommendations of
21 *level of detail unnecessary* the subsistence division;

22 (2) identify and designate the areas used for subsistence
23 *number for number* harvest, and areas formerly used for subsistence harvest, according to
24 *up small number* fish stock and game population, and according to subsistence user
25 population; the zones may overlap where different groups of subsis-
26 tence users have customarily and traditionally used the same areas;

27 (3) identify fish stocks and game populations that custom-
28 arily and traditionally have been used by, and are important to, rural
29 residents for subsistence use.

1 (b) The Board of Fisheries or the Board of Game shall assess the
2 biological status of, respectively, the important subsistence fish
3 stocks and the important subsistence game populations in the use
4 zones, and shall determine whether a surplus may be harvested during
5 a regulatory year consistent with the sustained yield principle, sound
6 management principles, and the maintenance of healthy fish stocks,
7 game populations, or other wildlife populations.

8 (c) After identifying the important subsistence fish stocks or
9 game populations, the appropriate board shall determine the amount of
10 harvestable surplus of the stock or population that will provide a
11 reasonable opportunity to engage in customary and traditional subsis-
12 tence uses of the stocks or populations.

13 (d) The Board of Fisheries and the Board of Game shall adopt
14 regulations, in accordance with the Administrative Procedure Act
15 (AS 44.62), for subsistence fishing and subsistence hunting unless
16 adoption of the regulations could jeopardize or interfere with the
17 maintenance of fish stocks, game populations, or other wildlife popu-
18 lations on a sustained-yield basis, or could be inconsistent with
19 sound management principles or with the maintenance of healthy fish
20 stocks, game populations, or other wildlife populations. The
21 regulations may be the same as, different from, or in addition to
22 regulations governing other consumptive uses of the stocks or
23 populations.

24 *point*
25 *3 mi limit*
26 (e) Except as otherwise provided in this chapter or in other
27 state or federal laws, subsistence fishing and subsistence hunting on
28 land or water subject to state jurisdiction *why?* is accorded a subsistence
29 preference over other consumptive takings and uses of fish, game, or
other wildlife. This preference is not a preference over
nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially
2 unrelated to customary and traditional subsistence needs, or over the
3 taking, capture, tagging, or transport of fish, game, or other
4 wildlife for biological or management purposes, or over nonconsumptive
5 uses of game in areas, such as national parks, that are open only to
6 subsistence hunting. Whenever it is necessary to restrict subsistence
7 fishing or subsistence hunting on land or water subject to state
8 jurisdiction to protect the continued health and viability of a fish
9 stock, game population, or other wildlife population, assure sound
10 management, assure the maintenance of a fish stock or game population
11 on a sustained-yield basis, or protect continued future subsistence
12 fishing or subsistence hunting, the preference may be limited by
13 applying the following criteria:

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

16 (2) local residency; and

17 (3) availability of alternative resources.

18 (f) Each board may adopt regulations under this chapter that
19 authorize taking for nonsubsistence uses a stock or population iden-
20 tified as important for subsistence use, to the extent that the non-
21 subsistence uses do not jeopardize or interfere with sound management
22 principles, sustained yield, the maintenance of healthy populations,
23 or the opportunity for taking these resources for customary and
24 traditional subsistence uses under this chapter.

25 *clarity* (g) The boards, acting jointly, shall adopt regulations that
26 *may lose center* establish criteria that the boards must consider when defining and
27 identifying customary and traditional subsistence uses and, *if appro-*
28 *]* appropriate, customary and traditional subsistence use areas. The regula-
29 tions may include, but need not be limited to, the following criteria:

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

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

5 (3) a use pattern consisting of methods and means of har-
6 vest characterized by efficiency and economy of effort and cost, and
7 conditioned by local circumstances;

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

10 (5) the means of handling, preparing, preserving, and
11 storing fish or game that has been used traditionally by past genera-
12 tions, but not excluding appropriate recent technological advances;

13 (6) a use pattern that includes the handing down of knowl-
14 edge of fishing or hunting skills, values, and lore from generation to
15 generation;

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

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

28 (h) If the appropriate board determines that (1) a particular
29 fish stock or game population is not a customary and traditional

1 subsistence resource or not a significant source of subsistence use
2 and (2) subsistence is not the best use of that fish stock or game
3 population, the board may provide that the fish stock or game popu-
4 lation may not be taken under subsistence regulations, but may be
5 taken under other regulations. // The Board of Fisheries may shift
6 subsistence use of a fish stock to a suitable prior or contempora-
7 neous stock of the same or a different species. The Board of Game may
8 shift subsistence use of a game population to another population if a
9 suitable alternative population of the same or a different species is
10 available.

11 (i) Each board may adopt regulations, under the Administrative
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for
13 subsistence uses by persons who have not qualified previously for
14 subsistence takings.

15 (j) The subsistence preference shall provide a reasonable oppor-
16 tunity for subsistence fishing or subsistence hunting. The preference
17 may vary, may be graduated, and may be balanced against the degree of
18 economic and traditional dependence on the resource in question. If
19 dependence on the resource in question is high, the preference shall
20 provide a full opportunity for satisfaction of subsistence needs,
21 including potentially exclusive subsistence use when a resource
22 shortage occurs. If dependence on the resource in question is low,
23 the preference may be less and need not be potentially exclusive. As
24 the degree of dependence varies, the degree of the preference may vary
25 accordingly.

26 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
27 and the Board of Game, acting jointly, shall establish an appeal
28 procedure for persons aggrieved by the adoption or repeal of a fishing
29 or hunting regulation. An aggrieved person must exhaust this

1 administrative remedy before bringing a legal action challenging the
2 adoption or repeal of the regulation.

3 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-
6 viding for the issuance and expiration of subsistence fishing permits,
7 subsistence hunting permits, and combination subsistence fishing and
8 hunting permits as needed for authorizing, regulating and monitoring
9 the subsistence harvest of fish and game. The boards shall adopt
10 these regulations when the subsistence preference requires a reduction
11 in the harvest of a fish stock or game population by nonsubsistence
12 users, or when special seasons, bag limits or other provisions are
13 necessary, to provide a reasonable opportunity for subsistence tak-
14 ings. A permit program need not be established in any particular area
15 of the state or for any particular fish stock or game population
16 unless circumstances warrant.

17 (d) Each board may establish programs to issue subsistence
18 permits to individuals, groups, communities, villages, or areas.
19 Nothing in this section shall be construed as altering other require-
20 ments of state or federal law for licenses, permits, stamps, tags, or
21 seals.

22 (e) With the assistance of the department, the boards shall
23 provide reasonable public notice of the following information to users
24 of a group, community, village, or area subsistence permit:

- 25 *does this need some major new program*
- 26 (1) the terms of the permit;
 - 27 (2) the fish stocks and game populations authorized to be
28 taken under the permit;
 - 29 (3) the subsistence use areas covered by the permit.

(f) The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
2 Native Claims Settlement Act) and community, postal, media, or other
3 services appropriate for providing notice under (e) of this section.

4 (g) The commissioner shall administer subsistence permit pro-
5 grams that may be established. The commissioner may appoint state
6 employees or other persons to take applications and issue permits and
7 tags. A person appointed by the commissioner, may administer oaths
8 for permit and tag applications. The commissioner or the appropriate
9 board may require a report from persons using a permit concerning the
10 time, manner, and place of taking fish and game, the kinds and
11 quantity taken, and other information helpful in administering the
12 fish and game resources of the state. Except for state employees, a
13 person appointed by the commissioner under this subsection is entitled
14 to compensation of \$50 per year or \$1 for each permit or tag issued,
15 whichever is greater.

16 (h) A person who holds a limited entry permit may not engage in
17 subsistence fishing for a species of fish authorized under the limited
18 entry permit unless the person proves to the satisfaction of the
19 commissioner's appointee that

20 (1) the limited entry permit was not and will not be used
21 during the season in which the subsistence fishing occurred or is to
22 occur;

23 (2) the species of fish was not taken under the limited
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry
26 permit was used or kept for personal or family consumption, the person
27 needs additional subsistence fish of the same species for reasons
28 approved by the department.

29 Sec. 7. AS 16.05.930(e) is amended to read:

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

9 * Sec. 8. AS 16.05.940(22) is amended to read:

10 *the out ind.* (22) "subsistence fishing" means the nonwasteful taking of,
11 *bins* fishing for, or possession of fish, shellfish, or other fisheries
12 resources by a person qualified under AS 16.05.258 for subsistence
13 uses with gill net, seine, fish wheel, long line, or other methods and
14 means defined by the Board of Fisheries;

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

16 (23) "subsistence uses" means the nonwasteful, customary and
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable
18 resources for direct personal or family consumption as food, shelter,
19 fuel, clothing, tools, or transportation, for the making and selling
20 of handicraft articles out of nonedible by-products of fish and wild-
21 life resources taken for personal or family consumption, and for the
22 customary trade, barter, or sharing for personal or family consump-
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]
24 persons related by blood, marriage, or adoption, and a [ANY] person
25 living in [WITHIN] the household on a permanent basis;


26 * Sec. 10. AS 16.05.940 is amended by adding new paragraphs to read:

27 (28) "fish stock" means a species, subspecies, geographic
28 grouping or other category of fish manageable as a unit that, at any
29 time during any season of the year, may be found in water subject to

1 state jurisdiction;

2 (29) "game population" means a group of game animals of a
3 single species or subgroup whose members in whole or in part use, or
4 may be found at any time or during any season of the year in or on,
5 land, air, or water subject to state jurisdiction;

6 (30) "nonwasteful" means making reasonable use of a har-
7 vested fish or game animal or most of its parts;

8  (31) "resident of rural Alaska" means a state resident
9 engaged in customary and traditional subsistence as a way of life;

10 *take out ind. bias* (32) "subsistence hunting" means the nonwasteful taking of
11 game animals by a person qualified under AS 16.05.258 for subsistence
12 uses by methods and means defined by the Board of Game.

13 * Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257(h) are re-
14 pealed. *Repeal all ↑*

15 * Sec. 12. This Act takes effect June 1, 1986.
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ALASKA FEDERATION OF NATIVES, INC.

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



December 24, 1985

Senator Mitch Abood
Committee on State Affairs
Alaska Senate
1024 West Sixth Avenue
Anchorage, Alaska 99501

Dear Senator Abood:

Since its inception in 1966, the Alaska Federation of Natives (AFN) and its member corporations, associations and villages have worked closely with the Alaska Legislature, the United States Congress and other interested parties to ensure that statutes and regulations governing the taking of fish stocks and game populations in Alaska recognize and protect - and in appropriate instances provide a priority for - the taking of such stocks and populations by rural Alaska residents (both Native and nonNative) for subsistence uses. For that reason, I appreciate the opportunity to review and provide preliminary comments on SB 8001, the draft subsistence legislation which your staff has prepared in anticipation of the upcoming legislative session.

As drafted, SB 8001 raises a number of technical concerns as to how the regulatory scheme it would establish is intended to operate in practice. In addition, SB 8001 raises policy concerns of elemental importance. However, before addressing each in detail, it might be helpful to briefly review the goals which AFN believes any new subsistence legislation should be drafted to achieve.

As you know, a small, but vocal, group of Alaskans have long opposed the policies embodied in both the 1978 state and the 1980 federal subsistence statutes. In particular, they believe that providing a priority for the taking of fish stocks and game populations by rural Alaskans for subsistence uses is neither necessary nor appropriate. In 1982 this group obtained the requisite number of signatures to put an initiative to repeal the state subsistence statute on the 1982 ballot. As a result, the subsistence issue was thoroughly debated statewide during the months preceding the 1982 election. After considering all of the arguments both pro and con, Alaskans voted - by an overwhelming margin - against the initiative and in favor of retaining the state subsistence statute and the priority for subsistence


CORRECTION

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

1 state jurisdiction;

2 (29) "game population" means a group of game animals of a
3 single species or subgroup whose members in whole or in part use, or
4 may be found at any time or during any season of the year in or on,
5 land, air, or water subject to state jurisdiction;

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7 vested fish or game animal or most of its parts;

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9 engaged in customary and traditional subsistence as a way of life;

10 take out (32) "subsistence hunting" means the nonwasteful taking of
11 incl. bias game animals by a person qualified under AS 16.05.258 for subsistence
12 uses by methods and means defined by the Board of Game.

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15 * Sec. 12. This Act takes effect June 1, 1986.
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Agrees w/ prob on def of rural resident
prob w/ indiv application.

Part V. Priority

Law - concern over graduated part.

doesn't like $\left\langle \begin{array}{l} \text{sound management principle} \\ \text{healthy pop} \end{array} \right\rangle$

Thinks is too
nebulous

says not mentioned
in AN/CA

+ wildlife
what does it mean - define

ch on subsis cust - and trud modification

Subsistence div respon. - letter of intent
which div

appeal process - nobody may sue until
ash board ~~to reconsider~~ change
it.

fish, same, wildlife
inclusive

limited entry section

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As drafted, SB 8001 raises a number of technical concerns as to how the regulatory scheme it would establish is intended to operate in practice. In addition, SB 8001 raises policy concerns of elemental importance. However, before addressing each in detail, it might be helpful to briefly review the goals which AFN believes any new subsistence legislation should be drafted to achieve.

As you know, a small, but vocal, group of Alaskans have long opposed the policies embodied in both the 1978 state and the 1980 federal subsistence statutes. In particular, they believe that providing a priority for the taking of fish stocks and game populations by rural Alaskans for subsistence uses is neither necessary nor appropriate. In 1982 this group obtained the requisite number of signatures to put an initiative to repeal the state subsistence statute on the 1982 ballot. As a result, the subsistence issue was thoroughly debated statewide during the months preceding the 1982 election. After considering all of the arguments both pro and con, Alaskans voted - by an overwhelming margin - against the initiative and in favor of retaining the state subsistence statute and the priority for subsistence

Mitch Abood
December 24, 1985
Page 2

uses which it contains. It is significant that throughout the course of the 1982 debate both the sponsors and the opponents of the initiative assumed that the 1978 statute limited the identification of "subsistence uses" of fish stocks and game populations to hunting and fishing for personal and family consumption by residents of rural Alaska.

With the defeat of the subsistence initiative in November 1982, AFN hoped that having been put to a vote of the people, the controversy about the subsistence issue and the acrimony which it had engendered would subside. And indeed it did. For the two years succeeding the 1982 election the regulatory system established by the subsistence statute worked and the members of the Board of Fisheries and Board of Game had little difficulty crafting regulations which both ensured that subsistence uses by rural residents were protected and at the same time provided all Alaskans with a fair and reasonable opportunity to hunt and fish.

Unfortunately, the quiet was shattered when the Alaska Supreme Court issued its opinion in Madison v. Alaska Department of Fish and Game. Significantly, the Alaska Supreme Court did not hold either that limiting the identification of "subsistence uses" of fish stocks and game populations to hunting and fishing for personal and family consumption by rural Alaska residents was not an important public policy or that limiting "subsistence uses" to rural Alaska residents violates either the Alaska or United States Constitution. Rather, the Court held that based upon the legislative history of the 1978 statute, it did not believe that the members of the Tenth Alaska Legislature intended to limit the purview of the statutory definition of the term "subsistence uses" to rural Alaska residents.

Although including all Alaskans within the purview of the "subsistence uses" definition may initially seem an attractive result to many hunters and fishermen living in urban areas such as Anchorage and Fairbanks, in actual practice doing so has severely limited the ability of the Board of Fisheries and Board of Game to regulate hunting and fishing in a fair and rational manner, and, ironically, has resulted in a significant reduction in hunting opportunities for urban Alaskans. And since the definition of "subsistence uses" in section 803 of the Alaska National Interest Lands Conservation Act (ANILCA) specifically limits the purview of that definition to "rural Alaska residents", the Madison opinion has also resulted in a finding by the Secretary of the Interior that the state subsistence management program

Mitch Abood
December 24, 1985
Page 3

is no longer in compliance with the federal regulatory guidelines set forth in title VIII of that statute.

For these reasons, among others, Governor Sheffield submitted legislation to the legislature last session to amend the 1978 statute in a manner consistent with ANILCA. The House Resources Committee held a series of statewide hearings on the subsistence issue and drafted and reported a substitute for the Governor's bill. The House Resources Committee bill was modified by the House Judiciary Committee and passed by the Alaska House of Representatives. The Senate State Affairs Committee, however, declined to consider and report any subsistence legislation prior to adjournment. Rather, the Committee held several hearings during the interim for the purpose of obtaining information necessary to draft and introduce its own bill. It is my understanding that SB 8001 reflects the Committee's work in this regard.

In commenting on SB 8001 it is important to restate the primary goal which AFN believes any new subsistence legislation should reflect. In brief, the purpose of subsistence legislation enacted during the 1986 session should be to amend the regulatory guidelines in the 1978 statute in a manner consistent with the regulatory guidelines set forth in title VIII of ANILCA. To do otherwise would defeat the very purpose the legislature has expended so much time and energy on the subsistence issue since the Madison decision and would do nothing to alleviate the threat that the Secretary of the Interior may compel the Board of Fisheries and Board of Game to adopt fishing and hunting regulations pursuant to federal, rather than state, regulatory standards.

Unfortunately, as presently drafted, the regulatory standards set forth in SB 8001 are at substantial variance with the regulatory standards established by title VIII of ANILCA. In addition, at least one section of the statute may be unconstitutional.

In discerning the regulatory standards established by title VIII of ANILCA, the reports of the congressional committees which drafted and reported the title and the primary sponsor's explanation of the title are of considerable importance. Indeed, the United States Court of Appeals for the Ninth Circuit has held that the views of Representative Morris K. Udall, the primary sponsor of title VIII and the chairman of the House Committee on Interior and Insular Affairs, are a definitive explanation of the congressional intent embodied in title VIII. See People of the Village of Gambell v. Clark, F.2d (1985).

Mitch Abood
December 24, 1985
Page 4

In a number of significant respects, section 5 of SB 8001 (proposed A.S. 16.05.258) is inconsistent with sections 803 and 804 of ANILCA as detailed in both the relevant committee reports and Representative Udall's explanation of title VIII.

Proposed A.S. 16.05.258(h), for example, authorizes the Board of Fisheries and Board of Game to exempt a particular fish stock or game population from the subsistence management system if it determines that the particular stock or population is not the subject of "significant" subsistence uses and that subsistence uses are not the "best use" of the stock or population. In addition, the section also authorizes a board to eliminate subsistence uses of a fish stock or game population even of a stock or population which is subject to significant subsistence uses if the board can find another stock or population which it determines to be "suitable" for subsistence uses. The "suitable" stock or population upon which subsistence uses may be displaced need not even be of the same species as the original stock or population from which subsistence uses are being eliminated.

This approach directly contravenes the regulatory standards established by sections 803 and 804 of ANILCA. The Senate Committee on Energy and Natural Resources was the primary drafter of the version of title VIII enacted into law. The Committee's report on the title clearly and unequivocally states that the ANILCA subsistence priority applies to every fish stock and game population. Whether a particular stock or population is or is not the subject of subsistence uses - and if so to what extent - is a question of fact to be evaluated on a case-by-case basis. If a stock or population is the subject of subsistence uses (either to a significant or a less than significant extent), sections 803 and 804 require the Board of Fisheries or Board of Game, as appropriate, to adopt regulations which authorize - and if necessary provide a priority for - subsistence uses of the stock or population. As the Committee explained at the time it first reported title VIII:

If a particular fish or wildlife population (e.g. salmon, moose, or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the State rulemaking authority. However, if the continued viability of a particular population

Mitch Abood
December 24, 1985
Page 5

or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons, the State rulemaking authority...is required by this section to establish regulations which restrict the taking of such population to Alaska residents engaged in subsistence uses. If "subsistence uses" must be further restricted to protect the continued viability of the population or to ensure the satisfaction of rural subsistence needs, the State rulemaking authority...must limit such uses to local residents of the affected area, or, if necessary, only those local residents residents with the most customary and direct dependence on the population as the mainstay of livelihood and with the least access to alternative food supplies. Senate Rept. No. 95-1300, 95th Cong. 2d Sess. 221-222 (1978)(Emphasis added). See also Senate Rept. No. 96-413, 96th Cong., 1st Sess. 269-270 (1979).

This view is consistent with Representative Udall's explanation as to how the subsistence management system of which he was principal sponsor would operate:

"The subsistence preference [in section 804 of ANILCA] applies to individual wildlife populations and fish, and state regulation of the taking of each population and stock must be consistent with section 804. The State must identify the customary and traditional subsistence uses of each population and stock by rural residents." 126 Cong. Rec. 29279 (November 12, 1980)(remarks of Morris K. Udall)(hereinafter "Udall") (Emphasis added).

Consequently, to the extent A.S. 16.05.258(h) authorizes the Board of Fisheries or Board of Game to restrict or eliminate subsistence uses of a fish stock or game population which it knows has been the subject of such uses, A.S. 16.05.258(h) is inconsistent with sections 803 and 804 of ANILCA.

A.S. 16.05.258(j) is also inconsistent with ANILCA. The text of the subsection implies that the boards may identify greater

Mitch Abood
December 24, 1985
Page 6

and lesser degrees of subsistence uses of a fish stock or game population and that if it determines that particular subsistence uses of a particular stock or population reflect "dependence on the resource...[which] is low", the board need not eliminate other uses before restricting subsistence uses. As articulated by the Senate Committee on Energy and Natural Resources in the text cited above, such a result is directly contrary to the regulatory standard established by sections 803 and 804 of ANILCA. It is also directly contrary to Representative Udall's intent. As Representative Udall explained on November 13, 1980:

"Once the customary and traditional subsistence uses of a particular wildlife population or fish stock have been determined, the State must next determine whether its viability is such that the harvest demands of all user groups can be satisfied without endangering the health of the resource. If the population is sufficiently viable then all user groups may participate in the harvest, but regulations concerning such subjects as seasons and means of taking must be adopted which have the least adverse impact upon rural residents engaged in subsistence uses of the population.

If the population cannot safely sustain a harvest by all user groups, then the State must adopt regulations establishing subsistence uses as the priority uses of such population. All genuine subsistence uses must be met before the State may permit taking of the population for any type of non-subsistence uses." Udall 29280 (Emphasis added).

In a related regard, A.S. 16.05.330(h)'s prohibition on the taking of fish stocks for "subsistence uses" by any person who also fishes commercially for the same species is similarly inconsistent with ANILCA. It is also fundamentally unfair (one result of implementation of A.S. 16.05.330(h) would be to eliminate most of the subsistence salmon fisheries on the Kuskokwam and lower Yukon Rivers). Nothing in the text of title VIII or its

Mitch Abood
December 24, 1985
Page 7

legislative history indicates that the Congress intended the opportunity to engage in subsistence uses of a fish stock to be conditioned upon whether a person otherwise eligible to engage in such uses does or does not fish for the stock commercially. Indeed, the hardship which implementation of such a rule would impose is directly contrary to the congressional policy set forth in section 802 that regulatory activities "cause the least adverse impact possible on rural residents who depend upon subsistence uses..."

A.S. 16.05.258(i) is a cause for even greater concern. The subsection indicates that whether the taking of fish stocks and game populations for personal and family consumption by a rural Alaska resident is or is not a subsistence use is dependent upon whether the resident did or did not engage in such uses prior to enactment of SB 8001. In other words, the subsection grants today's rural hunters and fishermen grandfather rights to participate in the subsistence management system and then disenfranchises their children. Like the subsections previously discussed, A.S. 16.05.258(i) is inconsistent with the intent of Congress embodied in title VIII of ANILCA. As the Senate Committee on Energy and Natural Resources indicated unequivocally in 1979, the limitation of the identification of "subsistence uses" to rural Alaska residents:

...[I]s not intended to impose a "dura-
tional" rural residency requirement in the
definition [of "subsistence uses"] or im-
pede the traditional movement of Alaska
residents between the rural areas and the
major population centers and vice versa.
Senate Rept. No. 96-413, 96th Cong., 1st
Sess. 233 (1979).

Representative Udall has articulated the same intent albeit in even stronger language:

[W]e [i.e. the members of the House Com-
mittee on Interior and Insular Affairs]
promised that any legislation enacted
into law would recognize the importance
of the subsistence way of life to the
survival of the Alaska Native people,
and would contain management provisions
which recognize the responsibility of the

Mitch Abood
December 24, 1985
Page 8

Federal government to protect the opportunity from generation to generation for the continuation of subsistence uses by the Alaska Native people so that Alaska Natives now engaged in subsistence uses, their descendants, and their descendants' descendants, will have the opportunity determine for themselves their own cultural orientation and the rate and degree of evolution, if any, of their Alaska Native culture. We made good on that promise by including a detailed subsistence title in the version of H.R. 39 which was passed by the House of Representatives during the 95th Congress." Udall 29278 (Emphasis added).

Implementation of A.S. 16.05.258(i) would produce a result exactly the opposite of the result intended by both the Senate Committee on Energy and Natural Resources and Representative Udall. Eliminating "subsistence uses" over time (as persons now engaged in such uses become too old to hunt and fish) by keying eligibility to participate in "subsistence uses" on the date a hunter or fishermen first began hunting and fishing to help feed his family or first moved to rural Alaska is patently inconsistent with title VIII of ANILCA. In addition to its inconsistency with title VIII, limiting the class of hunters and fishermen eligible to participate in "subsistence uses" in this manner raises significant constitutional problems. Because classifying hunters and fishermen in this manner has no apparent rational basis, enactment of such a statute would violate the Equal Protection Clause of both the Alaska and United States Constitutions. It would also establish the type of durational residency requirement which the Congress has specifically prohibited and which rarely survives constitutional challenge.

Another section of SB 8001 is even more troubling. The only reason for enacting new subsistence legislation is to amend the 1978 statute to delegate the Board of Fisheries and Board of Game the regulatory authority; they possessed prior to the Madison decision and to conform the state regulatory standards to the regulatory standards set forth in title VIII of ANILCA. The only change needed to accomplish this goal is to limit the "subsistence uses" of fish stocks and game populations to the taking of such stocks and populations by "rural Alaska residents". Although section 8 of SB 8001 purports to achieve this goal

Mitch Abood
December 24, 1985
Page 9

by amending A.S. 16.05.940(23) to limit "subsistence uses" to uses "by a resident of rural Alaska", the same section defines the term "resident of rural Alaska" in a manner which allows persons who do not reside in rural Alaska to nevertheless be considered as doing so. Section 8 of SB 8001 amends A.S. 16.05.940 as follows:

(31) "resident of rural Alaska" means a state resident engaged in customary and traditional subsistence as a way of life.

The definition does not require the state resident to actually reside in any particular area of Alaska. Consequently, a resident of Anchorage, Fairbanks or Juneau "engaged in customary and traditional subsistence as a way of life" - a phrase which is not itself defined - would, as a matter of law, be considered a "resident of rural Alaska" and hence eligible to engage in "subsistence uses". Such a result is directly contrary to the intent of title VIII of ANILCA. As the Senate Committee on Energy and Natural Resources explained its intent in limiting the identification of "subsistence uses" exclusively to state residents who in fact reside in rural Alaska:

Although many residents of cities such as Ketchikan, Juneau, Anchorage, and Fairbanks harvest renewable resources from the public lands for personal and family consumption, by its very nature a "subsistence use" is something done only by Native and non-Native residents of "rural" Alaska. The Committee adopted an amendment to clarify this point by limiting application of the definition to areas of "rural" Alaska including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other Native and non-Native villages scattered throughout the state. Senate Rept. No. 96-413, 96th Cong., 1st Sess. 233 (1979) (Emphasis added).

Simply put, enactment of SB 8001 would defeat the very purpose it purportedly has been drafted to achieve.

In addition to the concerns addressed above, SB 8001 also raises myriad other policy concerns each of which must be addressed prior to the enactment of any new subsistence legislation into

Mitch Abood
December 24, 1985
Page 10

law. Three are worth particular mention.

As you know, section 4, art. VIII of the Alaska Constitution requires fish stocks and game populations to be utilized on the "sustained yield principle" and since statehood the Board of Fish and Game and the Board of Fisheries and Board of Game have adopted fishing and hunting regulations pursuant to this standard. If enacted into law, the new A.S. 16.05.258(d) set forth in section 5 of SB 8001 would alter this standard with respect to the taking of fish stocks and game populations for subsistence uses. Although hunting and fishing for sport and commercial purposes apparently would continue to be regulated under the "sustained yield" standard, A.S. 16.05.258(d) would prohibit the Board of Fisheries and Board of Game from adopting regulations authorizing the taking of a stock or population for subsistence uses if doing so would be consistent with the sustained yield principle but "inconsistent...with the maintenance of healthy fish stocks, game populations, or other wildlife populations". This is a significant deviation from the existing regulatory standard. Why such a radical change of policy has been included in SB 8001 is particularly perplexing since I am not familiar with any testimony presented to the Senate State Affairs Committee which raised this issue.

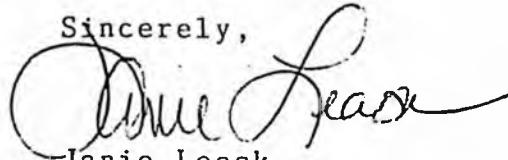
Subsection (e) of the same section raises a similar problem. The subsection gratuitously implies that as a matter of state policy nonconsumptive uses of a fish stock or game population should have a priority over the taking of such stock or population for subsistence uses. For the Senate State Affairs Committee to sponsor a bill which, if enacted into law, would advance the interests of primarily nonresident catch-and-release sport fishermen and backpackers by subordinating subsistence to catch-and-release fishing and by restricting the ability of state citizens residing in rural villages near or within the boundaries of national parks to obtain food to feed their families is troubling to say the least, particularly when the Congress specifically declined to delegate the National Park Service or any other agency authority to close a national park or any other federal land in Alaska, or any portion thereof, to subsistence uses in order to advance "public use and enjoyment", i.e. nonconsumptive uses. Compare section 816 of ANILCA with Department of the Interior Proposed Subsistence Title, Hearings on H.R. 39 before the Subcomm. on General Oversight and Alaska Lands of the Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess., Part XVI 258 (1977).

Mitch Abood
December 24, 1985
Page 11

Lastly, it is difficult to understand why the State Affairs Committee believes that the duties of the Division of Subsistence need to be rewritten in such a detailed fashion. Although the subsistence issue has certainly been a source of controversy over the years, I am not familiar with any significant criticism of either the work which the Division of Subsistence has performed or the degree of professionalism with which Division employees have performed that work.

I hope the preceding discussion has been helpful in highlighting AFN's concerns about SB 8001. On behalf of the AFN board of directors I would again like to express AFN's appreciation for the opportunity to comment on the draft. Although for the reasons set forth in detail above the present draft is not consistent with title VIII of ANILCA in a number of significant respects, the Senate State Affairs Committee's work on the subsistence issue has hopefully laid the groundwork for the enactment of legislation during the 1986 session which is consistent with title VIII. If between now and the commencement of the 1986 session either I or AFN staff can be of further assistance to you and the Committee in revising SB 8001 or in assisting your work on this important public policy issue in any other respect, please do not hesitate to contact me.

Sincerely,



Janie Leask
President

xc: Governor Bill Sheffield
William P. Horn
AFN Board of Directors

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

1 For an Act entitled: "An Act relating to fishing and hunting."

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

3 * Sec. 1. FINDINGS AND INTENT.

4 (1) Sound management of fish and wildlife will be best achieved
5 if the management of fish and wildlife, including allocation ^{among} [between]
6 different ^{uses} [user groups] is done on a biological basis, rather than on
7 the basis of land ownership.

8 (2) Maintaining healthy ^{reword} [and natural] populations of fish and
9 wildlife is important to Alaska in that healthy and natural
10 populations of fish and wildlife provide unique opportunities for a
11 subsistence life-style, for trophy and other hunting and fishing, for
12 commercial fishing and for wildlife viewing.

13 (3) In order to assure that these opportunities shall continue to
14 be reasonably available it is necessary:

15 (a) that there be an equitable ^{and appropriate} balance ^{allocation?} [between] ^{among} sport,
16 commercial, subsistence, and non-consumptive ^{uses?} [needs],

17 (b) that in times of resource shortage there be a reasonable
18 preference for subsistence use of stocks of fish and populations of
19 game that are important to subsistence uses,

20 (c) that the Board of Fisheries and the Board of Game have
21 sufficient authority, flexibility and information necessary to manage

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1 uses of fish and wildlife to maintain sustained yield, to maintain
2 healthy [and natural populations,] and to maintain meaningful
3 opportunities for subsistence, sport, commercial and other consumptive
4 and non-consumptive uses of fish and game.

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5 * Sec. 2. AS 16.05.094 is amended to read:

6 The division of subsistence hunting and fishing shall:

7 (1) compile and analyze existing data and data gathered in future
8 studies, and conduct studies to gather information including data from
9 subsistence users, the public, other divisions within the Department
10 and other state or federal agencies, on all aspects of subsistence
11 hunting and fishing in the lives of the residents of the state;
12 provided that in doing such analysis and studies the division shall as
13 clearly as possible set forth and identify --

14 (A) the species, stocks, and populations of fish and
15 wildlife used for customary and traditional subsistence uses in
16 specific areas of the State;

17 (B) the degree of significance that such species, stocks and
18 populations have to customary and traditional subsistence uses and
19 users in specific areas of the state;

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1 (C) customary and traditional subsistence uses of fish and
2 wildlife by species, stock and population of such fish and wildlife in
3 specific areas of the state;

4 (D) areas customarily and traditionally used for, and
5 presently used for subsistence harvest by species, stock and
6 population of fish and wildlife and by population of subsistence
7 users,

8 (E) areas, habitats, flyways, watersheds and the like,
9 whether within or not within the borders of Alaska, that are utilized
10 by fish and wildlife subject to subsistence uses; provided that such
11 areas, habitats, flyways, watersheds and the like shall be identified
12 in cooperation with other divisions of the Department and other state
13 or federal agencies having jurisdiction over fish and wildlife;

14 (F) the impacts and extent of impact, if any, that
15 subsistence use of specific species, stocks, or populations have on
16 the maintenance of healthy and natural populations of such fish and
17 wildlife, on the sustained-yield of such species, stocks or
18 populations, on other subsistence users and sport or commercial users
19 whether within or not within the borders Alaska; provided that such
20 impacts shall be identified in cooperation with other divisions of the

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