

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672  
4222.43 RES SUBSISTENCE: MISCELLANEOUS (file 1) - (file 2) 124

subsistence taking of game resources in amounts sufficient to provide for the customary and traditional uses he has identified, consistently with sound conservation and management practices. In no instance may the Commissioner permit subsistence taking which would jeopardize or interfere with the maintenance of a specific game population on a sustained yield basis.

(2) Whenever the Commissioner determines that game resources are sufficient, under the sustained-yield principle, to fully provide for subsistence uses and also to provide for nonsubsistence uses, and where current regulations authorize nonsubsistence uses, the Commissioner shall continue the current regulations in effect, with any modifications required by the circumstances, and designate them as governing nonsubsistence uses. The Commissioner shall take due care to provide an opportunity for non-subsistence uses only to the extent that such non-subsistence uses do not jeopardize or interfere with the conservation and development of game resources on a sustained yield basis, or with the conservation and development of these resources for customary and traditional subsistence uses.

(3) When circumstances such as increased numbers of users, weather, predation or loss of habitat may jeopardize the sustained yield of a game population or fail to provide fully for subsistence uses, the Commissioner will exercise his authority by restricting all nonsubsistence harvest

before subsistence uses are restricted. If all available restrictions for nonsubsistence uses have been implemented and further restrictions are needed, the Commissioner will restrict the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who:

- (i) live closest to the resource;
- (ii) have the fewest available alternative resources; and
- (iii) have the greatest customary and direct dependence upon the resource.

(4) Whenever the Commissioner determines under (f)(3) that it is necessary to restrict subsistence uses of game resources by subsistence villages and subsistence subcommunities in which a permit system otherwise would be inappropriate, he is authorized to implement such a system if he finds it necessary to accord priority to the preferred subsistence users he identifies pursuant to the criteria of (f)(3).

(g) Compliance with Federal Law. The Board has determined that this emergency regulation satisfies the requirements of both the federal and the state subsistence laws, and in particular that it will fully protect the subsistence priority of rural Alaskans as mandated by Title VIII of ANILCA, while at the same time protecting all subsistence users covered by state law. The Commissioner shall monitor the situation and immediately report to the Board any instance in which he determines that implementation



APPENDIX C

SUPPLEMENT TO  
· PETITION TO THE BOARD OF GAME  
TO ADOPT EMERGENCY SUBSISTENCE  
HUNTING REGULATIONS FOR CERTAIN  
SUBSISTENCE VILLAGES AND INDIVIDUALS

The petition previously submitted on behalf of the villages of Anaktuvuk Pass, Togiak and Lime Village, and Silas Tegoseak individually, is hereby supplemented in light of the policies the Board is now pursuing.

As we understand the Department of Law-constrained policies which govern the actions contemplated and now being taken by the Board, (1) "all Alaskans" are deemed to be subsistence hunters entitled to the general subsistence preference; (2) the Board is precluded from recognizing and protecting the customary and traditional subsistence uses of villages and communities with subsistence-based socioeconomic systems as communities, but rather can only deal with individuals; (3) the Board cannot protect the rights of particular subsistence communities and subcommunities by such means as eliminating arbitrary closed seasons and individual bag limits without also eliminating such restrictions for all other Alaska residents, i.e., opening up a particular community's hunting grounds to all Alaskans; and (4) whenever the need to protect sustained yield or subsistence uses necessitates restrictions on general subsistence users, preferred subsistence users will be identified through a limited-entry-type application and point-award system which can be applied only to individuals, not to subsistence-based socioeconomic systems as communities or subcommunities.

Petitioners believe that these policies violate the federal

subsistence law -- the supreme law of the land -- but they recognize that there is apparently nothing the Board can do to comply with federal law so long as the Board considers itself bound by the views of the Department of Law. Nevertheless, should the Board devise some way of protecting the legal subsistence rights of petitioners, petitioners wish to emphasize that they would have strenuous objections to the Board opening up their tribal hunting grounds to any person who has not participated in their customary and traditional subsistence harvest pattern, and that petitioners would have similar objections to the imposition of an individual-based limited-entry-type system on their communities.

DATED: 3 June 1985

Respectfully submitted,

ALASKA LEGAL SERVICES CORPORATION

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APPENDIX D



# United States Department

ATTACHMENT 1

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

FEB 25 1982

Honorable Jay S. Hammond  
Governor of Alaska  
Juneau, Alaska 99811

Dear Jay:

The Department of the Interior has completed its initial evaluation of the State of Alaska's subsistence management and use program. We are pleased to inform you that, with the exception of the concerns noted below, the State program appears to satisfy section 805(d) of the Alaska National Interest Lands Conservation Act (ANILCA). The material you have submitted to the Department demonstrates the State's desire to develop a workable subsistence program which meets the needs of Alaska residents and satisfies the objectives of ANILCA. We earnestly hope to be able to approve the State program as such action would be in accord with our commitment to States' rights, particularly the right to manage resident fish and game. The State's inability to provide such a program will, however, force us to assume fish and game management on Federal lands in Alaska. Such a step would run counter to our philosophy but enforcing the law is our sworn duty.

Our remaining concerns are enumerated below:

1. Section 805(d) states that the requirements of sections 803, 804, and 805 must be implemented through "laws of general applicability." To date, the State has not demonstrated that it has established "laws" which provide for all of the essential provisions of those sections. Policy Resolution 81-1-JB (Policy), for example, cannot be relied upon to satisfy Title VIII because it has not been promulgated as a regulation and thus is not binding on the Boards of Fisheries and Game.
2. The State program does not appear to provide an acceptable definition of the "subsistence uses" concept, as it is set forth in section 803. Title VIII and its legislative history establish that the federal definition of "subsistence uses" must be limited to "rural Alaska residents." Although the

State definition need not be identical to section 803, the State program must "provide for" this type of beneficial use by identifying rural subsistence users and extending the section 804 priority and section 805 participation scheme to those users. The approach adopted in the Policy does not satisfy this requirement because it fails to distinguish rural residents engaged in subsistence uses from other users who make "customary and traditional uses" of fish and game resources. As discussed above, any change made in the State program to accommodate the "rural residency" requirement must be promulgated as a "law of general applicability."

3. Finally, an important technical change should be made in the approach discussed in paragraph (e) of the Policy: To be consistent with section 804, the State program must provide that restrictions will be applied among rural residents engaged in subsistence uses when there is a threat to the sustained yield of a fish stock or game population or when there is a possibility that the continuation of rural subsistence uses will be jeopardized. Presently, only the sustained yield concern is reflected in paragraph (e) of the Policy.

To assist the State in achieving compliance with sections 803, 804 and 805, we have attached for your consideration an edited version of Joint Board Policy 81-1-B. If enacted in its entirety as a regulation, the approach embodied in the suggested edited revision would comply with all applicable provisions of Title VIII. Then, the Department would be in a position to verify the State program's compliance with ANILCA.

The Interior Department is confident that these areas of concern will be resolved and that the Congressional intent that the State assume the lead role in the management of subsistence uses of fish and game resources on the public lands in Alaska will be realized. If the State requires further assistance in interpreting the requirements of ANILCA, please contact William P. Horn, Deputy Under Secretary, at (202) 343-5183.

I look forward to receiving the State's final submission.

Sincerely,

/s/ James G. Watt

SECRETARY

Enclosure

FEB 25 1992

EDITED VERSION

Proposed additions indicated by underscores  
Proposed deletions indicated by slash marks

JOINT BOARDS OF FISHERIES AND GAME  
POLICY ON SUBSISTENCE  
RESOLUTION 81-1-JB

1. Definitions. For purposes of providing for the conservation, development and management of Alaska's fish and game resources;

(a) "Subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption.

(b) "Rural subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption, and for customary trade, barter or sharing for personal or family consumption.

2. Procedures. In applying a subsistence priority the Boards will provide for conservation and development of Alaska's fish and game resources pursuant to the following procedures:

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

(b) Each Board will identify rural and other subsistence uses of fish or game resources by reference to the following criteria:

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

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

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

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

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

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

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

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

After identifying rural and other subsistence uses based upon these criteria, each Board will determine the approximate amount of fish or game necessary to provide fully for opportunities to engage in these customary and traditional uses.

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

(d) These regulations may also provide an opportunity for non-subsistence uses of the resource, to the extent that such uses do not jeopardize or interfere with the conservation and development of fish or game resources, on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional rural and other subsistence uses as provided in (c) above.

### 3.. Priorities.

(a) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, or interfere with the opportunity for taking these resources for rural and other subsistence uses as provided in (c) above, each Board will exercise all practical options for restricting non-subsistence harvests before rural and other subsistence uses are restricted.

~~(b) If further restriction is necessary, the board shall give the highest priority to local residents in rural areas.~~

(b) If further restriction is necessary to assure the maintenance of fish stocks and game resources on a sustained yield basis or to assure the continuation of rural subsistence uses, each Board will give priority to rural subsistence uses.

(c) If additional restrictions are necessary among rural subsistence use allocations, the Boards will apply limitations and restrictions based on customary and direct dependence upon the resource as the mainstay of one's livelihood, ~~proximity to~~ and respect local residency, and the availability of alternative resources.

(d) In no event, however, will a Board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained yield basis.

~~A. Councils/ In fulfilling their regulatory and administrative functions, regional fish and game councils may consider all uses and fish and game resources. Under 5 AAC 96.200, 5 AAC 96.250 and 5 AAC 96.610, the councils shall take appropriate action, within their authority, to provide for rural and other subsistence uses. Such action may include, but need not be limited to, the preparation of annual reports and recommendations on proposed regulations, and shall provide a forum for the expression of rural subsistence user views.~~

A. Councils In fulfilling their functions under 5 AAC 96.200, 5 AAC 96.250 and 5 AAC 96.610, regional fish and game councils shall be authorized to consider and take action to provide for rural subsistence uses, including, but not limited to, the preparation of annual reports and recommendations on proposed regulations concerned with rural subsistence uses and the provision of a forum for the expression of rural subsistence user views. The councils may also consider, and take action to provide for, other subsistence and non-subsistence uses.

APPENDIX E



8. HOW DIRECTLY DEPENDENT ARE YOU (Y HUNTING THIS GAME POPULATION AS A PRINCIPAL MEANS OF SUPPORT FOR YOURSELF AND/OR YOUR FAMILY? (Principal means of support means that harvesting this animal is important because the harvest of wild resources is the primary way you feed yourself and/or your family.) [CHECK ONLY ONE]

a. Greatly dependent \_\_\_\_\_  
 b. Moderately dependent \_\_\_\_\_  
 c. Slightly dependent \_\_\_\_\_  
 d. Not dependent \_\_\_\_\_

9. IN YOUR USUAL HUNTING AREA, HOW AVAILABLE ARE OTHER KINDS OF BIG GAME AND/OR FISH WHICH ARE REASONABLE SUBSTITUTES FOR THE ANIMAL LISTED IN THIS APPLICATION?

a. Not available \_\_\_\_\_  
 b. Slightly available \_\_\_\_\_  
 c. Moderately available \_\_\_\_\_  
 d. Greatly available \_\_\_\_\_

10. IS YOUR HOUSEHOLD'S INCOME LARGE ENOUGH TO PURCHASE FOOD AND OTHER ITEMS AS REASONABLE ALTERNATIVES TO TAKING WILD FISH AND GAME? [CHECK ONLY ONE]

YES \_\_\_\_\_  
 NO \_\_\_\_\_

(Please keep in mind your assets, debts, family or household size, and other obligations. "Reasonable alternatives" are things which can be used instead of wild fish and game.)

11. I AM AT LEAST TWELVE (12) YEARS OLD AND QUALIFY FOR A RESIDENT - ALASKA HUNTING LICENSE.

YES \_\_\_\_\_  
 NO \_\_\_\_\_

No more than two individuals from a single household may apply for a caribou subsistence permit. For all other species, no more than one individual from a single household may apply for a permit.

12. WHICH ONE OF THE FOLLOWING STATEMENTS APPLIES TO THIS APPLICATION? [CHECK ONLY ONE]

a. This application is for caribou hunting. No more than two members of my household are applying for a permit for caribou. \_\_\_\_\_  
 b. This application is not for caribou hunting. I am the only member of my household applying for a permit for this species. \_\_\_\_\_

13. I have enclosed payment for the \$5.00 (bison and muskox \$10) application fee.

YES \_\_\_\_\_  
 NO \_\_\_\_\_

WARNING: Making false statements on this application is a class A misdemeanor, punishable by a fine of not more than \$5,000 and/or imprisonment of not more than one year.

CERTIFICATION

I, \_\_\_\_\_, do hereby certify that all of the information contained in this application is complete, true, and correct to the best of my knowledge. I further acknowledge that I am responsible for the truthfulness of the information.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_ Telephone Number \_\_\_\_\_ Social Security Number

9/25/85

# DISCUSSION DRAFT

1 IN THE SENATE

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."

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

8 \* Section 1. FINDINGS AND INTENT. (a) The legislature finds that

9 (1) hunting and fishing are <sup>economically and culturally</sup> important to residents of many  
10 small, remote communities in the state as a principal means of obtaining  
11 food <sup>and of sustaining a subsistence oriented</sup> lifestyle and culture.

12 (2) the Congress, in enacting the Alaska National Interest Lands  
13 Conservation Act, intended to ensure, in their words, "the continuation of  
14 the opportunity for subsistence uses by rural residents of Alaska" who are  
15 dependent on subsistence uses and for whom "no practical alternative means  
16 are available to replace the food supplies and other items gathered from  
17 fish and wildlife";

18 (3) even in communities in which there are practical alternative  
19 means of obtaining food, many residents rely on fishing and hunting to  
20 obtain a substantial portion of their food;

21 (4) the opportunity to fish and hunt is <sup>equally</sup> ~~equally~~ important to  
22 many Alaskans throughout the state, not only for obtaining food, but also  
23 for ~~the experience itself.~~ <sup>recreational and commercial purposes equally related to their</sup>  
24 <sup>lifestyle and culture</sup>

25 (b) It is the intent of the legislature.

26 (1) to establish as a principle of resource management by the  
27 Board of Fisheries and the Board of Game a preference for subsistence uses  
28 of fish and game in those areas where no practical alternative means are  
29 available to replace the food supplies and other items gathered from fish  
and wildlife which supply rural residents dependent on subsistence uses;

by name (Alaska) -1- this would not comply w/ Tier I.  
resident to also engage in customary and traditional

*To all fish stocks for sport, commercial and subsistence purposes and to ensure the maintenance of the natural diversity of such stocks for purposes of sport & subsistence.*

*meaning?*

1 and

2 (2) that the Board of Fisheries and the Board of Game have broad  
3 flexibility to manage the state's fish and game, and that they <sup>should</sup> use this  
4 flexibility to ensure the sustained yield and best use of all fish stocks  
5 and game populations.

6 \* Sec. 2, AS 16.05.251(a) is amended to read:

7 (a) The Board of Fisheries may adopt regulations it considers  
8 advisable in accordance with the Administrative Procedure Act  
9 (AS 44.62) for

10 (1) setting apart fish reserve areas, refuges and sanctu-  
11 aries in the waters of the state over which it has jurisdiction,  
12 subject to the approval of the legislature;

13 (2) establishing open and closed seasons and areas for the  
14 taking of fish;

15 (3) setting quotas, bag limits, harvest levels, and sex and  
16 size limitations on the taking of fish;

17 (4) establishing the means and methods, <sup>including gear, traps, boats, and other such items</sup> employed in the  
18 pursuit, capture and transport of fish;

19 (5) establishing marking and identification requirements  
20 for means used in pursuit, capture and transport of fish;

21 (6) classifying as commercial fish, sport fish, personal  
22 use fish, subsistence fish, or predators or other categories essential  
23 for regulatory purposes;

24 (7) watershed and habitat improvement, and management,  
25 conservation, protection, use, disposal, propagation and stocking of  
26 fish;

27 (8) investigating and determining the extent and effect of  
28 disease, predation, and competition among fish in the state, exercis-  
29 ing control measures considered necessary to the resources of the

1 State;

2 (9) prohibiting and regulating the live capture, posses-  
3 sion, transport, or release of native or exotic fish or their eggs;

4 (10) establishing seasons, areas, quotas and methods of  
5 harvest for aquatic plants;

6 (11) establishing the times and dates during which the  
7 issuance of fishing licenses, permits and registrations and the trans-  
8 fer of permits and registrations between registration areas is  
9 allowed; however, this paragraph does not apply to permits issued or  
10 transferred under AS 16.43;

11 (12) regulating catch-and-release <sup>or trophy management</sup> sport fishing for selected  
12 fish stocks (13) for establishing <sup>a procedure for</sup> administrative appeal of  
decisions by the Board,  
need authority to establish <sup>procedures</sup> for appeal procedure.

13 (14) regulating commercial, sport, personal <sup>and subsistence</sup>  
14 and subsistence fishing. as necessary for conservation, utilization & development  
of fisheries.

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

16 (b) The Board of Fisheries shall adopt regulations in accordance  
17 with the Administrative Procedure Act (AS 44.62) for [PERMITTING] the  
18 taking of fish for subsistence uses unless the board determines, in  
19 accordance with the Administrative Procedure Act, that adoption of the  
20 regulations will jeopardize or interfere with the maintenance of fish  
21 stocks on a sustained-yield basis. Whenever it is necessary to re-  
22 strict the taking of fish to assure the maintenance of fish stocks on  
23 a sustained-yield basis, or to assure the continuation of subsistence  
24 uses of such resources, subsistence use shall be the preferred [PRI-  
25 ORITY] use. If further restriction is necessary, the board shall  
26 establish restrictions and limitations on and priorities for these  
27 consumptive uses on the basis of the following criteria:

28 (1) customary and direct dependence upon the resource as  
29 the mainstay of one's livelihood;

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*leg is his to clarify meaning to change*

*leg is his needed*

1 (2) local residency; and

2 (3) availability of alternative resources.

3 \* Sec. 4. AS 16.05.251 is amended by adding new subsections to read:

4 (d) Subsistence fishing authorized under this section is subject  
5 to reasonable regulation of seasons, catch limits, methods, and means.

6 (e) If the Board of Fisheries determines that (1) a particular  
7 fish stock is not a customary and traditional source or not a  
8 significant source of subsistence for rural subsistence area residents  
9 and (2) subsistence is not the best use of that fish stock, the board  
10 may provide that the fish stock may not be taken under subsistence  
11 regulations.

12 (f) The Board of Fisheries shall establish an appeal procedure  
13 for persons aggrieved by the adoption or repeal or enforcement of a  
14 subsistence fishing regulation. The aggrieved person must exhaust  
15 this administrative remedy before bringing a legal action challenging  
16 the regulation.

17 \* Sec. 5. AS 16.05.255(a) is amended to read:

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

21 (1) setting apart game reserve areas, refuges and sanctu-  
22 aries in the water or on the land of the state over which it has  
23 jurisdiction, subject to the approval of the legislature;

24 (2) establishing open and closed seasons and areas for the  
25 taking of game;

26 (3) establishing the means and methods employed in the  
27 pursuit, capture and transport of game;

28 (4) setting quotas, bag limits, harvest levels, and sex,  
29 age, and size limitations on the taking of game;

1 (5) classifying game as game birds, song birds, big game  
2 animals, fur bearing animals, predators or other categories;

3 (6) methods, means, and harvest levels necessary to contro  
4 predation and competition among game in the state;

5 (7) watershed and habitat improvement, and management,  
6 conservation, protection, use, disposal, propagation and stocking of  
7 game;

8 (8) prohibiting the live capture, possession, transport, or  
9 release of native or exotic game or their eggs;

10 (9) establishing the times and dates during which the  
11 issuance of game licenses, permits and registrations and the transfer  
12 of permits and registrations between registration areas and game  
13 management units or subunits is allowed;

14 (10) regulating sport hunts and subsistence hunts.

15 \* Sec. 6. AS 16.05.255(b) is amended to read:

16 (b) The Board of Game shall adopt regulations in accordance with  
17 the Administrative Procedure Act (AS 44.62) for [PERMITTING] the  
18 taking of game for subsistence uses unless the board determines, in  
19 accordance with the Administrative Procedure Act, that adoption of the  
20 regulations will jeopardize or interfere with the maintenance of game  
21 resources on a sustained-yield basis. Whenever it is necessary to  
22 restrict the taking of game to assure the maintenance of game re-  
23 sources on a sustained-yield basis, or to assure the continuation of  
24 subsistence uses of such resources, subsistence use shall be the  
25 preferred [PRIORITY] use. If further restriction is necessary, the  
26 board shall establish restrictions and limitations on and priorities  
27 for these consumptive uses on the basis of the following criteria:

28 (1) customary and direct dependence upon the resource as the  
29 mainstay of one's livelihood;

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suppose*

*same  
suppose*

1 (2) local residency; and

2 (3) availability of alternative resources.

3 \* Sec. 7. AS 16.05.255 is amended by adding new subsections to read:

4 (d) Subsistence hunting authorized under this section is subject  
5 to reasonable regulation of seasons, bag limits, methods, and means.

6 (e) If the Board of Game determines that (1) a particular game  
7 species is not a customary and traditional source or not a significant  
8 source of subsistence for rural subsistence area residents and (2)  
9 subsistence is not the best use of that game species, the board may  
10 provide that the game species may not be taken under subsistence  
11 regulations.

12 (f) The Board of Game shall establish an appeal procedure for  
13 persons aggrieved by the adoption or repeal or enforcement of a sub-  
14 sistence hunting regulation. The aggrieved person must exhaust this  
15 administrative remedy before bringing a legal action challenging the  
16 regulation.

17 \* Sec. 8. AS 16.05.330 is amended to read:

18 Sec. 16.05.330. LICENSES AND TAGS REQUIRED. (a) Except as  
19 otherwise permitted in this chapter, a person may not engage in  
20 personal use fishing, subsistence fishing or sport fishing, including  
21 the taking of razor clams; in <sup>sport</sup> hunting, subsistence hunting, trapping,  
22 or fur dealing; in the farming of fish, fur, or game; or in taxidermy,  
23 without having the appropriate license or tag in actual possession.

24 (b) When obtaining the appropriate license or tag in (a) of this  
25 section, an applicant who asserts residency in the state or in a rural  
26 subsistence area shall provide the license vendor with the proof of  
27 residence that the department requires by regulation.

28 \* Sec. 9. AS 16.05.340(a) is amended by adding new paragraphs to read:

29 (18) personal use fishing license . . . . \$10

1 (19) subsistence fishing license . . . . \$10

2 (20) subsistence hunting license . . . . \$12

3 However, the fee for a license under this paragraph or (18) or (19) c  
4 this subsection is 25 cents for an applicant who is the head of  
5 family or a dependent member of that family, or who is solely self  
6 supporting, upon proof presented by the applicant that the applicant

7 (A) is obtaining or has obtained assistance during th  
8 preceding six months under any state or federal welfare progra  
9 to aid the indigent, or

10 (B) has an annual family gross income of less tha  
11 \$5,600 for the year preceding application.

12 \* Sec. 10. AS 16.05.940(23) is amended to read:

13 (23) "subsistence uses" means the customary and traditiona  
14 uses [IN ALASKA] of wild, renewable resources by a resident of a rural  
15 subsistence area of the state for direct personal or family noncommer  
16 cial consumption as food, shelter, fuel, clothing, tools, or transpor  
17 tation, for the making and selling of handicraft articles out o  
18 inedible by-products of fish and wildlife resources taken for direc  
19 personal or family noncommercial consumption, and for the customar  
20 trade, barter, or sharing for direct personal or family noncommercial  
21 consumption; for the purposes of this paragraph, "family" means all  
22 persons related by blood, marriage, or adoption, and any person living  
23 within the household on a permanent basis;

24 \* Sec. 11. AS 16.05.940 is amended by adding new paragraphs to read:

25 (28) "personal use fishing" means the taking of, or the  
26 attempt to take, finfish, shellfish, or other fishery resources in ar  
27 area other than a rural subsistence area by a resident for direct  
28 personal or family consumption, not for sale or barter, by means of  
29 gill net, dip net, seine, pot, fishwheel, long line, or other similar

1 means defined by the Board of Fisheries; personal use fishing is  
2 limited to areas which, in the judgment of the board, can support both  
3 personal use fishing and sport fishing because of an abundance of  
4 fishery resources in the area;

5 (29) "resident of a rural subsistence area" means

6 (A) a person who, for 12 consecutive months, has main-  
7 tained in a single rural subsistence area a permanent place of  
8 abode ~~and~~ a voting residence;

9 (B) a member of the military service who has been  
10 stationed, or a dependent of the member who has been living, for  
11 the preceding 12 consecutive months in a single rural subsistence  
12 area is a resident of that area; or

13 (C) an alien who, for 12 consecutive months, has main-  
14 tained in a single rural subsistence area a permanent place of  
15 abode;

16 (30) "rural subsistence area" means a community or area of  
17 the state in which there are no practical alternative means for re-  
18 placing food supplies and other items that are gathered from fish and  
19 game by rural residents who are dependent on subsistence resources, as  
20 determined by the Board of Fisheries or the Board of Game after con-  
21 sidering the following criteria:

22 (A) <sup>the degree of dependency on</sup> ~~lack of~~ cash economies, sources of employment, or  
23 stores in the community; <sup>low solution</sup>

24 (B) customary and traditional community dependence for  
25 sustenance on the consistent harvest and use, in a cost effective  
26 manner, of fish or game that is near or reasonably accessible  
27 from the community;

28 (C) remoteness of the community and lack of access by  
28 road, regularly scheduled barge, ferry, railroad or airplane

*Tier II language*  
*Needs work*  
*what determine cost-effective if we are looking at life support issues?*

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service; and

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(D) community population of less than 500 persons;

(31) "subsistence hunting" means the taking of a game animal by a resident of a rural subsistence area for subsistence uses by means defined by the Board of Game.

\* Sec. 12. AS 16.05.257(h)(1) is repealed.



## Additional Funding

Sec. 1(a)(5)

Subsistence use of fish and wildlife by those who are truly dependent on subsistence is threatened by ~~both~~ competing subsistence use ~~to~~ and eligibility by those who are not customarily and traditionally dependent, ~~particularly from the recent eligibility of~~ ~~urban Alaska~~ <sup>competition</sup>

This ~~threat~~ comes from two directions: first, the eligibility of all urban Alaskans for subsistence, and second, from the eligibility of all rural Alaskans regardless of customary and traditional dependence.

The Honorable William P. Horn  
Assistant Secretary  
Fish and Wildlife and Parks  
Department of the Interior

Dear Secretary Horn:

We appreciated our meeting with you and your sending us copies of your September 23rd letter to Governor Sheffield on subsistence compliance. As chairmen, respectively, of the Senate State Affairs Committee, to which the various subsistence bills are currently assigned, and the Senate Resources Committee, which is the next committee of referral for subsistence legislation, we have reviewed your letter.

In that letter, you formally advise the Governor that the State of Alaska is no longer in compliance with the requirements of ANILCA as specified in Title VIII. You further advise that compliance will require that the subsistence preference be limited to those rural Alaska residents who customarily and traditionally make use of subsistence resources.

The letter also said that in '82 you noted to the Alaska Boards of Fish and Game that there are various ways to comply with the requirements of Section 805 of ANILCA. In order to understand all the options open to the state in dealing with this issue, we are trying to fully explore all the various ways to comply with Section 805. Your offer of the full cooperation and assistance of your department in our effort to find a solution is appreciated and we would like to take you up on it.

draft/2

The findings in Section 801(2) say, "The situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses."

We realize that any full or final determination of compliance with Section 805 would require formal statutory language for you to review. However, we would be interested in your department's reaction to a proposal that would narrowly define rural as those communities or areas where the lack of practical alternatives referred to in Section 801(2) actually exists. The proposed language would provide a series of criteria that the Boards of Fish and Game could measure communities against in making this determination.

We realize that there are a number of Alaska communities that would no longer be considered rural under this proposal and that in these communities a number of residents eat large amounts of fish and game. In nonsubsistence areas the Boards would have wide flexibility to accommodate local needs and concerns while managing for sustained yield and best use.

In those areas and communities judged rural, subsistence would continue to be administered as outlined in ANILCA.

draft/3

We believe a state based on these principals could be fair, constitutional, enforceable, comply with ANILCA, and meet the needs of all Alaska residents throughout the state, as our state continues to grow and change.



## What's Been Written About Subsistence in Alaska?

There are three distinct categories of literature on Alaska subsistence.

The first is found in the actual language of Federal and State laws and regulations plus commentaries and judicial findings on the definitions and meanings embedded in those documents.

The second consists of recorded testimony taken at public meetings and position papers produced by special interest groups and organizations.

The third category is represented by formal subsistence studies prepared by anthropologists or other social scientists who have attempted quasi-scientific descriptions of subsistence "systems" in rural Alaska.

Categories one and two are obviously the most closely related since they form the major components of the continuing public policy debate. For that same reason it is unrealistic to expect that a universally agreed upon core definition of subsistence can be found in them. They represent the whole spectrum of positions staked out in the wildlife allocation controversy. In this instance how subsistence is defined naturally goes a long way in determining who gets what; a consensus definition is inherently impossible to achieve on scientific or technical grounds. The best one can do here is to carefully chart the history of the legislation and the evidence which special interests groups have produced in support of their claims against other, contrary ones.

Category three, formal subsistence studies by social scientists, have emerged from a number of different sources. Anthropological scholars have long been intrigued with "traditional" Alaskan hunting-fishing-gathering groups. However, their attention has largely been fixed on painting pictures of how things were in the pre-contact past rather than on how things are now. Exceptions exist, such as the work of Richard Nelson on both Eskimo and Athabascan hunting societies, but for the most part they aren't very helpful in answering the big question of what contemporary subsistence activities have become in the 1980s, statewide.

The studies which have tried to address that question are mostly produced by the Subsistence Division of ADF&G (which has a particular interest in identifying specific areas and the use of specific fish and wildlife populations within them); the Socio-economic Studies Program of the Minerals Management Service (whose special interest is in trying to measure impacts on subsistence user groups who may be affected by OCS petroleum activities); and Federal agencies--NPS, NFWS, etc.--(who require the studies to meet the regulatory needs demanded in ANILCA legislation).

Since almost all these studies are commissioned ones whose sponsors want some kind of hard answers that will help them draft regulations to protect the subsistence priority mandated by State and Federal law, they are applied--or policy oriented--anthropology rather than objective scientific inquiry. Even so, such studies have produced the best body of information presently available on the who, where, and how questions of contemporary Alaska rural subsistence. A thorough listing of them current through November 1982 may be found in Patricia O'Brien McMillan's Alaska Subsistence Bibliography, available from the Arctic Environmental Information and Data Center (AEIDC) in Anchorage.

What Have Applied Anthropologists Concluded About Contemporary Alaskan Subsistence "Systems"?

It is patently obvious that the residents of nearly all rural Alaska towns and villages spend a great deal of time hunting and fishing. It can also be demonstrated that a significant proportion of the rural diet in many places consists of game and fish which are caught. The present problem is, however, that hunting and fishing here have become activities which require considerable cash capital if they are to be effective (that is, money to purchase hunting and fishing gear, ATV's, boats and motors, motor fuel, air charter's to distant hunting grounds, and so on). For this reason the term subsistence can not be taken to mean that fishermen and hunters are wholly dependent upon what they can catch to support themselves and their families: they are equally dependent on obtaining the money which is essential to underwrite those pursuits. (Contrast this situation with those to be found in much of Africa, Asia, and parts of Latin America where farmers who make up over a third of the world's population are totally dependent on their personal efforts, with little or no cash income, for their very survival. This is the classical meaning of subsistence, and it is to be found rarely, if at all, in Alaska).

In order to overcome these very great differences in meaning, the applied anthropologists speak of "subsistence systems" in Alaska by which they mean socio-economic units where hunting and fishing for domestic consumption are very important features of what people actually do, but where cash incomes are critically important to the success of those activities. They call these systems "mixed economies" where the old, traditional pursuits based on family hunting and fishing units are equally supported by wage-earners or recipients of government checks to support them. But, since no one would argue that these systems could long survive without cash, then where does the dependency question or test enter?

Here is where the whole problem gets sticky. The anthropologists (and the people themselves) forcefully argue that they have a cultural and psychological dependency on preferential access to hunting and fishing areas which, if they were deprived of such access, would spell the death of their subsistence systems. The anthropological studies go to great lengths to gather evidence to support this assertion by demonstrating how Eskimo and Indian societies are family-based cooperative work units that share (without cash transaction) what they catch. The term which they apply to this is drawn from anthropological theory and is labeled "the domestic mode of production." At this point the subsistence issue gets all tangled up with the land protection, game management, and Native sovereignty issues.

In any event, what is outlined in the above paragraph is treated in fuller detail in my own essay entitled "The Subsistence Lifestyle Issue in Alaska" (copy attached) written last year. It therefore does not take up the most recent developments in the subsistence controversy which erupted earlier this year.

One final point, non-Native rural dwellers of Alaska are not seriously considered in the anthropological studies since it is assumed that they, rightly or wrongly, are not culturally and psychologically dependent on priority access to fish and game resources. In effect, defense of modern subsistence systems (or lifestyles) in Alaska by anthropologists is based on a public policy position that speaks of culture, psychological welfare, Native rights and the like rather than an historically defined situation of folks being dependent for their livelihoods on the ability to continue hunting and fishing.

Robert R. Griffeth  
Anchorage - September 1985

## THE SUBSISTENCE LIFESTYLE ISSUE IN ALASKA

### Summary

The word subsistence has two distinct meanings in the Alaska political vocabulary. The basic meaning refers to the capture and consumption of fish and game by rural folk, mostly Native. The second meaning is commonly expressed by the term subsistence lifestyle which includes the cultures, values, politics, psychological comforts, social organization, and economic behaviors of those same rural folk.

The subsistence issue (that is, the legal and political debate over who should receive highest priority in the allocation of scarce wild resources) turns on the question of whether or not rural Alaskans are entitled to special protection of their hunting and fishing enterprises. Both federal and state law have decreed that they are so entitled.

Over the past decade professional social scientists have been called on to provide federal and state agencies with proper answers to the question of who qualifies for subsistence privileges. Their studies and analyses have produced a definition popularly described as the subsistence lifestyle.

This paper attempts to examine, analyze, and, where appropriate, criticize the conclusions which they have reached. In part, this is an academic exercise in testing the validity of social science theory and findings as these relate to subsistence lifestyles in Alaska. However, there is a practical side to this exercise. Anthropologists, economists, social planners and others of the professional social science establishment play key roles in drafting federal, state, and local land use plans which become law. As they are charged with defining and describing subsistence lifestyles so that these might be effectively protected in such land use plans, their conclusions must be taken seriously by all parties whose interests are touched by the formal land use planning process.

What most subsistence lifestyle studies have concluded are that rural Alaskans continue to capture and to consume large quantities of wild game and fish; that as their cash incomes grow they invest heavily in subsistence technology and transportation which results in dramatically increased takes; that these takes are shared through domestic kinship networks on a non-commercial basis; and that so much is all this the case that the subsistence lifestyles presently lived by rural Alaskans are now vitally dependent on substantial cash incomes (from commercial fishing, wage and salary employment, and government entitlements of various kinds) for their survival. Many field studies have convincingly described this interplay between cash incomes and the utter dependence of subsistence activities on them in recent years.

On the other hand, these studies have been much less successful in demonstrating that cash based subsistence lifestyles are threatened with extinction by population growth, an enlarging 'modern' urban-industrial

## Summary

economy, changing social mores, or increased political participation beyond the rural village community. To the contrary, the evidence shows that subsistence lifestyles as currently practiced owe their continuing existence and vitality to those very same factors.

Finally, the theoretical premises against which subsistence lifestyles are analyzed may, on occasion, distort the description of the cultures, values, economies, and political institutions which law and land use planning seek to protect. Politically or socially sensitive issues are often omitted (e.g. ethnic and race relations, social cleavages based on wealth or political position, the quality of individual leadership in a community, and so forth). The highly theoretical exercise of studying sociocultural or socioeconomic 'systems' is the usual way by which social scientists get round these sticky but crucially important problems of description and analysis.

Following a brief summary of the public policy debate on subsistence in Alaska, the bulk of this paper is devoted to an examination of the theoretical and sensitive problems and issues posed by formal subsistence lifestyle studies.

Robert R. Griffeth  
Anchorage - September 1984

## THE SUBSISTENCE LIFESTYLE ISSUE IN ALASKA

The subsistence lifestyle issue in Alaska has a remarkably brief history despite the fact that it has now become one of the most vexatious and contentious matters affecting public policy and private development. It involves two key questions. One, is there presently a rural subsistence lifestyle here which can be clearly defined? Two, should the formal protection of that lifestyle constitute a very high priority in state and Federal law, management policies, and land use planning efforts?

In the history of the issue as it has evolved since the mid 1970s these questions were addressed in reverse order. Legal protection was extended to the preservation of rural subsistence by Alaska statute (1976), Federal legislation, and a growing body of regulations at the state and local levels.<sup>1</sup> It figures prominently in stipulations embodied in everything from mineral lease sales, including those set forth in OCS lease offerings, to fish and game management practices applicable to Federal, state, and privately owned lands.

Once the protective apparatus was in place, it was thought necessary to study and define what it was that should be protected. A veritable bureaucratic industry was created to study the rural subsistence lifestyle in order to provide answers to this question. A huge literature of monographic studies written by applied anthropologists and economists, position papers by legislative researchers, and a blizzard of published material from special

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<sup>1</sup> A good review of the legislative history of the subsistence law(s), both State and Federal, may be found in Dennis D. Kelso, "Technical Overview of the State's Subsistence Program," Technical Paper No. 64, Alaska Department of Fish and Game (December, 1981). The current detailed description of what constitutes a legitimate claim to subsistence use may be read from Alaska's Game Regulations, No. 25 (1984-1985), 66-67.

interest groups has been the result to date. The immense and growing popularity of the public hearing process has both raised the temperature and clouded the clarity of argument on the part of various agencies, groups, and individuals who have vital stakes in assuring that their particular definitions of the subsistence lifestyle become the on-going basis of law and regulation.

In what follows I hope to chart the recent history and present circumstances which surround the debate about preservation of the subsistence lifestyle with the specific intention of providing those whose duties necessarily involve some knowledge of the subject a condensed guide to the issue.

Before doing so, however, note must be taken of one critical dimension of the issue which literally defies clean and clear definition. This is the use of the term "lifestyle" as the significant qualifier of rural Alaskan subsistence. Native groups assert that the very survival of their cultures depends upon preferential access to fish and game whether or not they require these resources for food, shelter, clothing, or tool-making. That is, they argue that it is an ancient, indigenous, and endangered lifestyle which must be preserved even if the economic basis of cultural preservation has shifted away from exclusive dependence on wild resources. In this sense lifestyle is meant to be an ideal or goal as well as the way life is actually lived in the bush. Though their cultures may not be as old, rural subsisters who are not, by legal definition, Native make precisely the same argument. Anthropologists, economists, and others drawn from the community of professional social science have generally accepted without serious qualification that there is indeed a definable and measurable rural subsistence lifestyle and have staked their careers (and scientific conclusions) on telling the rest of us just exactly what it is. Law and rule-makers have also accepted that there is a

subsistence lifestyle and without further ado have fashioned their laws and rules accordingly.

The dissenters--those who for their individual reasons seek to challenge the general and idealized description of the lifestyle--are usually dismissed as either uncomprehending (won't listen to the Natives and social scientists) or unfeelingly exploitative (don't give a damn if there is such a lifestyle--let's get on with the business of developing Alaska as a modern place).

It is thus easy to see why something called lifestyle has become not so much a descriptive feature of contemporary Alaska as it has a profoundly divisive political issue.

It may be possible to tackle a number of the problems raised by the term lifestyle apart from the political uses to which the term is put. Thus, for the purpose of this background paper, I will confine my description and analysis to the basically historical problem of how the issue surfaced and has developed; and to the largely analytical problem of what the industry of subsistence studies has produced and concluded to date.

#### Brief History of the Subsistence Lifestyle Issue In Alaska

Living from and forging cultures respectful of wild resources is unquestionably the central theme in the history of Alaska's rural societies. Many regard that theme as central today, despite the sea changes which have occurred in the character of the state's population, economy, and links to the Outside.

Before the era of statehood there were certainly many important transformations and modifications which helped to reshape life in the rural

villages and encampments where most people still depended on subsistence harvests: the introduction and use of more efficient hunting and fishing technologies; opportunities or coercive pressures to trap and sell fur and fish; recasting traditional religious values in the new institutions of mission churches; and the not so gentle requirements that wrenched the education of children from their families and neighbors by placing them in schools that taught a different cultural ethic in a language not their own. Even so, subsistence under such circumstances was not a lifestyle. It was the main ingredient of physical survival, social communion, and how to value what one's world had to offer.<sup>2</sup>

About a generation ago it became apparent that changes initiated long before had finally created a drastically altered set of circumstances for subsistence societies. A growing immigrant population began to compete seriously for the wild resources. New roads and more efficient air transport encouraged to-and-fro-ing of unheard of scale between bush and town. Some of the old mining camps, cannery sites, and trading posts assumed the shape of regional hubs which, among other things, began to focus attention on town and city life. And then, of course, Prudhoe and the pipeline.

The sum of all these changes, and more, did not wholly replace subsistence as the principal means by which rural people fed themselves and

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<sup>2</sup> Thomas D. Lonner, "Subsistence As an Economic System in Alaska. Theoretical and Policy Implications," Technical Paper No. 67, Alaska Department of Fish and Game (November, 1980), 28, who states that "The use of the term 'lifestyle' is demeaning to the economic roles (hunting-fishing-gathering) as if subsistence activities were similar to beachcombing or recreational trapping." The author speaks of the situation in 1980, a point at which 'lifestyle' had already permanently attached itself to 'subsistence' in both popular and technical usage.

remained gainfully employed. For many rural Alaskans, that replacement still has not occurred.<sup>3</sup>

But in the eyes of Native, sourdough pioneer, and urban Alaskan alike the old cultural unities that were thought to have been so much a part of subsistence life had become something new: a lifestyle. The new rural culture seemed to be as dependent upon the modern cash economy of town and industry as it was upon success in the hunt. Despite this perceived economic shift, subsisters continued to venerate both the social institutions and the values of the earlier traditions: family cohesion, sharing the spoils of the hunt, celebrating success or mourning life's tragedies through ceremony, ritual, and an unshakeable belief in the harmony of human society and wild nature. Lifestyle became the preferred term used to express this new cultural synthesis.

From time to time through the 1960s and 70s this emerging new meaning of subsistence was treated as an important issue of public policy. Notable occasions involved efforts by the recently created State of Alaska to have the Federal government amend international migratory bird treaties to include provision for subsistence hunting by residents of western coastal areas. To what extent gillnets, seines, and fishwheels might legitimately be employed in subsistence taking of fish was another old issue resurrected once the state assumed its managerial dominance over that resource.<sup>4</sup>

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<sup>3</sup> Though many critics have challenged the notion that wild foods are essential to the nutritional requirements of Alaska's rural people, it is demonstrably true that very substantial quantities of subsistence harvest products continue to be consumed. To cite a recent example from among literally scores of studies that effectively document the point, see "Subsistence-Based Economies in Coastal Communities of Southwest Alaska," Robert J. Wolfe, et al, Technical Report No. 95, Social and Economic Studies Program, Minerals Management Service/Alaska Outer Continental Shelf Region (Anchorage, 1984).

<sup>4</sup> Kelso, "Technical Overview . . .", summarizes the situation from statehood (1959) through the mid 1970s.

Still, the state's rural population remained small and widely scattered through this decade and the number of wildlife enforcement agents were few. While generally respectful of laws and rules that limited the timing, areas, and amounts of the subsistence take, the practical situation was that subsisters often went about their business of hunting and fishing as need (and desire) dictated. "(I)n some interior Alaskan communities where regulatory measures have shown great inconsistencies with local practice, the regulations are considered to be applicable only to other (non-local) users . . ."5

This accommodation might well have persisted if left to itself. Tempers surely would have flared more frequently and prejudices become more thoroughly entrenched. But the new lifestyle might have been given time and space gradually to evolve. Instead, it quickly became vitally important to those who saw their new lifestyle threatened to seek protection. Dramatically increasing numbers of hunting and fishing competitors who were not rural residents, more vigorous enforcement of wildlife regulations, and explosive growth of Alaska's city populations and industrial activities raised the spectre that the subsistence lifestyle would be trampled under the boot of Progress and Development before it had a proper chance to take firm root. The division of the State's vast lands into three bounded estates--Federal, State, and Native--was the final element that raised consciousness of the issue from vitally important to critical and lifestyle-threatening.

The various new Native organizations born in the effort to acquire land rights and those created as corporations in the formal 1971 Settlement Act itself soon realized that neither subsistence "rights" nor the cultures which depended on them were fully taken into account. Typical of what followed from

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<sup>5</sup> Dennis D. Kelso, "Subsistence Use of Fish and Game Resources in Alaska: Considerations in Formulating Effective Management Policies," Technical Paper No. 65, Alaska Dept. of Fish and Game (March, 1982), 13.

this realization was a 1974 publication entitled "Does One Way of Life Have to Die So That Another Can Live?"<sup>6</sup> In the forward to this document Harold Napoleon, a Yupik leader from the Yukon-Kuskokwim Region, wrote that

Subsistence is often thought of as a certain kind of hunting and fishing where people go out not for the sport of it but to get something to eat. But subsistence is really much more. It is not an isolated thing that can be set out and looked at by itself. It is interwoven into every aspect of our lives.

Subsistence is directly related to and affected by everything that is happening within this region in the way of education, land use, economic development, wildlife management and other areas of public policy. Subsistence is really an entire way of life.

From formulations such as this one and many, many others similar to it in tone and substance, the subsistence issue was transformed in the public policy arena from a concern with wildlife management and conservation to that of a major organizing principle for Alaska's rural future. Before long this was duly noted by the Boards of Fish and Game which proclaimed in a 1976 Policy Statement that

The existing variety of cultures and life styles in Alaska are of great value and should be preserved. While limitations on the productivity of fish and game must discourage continued increases in the number of subsistence type resource users, domestic utilization is still of fundamental importance to many Alaskans, and accordingly it is assigned the highest priority among beneficial uses.<sup>7</sup>

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<sup>6</sup> Subtitled A Report on Subsistence and the Conservation of the Yupik Lifestyle, by Yupiktak Bista (Bethel, 1974). This 80 page document argues in detail that the Yupik subsistence lifestyle should properly consist of a blending of the old culture with modern life. Therefore, the claim for protection is directly linked to the demand for a voice in planning for change.

<sup>7</sup> "Policy Statement on Subsistence Utilization of Fish and Game," Alaska Board of Fish and Game and the Commissioner of Fish and Game (1976), quoted in Kelso, "Technical Overview . . .", 4. While this statement was intended to speak to subsistence uses of wild resources by rural residents, the official note taken of "cultures and lifestyles" as the determining factor in policy made a comfortable fit with the particular interests of Native groups which were claiming preservation of their lifestyles as the highest priority in all areas of public policy.

The enactment of the popularly named Alaska Subsistence Law<sup>8</sup> in 1978 did not directly state that the preservation of rural subsistence lifestyles was its central purpose. Rather, it first upheld the principle of sustained yield and then went on to focus on issues involving the fair allocation of wild resources among various user groups decreeing that rural subsisters should be granted first and highest priority if any particular resource should become scarce or threatened. Beyond that the law also made provision for a systematic and institutionalized method for obtaining adequate information, for the first time, about the social and economic character and resource use patterns of the subsisters themselves. This task was assigned to the Department of Fish and Game and thus was born, in August 1978, a Subsistence Task Force. The Task Force mainly addressed what was at the time the most divisive issue, fair allocation between all groups; but its recommendations foreshadowed the shift of emphasis that was soon to follow on defining who might legitimately qualify as a "subsistence user".

A Subsistence Section of the agency was created to begin providing information and advice on just that problem.<sup>9</sup> This new governmental unit also had another important duty which was to insure that whatever it discovered by research and proposed in the way of developing a better regulatory system conformed to Federal law which touched subsistence uses on the national

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<sup>8</sup> The law was proposed as House Bill 960 (by which it also became popularly known), and was enacted as Chapter 151 of the 1978 Alaska Session Laws taking effect as of October 10, 1978.

<sup>9</sup> The Subsistence Section became a full-fledged Division of the Department of Fish and Game in December, 1980. A brief account of how it was put together and what it did in this early period is given in Kelso, "Technical Overview . . .", 5-14.

lands.<sup>10</sup> While the language of the D-2 Bill varied in significant ways from that used in the Alaska Subsistence Law, it, too, contained bits and pieces which indicated that persons who remained "dependent" upon the consumption of wild resources found on Federal lands should enjoy first priority in their capture. Significantly, the D-2 legislation did not specifically indicate that native subsistence users had some better claim than other rural dwellers, and did not make much of the culture and lifestyle issues.

Clearly, the history of the first five years of the Subsistence Issue as a major public debate in Alaska homed in on the problem of fair allocation of permits to hunt and fish on State, Federal, and private lands. Cries of outrage by potential users who were from time to time denied permits; the general argument that preference conferred on rural dwellers violated basic rights of equity for those who happened to live in towns and cities; and the growing alarm among Native groups (who constituted the majority of the rural dwelling population of the State) that their wild resources would soon disappear altogether if everyone were to be allowed free access to them--these are the components of the Subsistence Issue as it has recently been fought in the public arena. Ballot Initiative Measure No. 7 sought repeal of the preference subsistence priority provision of the state law, but was defeated by a nearly two thirds majority of voters in the 1982 general election.<sup>11</sup>

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<sup>10</sup> See Dennis D. Kelso, "Implementation Issues Posed By Title VIII of the Senate-Passed D-2 Bill," Technical Paper No. 62, Alaska Department of Fish and Game (October, 1980).

<sup>11</sup> The Initiative sought to replace portions of the Subsistence Law with an Alaska Anti-Discrimination Hunting, Fishing and Trapping Rights Act. See State of Alaska Official Election Pamphlet (October, 1982) for details including pro and con arguments. A major fear expressed by opponents was that the Federal Government would usurp State fish and game management on Alaska Federal lands should the initiative pass.

Temporarily, at any rate, the results of this initiative campaign laid to rest the allocation and preference issues of subsistence use in favor of those who, largely from fears of resource depletion and Federal meddling in the State's game management practices, voted to keep intact the 1978 law.

Throughout the public controversy that briefly raged over the repeal initiative, very little was said by spokesmen on either side about preservation of the subsistence lifestyle. Even Native conferences and meetings convened for the express purpose of defending subsistence hunting and fishing rights steered clear of the lifestyle defense for this particular purpose.<sup>12</sup> This was a tactical decision to target on the specific Ballot Initiative and the effort to defeat it. However, the bigger issue for Native groups involved far, far more than priority access to fish and game.

These broader concerns had been aired at the very moment the original state law had taken effect.<sup>13</sup> They continue to dominate discussion, planning efforts, rule-making, social and economic researches, and specific political attitudes about what the future of the state will be. Simply put, the most influential impact of the controversy over subsistence will result from how subsistence lifestyle is defined and then written into law, regulation, and planning "guidelines." For these reasons, among others, it is important to review what has taken place so far, and by whom, in that definitional effort.

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<sup>12</sup> See, for example, "AFN Maps Strategy to Counter Anti-Subsistence Initiative," Anchorage Daily News (November 26, 1981).

<sup>13</sup> An excellent summary of these concerns appeared in the report of A Special Conference on Subsistence (Juneau, December, 1978), "What Happens Next?" Most conferees agreed that neither the new Subsistence Law nor protections built into Federal D-2 legislation addressed the central concern--threats to the subsistence lifestyle.

Official and Other Attempts to Define the Alaskan Rural Subsistence Lifestyle.

It would be possible to chart the history of efforts to define what constitutes subsistence in the lawyerly fashion of combing statute, case law, and government regulation. Indeed, a great deal of such combing has been done.<sup>14</sup> But the most dedicated efforts have appeared from two other sources: various Native organizations and social science research programs mandated by State and Federal law. A truly impressive volume of studies of varying quality have issued from both sources.

Among Native organizations, certainly the most prolific producers have been Yukon-Kuskokwim's Nunam Kitlutsisti (Protectors of the Environment), the Arctic Region's Alaska Eskimo Whaling Commission, and the Interior Region's International Porcupine Caribou Commission delegation. And there have been many others including the statewide Alaska Federation of Natives, the regional corporations, and groups which represent Native interests in the many coastal zone management and planning boards. A particularly interesting chunk of the material produced from these sources comes in the form of testimony and statement by rural subsisters themselves as they have sought to articulate the personal, nitty-gritty depth of feeling they express for the preservation of their lifestyles. While some of this testimony fails to escape the distortion that attends translation from Native tongues to clear English, much of it possesses the stark and determined eloquence of its speakers. A legally workable definition of the subsistence lifestyle would be difficult to extract from such testimony. But here is where one can discover the Native fears and hopes which surround the subject.

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<sup>14</sup> Kelso's three Technical Papers. Nos. 62, 63 and 64 prepared for the Alaska Department of Fish and Game in 1980 and 1981 are essentially of this character.

Social science research programs were first established to find out in as much detail as possible what legitimate subsistence use consisted of--that is, who qualified, based on what criteria, and where. In the case of non-Native rural subsisters, making those definitions wasn't too difficult: an individual had to demonstrate a long-time, consistent pattern of use employing "traditional" harvest methods and food preparation techniques in ways that made him, his family or his neighbors dependent on fish and game for their livelihoods. Confined as this working definition was to a relatively small number of persons, "traditional" criteria could be liberally interpreted without the need to embark on deep sociological inquiry. Length of rural residence served as the main test.

But for Native societies of Alaska who constitute the majority of the rural population, the "traditional and customary" tests posed a much thornier problem. Since they were descendants of the State's aboriginal inhabitants, even if they had moved to town or city, neither time nor place of residence could be used to determine eligibility in the same way these criteria were applied to non-Natives. Besides, nearly all Natives held ownership claims to rural lands through membership (directly or through family connections) in the various regional and village corporations. An additional twist was that race and ethnicity were ruled out as bases for passing laws and enforcing regulations governing resource use. If the problem were to be solved, some method had to be found that would establish the uniquely valued character on social, cultural and economic grounds of what were, patently, ethnic groups. This became one of the two rationales for creating subsistence studies units within both State and Federal agencies.<sup>15</sup>

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<sup>15</sup> The other was, of course, some effective means of limiting hunting and fishing pressures on the resources.

Even at the time there was no lack of ethnographic, demographic, and cultural evidence about Alaska's Natives. This was particularly true of the Eskimo cultures which, for nearly two centuries, had served travelers, missionaries, and anthropologists as the most exquisitely well adapted model of all the earth's "primitive" peoples to the extraordinary demands of a harsh environment. But the difficulty with all this kind of information was that it focused on what the observers thought was the old, pre-contact way of life. It said very little about Native cultures in the here and now.<sup>16</sup> That subject, to the extent that it was surveyed, rested in the domain of the social engineers from the Bureau of Indian Affairs or in the laps of agency officials whose duties were to ameliorate the appalling conditions of rural poverty and social dislocation caused by the clash of modern with traditional Native institutions. Neither of these sources was very helpful on the subject of who, and what, was to be protected. The question which those pioneer social scientists in the Subsistence Section thus faced was how to explain in real, hard terms what a "modern" subsistence society was like.<sup>17</sup>

The first steps--commissioning field studies in particular subsistence areas--got underway very quickly, and by 1981 over thirty of them had been published as Technical Papers. Department of Interior agencies, especially the

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<sup>16</sup> As with all sweeping generalizations, this one requires tempering. There have been a number of excellent studies of Native subsistence done from the classical ethnographic, field approach. Among the very best are the works of Richard K. Nelson on both Eskimo and Athabaskan societies. His are studies of specific places done up in rich detail, and purposely avoid either grand generalization or high level theorizing.

<sup>17</sup> A listing of what the Subsistence Section was charged to do appears in Kelso's "Technical Overview . . .", 9-11. It was asked to compile data on nutrition derived from subsistence products, how these products were shared or traded, the amount of "dependence" people actually had on them and so forth. This information was to be published for public circulation as well as for the use of the Fish and Games Boards in writing regulations.

National Park Service and Bureau of Land Management, were also keeping pace with the State by contracting for similar subsistence use studies on Federal lands.<sup>18</sup> The not terribly surprising conclusion gained from this first great batch of field studies was that as rural people acquired larger cash incomes (from wage paying jobs, commercial fishing, or what most economists have euphemistically termed "transfer payments"--social security and welfare checks, etc.) they invested the money in ways that increased the efficiency of their subsistence harvests: chartered aircraft to remote hunting areas, snow machines and outboard powered boats, all terrain vehicles, better rifles, and so on. All this meant that more, rather than less use was being made of Alaska's "naturally recurring wild fish and game resources." This conclusion posed an additional, and rather more vexing dilemma for the students of subsistence as a lifestyle. City and town dwellers, as their incomes rose, were also choosing to invest heavily in the items and opportunities related to hunting and fishing. The lifestyles of these urban folk were no less keyed to the values associated with pursuing the wild harvest than were those of the rural dwellers. And between the two of them they were placing one hell of a lot of pressure on the animals and fish. Since it would be difficult for social scientists to argue that the values associated with one lifestyle (rural) were superior to those which formed a significant component of others (urban),<sup>19</sup> they sought an explanation that would validate the plea for

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<sup>18</sup> There are numerous subsistence bibliographies. The studies themselves are widely available in Alaska libraries.

<sup>19</sup> Which is not to say that some didn't try. Thomas D. Lonner, the first head of the Subsistence Section (Division), wrote a very testy Technical Paper No. 68 entitled "Perceptions of Subsistence and Public Policy Formation," Alaska Department of Fish and Game (n.d., 1981?), in which he made the curious observation that "It has been my experience that findings of fact, if not attached to a sympathetic (italics mine) world view, will be rejected if they run counter to more general values and vested interest." 11-12. In other words, we are told, rural subsistence is more to be valued than sports hunting and fishing, the facts be damned.

"preserving the rural subsistence lifestyle."

All of which brings us to the current guiding idea which underlies the subsistence studies industry. That is, to employ very high level theory from a specialty identified as Anthropological Economics to demonstrate that Native subsistence in Alaska is the manifestation of an economic and cultural system that is both different and separate from that of our modern "urban-industrial" society and economy while, paradoxically, linked to and hugely dependent on the latter. If all this seems too much a mouthful for easy digestion, it is not for want of trying on the part of anthropological economists to reduce their guiding idea into bite-sized pieces. I do not propose here to summarize the history of theorizing and its multiple schools of thought. That job has been ably done by Steve Langdon, among others.<sup>20</sup> However, it is important to see how a rather simply modeled theory that initiated this effort has grown into something that purports to actually and fully describe Alaska's subsistence lifestyle.

Many have tried to reduce the idea into a few straight-forward sentences as, for example

Subsistence economies in modern Alaska may be understood as non-codified systems of production, distribution and consumption which facilitate the harvest, use, and exchange of renewable resources. These systems have some cash flow, but the cash sector is generally limited. It has been suggested that the 'commercial' and 'subsistence' sectors of the economy are complementary and mutually supportive in many rural Alaskan communities.<sup>21</sup>

While this definition might seem to touch all bases, it remains both

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<sup>20</sup> Co-authored with Rosita Worl, "Distribution and Exchange of Subsistence Resources in Alaska," Technical Paper No. 55, Alaska Department of Fish and Game (April, 1981), Part I, 1-53.

<sup>21</sup> Dennis D. Kelso, Technical Paper No. 65, "Subsistence Use of Fish and Game Resources in Alaska: Consideration in Formulating Effective Management Policies," Alaska Department of Fish and Game (March, 1982), quote from the Abstract.

incomplete and confusing. For example what is meant by non-codified? How can an economy with 'sectors' lack minimal codification? Beyond that, the definition depends heavily on oblique references using terms employed to describe integrated market economies. Since all these theoretical formulations strongly assert that subsistence economies are neither 'primitive' nor fully market-integrated, greater refinement in the definition is required. It may be argued whether the following represents refinement, but it does reflect a number of features which lend force to later theorists' efforts to define lifestyle.

Internationally 'subsistence' refers to those economic activities... which are relatively self-contained within a community or region, which are not conducted primarily for profit-maximization, which aim primarily for present consumption, and which are governed by traditional patterns rather than market conditions or immediate needs. . . The objective, then, of a subsistence system is to provide material and psychological security and self-sufficiency in the face of uncertainty in extra-regional economic systems by conserving energy through the reduction of capital dependency, labor intensity, <sup>22</sup>material and energy importation, transportation, costs and waste.

One can see right away that this expanded definition headed away from the guiding idea being sought. Others argued that the most successful adaptations of Alaskan subsistence economies to present day circumstances were the results of doing all the things which the energy conservation principle suggests they should not. The novel element here, and the one which so influences the lifestyle argument, involves subsistence as the effort to provide "material and psychological security and self-sufficiency." Here, clearly, is a theme that non-scientific practitioners of subsistence living stress over and again in defense of their lifestyle. "The only time I really feel I am myself is when I am hunting. Every year I must return to the tundra if only a few days.

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<sup>22</sup> Thomas D. Lonner, "Subsistence As an Economic System . . . ", 2-5. The author's definitional efforts are a great deal more long-winded than the bits presented here for illustrative purposes.

I have to do this."<sup>23</sup>

But such sentiments, psychologically important as they are, can be devilishly hard to incorporate into a workable definition of either an economic or cultural system.<sup>24</sup> To crack this nut recent definitional efforts have attempted two things. First, by delving deeply into case examples they have tried to demonstrate just what earnings individual subsistence communities acquire from both the cash economy and hunting and fishing activities.

Second, they attempt to show how the infusion of cash shores up the values and social organization of the traditional economy and culture (as well as increasing the efficiency of its subsistence harvest).<sup>25</sup> When the pieces are put together one is allowed to see something called "a mixed, subsistence-based socioeconomic system" which, in its Alaskan manifestation, has six prominent features: 1. A community-wide seasonal round of hunting and fishing; 2. High production outputs; 3. A domestic mode of production; 4. Non-commercial distribution and exchange networks; 5. Traditional systems of land use and occupancy (influenced by non-codified customary laws defining rights of access); 6. And is a mixed economy since subsistence earnings and money incomes are co-mingled.<sup>26</sup>

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<sup>23</sup> A Chevak resident quoted in "Does One Way of Life Have to Die . . .", 6.

<sup>24</sup> Again, some anthropological economists have tried. See Langdon and Worl, "Distribution and Exchange . . .", 10-14, who survey theories of this sort.

<sup>25</sup> Wolfe, et al, "Subsistence-Based Economics . . .", 55-75 and 438-522. This excellent recent study examined four Bristol Bay and Lower Kuskokwim Villages each deeply involved in the Bering Sea commercial fishery. Its theoretical slabs are well done; its presentation of the empirical evidence thorough and convincing. Critics might argue that they have chosen especially well suited places for this sort of integrative study and that many other subsistence villages are denied the opportunities which commercial fishing confers on the new lifestyle. Even so, were this an engineering study, I'd be tempted to call it "state of the art."

<sup>26</sup> Wolfe, et al, "Subsistence-Based Economies . . .", 50-51.

The two key elements which touch the lifestyle issue in this definition are encompassed within the notion of a 'domestic <sup>o</sup>mode of production' and 'traditional systems of land use and occupancy.' The first instance defines production relations as a function of "socially defined kinship relations," where surplus value in production is collectively appropriated and consumed within the kinship-based household or network of local households. Meaning, subsistence activities are the necessary and essential economic props of the subsistence lifestyle which greatly values the maintenance of extended families and villages as communities of related people. Restricting access to hunting and fishing grounds by virtue of traditional systems of land use and occupancy is the main political prop of the lifestyle.

The definition briefly summarized here thus achieves the intended purpose. It confers the mantle of scientific respectability on something which has so far managed to escape being nailed down. In all fairness one should also point out that this social science perspective is not oblivious to the fact that the lifestyle it defines stands to become changed beyond recognition from the forces and pressures of modern life and that its viability will be primarily determined in the sociopolitical arena.<sup>27</sup> It takes no specific position on whether this is a good or bad development, as is only proper for a theoretic<sup>e</sup>ally based empirical study. On the other hand, it does take us a fair way along the road of understanding what the Native lifestyle of subsistence actually represents today despite the thicket of social science jargon in which that understanding is enclosed.

Calling something by its proper name (or as close as is possible in the rarified atmosphere of theoretical social science) still does not fully impart the flavor or subtleties possessed by the institution (or system, to use a

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<sup>27</sup> Ibid., 501

vog sh terminological substitution). Certain attributes of the subsistence lifestyle which are discussed at length in the formal analytical studies are: networks of distribution and exchange, identified as systems of "sharing" because the networks are not founded on market principles and are thought to be animated by cultural and social values instead of economic ones<sup>28</sup>; barter, often identified as a pre-capitalist economic phenomenon<sup>29</sup>; social standing and prestige, which attach to the successful subsister; historical appreciation, which follows from the instruction of the young by their elders in the ways, means, events, and personalities of the old tradition; ceremonial and ritual functions both of the hunt itself and the uses to which the provender is put, as for example in potlatches. The list could be extended, but these are the main entries on the lifestyle menu which have attracted attention.

A final point has proved to be especially troublesome in the description of both old and modern subsistence societies: the degree of social stratification (classes) in them. The Tlingit and Aleut of yore both had chiefs, Big Men, and slaves. Yet they were considered societies of subsisters despite the status cleavages represented by these social "classes". Eskimo and Athabaskan societies were described as egalitarian (social standing was earned through achievement, such as that conferred on the successful whaling captain or hunter) with only the Elders raised to positions of social prominence above all others, and that only because their wisdom was venerated and sought. Traders, missionaries, civil and military administrators saw to

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<sup>28</sup> See, for example, Langdon and Worl, "Distribution and Exchange . . ."

<sup>29</sup> At the time the original Subsistence Law was promulgated, barter and trade of articles thought destined exclusively for "domestic" consumption" became a big issue. It was ironed out in subsequent amendments which tried to set appropriate limits for this quasi-commercial dimension of subsistence activities. See Kelso, "Implementation Issues Posed by Title VIII of the Senate-Passed D-2 Bill," Technical Paper No. 62, Alaska Department of Fish and Games (October, 1980).

it that Tlingit and Aleut society was effectively leveled by making the people of each a common subject class in the new colonial order. From one perspective theirs became an egalitarianism of shared oppression rather than a hallmark of their precolonial society and economy. The Eskimo and Athabaskans, despite the many contacts they had with outsiders, had never reached the stage of significant social stratification so long as they lived by nomadism or in very dispersed villages.

So, what is happening today? Are the institutions of modern Native life (corporate officialdom, educational levels in Western terms, earned wealth by enterprising individuals) creating social classes among Eskimo and Athabaskans where none previously existed while restoring them in new forms to Tlingit and Aleut? If so, doesn't this fact substantially alter the meaning of the subsistence lifestyle if some are far more equal than others in cultures where egalitarianism is achieved through sharing wealth?

These are tough questions and it is hard to take a convincing measure of them. But most observers, no matter what their particular views are regarding the subsistence "issue" (and who have some direct knowledge of rural Alaska today), would be unlikely to say that no social class distinctions based on wealth, education or community position have emerged. To the chagrin of many rural individuals and families, there is a noticeable generation gap created by opportunities for Western education; a clear perception that not all accumulated wealth is being shared by the more successful money-earners; and, a core of Native leaders who are as much a part of the urban-industrial society and economy as they are mediators to their people of what modern life is all about.

The question which few wish to address in public is, then, at what point does an individual cease to live even the "modern" subsistence lifestyle by virtue of sharing the blessings (or, as often, the desperate failings) of

urban-industrial life? Emotional, laden with racial or ethnic prejudice, or cynically treated as this question has become, social scientists have generally shied away from it. Or, they have clouded the matter with so many qualifications as to render the answers neutral of meaning.<sup>30</sup> But that academic privilege hardly erases the issue of social stratification from the serious consideration it deserves if we are ever to reach minimal understanding and agreement on what the subsistence lifestyle has become. It just makes it a whole lot more difficult.

What's So Important About How Subsistence Lifestyle is Defined?

Whether or not one is convinced by the analyses of the anthropological economists that they have unlocked the mysteries which explain and define the rural subsistence lifestyle in Alaska, the weight and influence of their work is very likely to determine many contours of the public policy debate about how it should be protected. Native groups might find themselves astonished and baffled if they look in the mirror of high theory held up to them by the social science establishment. Others approaching the matter from the commonsensical perspective of deep personal acquaintance with life as it is lived in rural Alaska might also find a great deal to quibble with in such abstruse formulations as 'domestic mode of production' or 'non-codified systems of consumption'.

Sportsmen question whether one lifestyle in a democracy deserves special privilege as compared to their own, no matter how it came into being or is

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<sup>30</sup> Wolfe, et al, "Subsistence-Based Economies . . . ", 502-522, do not shy away from the issue of "emergent social stratification." However, they treat the subject in such a way as to leave unanswered whether or not it plays a major role in the alteration of the social structures of the communities they studied. Understandably, for this sensitive issue to be treated at all in the present political climate is noteworthy.

defined. And still others may concede that such a lifestyle may presently exist, but go on to ask whether or not new developments might not be agreeably blended into it.

The fact remains, however, that social scientists have been directly charged with the task of providing that basic information and analysis upon which far-reaching planning decisions are likely to be made. This, at least, is not an abstract or negotiable matter: the charge comes directly from Federal and State law. And just as they have contributed mightily to the regulatory process which governs the management and use allocation of wild resources, the commissioned technical studies of subsistence lifestyle will in all probability carry decisive weight in land use plans and the permitting process as it applies to vast regions (not just Federal or State or Native lands within their exclusive domains). Indeed, it already has.<sup>31</sup>

So, what's anyone to make of all this slippery stuff?

First, one should challenge the guiding idea that there is an adequate general definition of a unique subsistence lifestyle in Alaska. Much of the best empirical work on the subject has been done in the Bristol Bay/Lower Kuskokwim regions where cash income from commercial fishing is the single most important contribution to the subsistence lifestyle as defined by those who closely studied it.

Their focus was upon the presumed integration of the subsistence and cash economies, but their conclusions strongly support the concept that the two economies are really inseparable. In the Arctic Slope region wage earnings

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<sup>31</sup> The most recent situation in which the subsistence lifestyle factor played a significant role in shaping a major land use plan involved the "Proposed Bristol Bay Cooperative Management Plan and Revised Draft Environmental Impact Statement," Bristol Bay Study Group-Alaska Land Use Council (April, 1984). Specific references dot the whole document, but see II, 17-19, in particular. Many feel that this plan, if finally officially adopted, will become the model for similar regional plans throughout Alaska. If so, the subsistence lifestyle issue is bound to be around for quite a while to come.

from seasonal and year-long jobs are the major underwriters of subsistence activities. By contrast, Native groups occupying areas less well placed to infuse their "traditional socioeconomic systems" with cash may very well have greater dependence on the harvest of wild resources (even though the lack of cash usually makes them less successful in acquiring them). Here we confront the "subsistence", as opposed to the "subsistence lifestyle", issue. The two should be distinguished from one another, but God forbid that any additional layers of theory be added which would typologize differences in lifestyles (which would, of course, call for a whole new round of studies). At the same time, challenging the applicability of the all-encompassing definition to specific cases would at least sort out the political from the descriptive elements of socioeconomic and sociocultural studies. And that, I think, is vitally important to do.

Second, there is a fundamental illogic to the idea that subsistence lifestyles can be "preserved". If they have done nothing else, the anthropological economists have clearly demonstrated that subsistence lifestyles are the products of very recent and profound social, political, and economic change. Much of the definitional as well as policy argument turns on the pace and direction of changes currently taking place. To cite Bristol Bay once again, Natives have entered the commercial fishery only recently, and yet their lifestyles are now virtually dependent on that income source. Therefore, preservation of their stake in the commercial fishery is the sine qua non of the lifestyle itself, not vice versa.

The quality and character of family and village life, the maintenance of cherished traditional values, cooperation and sharing of goods (including wild harvest) are considered by the anthropological economists to be features of a separate, non-commercial economic system. However, it can be argued with equal force that these are vital social and cultural supports to the new,

fisheries-based lifestyle. Certainly that is how most of the subjects of the study would see it and accounts for why many spend so much energy promoting programs of cultural revival, family and religious values, Native arts, and the like. I repeat, preservation is not the central purpose here. Besides, responsible society at large lends great support to the best social, cultural, and economic aims of Native groups including, prominently, strong support from the petroleum industry.

Third, try as they might, social scientists have not succeeded in marrying their conclusions to those provided by environmental scientists (wildlife biologists and such).<sup>32</sup> If cultures were so fragile that the loss of one or even all locally available wild foods also tolled the cultural death-knell, there wouldn't be many cultures of any kind left on this earth. Among the many ironies embedded in this issue is that social scientists in general and anthropologists in particular have proved the tenacity of culture in face of incredible dislocation, dramatic environmental disruption, and human predators such as conquering warriors.

Stated in local terms, would the loss of the Bowhead as a subsistence resource doom contemporary Eskimo whaling culture? Or has the whaling lifestyle already undergone such profound change that its core no longer depends on actually capturing whales? Obviously, whalers assert the former position--no whales, no whaling culture. Students of culture--some of them at any rate--might support the second contention.<sup>33</sup> It would require a fool or a

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<sup>32</sup> This may account, in part, for why activist environmentalist and conservation organizations have generally stayed well clear of the debate over subsistence, except in those few cases where their interests may temporarily converge--i. e., severely restricting access to hunters on Federal parklands and wildlife preserves.

<sup>33</sup> I will admit that this, like so many other theoretical controversies, is the subject of hot dispute between various schools of thought.

knave to maintain that the actual capture of Bowheads is irrelevant to present day coastal Eskimo culture. But--and this is the important question where lifestyle is concerned--environmental scientists are not positioned to say much more than, if someone puts too much pressure on wild animal populations the subsisters might be forced to change the way they do things or move elsewhere. About the material or psychological damage that might result to the lifestyle they must of necessity remain mute.

One way round all this inconclusive style of debate has been to view human populations as essential functioning parts of what might otherwise be called wilderness ecosystems. The direct application to subsistence systems is obvious. The links to culture--to language, social organization, economy, customs, values, politics, religion and the arts--are far from being obvious or direct.

Individual historical experience must be consulted to discover how a culture has adapted or failed to adapt to novel circumstances. In Alaska most native cultures have persisted in face of very big changes of all sorts, including environmental ones. The emergence of modern subsistence lifestyles provides clear proof of this assertion.

On the very practical and timely level, however, social scientists have attempted to link culture (somewhat fuzzily defined) to potential culturally destructive 'impacts' that might result from the loss of a given species or its habitat. They wish to measure the loss partly in terms of damage to normal food supplies, partly in terms of specific cultural values, and mostly in psychological distress. They do this as part of a general effort to predict the impact of oil and gas activities on a subsistence lifestyle. As can be seen, they feel they need the reinforcing comfort of hard biological science to support their notions of what cultural damage is likely to take

place. In at least one instance with which I am personally familiar<sup>34</sup> their efforts failed. But I strongly suspect that this was not the last time this sort of quasi-science will rear its head in the subsistence studies programs.

Fourth, one major analytical feature is entirely missing from nearly all subsistence lifestyle studies: ethnicity, or race, if you prefer. Undeniably, what social scientists generally call inter-ethnic relations is a main theme of all American social history. For most of the country, white-Black, white-Hispanic, white-Asian, etc. relations are the focal points. In Alaska, white-Native relations form the key set. Most subsistence lifestyle studies do little more than allude to this rather significant fact.

The reasons for the omission are not hard to find. Race relations raise politically and socially sensitive issues to the extent that many schools of social science thought feel that politics and racial bias overshadow the structural/functional analysis of the groups to be analyzed.<sup>35</sup> This accounts for the almost incessant use of neutral terms like sociocultural or socioeconomic systems in place of the usual race or ethnic terminology characteristic of an older sort of sociological inquiry. Beyond that, subsistence itself has been identified in law as a way of life in rural Alaska where it is forbidden to use ethnic or racial distinctions in the identification process. Using this prohibition as justification, many social scientists appear to say something like "we're prohibited from saying anything on this matter owing to an official position of non-discrimination and so we won't--even if matters of race and ethnicity are central to the groups we're studying."

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<sup>34</sup> At the Norton Sound Synthesis Meeting (June, 1984).

<sup>35</sup> This reflects one of the hottest disputes in comparative sociological theory. For a rip-snorting good treatment of it see Pierre L. Van den Berghe, The Ethnic Phenomenon (Elsevier: New York, 1981).

The result is that two huge gaps appear in subsistence lifestyle studies when ethnic relations are not taken seriously. First, ethnic consciousness is one of the strongest forces promoting social cohesion within a group. When it functions best, this consciousness may be termed ethnic pride (among speakers of the same non-English language, possessors of a special historical tradition, or, the locally famous one, the Eskimo identification of themselves by referring to "The Men Preeminently"). At its most contentious, ethnic consciousness fosters feelings and acts of strong hostility toward strangers (defined as those who do not belong to the ethnic group). Who can deny that both these features of ethnic consciousness are present and live forces in the rural Alaska situation to the extent that one or the other may even dominate the perceptions of subsistence lifestyle in a given locale. By focusing on something called a sociocultural system all this can be side-stepped.

The second gap occurs when non-Native social groups in a subsistence locale are either left out of the analysis or treated as minor actors. Here once again the Bristol Bay/Lower Kuskokwim study<sup>36</sup> comes to mind. In this otherwise admirable, empirically detailed analysis of four Native communities relations between them and the huge seasonal population of non-Native fishermen, cannery workers and the like are treated as secondary in anything touching subsistence lifestyle. Yet we have already learned that native participation in the commercial fishery is the central prop of the lifestyle. How then is it possible to leave out inter-ethnic relations between these clearly identified groups without doing serious damage to overall analysis? I suggest that that isn't possible, and this may be the single worst defect of even the best studies. At the same time, one sympathizes with the authors of subsistence lifestyle studies for it is difficult to introduce this key

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<sup>36</sup> Wolfe, et al, "Subsistence-Based Economies . . .".

element without running the risk of being tarred and feathered by everyone else involved. Not surprisingly, the heart of most disputed issues is what gets least talked about.

Finally, land use planning and management create the most visible disputes in which the lifestyle issue plays a leading role. How much land should be restrictively set aside to support the capricious or regular habits of migratory wildlife? Will industrial development (prominently, petroleum and mining), new settlement, sport hunting and fishing, growth of regional town centers, roads and so on undermine subsistence resources and therefore the subsistence lifestyle? Who needs what, with what justifications, from the enormous Federal land holding in the State? These and a dozen more allied questions are asked where the students of subsistence lifestyle are called upon to supply answers anchored to the 'data base' they have so meticulously accumulated and analyzed with the help of high level social science theory and sophisticated research methodologies.

The most popular form in which their answers are given is to predict outcomes of hypothetical 'scenarios'. At this point it is often not the anthropological economist, but the rather formalist econometricians who are trundled in to lay out a sideboard buffet of 'alternative outcomes' (economists being universally unwilling to pit their science and reputations on telling us what they think will really happen). Students of subsistence lifestyles are often not so cautiously modest. Since their tendency frequently is to identify with the groups, and lifestyles, of those whom they have studied (some call this secondary ethnocentrism while they normally speak of a field method described as 'participant observation'), their recommendations reflect an enthusiasm to protect that which the folks from whom they have acquired their data say they want protected.

Translated to land planning and management issues, this noteworthy tendency is perhaps the most challengeable of all the contributions made by the subsistence studies industry to the political, social, and economic debates that will so affect not only the future of present rural lifestyles, but Alaska's future as well.

Robert R. Griffeth  
Anchorage, Alaska  
September, 1984

Dear Sportsfisher,

The public hearings on subsistence law changes that we have demanded have been scheduled for August 14, 1985, in Anchorage. Senator Abood will be presiding on the State Affairs Committee for these hearings. Whether they will be delayed because of the impeachment proceedings remains to be seen. Watch the paper for public notices.

The following five points were sent to us by the statewide Alaska Outdoors Council of which we are a member. We have changed some wording, but the ASA Board of Directors concurs and feel that any change to the subsistence law must contain these five points.

Six additional position statements that your Board of Directors feel must be included in the law follow the AOC points. If you have any comments on additions, please contact Bob Hunter at 276-8134 (home). All points will be subject to change to enable a consensus with hunting needs, and to consolidate a position with Fairbanks, Juneau, Wasilla, etc. A united front is imperative. Your attendance and input at the committee hearings is important to successfully demonstrate that we are greatly concerned about the existing law.

GENERAL POINTS FOR CONSIDERATION AND CONCURRENCE - SUBSISTENCE

(FROM THE ALASKA OUTDOOR COUNCIL)

1. Licensing: A permit will be required for subsistence preference use. Licensing will be based on personal or household qualifications. No fee will be charged for this permit.
2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that (1) the wild resource taken be used for personal and household consumptive use only; and (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent household. The Board may initially qualify an area, then restrict further to a community, then groups, then families and individuals, as the situation and need arises...or otherwise pass a needs test as specified by the Boards.
3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations on seasons, quotas, bag limits, etc. The opportunity to harvest will be given a preference, but no guarantee of harvest is intended.
4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial, or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.
5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter, or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges shall be included in subsistence use.

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

### (3) POSITION STATEMENT

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

### BACKGROUND

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

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

### (4) POSITION STATEMENT

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

### BACKGROUND

In many areas of the state, large numbers of fish (commonly salmon) occur which are excess to spawning needs and are not harvested by commercial, subsistence, or sport fishermen. Personal-use regulations may be an ideal tool for the Board of Fisheries to allow the harvest of the fish on an equal

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

# **CORRECTION**

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

Dear Sportsfisher,

The public hearings on subsistence law changes that we have demanded have been scheduled for August 14, 1985, in Anchorage. Senator Abood will be presiding on the State Affairs Committee for these hearings. Whether they will be delayed because of the impeachment proceedings remains to be seen. Watch the paper for public notices.

The following five points were sent to us by the statewide Alaska Outdoors Council of which we are a member. We have changed some wording, but the ASA Board of Directors concurs and feel that any change to the subsistence law must contain these five points.

Six additional position statements that your Board of Directors feel must be included in the law follow the AOC points. If you have any comments on additions, please contact Bob Hunter at 276-8134 (home). All points will be subject to change to enable a consensus with hunting needs, and to consolidate a position with Fairbanks, Juneau, Wasilla, etc. A united front is imperative. Your attendance and input at the committee hearings is important to successfully demonstrate that we are greatly concerned about the existing law.

GENERAL POINTS FOR CONSIDERATION AND CONCURRENCE - SUBSISTENCE

(FROM THE ALASKA OUTDOOR COUNCIL)

1. Licensing: A permit will be required for subsistence preference use. Licensing will be based on personal or household qualifications. No fee will be charged for this permit.
2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that (1) the wild resource taken be used for personal and household consumptive use only; and (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent household. The Board may initially qualify an area, then restrict further to a community, then groups, then families and individuals, as the situation and need arises...or otherwise pass a needs test as specified by the Boards.
3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations on seasons, quotas, bag limits, etc. The opportunity to harvest will be given a preference, but no guarantee of harvest is intended.
4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial, or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.
5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter, or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges shall be included in subsistence use.

## ALASKA SPORTFISHING ASSOCIATION INPUT - SUBSISTENCE

### (1) POSITION STATEMENT

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

### BACKGROUND

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

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

A classic example is the fall Kenai Silver run, which has a long-term average harvest of 13,200 fish. Currently, the subsistence allocation from this run is 13,000 Silvers...essentially the entire run.

### (2) POSITION STATEMENT

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

### BACKGROUND

An example of this problem is the trophy Rainbow trout streams of the Iliamna Lake Drainage. Trout in these streams grow very slowly with some

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

### (3) POSITION STATEMENT

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

### BACKGROUND

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

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

### (4) POSITION STATEMENT

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

### BACKGROUND

In many areas of the state, large numbers of fish (commonly salmon) occur which are excess to spawning needs and are not harvested by commercial, subsistence, or sport fishermen. Personal-use regulations may be an ideal tool for the Board of Fisheries to allow the harvest of the fish on an equal

priority basis with other user groups. Personal-use regulations were created by the Board of Fisheries for exactly this purpose. However, the Madison decision vastly expanded subsistence qualifications, and personal-use harvesters have now been included in subsistence with a priority over other users. The legislature should enact personal-use regulations, by statute, to permit harvest of fisheries resources on an equal priority basis.

#### (5) POSITION STATEMENT

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

#### BACKGROUND

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

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

#### (6) POSITION STATEMENT

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

#### BACKGROUND

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

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

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

ALASKA OUTDOOR COUNCIL  
SUBSISTENCE CONSENSUS POINTS

AUGUST 21, 1985

1. Permitting: A permit will be required for subsistence preference use. Permitting will be based on personal or family qualifications--not on the locality in which one lives nor upon racial, cultural or ethnic considerations.
2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that: (1) the wild resource taken be used for personal and family consumptive use only; (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent family; and (3) the permit should be limited to a family unit with income from all sources at or below Federal poverty levels with no more than one subsistence license per family unit.
3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations regarding applicable or substituted species by area, seasons, quotas, bag limits and methods and means as authorized by the Boards of Fish or Game. The opportunity to harvest will be given a preference but no guarantee of harvest is intended.
4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.
5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges or commercial sale shall be included in subsistence use.

~~It is~~ I realize that  
any full or partial debarment  
of ~~subsystems~~ companies  
will ~~be~~ sector jobs and  
require <sup>significant</sup> language  
for you to review. <sup>However,</sup> we  
would be interested  
in your ~~dept's~~ dept's  
reaction to <sup>a proposal</sup> ~~the proposal~~  
that would define  
~~subsystems~~ <sup>several</sup> now only as  
~~the~~ those companies  
or areas where the  
lack of practical alternative

returned to in section  
801(2) actually exists.

The ~~text~~ proposed  
language would  
provide a series  
of criteria that  
the Board of Fish  
& Game could  
measure communities  
against in making this  
determination of ~~whether~~  
or ~~not~~ ~~the~~ ~~were~~ ~~good~~.

In those areas that  
were judged detrimental  
subsistence uses would

provision for local  
concerns.

We realize that  
there are ~~the~~ ~~is~~ ~~is~~  
~~in~~ ~~some~~ ~~ways~~ a number of  
Stashan communities  
~~that~~ <sup>that</sup> would no longer  
be considered  
and under this  
proposal ~~of this~~  
in these ~~proposed~~  
communities the number  
of residents eat  
in large amounts of  
food & give. In

non subsistence areas  
the Bonds would have  
wide flexibility to ~~any~~  
accommodate local  
needs and concerns  
while ensuring fair  
sustained yield and best  
use.

In those areas  
and communities  
where rural subsistence  
and hunting

to be administered  
as outlined in ANICCA

We believe a  
statute based on  
these proposals  
could be fair,  
constitutional, enforceable  
comply with ANILCA,  
and meet the  
needs of all Alaskan  
residents throughout  
the state. as  
our state continues  
to grow and change

Honorable William P. Horn  
Assistant Secretary  
Fish and Wildlife and Parks  
Department of the Interior

Dear Secretary Horn:

We appreciated our meeting with you and your sending us copies of your September 23rd letter to Governor Sheffield on subsistence compliance. As chairmen, respectively, of the Senate State Affairs Committee, to which the various subsistence bills are currently assigned, and the Senate Resources Committee, which is the next committee of referral for subsistence legislation, we have reviewed your letter.

In that letter, you formally advise the Governor that the State of Alaska is no longer in compliance with the requirements of ANILCA as specified in Title VIII. You further advise that compliance will require that the subsistence preference be limited to those rural Alaska residents who customarily and traditionally make use of subsistence resources.

The letter also said that in 1982, you noted to the Alaska Boards of Fish and Game that there are various ways to comply with the requirements of Section 805 of ANILCA. In order to understand all the options open to the state in dealing with this issue, we are trying to fully explore all the various ways to comply with Section 805. Your offer of the full cooperation and assistance of your department in our effort to find a solution to this problem is appreciated and we would like to take you up on it.

The findings in Section 801 (2) says "the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses."

A handwritten signature in dark ink, appearing to be "A. H. Jones", written over a horizontal line.

SUBSISTENCE

Miscellaneous

(FILE 2)

Mckie -

Here are some pieces of information responding to your questions. They are provided in the interest of being cooperative, and are not intended to express approval from a policy standpoint.

Lauri, et al

1. The deletion of Section 6, AS 16.05.258(f) will not remove all reference to "preference" from the bill; it appears in (c) of the same section. To comply with ANILCA, ~~we~~ our statute must give subsistence a priority preference.
2. "Nonwasteful" could be removed from section 9 and section 10(30), and a new section could be added to provide
  - ~~"The provisions of AS 16.30.010 -- AS 16.30.030 apply to subsistence fishing and subsistence fis~~
  - "The provisions of AS 16.05.8311 <sup>apply to subsistence fishing</sup> and <sup>the</sup> provisions of AS 16.30.010 -- AS 16.30.030 apply to subsistence ~~hunting fishing and~~ subsistence hunting."

Of course, those prohibitions on waste apply anyway.

3. Durational residency in a rural area poses severe constitutional problems. Instead, perhaps define "domicile" as used in section 9 in a new section, tracking the definition ~~the definition~~, adopted by the fish board:

"domicile" means the location of a person's primary residence; evidence of domicile may include, but is not limited to, the following:

- (A) statements made to obtain a license to drive, hunt, fish, or engage in an activity regulated by a government entity;
- (B) affidavit of the person, or of other persons who may know of that person's domicile;
- (C) place of voter registration;
- (D) location of residences owned, rented, or leased;
- (E) location of storage of household goods;
- (F) location of business owned or operated;
- (G) residence of spouse and minor children or dependents;

4. Regarding defining "reasonable opportunity," any definition will probably be circular. Courts and the boards apply the term "reasonable" all the time, and defining it has not been necessary — in fact, it may be such a strained definition as to be actually counter productive.

5. Administrative Remedies

Substitute the following for Section 6, AS 16.05.259

ADMINISTRATIVE REMEDIES (a) No person may challenge in court a regulation adopted by the Board of Fisheries or the Board of Game unless the person establishes that all administrative remedies through the boards have been exhausted.

(b)

(b) In a prosecution for the taking of <sup>fish or</sup> game in violation of a statute or regulation, it is not a defense to the charge that the taking was done for subsistence uses or in the belief that the taking was for subsistence uses unless the defendant establishes that ~~the defendant exhausted~~ all administrative remedies through the <sup>Board of Fisheries</sup> Board of Game, <sup>have been exhausted</sup> in an effort to assure continuation of the defendant's subsistence uses of game resources.

Ed  
should  
help with  
language

14-1465  
Hein  
01/23/86

MASTER DRAFT  
1/27/86

1 IN THE <sup>House</sup> [SENATE] BY THE STATE AFFAIRS COMMITTEE

2 SCS for House [SENATE] BILL NO. 288

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL, of  
-the taking of

game for subsistence  
and personal use

6 For an Act entitled: "An Act relating to <sup>the taking of</sup> fishing] and <sup>game for subsistence</sup> [hunting]; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 16.05.251(a)(6) is amended to read:

10 (6) classifying as commercial fish, sport fish, personal  
11 use fish, subsistence fish, or predators or other categories essential  
12 for regulatory purposes; *watershed and habitat regulation may be adopted under*  
*this paragraph only after consultation with the*  
*Department of Natural Resources;*

13 \* Sec. 2. AS 16.05.251(a)(7) is amended to read:

14 (7) protecting, maintaining, and improving watersheds  
15 [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-  
16 ment, conservation, protection, use, disposal, propagation, and stock-  
17 ing of fish; *Delete*

18 \* Sec. 3. As 16.05.251(a) is amended by adding new paragraphs to read:

19 (12) designating and regulating special fishing areas,  
20 including personal use areas, trophy management areas, catch-and-  
21 release areas, and children's fishing areas, and designating stocks in  
22 those areas for which special management is appropriate;

23 *procedure for admin effort*  
(13) regulating commercial, sport, subsistence, and personal  
24 use fishing as needed for the conservation, development, and utiliza-  
25 tion of fisheries.

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

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

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

\* Sec. 5. AS 16.05.255(a) is amended by adding a new paragraph to read:  
*> admin. appeal*  
(10) regulating sport hunts and subsistence hunts as needed for the conservation, development, and utilization of game and nongame species.

\* Sec. 6. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION <sup>OF</sup> FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall

(1) identify the fish stocks and game populations, or portions of stocks and populations, that are important to the subsistence economy and culture of the area in which they are located; and

(2) estimate the amount of fish and game needed from each stock or population identified under (1) of this subsection to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

(b) Consistent with sustained yield, sound management, and the maintenance of healthy fish stocks and game populations, the boards shall determine

(1) whether there exists a harvestable surplus of the stocks and populations identified under (a)(1) of this section; and

(2) how much of the surplus is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population ~~for which a harvestable surplus is determined to exist.~~ <sup>(b)(1) of</sup> ~~under this section.~~ <sup>all other</sup> If a surplus is not sufficient to accommodate ~~consumptive~~ <sup>consumptive</sup> uses of the surplus, but is sufficient to accommodate subsistence uses of the surplus, then subsistence uses shall be accorded a preference over other consumptive

ask for portions

(e) Fish stocks and game populations ~~For portions of stocks and populations,~~ that are not identified under (a)(1) of this section ~~[as important to the subsistence economy and culture of the area in which they are located]~~ may only be taken under non subsistence regulations.

uses, and the regulations shall provide a reasonable opportunity to satisfy subsistence uses of the surplus, and may provide opportunities to satisfy other consumptive uses of the surplus. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sound management or protect future subsistence fishing or subsistence hunting, then the preference shall be limited, and the boards shall distinguish among subsistence users, by applying the following criteria:

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

(d) The boards may adopt regulations consistent with this section that authorize taking for nonsubsistence uses a stock or population identified under (a)(1) of this section.

(e) [A board may provide that a fish stock or game population not identified under (a)(1) of this section may not be taken under subsistence regulations, but may be taken under other regulations.] <sup>(f)</sup> The Board of Fisheries may shift subsistence use of a fish stock to a suitable prior or contemporaneous stock of the same or a different species that is readily available. The Board of Game may shift subsistence use of a game population to another population if a suitable alternative population of the same or a different species is readily available.

(g) [(f)] The subsistence preference shall provide a reasonable opportunity for subsistence fishing or subsistence hunting. The preference may vary, may be graduated, and may be balanced against the degree of economic and traditional dependence on the resource in question. If dependence on the resource in question is high, the preference shall

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provide a full opportunity for satisfaction of subsistence uses, including potentially exclusive subsistence use when a resource shortage occurs. If dependence on the resource in question is low, the preference may provide a lesser opportunity for satisfaction of subsistence uses and need not be potentially exclusive. As the degree of dependence varies, the degree of the preference may vary accordingly.

(h) (g) Takings authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means.

(i) (h) The implementation of a subsistence preference under this section does not affect the eligibility of active duty military personnel, while stationed in the state for more than 30 days, to fish, hunt, or trap on military installations and facilities in the state under 10 U.S.C. 2671.

(j) (i) The <sup>boards, after consultation with the department,</sup> [commissioner of fish and game] shall adopt regulations defining ["maintenance of healthy populations of fish and game,"] "sound management principles," [and] "sustained yield," and "harvestable surplus."

Sec. 16.05.259. ~~ADMINISTRATIVE APPEALS.~~ (i) The Board of Fisheries and the Board of Game, acting jointly, <sup>may</sup> ~~shall~~ establish by regulation an <sup>appeal</sup> ~~procedure~~, for persons aggrieved, by the adoption or repeal of a fishing or hunting regulation. ~~(b) An aggrieved person must exhaust administrative remedies before bringing a legal action challenging the adoption or repeal of the regulation.~~

\* Sec. 7. AS 16.05.330 is amended by adding new subsections to read:

(c) The Board of Fisheries and the Board of Game may adopt regulations providing for the issuance and expiration of subsistence permits for areas, villages, communities, groups, or individuals as needed for authorizing, regulating and monitoring the subsistence harvest of fish and game. The boards shall adopt these regulations