

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672

4222.49 SERIES SUBSISTENCE: MISCELLANEOUS (file 4)

230

*****EOM*****

```
*****
#
# DELIVER TO: TOLNU
#
# ORIGINAL
# SENT: 03/05/96 TIME: 15:45
# FROM: 10001
# SUBJECT: FINAL STATE
# PRINT DATE: 03/05/96 TIME: 15:45
#
*****
```

*** FINAL STATE ***

DATE: 3/5/96
SITE: SLDOTNA
SPONSOR: GEN. RESOURCES
SUBJECT: MR. ORR SUBSISTENCE

NO PARTICIPANTS FOR THIS TELECONFERENCE.

*
* DELIVER TO: TOJNU
*
*
* ORIGINAL
* SENT: 03/05/86 TIME: 15:49
* FROM: LIOBOL
* SUBJECT: FINAL STATE
* PRINT DATE: 03/05/86 TIME: 15:49
*

* * * FINAL STATE * * *

FILE: 1000
SITE: 1000
SPONSOR: GEN. RESOURCES
SUBJECT: NO 000 EXISTENCE

OBSERVED:
CLARRY SMITH GEN. RESOURCES

```

*****
*
* TO: SUBJECT TO: TO:
*
* ORIGINAL
* SENT: 03/05/86 TIME: 15:44
* FROM: KAREN JOHNSON
* SUBJECT: FINAL STATS, 3-5 SUBSISTENCE
* PRINT DATE: 03/05/86 TIME: 15:44
*
*****

```

*****FINAL STATS*****

```

DATE: 3-5-86
SITE: KOTZEBUE
SPONSOR: SENATE RESOURCES
SUBJECT: 48026 SUBSISTENCE
OPERATOR: KAREN JOHNSON, RESERVE MODERATOR

```

TO RECEIVE:

- PETE SCHAEFFER, NANA MUSEUM, BOX 6 KOTZEBUE AK. 99752, 442-3705
- GRANT HILDRETH, KANITLAG, BOX 799 KOTZEBUE AK. 99752, 442-3311
- DUANE KULALA, KANITLAG, BOX 256, KOTZEBUE AK. 99752, 442-3311
- WALLYE BOOTHEN, KIC, BOX 279, KOTZEBUE AK. 99752, 442-3165
- PAUL HANSEN, KANITLAG, BOX 256, KOTZEBUE AK. 99752, 442-3311

```

TESTIFIED: 0
OBSERVED: 5
TOTAL: 5
START: 1:30 P.M.
TIME END: 3:30 P.M.

```

* ORIGINAL *
* FROM *
* SUBJECT *
* PRINT DATE *

TO: JIM FINAL STATE
FR: INEZ IN BELLICUM

***** FINAL STATE

DATE: MARCH 5, 1964
SITE: BELLICUM
SPONSOR: SENATE RESOURCES COMMITTEE
SUBJECT: PUBLIC HEARING ON JO JOO. SUBSISTENCE
LOCAL COORDINATOR: INEZ INEZ

BELLICUM
OUR PARTICIPANT NEVER ARRIVED.

* BELIEVED TO BE *

DATE: 03/01/86 TIME: 10:17
 FROM: TCCM
 TO: FINAL STATE - SUBSISTENCE
 DATE: 03/01/86 TIME: 10:17

LEGISLATIVE TELECONFERENCE NETWORK

CONFERENCE

DATE: 03-05-86
 DATE MODERATED: SLENNALLEN-ROSA
 SUBJECT: SEN. RES.
 SUBJECT: SUBSISTENCE

* MODERATED *
 * BY *
 * DATE *
 * TIME *

TO BEGAN 1:30
 TO ENDED 1:45
 MODERATED WITH BILL

NAME - REPRESENTATIVE ADDRESS - PHONE

- DELEGATES
- 1. ALIENIA HUGHES BOX 2 SAKONA 77824 822-3896
 - 2. NER ROBERSON ADP-5 SLENNALLEN 89500 822-5520

- MENTASTA - DUNCAN MADOLEAN
- 3. ERIC MADOLEAN SAKONA 89504
 - 4. DUYEN LINSCHMECKER PLANA 89506
 - 5. BILL STAFF MO. RD TEN OUTLET, SAKONA 89506

- SAKONA - ALAN LEMASTER
- 6. VALT FREONT SAKONA 89504
 - 7. DIXIE BROWN SAKONA 89504
 - 8. SANDY LAPP SAKONA 89504
 - 9. BOB COOPER SLENNALLEN 89504

- COPPER CENTER - JEAN HUBLEFTON
- 10. J. BRADY AVON COOP. COPPER CENTER 89577
 - 11. J. BROWN COPPER CENTER 89577
 - 12. W. SCHNEIDER COPPER CENTER 89577
 - 13. J. SCHNEIDER COPPER CENTER 89577

*
* DELIVERED TO: TELMU *
*
* ORIGINAL *
* SENT: 03/05/04 TIME 16:07 *
* FROM: ELAINE JENSE *
* SUBJECT: FINAL STATE SUBSISTENCE *
* PRINT DATE: 03/05/04 TIME: 16:08 *
*

TO JUNEAN TLO
FR ELAINE JENSE

FINAL STATE SUBSISTENCE

OBSERVING IN SETVA:

1. DEAN VALER, BCM, ET, KITZIELE, ALASKA 812-2215 (PRESENTLY ENROLLED AS SHELDON JACKSON COLLEGE STUDENT).

2. BELL CAR, A, MARINE ADVISORY PROGRAM, BOX 2630, SETVA, AK, 747-2782

-----TOTAL: 2 OBSERVING

```

*
* DELIVERED TO TELNO
*
* ORIGINAL
* SENT: 02/05/06 TIME: 16:33
* FROM: TOMAT
* SUBJECT: SEN RESOURCES - SUBSIST
* PRINT DATE: 02/05/06 TIME: 16:33
*
*****

```

*** FINAL T/O STATE ***

```

DATE: 2/26/06
SITE: CORONA
CONFER: SENATE RESOURCES
TOPIC: HR002 - SUBSISTENCE
LOCAL OPERATOR: BARCLAY JONES-KOPCHAK

```

NAME REPRESENTING	ADDRESS	PHONE
1. TOM MAGOLINE P O BOX 100 CORONA NY 10974		424-7409
2. LONDA WELLS P O BOX 100 CORONA NY 10974		424-7409

```

REGISTERED: 0
COPIES: 2
TOTAL: 2
TIME START:
TIME END:

```

DEPARTMENT OF JUSTICE

DATE	03/08/04	TIME	5:00	
LOCATION	LEEDS			
OFFICE	FEDERAL STATES			
REPORT DATE	03/26/04	TIME	1:00	

*****FINAL STATE*****FINAL STATE*****FINAL STATE*****

BARROW 100
 1000
 PRIVATE RESIDENCE
 NO. 222, SUSSEX

TESTIFY/OBSERVE

- BARROW PARTICIPANTS
- BY MARK REGAN, ALASKA LEGAL SERVICES, BARROW X
 - BY BEN NAFDAN, NORTH SLOPE BOROUGH, BARROW X
 - BY MARCEL LONDER, NORTH SLOPE BOROUGH X

TESTIFIED	3	OBSERVED	3	TOTAL	3
-----------	---	----------	---	-------	---

***** LINE NO 101 *****
LINE NO 101
LINE NO 101

***** LINE NO 101 *****

***** LINE NO 101 *****

***** LINE NO 101 *****

***** LINE NO 101 *****

***** LINE NO 101 *****

***** LINE NO 101 *****

***** LINE NO 101 *****

***** LINE NO 101 *****

ALASKA DEPARTMENT OF FISH AND GAME
SUBSISTENCE HUNTING PERMIT (TIER II) APPLICATION AND CERTIFICATION
[A SEPARATE FORM MUST BE FILLED OUT FOR EACH SUBSISTENCE HUNT]

1. NAME: _____
 First Middle Initial Last

2. MAILING ADDRESS: _____
 P.O. Box/Street

 City/Town State Zip

3. ADDRESS WHERE YOU LIVE (Primary Residence/Domicile*)

 Street or Property Description

 City/Town or Closest Community

(* See 5 AAC 92.990)

4. LIST THE HUNT NUMBER FROM THE EMERGENCY SUBSISTENCE PERMIT (TIER II) HUNT SUPPLEMENT FOR THE HUNT YOU WISH TO APPLY FOR: [LIST ONLY ONE] HUNT NUMBER: _____

OR

5. IF YOU ARE UNABLE TO PROVIDE THE HUNT NUMBER, PLEASE LIST THE TYPE OF ANIMAL YOU WISH TO HUNT (caribou, moose, etc.) AND THE GAME MANAGEMENT UNIT, SUBUNIT, AND AREA DESCRIBED IN THE CURRENT GAME REGULATIONS:

<u>Animal</u>	<u>Game Management Unit, Subunit, and Area</u>
_____	_____

6. WHICH OF THE FOLLOWING DESCRIBES WHERE YOUR PRIMARY RESIDENCE/ DOMICILE IS LOCATED (see instructions)? [CHECK ONLY ONE]

a. I live within the hunt area.	_____
b. I live within the same game management unit(s) as the hunt for which I am applying, but do not live within the hunt area.	_____
c. I live in a game management unit immediately adjacent to the game management unit in which the hunt is held.	_____
d. I live in an area not described in a, b, or c.	_____

7. You may be given one point for each year you legally killed an animal(s) in this hunt (same species of animal in the same area as the hunt you are now applying for). A maximum of 10 points may be claimed.

PLEASE LIST THE YEARS IN WHICH YOU LEGALLY KILLED AN ANIMAL(S) IN THIS HUNT.

19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__

8. HOW DIRECTLY DEPENDENT ARE YOU ON 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

4/11/85

OPTION A

- 1) Subsistence use is the preferred use, subject to conditions below.
- 2) Neither sport, personal use, nor commercial use is assigned a priority over the other.
- 3) Boards set resident sport hunts and fisheries throughout state by stock and by area or sub area. Boards set regulations for seasons, bag limits and gear types.
- 4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:
 - a) customary and direct dependence upon the (specific fish and wildlife) populations as the mainstay of livelihood,
 - b) local residency, and
 - c) availability (lack) of alternative resources,

And that these specified needs can not be met by a particular sport or personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of maximum sustained yield.

Call
Clive

586-2964

8-20 2.40

OVERVIEW

Game Board Meeting
June 1985

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

II. Madison: A. Unless sustained yield will be jeopardized, subsistence hunting must be authorized on any game population that has been hunted in the past and used for food, shelter, fuel, clothing, tools, transportation, customary trade, barter, or sharing; subsistence hunting means hunting by any Alaskan for these purposes.

B. If subsistence hunting of a game population must be restricted (significantly impaired) to protect the resource, then non-subsistence uses (non-state resident hunting) must be eliminated first.

C. If subsistence hunting on a game population must still be restricted (significantly impaired), then the board must use the three criteria listed in AS 16.05.255(b) to determine how hunting opportunities are to be distributed among Alaskans:

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

(2) local residency; and

(3) availability of alternative resources.

★ III.

Therefore, in order to have enforceable regulations, for each game population which has been hunted for food, etc., by Alaskans, the board should:

A. Adopt separate subsistence regulations.

B. Examine the current regulations to see if they prohibit any Alaskan from subsistence hunting, fail to provide the same legal subsistence hunting opportunity to all Alaskans, or otherwise significantly impair subsistence uses.

C. If so, eliminate non-state residents, and see if it is still necessary to significantly impair subsistence uses, to protect the resource.

D. If so, apply tier 2 standards.

RURAL ALASKA RESOURCES ASSOCIATION
P.O. Box 200908
Anchorage, Alaska 99520

Kie-
Iran 12
copies of this
C.

RESOLUTION 86-1

ENTITLED: IN SUPPORT OF THE ORIGINAL GOVERNOR'S BILL
ON SUBSISTENCE.

WHEREAS, ^{twelve}~~ten~~ non-profit and governmental agencies are
members of the Rural Alaska Resources Association;
and

WHEREAS, the Rural Alaska Resources Association is an
organization whose primary purpose is to help
rural areas in need; and

WHEREAS, the Alaska State Senate is considering legislation
to amend the State Subsistence Law; and

WHEREAS, this Subsistence bill, if ratified, would have a
great impact on the way of life in rural areas; and

WHEREAS, rural areas live a majority of their lives through
subsistence; and

WHEREAS, the original Governor's Bill on Subsistence with the
words "rural" and "personal use" included in the
language is compatible with the Rural Alaska
Resources Association;

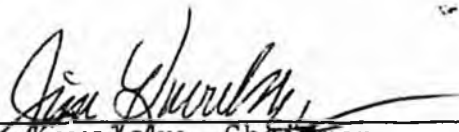
NOW, THEREFORE, BE IT RESOLVED

that the Rural Alaska Resources Association supports
the original Governor's Bill with the language
"rural" and "personal use" included; and

BE IT FURTHER RESOLVED

that any legislation adopted be consistent with
legislation introduced by Governor Sheffield to the
first session of the 14th Legislature.

ADOPTED in Juneau, Alaska on February 27, 1986 by
members of the Rural Alaska Resources Association.



Jim Kowalsky, Chairman
RURAL ALASKA RESOURCES ASSOCIATION

February 27, 1986

Date

ALASKA JOINT BOARD OF FISHERIES AND GAME
RESOLUTION #85-14-JB

WHEREAS, the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the Madison ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to accommodate both the historic commercial fishery and other users.
2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.
3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

WHEREAS, prior to the Madison decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the Madison decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

SUBSISTENCE USES MAY BE REASONABLY REGULATED

Under the 1978 state law, it was never intended that subsistence fishing and hunting would be unregulated, nor have they been unregulated.

- The legislature noted in the intent section of the 1978 subsistence bill that "beneficial use of those [fish and game] resources by all state residents should be carefully monitored and regulated...." § 1 ch 151 SLA '978.
- Although the 1978 state subsistence law says that subsistence uses may not be restricted unless non subsistence uses have been cut back or, if necessary eliminated, "restricted" means "significantly impaired," rather than "regulated." State v. Eluska, 698 P 2d 174, 182 (Alaska App. 1985).
- In fact, Eluska specifically acknowledges that subsistence uses are subject to reasonable "regulation of time, place and manner." Id. at 182.

Under ANILCA, reasonable regulation of subsistence hunting and fishing is expected.

- Bill Horn, Assistant Secretary, Department of the Interior, testified to the Alaska Senate Resources Committee on March 5, 1986, that the version of HB 288 being considered by the committee was consistent with ANILCA. It contained a provision specifying that all takings authorized under the bill, including subsistence, are "subject to reasonable regulation of seasons, catch or bag limits, and methods and means."
- Gale Norton, Associate Solicitor, in a April 4, 1986, letter to the Alaska Attorney General noted that under ANILCA "all taking of the [fish or game] population for nonsubsistence purposes must be eliminated before subsistence uses may be restricted." However, that does not mean that subsistence uses could not be regulated under ANILCA.
- In fact, ANILCA § 814 specifically notes that the Secretary of the Interior "shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title."
- Further, ANILCA legislative history clarifies that reasonable "regulations concerning such subjects as seasons and methods of taking" may be adopted under ANILCA. 126 Cong Rec. H10547 (daily ed. Nov. 12, 1980). Congress expected that subsistence uses would be "consistently... respected and adequately protected by state regulation." Id. at 10546. Another example of Congressional intent relates to subsistence uses in national parks, which Congress intended to "continue subject to reasonable regulation." S. Rep. No. 413, 96th Cong., 1st Sess. 169 (1979).

CORRECTION

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

ALASKA JOINT BOARD OF FISHERIES AND GAME
RESOLUTION #85-14-JB

WHEREAS, the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the Madison ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to accommodate both the historic commercial fishery and other users.
2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.
3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

WHEREAS, prior to the Madison decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the Madison decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures, reallocations and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the Madison decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.

Ron Jolin, Chairman
Alaska Board of Fisheries and Game

Adopted March 26, 1985
Anchorage, Alaska
VOTE: 13/1

SUBSISTENCE USES MAY BE REASONABLY REGULATED

Under the 1978 state law, it was never intended that subsistence fishing and hunting would be unregulated, nor have they been unregulated.

- ° The legislature noted in the intent section of the 1978 subsistence bill that "beneficial use of those [fish and game] resources by all state residents should be carefully monitored and regulated...." § 1 ch 151 SLA 1978.
- ° Although the 1978 state subsistence law says that subsistence uses may not be restricted unless non subsistence uses have been cut back or, if necessary eliminated, "restricted" means "significantly impaired," rather than "regulated." State v. Eluska, 698 P 2d 174, 182 (Alaska App. 1985).
- ° In fact, Eluska specifically acknowledges that subsistence uses are subject to reasonable "regulation of time, place and manner." Id. at 182.

Under ANILCA, reasonable regulation of subsistence hunting and fishing is expected.

- ° Bill Horn, Assistant Secretary, Department of the Interior, testified to the Alaska Senate Resources Committee on March 5, 1986, that the version of HB 288 being considered by the committee was consistent with ANILCA. It contained a provision specifying that all takings authorized under the bill, including subsistence, are "subject to reasonable regulation of seasons, catch or bag limits, and methods and means."
- ° Gale Norton, Associate Solicitor, in a April 4, 1986, letter to the Alaska Attorney General noted that under ANILCA "all taking of the [fish or game] population for nonsubsistence purposes must be eliminated before subsistence uses may be restricted." However, that does not mean that subsistence uses could not be regulated under ANILCA.
- ° In fact, ANILCA § 814 specifically notes that the Secretary of the Interior "shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title."
- ° Further, ANILCA legislative history clarifies that reasonable "regulations concerning such subjects as seasons and methods of taking" may be adopted under ANILCA. 126 Cong Rec. H10547 (daily ed. Nov. 12, 1980). Congress expected that subsistence uses would be "consistently... respected and adequately protected by state regulation." Id. at 10546. Another example of Congressional intent relates to subsistence uses in national parks, which Congress intended to "continue subject to reasonable regulation." S. Rep. No. 413, 96th Cong., 1st Sess. 169 (1979).

SUBSISTENCE USES MAY BE REASONABLY REGULATED

Under the 1978 state law, it was never intended that subsistence fishing and hunting would be unregulated, nor have they been unregulated.

- ° The legislature noted in the intent section of the 1978 subsistence bill that "beneficial use of those [fish and game] resources by all state residents should be carefully monitored and regulated...." § 1 ch 151 SLA '978.
- ° Although the 1978 state subsistence law says that subsistence uses may not be restricted unless non subsistence uses have been cut back or, if necessary eliminated, "restricted" means "significantly impaired," rather than "regulated." State v. Eluska, 698 P 2d 174, 182 (Alaska App. 1985).
- ° In fact, Eluska specifically acknowledges that subsistence uses are subject to reasonable "regulation of time, place and manner." Id. at 182.

Under ANILCA, reasonable regulation of subsistence hunting and fishing is expected.

- ° Bill Horn, Assistant Secretary, Department of the Interior, testified to the Alaska Senate Resources Committee on March 5, 1986, that the version of HB 288 being considered by the committee was consistent with ANILCA. It contained a provision specifying that all takings authorized under the bill, including subsistence, are "subject to reasonable regulation of seasons, catch or bag limits, and methods and means."
- ° Gale Norton, Associate Solicitor, in a April 4, 1986, letter to the Alaska Attorney General noted that under ANILCA "all taking of the [fish or game] population for nonsubsistence purposes must be eliminated before subsistence uses may be restricted." However, that does not mean that subsistence uses could not be regulated under ANILCA.
- ° In fact, ANILCA § 814 specifically notes that the Secretary of the Interior "shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title."
- ° Further, ANILCA legislative history clarifies that reasonable "regulations concerning such subjects as seasons and methods of taking" may be adopted under ANILCA. 126 Cong Rec. H10547 (daily ed. Nov. 12, 1980). Congress expected that subsistence uses would be "consistently... respected and adequately protected by state regulation." Id. at 10546. Another example of Congressional intent relates to subsistence uses in national parks, which Congress intended to "continue subject to reasonable regulation." S. Rep. No. 413, 96th Cong., 1st Sess. 169 (1979).

SUBSISTENCE USES MAY BE REASONABLY REGULATED

Under the 1978 state law, it was never intended that subsistence fishing and hunting would be unregulated, nor have they been unregulated.

- ° The legislature noted in the intent section of the 1978 subsistence bill that "beneficial use of those [fish and game] resources by all state residents should be carefully monitored and regulated...." § 1 ch 151 SLA '78.
- ° Although the 1978 state subsistence law says that subsistence uses may not be restricted unless non subsistence uses have been cut back or, if necessary eliminated, "restricted" means "significantly impaired," rather than "regulated." State v. Eluska, 698 P 2d 174, 182 (Alaska App. 1985).
- ° In fact, Eluska specifically acknowledges that subsistence uses are subject to reasonable "regulation of time, place and manner." Id. at 182.

Under ANILCA, reasonable regulation of subsistence hunting and fishing is expected.

- ° Bill Horn, Assistant Secretary, Department of the Interior, testified to the Alaska Senate Resources Committee on March 5, 1986, that the version of HB 288 being considered by the committee was consistent with ANILCA. It contained a provision specifying that all takings authorized under the bill, including subsistence, are "subject to reasonable regulation of seasons, catch or bag limits, and methods and means."
- ° Gale Norton, Associate Solicitor, in a April 4, 1986, letter to the Alaska Attorney General noted that under ANILCA "all taking of the [fish or game] population for nonsubsistence purposes must be eliminated before subsistence uses may be restricted." However, that does not mean that subsistence uses could not be regulated under ANILCA.
- ° In fact, ANILCA § 814 specifically notes that the Secretary of the Interior "shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title."
- ° Further, ANILCA legislative history clarifies that reasonable "regulations concerning such subjects as seasons and methods of taking" may be adopted under ANILCA. 126 Cong Rec. H10547 (daily ed. Nov. 12, 1980). Congress expected that subsistence uses would be "consistently... respected and adequately protected by state regulation." Id. at 10546. Another example of Congressional intent relates to subsistence uses in national parks, which Congress intended to "continue subject to reasonable regulation." S. Rep. No. 413, 96th Cong., 1st Sess. 169 (1979).

SUBSISTENCE USES MAY BE REASONABLY REGULATED

Under the 1978 state law, it was never intended that subsistence fishing and hunting would be unregulated, nor have they been unregulated.

- The legislature noted in the intent section of the 1978 subsistence bill that "beneficial use of those [fish and game] resources by all state residents should be carefully monitored and regulated...." § 1 ch 151 SLA 1978.
- Although the 1978 state subsistence law says that subsistence uses may not be restricted unless non subsistence uses have been cut back or, if necessary eliminated, "restricted" means "significantly impaired," rather than "regulated." State v. Eluska, 698 P 2d 174, 182 (Alaska App. 1985).
- In fact, Eluska specifically acknowledges that subsistence uses are subject to reasonable "regulation of time, place and manner." Id. at 182.

Under ANILCA, reasonable regulation of subsistence hunting and fishing is expected.

- Bill Horn, Assistant Secretary, Department of the Interior, testified to the Alaska Senate Resources Committee on March 5, 1986, that the version of HB 288 being considered by the committee was consistent with ANILCA. It contained a provision specifying that all takings authorized under the bill, including subsistence, are "subject to reasonable regulation of seasons, catch or bag limits, and methods and means."
- Gale Norton, Associate Solicitor, in a April 4, 1986, letter to the Alaska Attorney General noted that under ANILCA "all taking of the [fish or game] population for nonsubsistence purposes must be eliminated before subsistence uses may be restricted." However, that does not mean that subsistence uses could not be regulated under ANILCA.
- In fact, ANILCA § 814 specifically notes that the Secretary of the Interior "shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title."
- Further, ANILCA legislative history clarifies that reasonable "regulations concerning such subjects as seasons and methods of taking" may be adopted under ANILCA. 126 Cong Rec. H10547 (daily ed. Nov. 12, 1980). Congress expected that subsistence uses would be "consistently... respected and adequately protected by state regulation." Id. at 10546. Another example of Congressional intent relates to subsistence uses in national parks, which Congress intended to "continue subject to reasonable regulation." S. Rep. No. 413, 96th Cong., 1st Sess. 169 (1979).

SUBSISTENCE USES MAY BE REASONABLY REGULATED

Under the 1978 state law, it was never intended that subsistence fishing and hunting would be unregulated, nor have they been unregulated.

- ° The legislature noted in the intent section of the 1978 subsistence bill that "beneficial use of those [fish and game] resources by all state residents should be carefully monitored and regulated...." § 1 ch 151 SLA 1978.
- ° Although the 1978 state subsistence law says that subsistence uses may not be restricted unless non subsistence uses have been cut back or, if necessary eliminated, "restricted" means "significantly impaired," rather than "regulated." State v. Eluska, 698 P 2d 174, 182 (Alaska App. 1985).
- ° In fact, Eluska specifically acknowledges that subsistence uses are subject to reasonable "regulation of time, place and manner." Id. at 182.

Under ANILCA, reasonable regulation of subsistence hunting and fishing is expected.

- ° Bill Horn, Assistant Secretary, Department of the Interior, testified to the Alaska Senate Resources Committee on March 5, 1986, that the version of HB 288 being considered by the committee was consistent with ANILCA. It contained a provision specifying that all takings authorized under the bill, including subsistence, are "subject to reasonable regulation of seasons, catch or bag limits, and methods and means."
- ° Gale Norton, Associate Solicitor, in a April 4, 1986, letter to the Alaska Attorney General noted that under ANILCA "all taking of the [fish or game] population for nonsubsistence purposes must be eliminated before subsistence uses may be restricted." However, that does not mean that subsistence uses could not be regulated under ANILCA.
- ° In fact, ANILCA § 814 specifically notes that the Secretary of the Interior "shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title."
- ° Further, ANILCA legislative history clarifies that reasonable "regulations concerning such subjects as seasons and methods of taking" may be adopted under ANILCA. 126 Cong Rec. H10547 (daily ed. Nov. 12, 1980). Congress expected that subsistence uses would be "consistently... respected and adequately protected by state regulation." Id. at 10546. Another example of Congressional intent relates to subsistence uses in national parks, which Congress intended to "continue subject to reasonable regulation." S. Rep. No. 413, 96th Cong., 1st Sess. 169 (1979).

The state effort to implement a subsistence priority in the management of fish and game is structured on a several tiered system of citizen qualification. This requires certain citizens being excluded from some tiers of resource use on a variable basis keyed to resource abundance.

This situation presents some administrative and enforcement problems. The first is a complex qualification system followed by the problem of identifying qualified subsistence users in the field. One recurring question is whether "rural" is a community or individual citizen designation for purposes of subsistence use qualification.

QUESTION: To be equitable and legally defensible, should state regulation of subsistence use be on the basis of an individual's personal qualifications or on the basis of a person's residency in a community? In other words, are we regulating individuals or communities?

Much of the testimony reaching the legislature urges the adoption of "rural" residency as a primary qualification for the subsistence priority. There has been pressure to adopt "rural" into statutory language without first defining the term. Given the history of years of controversy over who qualifies for rural subsistence, a definition of this critical term seems essential to settling the issue. Adopting a controversial ~~term~~ but undefined term seems analogou to signing a contract without first reading it.

Question: Do you recommend adopting the term "rural" as a subsistence user qualification without first defining the term so that its meaning is clear to all citizens?

Recommendations from your staff place great weight on state compliance with ANILCA and its requirement that rural subsistence receive priority among resource uses.

Question: Given the ANILCA language, will state compliance with with the federal "rural" category also require rural priority in in the use of timber, grass and water?

ALASKA BOARD OF FISHERIES FINDINGS
SUBSISTENCE REGULATIONS FOR THE 1985 FISHING SEASON
#85-111-FB

The Alaska Board of Fisheries, meeting in Anchorage, Alaska on March 26, 1985, finds that the Alaska Supreme Court decision in Madison v. Alaska Department of Fish and Game will require a revision of certain subsistence, personal use, sport, and commercial fishing regulations. However, the board finds insufficient time exists before the smelt, herring, bottomfish, shellfish, and salmon seasons to allow for an orderly, comprehensive review of all regulations which may be impacted, considering the need to provide an adequate opportunity for public comment and review. Therefore, to ensure an orderly process allowing the opportunity for all members of the public to participate in the review process, and implement the court's decision in Madison in the interim, the board requests that the commissioner take the following actions:

- 1) Authorize by emergency regulation, access by all Alaska residents to existing Tyonek, Port Graham, and English Bay subsistence fisheries. Existing bag and possession limits, time, gear, area regulations, and overall guideline harvest will not be changed for the 1985 season. The board finds that such regulations promote an orderly harvest which will reasonably satisfy anticipated subsistence uses. Modification of these regulations at this time is not in the best interest of the public given the inadequate opportunity for public comment, and uncertainty about 1985 participation levels.

- 2) During 1985, continue the following presently authorized personal use fisheries in Cook Inlet as personal use fisheries:

The spring Kasilof River salmon gill net fishery, the Kasilof and Kenai River, China Poot, and Bear Creek sockeye salmon dipnet fisheries, and the shellfish, herring, and smelt fisheries.

The board cannot reasonably modify or eliminate these fisheries without an opportunity for public comment, which is not possible under the present time frame.

- 3) Change the Kenai River fall coho set gill net personal use fishery by emergency regulation to a subsistence fishery, as required by Madison, and manage it under the regulations used during the 1981 season, except the current reporting requirements will apply. Any Alaska resident may participate in this fishery.

- 4) Change the Kachemak Bay coho salmon set gill net personal use fishery, by emergency regulation, to a subsistence fishery, as required by Madison, and manage it under the regulations developed for the court ordered fishery. Any Alaska resident may participate in this fishery.
- 5) Allow, by emergency regulation, access by all Alaska residents to the Iliamna/Lake Clark, Naknek River, and Angoon subsistence salmon fisheries. The bag and possession, time, area, gear, and overall harvest guidelines of each of these fisheries shall remain as described in the existing regulations. The board finds that such regulations are necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Modification of these regulations at this time is not in the best interest of the public given the inadequate opportunity for public comment. During 1985, continue the Naknek River personal use fishery.
- 6) By emergency regulation, combine the Copper River subsistence and personal use salmon fisheries into a subsistence fishery. Retaining the existing regulations as to bag and possession limits, time, area, gear, and overall harvest guidelines, with regulations that now apply to the personal use fishery applying to the dip net fishery, and those that now apply to the subsistence fishery applying to the fishwheel fishery. The board finds these regulations to be necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Further, the overall harvest guidelines, bag limits, and areas represent the different historical harvest patterns for each gear type. The dip net portion of this guideline represents a total harvest which was not taken during the 1984 season. The harvest lid is necessary to manage the downriver commercial salmon drift gill net fishery to ensure escapement for reproductive needs and the upriver subsistence fishery. The bag and possession limits, while different for dipnetters and fishwheel fishermen, were developed by the board after extensive public testimony and information demonstrating that the differing bag limits reflected historical use by each group. Any Alaska resident may participate in either the fishwheel or the dipnet fishery.

The board hereby calls for proposals from the public on all subsistence and personal use regulations to be considered at the 1985 fall/winter finfish meeting. Any petitions concerning subsistence, personal use, or associated sport and commercial fisheries will be accepted and scheduled for the 1985 fall/winter board meeting. The board will consider all

March 27, 1985

proposals to establish, eliminate or modify any or all subsistence or personal use regulations and any changes in commercial or sport fishery regulations required by such regulations.

Ron Jolin, Chairman
Alaska Board of Fisheries

Adopted March 26, 1985
Anchorage, Alaska

VOTE: 4/0

the resource as the

ch 206 SLA 1975; am
m §§ 1, 2 ch 110 SLA

tes. — As to legislative
ch. 151, SLA 1978, in the
ry and Special Acts and

history reports. — For
1, SLA 1978 (HB 960), see
rnal, p. 1154.

attorney general. — For
compatibility of state
law with federal stan-
dards in Alaska National
s Conservation Act (16
at seq.), see 1981 Op. Att'y

ent of use priorities. —
d of Fisheries did have the
establish priorities of use be-
tional and commercial
salmon stocks in the Upper
e policy and option estab-
priorities were regulations
ave been adopted pursuant
ons of the Administrative
AS 44.62.010 — 44.62.650.
la Fisherman's Coop. Ass'n
Ct. Op. No. 2358 (File No.
1897 (1981).
olds v. State, Ct. App. Op.
No. 6432, 655 P.2d 1313

ishing gear. (a) The
holds a limited entry
3.43 to be physically
g the operation of net
cept when the permit
of

means fishing site as
any structure used for
the net gear or other
n § 1 ch 19 SLA 1983)

Effect of amendments. — The 1983 guage subsection (a) and added subsection
amendment rewrote the existing language (b).
of this section and designated that lan-

Sec. 16.05.255. Regulations of the Board of Game. (a) The Board
of Game may adopt regulations it considers advisable in accordance
with the Administrative Procedure Act (AS 44.62) for

(1) setting apart game reserve areas, refuges and sanctuaries in the
waters or on the lands of the state over which it has jurisdiction, subject
to the approval of the legislature;

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

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

(4) setting quotas and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation
and competition among game in the state, exercising control measures
considered necessary to the resources of the state and designating
game management units or parts of game management units in which
bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improve-
ment, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institu-
tions and state, federal, or other agencies to promote game research,
management, education, and information and to train persons for game
management;

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

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

(b) The Board of Game shall adopt regulations in accordance with
the Administrative Procedure Act (AS 44.62) permitting the taking of
game for subsistence uses unless the board determines, in accordance
with the Administrative Procedure Act, that adoption of the regu-
lations will jeopardize or interfere with the maintenance of game
resources on a sustained-yield basis. Whenever it is necessary to
restrict the taking of game to assure the maintenance of game
resources on a sustained-yield basis, or to assure the continuation of
subsistence uses of such resources, subsistence use shall be the priority
use. If further restriction is necessary, the board shall establish restric-
tions and limitations on and priorities for these consumptive uses on
the basis of the following criteria:

*From: Cope Anderson
789-7422*

STATE SUBSISTENCE OPTIONS UNDER ANILCA
April 29, 1986

Years of controversy have centered on the issue of Alaska's compliance with the federal ANILCA subsistence mandate. The lack of consensus among interested parties and the need to reassess direction are perhaps best indicated by the fact that no one, to date, has identified precisely who is entitled to a priority use of fish and game for subsistence.

This overview of ANILCA, Title VIII, identifies some actions that are required of the Secretary of Interior and notes the significance of those requirements for state managers. The most obvious conclusion is that ANILCA can accomodate a much simpler approach to subsistence than the one that has been so vigorously promoted under Sec. 805. The Sec. 805 debacle emerges as a waste of state energies that is perpetuating divisiveness in the name of subsistence. On the basis of other language in ANILCA, Alaska's most effective course would seem to be, simply, to make a clear offer to the feds to accomodate their requirements on federal lands, in the course of existing state management. There is no need to write a federal priority into state law. We may have less of a federal problem than one of self-generated confusion.

Key Points

1. ANILCA does not require the state to do anything. It gives the state the option, under Sec. 805, of assuming the federal responsibility for Regional Councils and the subsistence priority. Tied to this option is the offer of federal funds. This option, however, shifts to the state the burden of resolving the murky questions of who is rural, and when and how the subsistence priority is to be implemented. In addition, since the Regional Councils are required to monitor and advocate subsistence uses, the state is placed in the dubious position of lobbying a special interest. If the state withdraws from Sec. 805, the councils would continue in their role of public involvement, but at federal expense and without the inherent question of the propriety of the present situation. Virtually all of the controversy of recent years derives from the unresolved question of what constitutes state compliance with Sec. 805. One wonders if the state is prepared to provide equal time and funds to sportsmen or environmentalists if they, too, should decide to litigate for similar accomodation.

2. Less compromising arrangements are possible. Sec. 809 authorizes the feds to enter into agreements that will "effectuate the purposes and policies" of ANILCA as it relates to subsistence, and Sec. 802 (3) requires federal cooperation with the state. These have none of the strings attached to state participation that exist under Sec. 805. Under Sec. 809, the state could continue state wide management of fish and game and offer (to the feds) to modify state regulations on federal lands where necessary to accomodate the subsistence priority, after the feds

identify their subsistence needs, areas, and rural residents. This approach would require the feds to define "rural" and the other ambiguous terms that are the source of controversy. It would allow the feds to answer, directly, any questions regarding interpretations and equal treatment. The present situation where the state acts as a buffer for the feds seems inexcusable. Ironically, if the feds should ever "takeover" because of state "noncompliance" with Sec. 805, it probably would take the form of contracting management functions with the state under Sec. 809.

There is tremendous bargaining latitude for the state under Sec. 809 since the feds, despite rumors to the contrary, are neither staffed, funded, nor structured, to assume state resource management. A good straightforward offer by the state under this section would be very attractive to the feds and could negate the current pressure to amend the state subsistence law. In brief, we should be able to reach a workable agreement with the feds without rewriting our fish and game code on an emergency basis.

3. Subsistence research is a federal obligation under Sec. 812. This requires the feds to make research results available to the state. Any agreement under Sec. 809 could integrate relevant state and federal interests at a savings to the state.

4. The threat of federal preemption should be viewed in the context of what obligations are imposed upon the feds and not as the specter of imminent disaster that often is suggested. The feds are required to report annually (Sec. 806) to congress on the federal implementation of subsistence, including state provisions for such preference. Their report must include the views of the state. In addition, the feds are required, at three year intervals, (Sec. 813) to make major assessments of resource health, uses, needed actions, the role of subsistence in the economy and culture, and etc. None of these things occur rapidly.

The point is, that the feds would need to demonstrate a rational basis for any preemptive action that they might contemplate. Federal findings would be open to scrutiny and validation, and would not occur as an instantaneous action.

5. Individuals are prohibited (Sec. 815 (1)) from reassigning their subsistence privileges to other persons. The impacts of this section need legal analysis since it may be a barrier to the concept of communities being the qualifying unit for subsistence use that, by implication, is then delegated to individuals. If nothing else, it suggests a clear need to identify those individuals who qualify for subsistence.

Conclusion

The state should take time for a fresh examination of its options under ANILCA and not run the risk of setting undesirable precedent by acting under pressure.

Tr. 75 - → 6 reg -
Combined report

Rec. mostly predators program
Disregarded all

4/12/85
Bill Waugaman
- must Jones
Guide?

See Ensiminger -
Board of Game - make up of Bd.

Israel Bennett - m Bd - "Greenie"
Lang Bd - Greenie

Sen. A. A. Wood - Bennett -

Predator program back to Dept of Game
Rec of Regional Councils -

When Harris taken off board - Greenies.
Anything up - Greenies were.

1500 - 2400 makes per year 1950 - '67

Comp. Plan - mat - see Brough
Eating
Allow of comp plan

sell & barter - out }
want or want e -- need enforcement

method }
means } did work

4/17/85
Jim Ayres

Encouraging 3rd floor & me
need - community need
sports fishing rights

Steve Cowper trying to see us -
explain his position.

Could be difficult at mtg tomorrow.
Forcing issue as to where
people are.

Felt that opportunities for (mountain)
sports fishing rights protected.

Cowper - economic need band
He got out door council all stirred
up - don't need to do anything

In order for Out door Council to
they want to believe there is a
solution -
allow subsistence to continue.

1 April 85

KDE - Draft subsistence language in
the context discussed Sat, 3/30/85.
m.z.

First item - to Clarify the subsistence / sport /
commercial / recreational relationship:

This clears the air on basic
categories. Gives the Board flexibility
to specify hook & line, net, fishwell, etc.
& tailor regs to areas & users.

AS 16.05.251 (a) is amended to read:

(6) classifying [as] commercial fisheries,
[sport fish ~~or~~ or predators] personal use fisheries,
or other categories essential for regulatory
purposes; for the purposes of this paragraph,
"personal use" fishing means engaging
in any recreational or subsistence fishery
where the purpose is personal consumption
or recreation & does not include
commercial sales. Personal use fishing
shall be limited to those methods &
means specified by the Board of Fisheries
for specific geographical areas.

The point here is
to identify the subsistence
priority. This could fit with
any definition of subsistence
you care to use.

AS 16.05.940 (23) is amended to read:

(23) "subsistence uses" ^{is} are the priority use
among all commercial ~~and~~ and
personal use
categories and means the customary
& traditional (to end) . . .

~~This~~ item may need a new section?

This requires Boards to
respond to subsistence needs
& should satisfy ANILCA.
Also it sets a tone of subsistence
being a special need.

* Where documented subsistence needs
cannot be accommodated via personal use
regulations the Boards shall adopt
subsistence priority regulations to accommodate
those subsistence needs.

I welcome an opportunity to talk with you today.
I'm going to cover ^{your suggested} ~~these~~ topics and perhaps a little bit more, but first I would like your indulgence for just a minute while I say something about the out-of-doors.

When we are inside, in this room for example, we could be anywhere in the country; in any state, in any city. In Alaska, however, when we go outdoors, no one could ever make the mistake of thinking they were anywhere but in Alaska. The outdoors of Alaska is unique, and I believe that it is the soul and essence of our State.

There are many people in our state, undoubtedly many of you in this room, who live in Alaska precisely because of the out-of-doors opportunities that our state offers. It is vital to the well being of our state that we maintain and enhance these outdoor opportunities; that we properly manage our fish and wildlife populations for all people and ensure that access remains available as our state grows.

Yesterday, in the Senate Resources Committee, which I chair, we heard Senate Bill 201, which would create within the Department of Fish and Game a fund for purchasing public access rights to recreational areas. This fund, which can receive both public and private contributions, is a good example of the type of creative solution that we need in times of declining oil revenues. We will be passing out Senate Bill 201 next week. It will certainly have my "Do Pass" recommendation.

Along with Senate Bill 201, there are a number of other bills with which our committee has dealt. We passed out a one million dollar appropriation for rifle ranges yesterday. Earlier this session we ~~have~~ passed out bills enlarging the Palmer Hay Flats Game Refuge, establishing the Anchorage Coastal Wildlife Refuge, and the Nelchina Public Use Area. I expect HB 93, the recreational rivers bill to be coming to our committee soon and when it does I will schedule it for a prompt hearing.

2

Representative Larson has introduced three bills which deal with access to the streams in the Susitna drainage. These bills, HB's 29, 36 & 43, are currently in the House Finance Committee and I hope that they will make it across to the Senate in the near future. If they do, I will also schedule prompt hearings for them.

As the state moves to complete its area plans such as the Susitna Plan and the Tanana Plan, you will see more multiple use plans appear before the legislature. We've appreciated your comments on the legislation introduced this year and I urge your careful consideration of future implementing legislation.

Navagability is another important public access issue. The state has approached the issue primarily from the standpoint of ownership of the subsurface rights and we are talking of some 5.000,000 acres. I consider navagability as a means of public access to be equally important and we must make sure that this aspect of navagability is not overlooked.

Legislation in Congress extending states authority to challange Federal decisions on navigability must be passed. I support and will consider introducing legislation that will allow the greatest possible use and access to our navagabile waters. In my opion a clear statement of policy is needed.

~~INCEPT BY [REDACTED]~~

Touch briefly on state revenue reductions which affect renewable resources management and outdoor activities.

Tourism budget in Commerce & Economic Development, as closed out by House ^{is} shows nearly \$750,000 ^{low} from the current year's budget. *up until this year has been to*
~~This changes the trend to larger budgets for tourism during the past few years.~~ Contractual dollars will be 6.1 million vs. 6.9 for the current year.

Fish and Game -- some good news, some not so good.

As you know, we've spent a lot of dollars working on the U.S.-Canada agreement. It looks like we should receive some \$20 million for increased hatchery and enhancement programs and to carry out other treaty mechanisms. *Some of these \$10 should come in 7y'86*

Some surplus in the Fish and Game Fund. For the first time ^{is} being used in the budget. \$500,000 ^{is} allocated to the F.R.E.D. division. *those dollars from the fund are being*

Losing some \$420,000 in federal funds ~~that~~ will impact the Division of Game budget. This creates a real problem, and again the Fish and Game Fund is being looked at to assist in meeting this shortfall.

The Commercial Fisheries Entry Commission shows a slight increase over the Governor's budget. Court decisions have allowed more permits and caused review of many outstanding ^{permit requests} claims. An office has been established in Kodiak to assist in meeting demands.

5

758

Department -- overall had a cut of 4.4 million -- from 57.2 to 52.8 -- Primarily in commercial fish. ^{It} Means less research.

I would expect the Division may well be more conservative in decision making and in allocation of ~~the~~ resources.

6

As Chair of Senate Resources, I made an early decision not to create a sub committee on fisheries but to consider fishery matters, both sport and commercial, as a committee of the whole. We need more legislators aware of Fish and Game matters.

There are aspects of fish and game management that are both vital and expensive and in those *area* are we will simply have to be prepared to spend the required amounts of money. However, there are many areas of fish and game management that the crucial question is not one of money, but *perhaps* is one of the state's political leaders staying out of the way, and avoiding the substitution of political fixes for professional fish and game management decisions.

The present policy of this administration, which routes the boards access to the governor through the commissioner is not healthy. Alaska's system of Fish and Game Boards, established separately from the Department, was specifically designed to separate the administrative functions of the department from the regulatory functions of the board and to protect the public interest in the common use of our fish, wildlife and water.

There are a number of other areas that are coming our way where political judgements could have serious effect on fish and game resources. We have all read recently of efforts to amend the Alaska Native Claims Settlement Act. It may be that ammendments should be made to ANCSA and ANILCA, but if so, it should only be done after extensive public hearings here in Alaska, so alaskan citizans can participate and make themselves heard.

Village sovereignty is a related issue that has also been much in the news lately and also has significant implications for the management of our resources. As you know, I served many years in various aspects of local government and remain a strong supporter of local government. I have a keen respect for the local government section of our constitution which states that all local government powers shall be vested in boroughs and cities. Seperate, soverign governments do not meet this constitutional mandate.

8

State laws relating to fish and game management should apply equally to each one of us and should apply to all species of fish and game in our state. The state should assert its authority to manage all our fish and game species whether they occur on state, federal or private land. This should include ^{in my opinion} marine mammals.

I spoke earlier of the need to keep politics out of the management of fish and game. In this real world we live in, however, we are currently faced with an issue where political, social, and economic decisions are going to have a major impact on the management of Alaska's fish and game.

Subsistence has once again surfaced into controversy. The state desperately needs an fair, equitable, and lasting solution to this problem. A solution that provides for genuine needs while dealing realistically with Alaska as it exists today.

Since the Madison decision came down, there have been a multitude of opinions about what the current status of subsistence and fish and game management is. *I suspect that* By picking your attorney, a person can get almost any interpretation of the current law's status that they please. This confusion is totally counterproductive to proper fish and game management and can not help but lead to divisiveness.

It is the responsibility of government to provide stability for our citizens and direction for the managers of our resources. That is not happening, it has not been happening and unless we can come together on a solution for this problem, it is not going to happen.

Subsistence is an issue that is too complex to be susceptible to attempts at so called technical quick fixes and it is too important for shoot from the hip solutions that do more to add the divisiveness and controversy than they do to solve the problem.

A great deal of the confusion results from the lack of any agreement on the parameters of the discussion or any definitions for many of the terms we have all been throwing around. The Madison decision itself was based on the use of a word, "rural", in regulations, when that word was not based in statute.

The court of appeals decision issued yesterday in State vs. Eluska pointed up that which must be considered when amending the current subsistence statute. The Court found that the Board of Game had erred when not providing regulations specifically for subsistence uses as required by statute.

The court further found that in the absence of such specific regulations, a person who believed he or she was taking game for subsistence uses could use the "subsistence defense" if their conduct otherwise violated regulations adopted by the Board restricting hunting.

The court went on to say that adoption of such regulations would fix that problem. All of this leads us to one conclusion. We must give the Boards statutory guidance and let them get on with the job of regulating our wildlife resources. In doing so we have to consider, among other things, adequately addressing the questions left open by this case and the MADISON decision without violating state and federal equal protection guarantees.

We need to be looking carefully at what we are trying to accomplish in dealing with this issue. We need to define our terms carefully and try to use terms that are definable.

The governor currently has bills dealing with subsistence in the House and Senate. The Senate bill is currently in the State Affairs committee. My committee, the Resources Committee, is the next referral. Unless some consensus is reached as to an acceptable approach to the issue, I do not expect State Affairs will move the bill.

Every day that passes, it also looks less and less likely that the House version of the bill will pass out of that body. I believe that the more that the representatives look into the problem the more they realize its magnitude.

13

If the governor's bills do not pass the legislature, and I believe that they should not and will not, that leaves at least three alternatives. 1) That no bill will pass and we will go into this summer with all the uncertainties that I have talked about. 2) A one year moratorium or freeze bill will be passed that will revert conditions to their pre Madison state for one year only. ^{this will} ~~in order to~~ give a little breathing room for the governor, the legislature and the public to work out a just and equitable solution to this problem. 3) We all work together to agree on a just and equitable solution to the subsistence issue this session.

14

Because I believe that subsistence is one of the most important resource issues facing the state today, as Chairman of the Senate Resources Committee, I have been working on trying to find a solution since the Madison case was decided by the Supreme Court.

I feel that the best solution to the problem would be a resolution of the issue that all parties could agree to and that is done as soon as possible. I am not under any ^{illusions} ~~delusions~~ that a solution that is going to make every one happy is possible, but I have been working with people on all sides of this issue, including many of you in this room, to try and find common ground.

I have to admit that it is somewhat of a longshot to hope that we can achieve a long term solution this session, but even if we don't, the progress we will have made can serve as a foundation on which to base future discussions.

In trying to achieve a solution, we have been working closely with a number of other Senators and Representatives. Ron Sommerville has been included in our discussions from the start and we are also working with Don Mitchell from the AFN and Bob Blake from the United Fishermen Alaska. We have been in contact with Don Young's office on this issue.

I have been fortunate to have had extensive volunteer help from Mil Zahn, the former Executive Director of the Boards of Fish and Game and we have been talking with Greg Cook, another former Executive Director of the Boards. Members of a number of your individual groups, including Bob Hunter, Jeff Parker and Hunter Fisher have also given us the benefit of their wisdom.

I would like to outline for you the concept that has developed out of these discussions. I don't expect that all of you will like every part of it and I don't want to imply that everyone I just mentioned is in agreement with every part of it either. This concept is simply what we have been able to reach more agreement on than ~~anything else.~~

other approaches

16

In this concept, the Boards would continue to set sport hunt and fishery regulations throughout the state as they do now.

If there are subsistence needs by particular people, the first step would be to see if those needs could be met under the proposed bag limits of the sport hunt or fishery.

If the Boards found that local residents had subsistence needs based on the existing State and ANILA tier two criteria of: 1) customary and direct dependence upon specific fish and wildlife populations as the mainstay of livelihood, 2) local residency, and 3) lack of available alternative resources

AND that these specified needs can not be met by a particular sport or personal use fishery or hunt;

Then the Boards would establish a special subsistence hunt or fishery by particular stock and area, if that could be done in accordance with principles of maximum sustained yield.

Under these circumstances, subsistence would be be ^{the} preferred use, but would be subject to bag limits based on proven need and would be subject to wanton waste provisions.

This is ~~our~~ ^{your} best shot so far and I think it is a pretty good one. I understand that your subsistence panel has developed ideas for a bill and I want to hear those. I am convinced that if Alaskans work together on this issue, rather than against each other, we can come up with a solution that works.



ALASKA OUTDOOR COUNCIL

Annual Meeting, Juneau, Alaska

BARANOF HOTEL - APRIL 11-14, 1985

○ Agenda ○

Thursday April 11

Registration - Governor's Suite Room 515
Contact with Legislators

Friday April 12

Registration - Governor's Suite Room 515
Contact with Legislators
Committee Meetings

10-11AM & 2-4:30PM Resolutions & Policies - A.J. Room
10-12N & 1:30-5PM Subsistence - Governor's Suite
1PM Nominations - Lunch Meeting
1-3PM Finance - Conference Room
3-5PM Legislative - Conference Room
4PM Membership - To be announced
4PM Education - To be announced
4PM Raffle - To be announced

7-9PM Alaska Outdoor Draft Committee & Outdoor Committee on
Political Education Meeting - Governor's Suite

Saturday April 13

Morning - Business Meeting - 8:00 AM - Treadwell
Registration
Certification of Delegates
Resolutions & Policies
Election of Directors
Committee Reports
General Business



Afternoon - State Policy Makers Session - Open to Public
Session sponsored by the Alaska Outdoor Council and the
Alaska Outdoor Draft Committee.

1:00 - 1:30 Mr. Somerville
1:30 - 2:00 Senator Halford
2:00 - 2:30 Mr. Keller
2:30 - 3:00 To be announced
3:00 - 3:30 Break

(over)

3:30 - 4:00 Senator Bennett
 4:00 - 4:30 Senator Sturgulewski
 4:30 - 5:00 Mr. Cowper

Allotted 15 - 20 minute presentation with 10 minute question and answer.

Major Issues of Concern: ✓ State revenue reductions, ✓
 ✓ Alaska Native Claims Settlement Act amendments, ✓
 ✓ navigability, ✓ Village sovereignty, ✓ subsistence, ✓ states
 rights, public access ✓ and ✓ removing Fish & Game
 administration from Politics. ✓

Evening

No Host Cocktails - 6:30 - 8:00 PM
 Fund raising Dinner Sponsored by Alaska Outdoor Draft
 Committee - 8:00 PM, Baranof Hotel - Treadwell
 Mrs. Mary Jablonski - Chairman
 Session guests invited.
 Fifty dollars per person.
 Open to Council members and general public.
 Entertainment
 Mr. Warren Wiley - Emcee

Sunday April 14

Morning - Business Meeting - 8:30-12:00 Noon - A.J. Room
 Subsistence Policy Session
 Waterfowl Case Discussion
 Election of Officers - Directors
 General Business

Afternoon - 1:00 - 3:00 PM
 Meeting between Directors, Trustee officers and
 Trustee's
 Business Meeting

Adjournment



ALASKA OUTDOOR COUNCIL, INC.

3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

March 13, 1985

Senator Arliss Sturgulewski
Pouch V
Juneau, AK. 99811

Dear Senator Sturgulewski:

On behalf of the Alaska Outdoor Council, I would like to extend an invitation for you to participate in our Annual Meeting scheduled for April 11-14, 1985 at the Baranof Hotel in Juneau. The Alaska Outdoor Council is a statewide Federation of 44 sportsmen and outdoor organizations and our membership numbers over 8,000.

Our Annual Meeting is held to provide policy direction from the membership. It is scheduled in Juneau this year during the session to take advantage of the opportunity for our membership to actively participate in the legislative process. It also provides us the opportunity to try and schedule major issue sessions with State Policy Makers.

I have enclosed some additional draft material circulated recently by the Alaska Outdoor Draft Committee which will provide background information of interest.

In cooperation with the Alaska Outdoor Draft Committee, we have cosponsored a session with major State Policy Makers to address issues and concerns of interest to our general membership. We have set Saturday afternoon April 13 as our major session. Included for your review is the final agenda which was recently approved by our Board of Directors. The agenda also includes a brief outline of the session with those invited to participate and the major issues of concern.

Exact times have not been assigned to each invited guest at this point. We are waiting to see if any of the participants will have scheduling problems which we can accommodate. I would appreciate it if you would let me know as soon as possible if you can accept and whether or not you prefer a particular time that afternoon.

If at all possible, we would like for each participant to address one or more of those issues that we have listed of major concern. However, you are free to select an appropriate subject which you feel will be of particular interest to our sportsmen and outdoor user membership. As you can tell from the listing, most of these items are of

PRESIDENT
Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7422

REGIONAL VICE-PRESIDENT
Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

REGIONAL VICE-PRESIDENT
Robert Rausch
PO Box 2662
Juneau, AK 99803
(907) 789-3764

REGIONAL VICE-PRESIDENT
Ron Swanson
3417 Katlian
Eagle River, AK 99577
(907) 694-9564

TREASURER
Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY
Sam Harbo
PO. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE
Warren Hoflich
6901 Tall Spruce Dr.
Anchorage, AK 99502
(907) 243-4790

critical concern to our members but many are of equal concern to all Alaskans.

You are also invited to attend the Saturday fund raising dinner sponsored by the Alaska Outdoor Draft Committee. The dinner is primarily designed as a fund raising affair which is also offered in appreciation for those who participate in the cosponsored sessions. This function is relatively informal and it should prove to be an excellent opportunity for you and the other session participants to meet our delegates and members from around Alaska.

Obviously, your involvement in this type of session will be extremely valuable to our membership and I hope an opportunity for you to become better acquainted with some of our concerns.

Thank you for considering our invitation.

Sincerely,



Ronald Somerville
Executive Director

Enclosures

Alaska Outdoor Council
Annual Meeting, Juneau Alaska

Baranof Hotel, April 11 - 14, 1985

Agenda

Thursday April 11

Registration
Contact with Legislators

Friday April 12

Registration
Contact with Legislators
Committee Meetings
 Resolutions & Policies
 Subsistence
 Nominations
 Membership
 Education
 Legislative
 Finance
 Raffle
Alaska Outdoor Draft Committee Meeting

Saturday April 13

Morning - Business Meeting

Registration
Certification of Delegates
Resolutions & Policies
Election of Directors
General Business

Afternoon - State Policy Makers Session

Session sponsored by the Alaska Outdoor Council and the
Alaska Outdoor Draft Committee.

Invited participants: Governor Sheffield, Senator
Bennett, Senator Sturgulewski, Senator Halford, Mr.
Lindauer, Mr. Cowper, Mr. Keller, Mr. Sullivan, Mr.
Hayes, Mr. Somerville.

Alloted 15 - 20 minute presentation with 10 minute
question and answer.

Major Issues of Concern: State revenue reductions,
Alaska Native Claims Settlement Act amendments,
navigability, village sovereignty, subsistence, states
rights, public access and removing Fish & Game

administration from Politics.

Evening

No Host Cocktails - 6 - 7:30 PM
Fund raising Dinner Sponsored by Alaska Outdoor Draft
Committee - 7:30 PM, Baranof Hotel
Session guests invited.
Alaska Outdoor Council members invited.
Fifty dollars per person.
Mr. Warren Wiley - Emcee

Sunday April 14

Morning - Business Meeting
Subsistence Policy Session
Election of Officers - Directors

Afternoon
Meeting between Directors and the Trustee officers and
Trustee's

Adjournment

HALFORD -

No quick fix - et al appears case
ref to Nels Andersons

USEN VS USES - USES UNCONSTITUTIONAL

HALFORD SAYS - HAS NOT SEEN ANYTHING
GOOD ENOUGH THAT HE WOULD BE WILLING
TO ACT THIS SESSION

WANTS MEAT RESIDENCE PRITE

Eliminate brown bear etc.

chosen species vs. assigned species

Violent opponent of sovereignty
protection is in terms of funding

dissatisfaction based on ANCSA

surface vs subsurface
cultural, traditional - brooks brothers indian

seagull joint.

more

Management plans - disapp w/ states
allocation of effort - wants concentration
on Fed plans

Planning - Pointy systems hasn't done much
good - deterrents good estimates - bad solutions

parties don't work

where can we find basic alliances
of support

We that all diversity req

Urban conservation - pro-sewer

need people who can put things
back together
Rural - urban

equality of res, equality of opp.

needs to draw in women

Rev. how are we going to find
someone who can be popular and
lead the state when it's out of
10 questions will have to be no.

Q - Mark Jansen - support at suit.

A - H - could support but not best way, keep intention on own side

Q - ANI/CA prompted Fed following state plans - impact is not being followed.

A - state not supportive now - situation has reversed
Ash - gov completely

Q - confusion on subsistence - task-force. didn't do anything. would you support task force that would do something.

Q - Conject Amend to remove F&A from direct political influence

A - H - Leg will agree to keep gov out - but not themselves - I don't think you will get there.

Q - Subsistence - how define individual need

A - Look at Goals - define so broadly we all qualify & all agree define so narrowly that very few qualify & have little impact on the rest of us. / right need centers
- cost effective means

Q - problem w/ getting info to public - how should?

A - Tsh F would be ok if leg leaders who old, do something
not to justify budget or placate people

Q - will there be standing committees that will be working on issue this summer

A - Yes - it chad w/ Bill Horn - reluctance to intervene

SC.

comp. bu ex

resp to

Bennett - oil is running out
- need for savings program

short term plan paper - 2 1/2 B but

1st budget cut will be 10% just.

increase in decisions based on
politics not expertise

- Subsistence

Comptroller on Subsistence Committee

- says there was scream from villages

- short hearings

- work something nobody could read
on understand - left town

- courts finally got held

- 2 choices

stopping

on

war on

Racial or economic
bill might be good way
to do it but that's the
only way to do it

economic -

it must work.

Revenue and General \$60K per year

Racial tensions -

20 min
SP.

~~should~~
should be economic - put into law

if you are ~~above~~ ^{below} a certain
income level - should be able to
get sub permit.

Village Soc.
diff. ~~significance~~ - what does it mean
can't have gov't in gov't.

too soon to decide about - but
any point that infers w/ state
law. can't be enforced

a need - can't tax unimproved land
- that's reasonable
alignability of stock - hasn't made up
mind

Wants everyone to realize probably
has point.

Navigability - is there really a
problem.

Q - Slowly - NANA - indi. towards NAV.
Reducing gov't. to level

A - irreducible level. always going to
exist. ~~exposed to the~~
back to 2 1/2 B idea.

Jensen

Q Court said - on just ignore

Don't like Fed intervention - approach
Congress

Q - Jensen - Young said what work

A - Lets do what's best for us.

Q - Need - opposes - but wouldn't most
permits be issued in urban areas

Identify community by historical subsistence
method. Laws make everybody bad
1978 - got in

A Thank you

Q Cash based budgeting vs ~~permitted~~ ^{permanent fund}

A - His way

Q Repeat of above

Q ANCSA amend. - nontaxable status of lands
fair? burden on other ~~state~~ lands

A. Yes

Q - NAVICORP - Wagoner

A - column of burdens

Q - Lady agrees - get rid of radicals
Thank you

Q - What's wrong w pre 1978 practice approach

A - can't even go back - different place & time

Q - concepts

A - memo

Q - use substantiated divs; category

no A

Q - Unhappy w/ benefits - don't reflect users - say it started - non consumption users etc

A - In at BLS - find advocates of interest ops + bids don't work - need ~~the~~ people who may be - fish etc but have stwide entrance

Q - discipline on BLS

A - doesn't know runs

Drinky

SUBSISTENCE

1) Concern about current muddle that subsistence is in.

2) Current situation has resulted in massive uncertainties.

There are a variety of legal interpretations of Madison decision i.e. interpretations of regulatory powers of boards; doubts about future of commercial fishing, sport fishing, big game guiding, what areas and stocks will be affected, ability to impose bag limits and seasons, Doubts about compliance with federal law.

3) Governor's bill has no chance of passing the legislature.

4) Have been approached by interested people from all sides of this issue who see need for a workable long range solution and time to achieve that solution.

5) Have draft legislation that would provide for one year interim during which we can bring Alaskans together. There is strong support for this approach.

6) It is the responsibility of government to provide stability for our citizens and direction to the managers of our resources. I am committed to my part in fullfilling that responsibility.

NEED TO HAVE EXPLICIT FINDINGS

Subsistence uses are the customary and traditional uses of wild, renewable resources by ~~Alaska~~ communities for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption by residents of Alaska communities in which fish and game are essential to the physical, economic, traditional and ^{cultural or} social existence of the community.

Determination of the communities ~~whose residents~~ in which fish and game are essential to ~~the~~ physical, economic, ^{customary} traditional and social, ^{or cultural} existence ~~with~~ may be ~~determined~~ ^{made} on a case by case basis by the Board of Fisheries and the Board of Game, based ~~in~~ on information provided by the Division of Subsistence.

OR

customary and traditional uses by rural Alaska residents
For the purposes of this statute,

"Rural" means those Alaskan communities in which fish and game are essential to the physical, economic, ^{or cultural} customary, traditional and social, ^{or cultural} existence of the community. Determination of the communities in which fish and game are essential to physical, economic, ^{or cultural} traditional and ^{or cultural} social existence may be made on a case by case basis by the Board of Fisheries and the Board of Game.

4/10/85

Sam Mc Dowell

248-1913

Bob Penney - thinks a bill -- don't
get caught.

Penney
County
James Day

Going to file injunction against
wards decision. Court case -- don't think
much of his spangler. Based so can't
be on basis of residency.

Steve Camp - says based on need.

Put 4200 things on Zyxet -- don't
have to count either fish in last
weeks. Dunder Jones trying to
talk end news around court.

Why not caps on fisheries.

3 documents - Sam. Mc Dowell
~~Put out 2 of 1 etc~~

ly cap -

Can't restrict subsistence until
restrict commercial.

Angry having to put up §1A to
protect constitutional rights

4/10/85 Subsistence

John Shively - (Bob Penney)
Conversation w/3rd
3rd 2 looz floor.

while see that those who want
summit would like to see settled.
Dismantle to see deficiencies -

Steve
Lowell publically made statement
that subsistence wrong.
not rural Alaska have become
abducted. Subsidy - hand
in "economic need." Gov's best
wrong. Special rules for
Alaska

Pres political arena problems

Talk to Big Romney - Big taking
heat. - "Threat to management"
Big says lets' define rural.

Zahn

3/15/85

1. Halford's Question: May crisis areas such as Kenai R. be isolated from fed oversight & given statutory exemption from subsistence priority?

Answer: No, because part subsistence uses in a given area would be grandfathered in. (there is almost no place in Alaska where part subsistence use cannot be documented).

2] Subsistence Task Force

Governor's charge to TF: Review the F+G Boards' implementation of subsistence law and make suggestions to enable Bds to conform w/intent of legislature (1978 law).

No fixed lifespan of ~~the~~ Task Force

Four meetings thus far (Oct 83, 7/84, 8/84, + 11/84)

They plan to do a TF report but no projected completion date.

Subsistence Div has been giving TF a systematic briefing on implementation of subsistence law. Not completed yet.

~~Conrad felt
follow up
not satisfied~~

Zahn

3/15/85

Management Areas for all species & uses:

1. Game - 100+ (of these residency is a factor in 6 area regulations)
2. Sport Fish 300-400
3. Comm Fish 300-400

Questions for legal counsel answers:

1. May the state limit subsistence where no resource shortage exists?

allow

2. Assume:

- a. ~~State~~ resource uses are classified in two (only) categories of Personal Use & Commercial
- b. Personal Use is the priority use.
- c. Pers Use is defined to include subsistence.

Then:

Would the resulting subsistence priority meet the ANILCA requirement?

RE: POTENTIAL IMPACTS ON FISH AND GAME BUDGET FROM
MADISON DECISION

1. If the state is found not to be in compliance with ANILCA, the ADF&F might lose the million dollars appropriated from the federal government through Title 8 of ANILCA for the Advisory Systems. FY86

Subsistence Division \$500,000 (15% of total 3,253,000)
Boards \$498,800 (40% of total 1,257,300)

- and Sport Fishing*
2. If non-resident hunting excluded in some or all areas, there would be direct loss of revenue from non-residents licenses, tags, and permits. This money goes to ADF&G's fish and game fund. These funds may only be used for sport fish and wildlife restoration (not for commercial or subsistence fishing projects).

GAME

- a. Total budget: \$11,655,000
(This figure does not include \$1,670,400 from the federal government in Capital Improvement Projects and Special Projects. The above is for FY86)
- b. Amount from fish and game fund: ^{res + non res.} \$3,900,000 (33% of budget)
- c. Of the fish and game fund:
 - NON-RESIDENT \$2,223,000 (19% of total budget)
 - RESIDENT \$1,677,000 (14% of total budget)

SPORT

- a. Total budget: \$6,158,600 (for FY86)
 - b. Amount from fish and game fund: \$3,400,000 (55% of budget)
 - c. Of the fish and game fund:
 - NON-RESIDENT \$1,870,000 (30% of budget)
 - RESIDENT \$1,530,000 (24% of budget)
- 3) ~~4.~~ If eliminate or significantly reduce opportunities for recreational hunting and fishing, particularly out of state hunting and fishing, there may be problems with obtaining several other sources of funding.

ifly

Pittman- Robertson Funds: These are from the federal government and are contributed by manufacturers from taxes levied on the sale of hunter and sport fishing equipment. The amount granted to the state relates to the land area and the number of licensed hunters and fishers. *This money goes to game division.*

\$4,300,000 (36% of total ^{game} budget)

BUDGET

Dingall-Johnson: \$1,989,600 to Sport Fishing Division
(32% of total budget)

(1769,000 cases from general fund)

JOHN STEWART 465-4120

14-0942
Hein
3/22/85

1 IN THE SENATE

BY STURGULEWSKI

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 subsistence and personal use; and providing for an
8 effective date."

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

10 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
11 finds that

12 (1) as a result of the Alaska Supreme Court's opinion in Madison
13 v. the Alaska Department of Fish and Game, the legislature is suddenly
14 confronted again with the complex, potentially divisive issue of subsis-
15 tence fishing and hunting;

16 (2) this comes when the First Session of the Fourteenth Legisla-
17 ture is more than half over; and

18 (3) the legislature has insufficient time remaining in the
19 legislative session for the careful consideration and deliberation needed
20 to assure an equitable weighing and accommodation of the many competing
21 interests in the state's fish and wildlife resources.

22 (b) It is the intent of the legislature to preserve for one year the
23 status quo with regard to subsistence fishing and hunting regulations as it
24 existed immediately before the issuance of the Madison opinion. This
25 one-year period, it is hoped, will give the legislature and the governor
26 adequate time to arrive at a permanent solution to the subsistence ques-
27 tion. To that end, this Act amends statutes for a period of one year only.
28 The amendments made by this Act are not intended to be or to suggest a
29 particular approach to permanently resolving the conflicts inherent in the

1 subsistence question.

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

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

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

9 (2) establishing open and closed seasons and areas for the
10 taking of fish;

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

13 (4) establishing the means and methods employed in the
14 pursuit, capture, and transport of fish;

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

17 (6) classifying as commercial fish, sport fish, personal
18 use fish, [OR] predators, or other categories essential for regulatory
19 purposes;

20 (7) watershed and habitat improvement, and management,
21 conservation, protection, use, disposal, propagation, and stocking of
22 fish;

23 (8) investigating and determining the extent and effect of
24 disease, predation, and competition among fish in the state, exercis-
25 ing control measures considered necessary to the resources of the
26 state;

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

29 (10) establishing seasons, areas, quotas and methods of

1 harvest for aquatic plants;

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

7 (12) personal use fishing.

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

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

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

15 (2) establishing open and closed seasons and areas for the
16 taking of fish;

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

19 (4) establishing the means and methods employed in the
20 pursuit, capture, and transport of fish;

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

23 (6) classifying as commercial fish, sport fish, [PERSONAL
24 USE FISH, OR] predators, or other categories essential for regulatory
25 purposes;

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

29 (8) investigating and determining the extent and effect of

1 disease, predation, and competition among fish in the state, exercis-
2 ing control measures considered necessary to the resources of the
3 state;

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

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

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

13 (12) PERSONAL USE FISHING].

14 * Sec. 4. AS 16.05.940(23) is amended to read:

15 (23) "subsistence uses" means the customary and traditional
16 uses by rural [IN] Alaska residents of wild, renewable resources for
17 direct personal or family consumption as food, shelter, fuel, cloth-
18 ing, tools, or transportation, for the making and selling of handi-
19 craft articles out of nonedible by-products of fish and wildlife
20 resources taken for personal or family consumption, and for the cus-
21 tomary trade, barter, or sharing for personal or family consumption;
22 for the purposes of this paragraph, "family" means all persons related
23 by blood, marriage, or adoption, and any person living within the
24 household on a permanent basis;

25 * Sec. 5. AS 16.05.940(23) is amended to read:

26 (23) "subsistence uses" means the customary and traditional
27 uses in [BY RURAL] Alaska [RESIDENTS] of wild, renewable resources for
28 direct personal or family consumption as food, shelter, fuel, cloth-
29 ing, tools, or transportation, for the making and selling of

1 handicraft articles out of nonedible by-products of fish and wildlife
2 resources taken for personal or family consumption, and for the cus-
3 tomary trade, barter, or sharing for personal or family consumption;
4 for the purposes of this paragraph, "family" means all persons related
5 by blood, marriage, or adoption, and any person living within the
6 household on a permanent basis;

7 * Sec. 6. AS 16.05.940 is amended by adding a new paragraph to read:

8 (28) "personal use fishing" means the taking, fishing for,
9 or possession of finfish, shellfish, or other fishery resources, by
10 Alaska residents for personal use and not for sale or barter, with
11 gill or dip net, seine, fish wheel, long line, or other similar means
12 defined by the Board of Fisheries.

13 * Sec. 7. AS 16.05.940(28) is repealed.

14 * Sec. 8. Sections 1, 2, 4, and 6 of this Act take effect immediately
15 in accordance with AS 01.10.070(c).

16 * Sec. 9. Sections 3, 5, and 7 of this Act take effect one year after
17 the effective date of sec. 1 of this Act.

Kie, Some overview thoughts (not necessarily cheerful ones) on subsistence after reviewing your draft. The following points emerge.

Subsistence is bigger than any candidate. Plan now for it to be an election issue.

Arline needs to make clear to public that:

1. Can't argue issue forever.
2. Can't all have our cake & eat it too.
3. Resources are finite
4. Human pop is increasing.
5. Rural areas today are urban tomorrow.
6. Public has a responsibility to view resource harvest/management realistically & responsibly.
7. Subsistence priority now, means that other priorities will follow. This is the only alternate scenario to equal access (mediation).
8. This special priority is impacting everyone
9. Subsit issue bigger daily as illustrated by enforcement agencies recent stance.
10. The issue is essentially out of control.
11. Madison decision offers a stepping stone to depersonalize the whole issue so that Arline does not inherit all the flak.
12. Also, Elvika case pre-emptive need for Gov's bills by pointing out the need to regulate habitat & identify levels of take that qualify.
13. Arline can take a position now & tie it to those decisions as a timely point to call for change, new open review, clarification of intent, or whatever.
14. Will be harder to disassociate from issue later unless the Gov's bills are put to rest

Kie - some rambling thoughts on the general topic listed by the Outdoor Council. (Call anytime).
Subsistence Z

Now that subsistence has blossomed once again in its 7 or 8 years of controversy, I believe it is time we set some parameters for resolving the expensive, divisive issue.

Probably there is no resolution of this issue that will please everyone. However, where this much ~~too~~ smoke & noise persists year after year, I can only conclude that the state is not receiving satisfactory leadership.

For the present, we need breathing room. I cannot endorse ~~a~~ hasty repairs that may perpetuate 7 more years of argument. ~~I would like to see~~ ^{It is time for} a positive approach of working within the existing subsistence law that, according to the supreme court, at least requires equal treatment of citizens as a starting point. I think that law should be implemented as an interim measure while the legislature defines basic related issues.

I firmly believe that public policy should be based on available information & options that are examined in full daylight. ^{judging from public comments,} The lack of definitive terms relating to subsistence with its implications for, rural, urban, personal, commercial, & historic uses is a major source of controversy & must be addressed by the legislature.

note - This will generate opposition from both AFN & the sportfish types

Village Sovereignty

✓ If you are asked, "Do you support sovereignty?"

I do not support separate, sovereign, governments within Alaska & the U.S. Either we are one nation or we are not.

There appears to be a proliferation of wishful thinking on what ~~will~~ sovereignty is or might accomplish. ~~However,~~ no group ^{or agency} is clearly & publically stating their goals in this area & that bothers me.

✓ Removing F & G from Politics

The F & G Boards regulatory function must be removed from the shadow of the F & G Dept. The system was designed to separate the administrative & regulatory role of these agencies as a means of safeguarding the public interest in common property management.

The present system is not healthy where the boards are directed to filter their views through the Commissioner instead of direct to the Governor. I support a clear separation of these functions. If the Governor intrudes into these roles there is no check & balance in the system.

Q-A Question: Do you support Sec 22, professional bds (like dept of ed)?

ans: I don't know. There is a danger of losing the cross-section of public involvement & drifting toward a board of retired biologists or lawyers.

I would need a close look at the implications.

Public Access

If they mean public access to the Boards —
 Alaska has by far the most public involvement
 in f & g mgt of any state.

The advisory Committee system is well proven
 & merges easily with the Regional Councils
 under ANILCA.

Note - There is a pitfall in discussing
 Regional Councils. They are mandated
 under ANILCA for subsistence review &
 carry overtones of subsistence lobby.

The Advisory Committees, however, have a
 longer, broader based history.

Any hint of non support for the Reg Councils
 will bring AFN off the wall.

Too much deference to the Councils, though,
 will label you pro subsistence.

Navigability

(I can't help much on this)

It an open ended ques re summer & winter
 use of streams for travel.

ANILCA defines land to mean "waters & interests
 therein" (sec 102) which leads directly to
 the subsistence priority on fed lands.

In addition to "access" questions it ties to
 pre-emptive activities such as mining/water
 quality, fishing, ~~trout~~ logging etc.

Comes full circle to the question of defining
subsistence & rural before locking into
 long term commitments.

~~XXXXXXXXXX~~

State Rights

The threat of federal management under ANILCA is alluded to frequently but the feds themselves are notably silent. Regardless of the substantive question, or perhaps because of it, I would like the state to assert itself in a positive, constructive manner in fish & game management.

We ~~do~~ have not explored all options for ~~satisfying~~ ANILCA & still retaining comprehensive state management. Some lawyers, successful ones I might add, believe the state is in compliance with the federal law. We do know that the feds are not "managing" either marine mammals or waterfowl, two of their primary responsibilities in Alaska.

Litigation on these issues is [a way of life] ~~at~~ the price of doing business & we have to move forward on ~~an~~ ~~best~~ factual basis & see what emerges. We are acting irresponsibly if we do not act to end this ^{perpetual} debate.