ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5716 HOUSE JUDICIARY 120

-- Act immediately to request and to take action to involve affected Native organizations directly and fully in development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall resist, with all possible force, any attempt by the State of Alaska to contract with the federal government for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.

-- Act to initiate a vigorous campaign to educate and familiarize public officials and legislators with all aspects of subsistence resources and uses.

-- Act to initiate a vigorous registration campaign across the State of Alaska.

BE IT FURTHER RESOLVED that all Native entities and organizations shall withdraw after July 1, 1990, their support for State subsistence management on federal lands and for a State constitutional amendment if there is not a satisfactory resolution pursuant to the review and revision of State subsistence management requested herein; and

BE IT FINALLY RESOLVED that in the event of the above withdrawal of Native support, all affected Native organizations shall pursue with all appropriate resources any and all legal and Congressional actions to secure their rights to Alaska's subsistence resources and uses.

Passed and approved unanimously by delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

Julie E. Kitka
President

alaska federation of natives, inc.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-2
APRIL 11, 1990

ENTITLED: ALASKA NATIVE SUBSISTENCE RIGHTS: A PRIORITY FOR ALASKA NATIVE TRIBAL MEMBERS

WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

WHEREAS, members of Alaska Native tribes today, and in the future, rely on the right to harvest subsistence resources to nourish their bodies, and for the survival of their culture; and

WHEREAS, the only way to guarantee subsistence rights for members of the Alaska Native tribes is for tribal members to be given a priority to harvest subsistence resources on all lands in Alaska that they have traditionally and customarily used;

NOW THEREFORE BE IT RESOLVED that Native tribes and organizations will work in the long-term to gain a subsistence priority for Alaska Native tribal members, and to affirm the power of Alaska Native tribes to manage and regulate subsistence uses by their members.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

Julie E. Kitka
President

alaska federation of natives, inc.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-3
APRIL 11, 1990

WHEREAS, the McDowell v. State decision by the Alaska Supreme Court puts the State out of compliance with the federal subsistence preference found in Title VIII of ANILCA and will lead to a federal assumption of fish and game management authority on federal lands in the State after July 1, 1990, unless the law is changed; and

WHEREAS, there is a substantial doubt that the law can be changed in time to avoid federal takeover of fish and game management on federal lands; and

WHEREAS, joint State and federal planning for implementing a dual fish and game management system in the State after July 1, 1990, has taken place without participation or over consultation with the Alaska Federation of Natives or other Native organizations; and

WHEREAS, the sound management of Alaska's fish and game resources is inseparable from Native culture and tradition and must be protected by all possible means; and

WHEREAS, Representative Lyman Hoffman has proposed a State constitutional amendment which would allow the State to manage subsistence resources in accordance with federal law and retain fish and game management authority on federal lands.

NOW THEREFORE BE IT RESOLVED that the body assembled herein directs the Alaska Federation of Natives to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands.

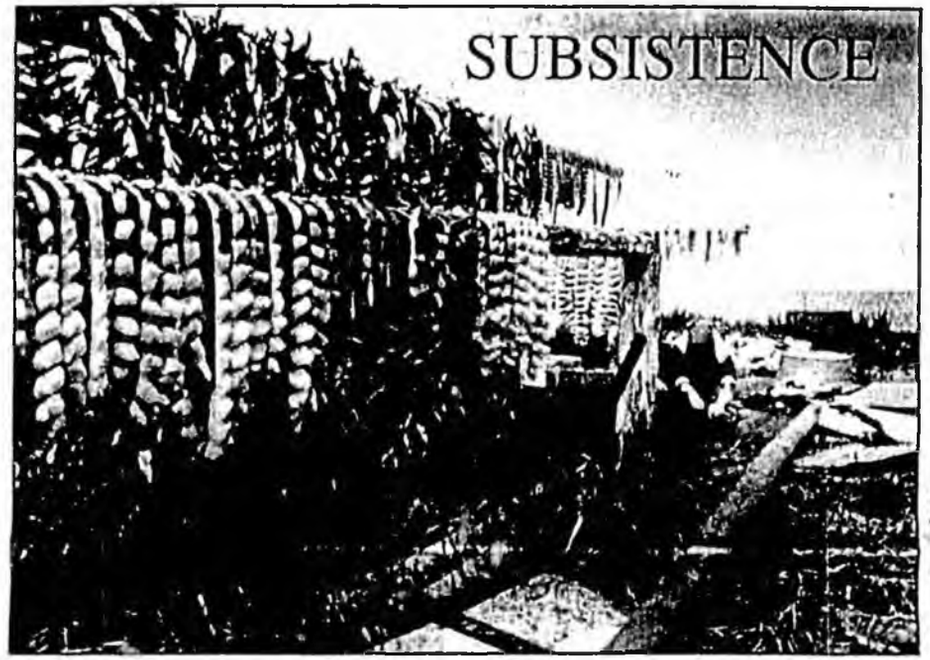
Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

Julie E. Kitka
President

AFN NEWSLETTER

SPECIAL ISSUE

Volume VIII, Number 2 *Alaska Federation of Natives* *February 1990*



THE CURRENT CRISIS: McDOWELL V. STATE

THE SITUATION of federal and state laws governing subsistence in Alaska was abruptly upset on December 22, 1989, when the Alaska Supreme Court issued its opinion in McDowell v. State. At issue in this case was whether the existing Alaska subsistence law, which provided priority subsistence hunting and fishing opportunities to rural Alaska residents, was permitted by the Alaska State Constitution.

the Alaska Supreme Court, on December 22, 1989, reversed the decision of the lower court. The Supreme Court held that providing rural Alaskans special subsistence privileges violates Article VIII, Sections 3, 15 and 17 of the Alaska Constitution. Section 3 reserves fish and wildlife in their "natural state" to the people of Alaska for "common use." Section 15 prohibits the Legislature from creating a fishery allocation system that results in an "exclusive right or special privilege of fishery." Section 17 requires statutes gover[illegible] hunting and fish-

up the case again. If rehearing is denied, the case will be sent back to the Superior Court to determine the practical consequences of this new rule of constitutional law.

One of the first things the Superior Court will have to decide is which part or parts of the Alaska subsistence law the Supreme Court struck down. Did the Supreme Court intend to invalidate the entire subsistence priority, or did it throw out only the rural resident limitation, leaving the subsistence priority intact?

In either case, state law is once again out of compliance with the rural subsistence prior-

position in which, if no remedy can be found by July 1, the Secretary of the Interior has a legal responsibility under Title VIII of ANILCA to assume fish and game management (with the federal rural subsistence priority) on public lands and waters in Alaska. If this should happen, the geographical extent of the Secretary's jurisdiction and his various options for management systems remain to be decided.

Various remedies for this legal dilemma have been suggested in Alaska during the last several weeks. The substantive results and political processes of each are discussed, without comment or analysis, in the article on "options" on page 5 of

SUBSISTENCE

WORKBOOK

ISSUE: REVIEW OF THE STATE MANAGEMENT SYSTEM

The Southeast Native community, through the Southeast Native Subsistence Commission and the General Assembly of the Tlingit and Haida Indian Tribes of Alaska, has agreed to work cooperatively with the Alaska Federation of Natives and the State of Alaska in gaining approval of an amendment to the Constitution of the State of Alaska which allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and requires that the State shall exercise management of subsistence resources therein in accordance with applicable federal law providing *the State will review and revise as necessary all state subsistence statutes, policies, regulations, programs and practices in every area of state jurisdiction in order to establish an overall subsistence management regime that is responsive to the true needs of Alaskans.* This workbook was prepared in cooperation with the Southeast Native Subsistence Commission to assist the State in its review of the system.

Prepared by:

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April 1990

AFN SUBSISTENCE SUMMIT CONFERENCE
SOUTHEAST NATIVE SUBSISTENCE COMMISSION

ISSUE
REVIEW OF STATE MANAGEMENT SYSTEM

Prior to July 1, 1990, Native Alaskan representatives would meet with the State of Alaska to identify areas within statutes, regulations, policies, programs, procedures, practices and organizational structures that might be reviewed and revised in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. At this point, matters of concern include, but are not limited to, the following:

- In the recent past, Native Alaskans have been confronted with experiences incurred in their exercise of subsistence rights which have created personal unhappiness, extra cost and expense, legal confrontations with legal officials or the Alaska Department of Fish and Game, or in some manner have been denied access to resources. Please find attached as Exhibit "A" an outline of some of these events.

- The Alaska Department of Fish and Game and the Alaska Board of Game have time and again provided for commercial fishing, or sports hunting and fishing or some other use or allocation of plant, fish and

wildlife resources without first establishing the scientific and baseline management information on the populations of resources. Upon determination of this information, policy consideration of sustained yield and subsistence requirements before allocation to commercial, sports and other uses has been lacking and not established as envisioned and required by ANILCA Title 8.

- The implementation of Alaska statutes, regulations, policies and enforcement procedures - are the source of many problems experienced by subsistence users and other members of the public. These are evidenced in many decisions of the federal and state courts and in cases still pending. Please see attachment "B" which outlines a synopsis of these occurrences. A review and consideration of revisions to these Alaska statutes, regulations, policies, and enforcement procedures is proposed. Simultaneously, a review and evaluation of all pending appeals and cases pending consideration in state and federal courts for possible withdrawal, dismissal or alternative resolution by the State of Alaska is proposed. These suits are costly, and create disharmony in any good faith effort to find solutions among Natives, the public and the government.

- It is observed that the ADF&G, Division of Habitat lacks legal and management authority with respect to subsistence resources and uses. This matter needs legislative policy review.

- It is observed that the ADF&G, Division of Subsistence, which is responsible for researching and documenting subsistence uses, is isolated from the advisory, policy and rulemaking system. Yet those activities require research data and information on which to base resource decisions. Closer interaction between the research and the policy making processes would enable the state to manage the resources in accordance with the priority subsistence provision and consistent with the important mandate under ANILCA.

- The definition of "rural", whether the federal or state management is controlling, needs to be resolved in a non-judicial manner, "which includes as many Alaska Native people possible and in a manner that encourages that the State Administration to adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources". It is observed that ANILCA Section 804 does not trigger a subsistence priority until a resource shortage occurs. Prior to that time a policy

to provide for subsistence allocations to non-rural individuals should be established.

- The role, the policy interface, the funding and the membership constitution of the local advisory committees, and the regional councils as contemplated by Title 8 of ANILCA has been poorly supported and implemented. Please find attached as Exhibit "C" the Sealaska Corporation paper entitled Summary Recommendations and Conclusions of Sealaska's Southeast Regional Council White Paper.

- The ADF&G enforcement policies and procedures are lacking in consistence, uniformity, guidance and sensitivity to the rights of Alaska Natives and others. The many court decisions and pending cases bear witness to this current condition. Please see Exhibit B for specific situations.

- Technical and policy interaction with federal agency planning and administration for activities on federal lands which may impact subsistence resources has occurred on a limited basis by State ADF&G, ADNR and other appropriate State agencies. More effective research, interface, advocacy and management needs to occur.

EXHIBIT A

DOCUMENTATION OF SUBSISTENCE USER PROBLEMS WITH THE EXISTING ADF&G SYSTEM

Resource Use: Subsistence Hunting - Deer
Time Frame: December 1990-January 1991 Hunting Season
Source: Raymond Dick
Community or Impact Area: Hoonah, Alaska
Date of Interview: April 24, 1990

Nature of Problem: While he is sure there are problems which have been ongoing, there is one of immediate concern to Mr. Dick. Apparently two ADF&G representatives, Bob Schroeder and Matt Kookesh, did some research in the community concerning the possible closure of the deer season in December or possible reductions in bag limits with a January month closure. Mr. Dick feels such a closure or limitation on take would create a hardship on community residents who customarily and traditionally hunt during that time period. He feels if sustained yield were truly jeopardized in which case subsistence uses could be limited, that all other outside uses should be cut off. The only change in outside permits is that there is a 3 bag limit.

Resource Use: Commercial Fishing - Regional Regulations
Time Frame: Future Commercial Openings
Source: Raymond Dick
Community or Impact Area: Southeast, Alaska
Date of Interview: April 24, 1990

Nature of Problem: Mr. Dick has been on the Board for 14 years. He has had plenty of opportunity to examine the issues for the various fisheries and between the various regions. He feel it is appropriate for the subsistence group to recommend a reduction in the percentage paid by fishermen to support the Northern and Southern Southeast Resource Associations from 3% to 1%. They have done this in the Prince of William Sound and it seems to be working. He has proposed this several times with no result. The benefit will be to fishermen throughout the region.

Resource Use: Juneau Hatchery - Enhancement Efforts
Time Frame: Future Impacts on Other Uses in Other Areas
Source: Raymond Dick
Community or Impact Area: Juneau, Alaska & Surrounding Communities
Date of Interview: April 24, 1990

Nature of Problem: Speaking from his perspective as a Board member, Mr. Dick brought up a concern about the Juneau hatchery (DIPAC). Mr. Dick is concerned about the potential impacts to other fisheries and other community uses of the resources. He has heard comments about the fish given away by the hatchery to local individuals and is concerned that the State may attempt to interpret this sort of supply as meeting a subsistence need. He is also concerned about the quality of fish and suggests that the situation be studied in detail to ensure that there are no undue negative impacts to the natural fisheries and uses.

Resource Use: Hydaburg Subsistence Fishery - Herring Eggs on Kelp
Time Frame: Over the Past Several Years to Present
Source: Bob Sanderson
Community or Impact Area: Hydaburg & Surrounding Area
Date of Interview: April 20, 1990

Nature of Problem: Mr. Sanderson has indicated that problems with the herring egg fishery have been ongoing for a number of years now. The most recent occurred with the most recent spawning and gathering effort. He feels that ADF&G is overly aggressive in their enforcement and may even be selectively enforcing or focusing their efforts on the Hydaburg residents. He is willing to recount years of this sort of harassment by the enforcement people. The most recent incident involved confiscation of herring eggs which were being obtained for an elder in the community (Sam Douglas). The enforcement people confiscated the eggs because Mr. Douglas hadn't signed his permit even though Mr. Douglas was there to receive the eggs and it was obvious that he needed help to get his allowance. Frank "Hammy" Natkong witnessed the confiscation. Bob Sanderson contends that this is not an isolated incident. It goes on all the time. He is incensed that so many limitations and such strict enforcement is focused on subsistence users which commercial users carry off tons of herring eggs. He contends that the massive harvesting for commercial uses has taken its toll. There is hardly any spawn in traditional harvest areas where "you could almost walk on the water" the spawn was so thick".

Resource Use: Saxman Subsistence - All Species
Time Frame: Over the Past Several Years to Present
Source: Tillie Kushnik
Community or Impact Area: Saxman & Surrounding Area
Date of Interview: April 24, 1990

Nature of Problem: Ms. Kushnik is a recognized leader from the community of Saxman. She has been a strong vocal spokesperson at the various subsistence summit conferences and sits on SENSC. Her disgruntlement with the system is apparent by her written and verbal testimony which she has presented. She is particularly concerned about the permit and enforcement process which has begun to make criminals out of our people for no larger crime than going to get our Native food to live on. She does not feel that this is what was intended under ANILCA and that it is certainly undermining to our basic Native rights which have never been respected and our needs which have never been met. She is now concerned about ADF&G plans to commercialize the sea cucumber. She is afraid that resource will be depleted in the same manner as the herring egg resource and with no thought to the Native subsistence uses. The Saxman IRA Council conducted a meeting on April 24 and voted to support Ms. Kushnik's input as typical of the kinds of problems that the community has encountered with the system.

Resource Use: Sitka Subsistence - Abalone
Time Frame: 1981-82
Source: Mark Jacobs, Jr.
Community or Impact Area: Sitka & Surrounding Area
Date of Interview: April 20, 1990

Nature of Problem: Mr. Jacobs has provided copies of correspondence that he had with ADF&G concerning problems that he had with the subsistence permit process. That

supporting documentation is attached at the request of Mr. Jacobs. At the time that Mr. Jacobs applied for a subsistence permit for abalone, he was seeking to include his wife and two children on his permit as head of household. He was denied while two others (both non-Native) were issued head of household permits. He immediately protested to the Commissioner of ADF&G. His contention was that even with a stronger aboriginal claim to use of the resources he did not even get equal treatment in the system. He also raised the issue of limited subsistence uses in the face of more extensive, less limited commercial uses.

Resource Use: Sitka Subsistence Fishery
Time Frame: Past and Present
Source: Mark Jacobs, Jr.
Community or Impact Area: The Region
Date of Interview: April 24, 1990

Nature of Problem: Mr. Jacobs has expressed particular concern about regulatory language which gives sports fishermen a higher priority than subsistence users for certain fish species in certain areas by not recognizing them as having been traditionally used for subsistence. King salmon, coho and sockeye are the targeted species. His example is that sockeye salmon in Redoubt Bay near Sitka are harvested almost exclusively by sports fishermen. He has submitted strong supporting testimony concerning the cultural importance of subsistence foods to the Native cultures. That eloquent document is also enclosed because it speaks of the Native culture, including the origin of tribal and clan names which stem from land and the resources of the land.

Resource Use: Sitka Subsistence Fishery
Time Frame: Past and Present
Source: Mark Jacobs, Jr.
Community or Impact Area: The Region
Date of Interview: April 24, 1990

Nature of Problem: Another concern of Mr. Jacobs involves the limitations placed on the types of gear the permittee can uses. Subsistence users are continually losing gear through confiscation for alleged violations. In addition, the system threatens termination of any access rights if the permit holder loses or doesn't report take. He does not believe that federal law requires this sort of heavy handed management and presents a very eloquent statement concerning the need for ADF&G to even use permits, bag limits. Of course, people resist this system and process. Mr. Jacobs expressed concern that this resistance to reporting take or even applying for a permit, could be used to demonstrate decreased need and importance.

Resource Use: Personal Use Fishery
Time Frame: The Past Year
Source: Bill Thomas
Community or Impact Area: Ketchikan & Surrounding Community
Date of Interview: April 25, 1990

Nature of Problem: Mr. Thomas is a Native residing in an "urban" community. As a result, he must use a personal use permit to satisfy his subsistence needs, which it does only marginally. Personal use does not have the same protections as subsistence use and will eventually lose out as competition for the resources becomes more fierce or in the

event sustained yield is jeopardized. He is afraid that the Native people may be convinced to accept personal use permits instead of subsistence permits throwing them into the competing use arena and that this may be used to demonstrate decreased subsistence need. His own experience with personal use is that gear and use limitations with that sort of permit are unacceptable.

Resource Use: State Subsistence Management
Time Frame: Ongoing
Source: Victor Burgess, Bob Sanderson - Hydaburg
Community or Impact Area: The State
Date of Interview: April 24, 1990

Nature of Problem: Bob Sanderson (SENSC) and Victor Burgess (Hydaburg Fishery Advisory Committee) have identified flaws in subsistence law which must be corrected. They believe that Natives have rights superior to other state citizens and therefore should not concern themselves with discussion of a constitutional amendment. They also believe that any appearance of acquiescence or agreement is a form of compromise and thus a potential weakening of the Native position in protecting those rights. They suggest:

- The term "reasonable" be defined in the state statute so Native hunting and fishing rights are not qualified. Subsistence regulations should be judged by the standard of whether they are necessary for conservation. The less stringent due process standard of reasonableness normally required for regulating is not applicable.

- Amend ANILCA so that Native subsistence rights are not qualified (e.g., non-commercial, customary trade). Some terms are inconsistent with Title VIII of ANILCA.

- Criteria for customary and traditional uses should be defined in statute with concurrence of Native community.

- Restrict the power of Fish and Game Boards on regulations dealing with subsistence (e.g., functions of regional councils and advisory committees, rules of operation).

- Statutes and regulations related to subsistence to be more readily understood and usable should be separate and apart from other regulations.

- Recognition by the State that Natives have exclusive subsistence rights on Native land. [Refer to Title VIII of ANILCA, Section 801, Section 1]

Resource Use: State Subsistence Management
Time Frame: Ongoing
Source: John P. Feller (Wrangell)
Community or Impact Area: The State
Date of Interview: April 24, 1990

Nature of Problem: The Native community in Wrangell is in support of the Goldbelt position which suggest an allocation of resources to residents in the balance of the state which would include their shareholders residing in an area termed "urban".

Resource Use: Subsistence Fishery - Hooligan
Time Frame: 1988-1990
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Chilkat and Chilkoot Rivers - Haines
Date of Interview: April 24, 1990

Nature of Problem: The Haines ANB/ANS Camp 5 has submitted a resolution concerning disruption of the hooligan fishery in the Chilkat and Chilkoot Rivers and suggesting a right of way to be given to hooligan fishermen and that ADF&G enforce a subsistence priority.

Resource Use: Subsistence Fishery
Time Frame: Future Uses
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Chilkat Lake - Haines
Date of Interview: April 24, 1990

Nature of Problem: Native subsistence users are recommending the opening of Chilkoot Lake to subsistence.

Resource Use: Subsistence Fishery
Time Frame: Future Uses
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Chilkoot Inlet - Haines
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended that subsistence fishing be allowed on Chilkoot Inlet 7 day a week.

Resource Use: Subsistence Fishery
Time Frame: Future Uses
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: All Areas
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended that the limitation on number of fish taken for subsistence be removed.

Resource Use: Subsistence Fishery - Halibut
Time Frame: Future Uses
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Haines & Surrounding Area
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended the protection of halibut.

Resource Use: Subsistence - Seaweed

Time Frame: Future Uses
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Haines & Surrounding Areas
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended the protection of seaweed areas.

Resource Use: Subsistence
Time Frame: Future Uses
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: All Areas
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended the development and implementation of a traditional management plan.

Resource Use: Subsistence Fishery - Hooligan
Time Frame: Future Uses
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: All Areas
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended that ADF&G take measures to protect the hooligan resource.

Resource Use: State Management System
Time Frame: Present & Future
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Haines & Skagway & Surrounding Areas
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended that Haines and Skagway be allowed to have their own ADF&G local advisory committees.

Resource Use: Subsistence Uses
Time Frame: Present & Future
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: All Areas
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended that the regulatory system allow the taking and harvesting of traditional subsistence foods, such as sea gull eggs.

Resource Use: Subsistence Hunting - Moose & Bear
Time Frame: Present & Future
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Haines Area
Date of Interview: April 24, 1990

Nature of Problem: Subsistence hunters have recommended that the number of outside moose hunters in the area be limited and that the bag limit on bears be increased in areas where bears impact the moose population.

Resource Use: Subsistence Fishery - Enhancement
Time Frame: Present & Future
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: All Areas
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended that the state involve itself in more fishery enhancement programs.

Resource Use: Subsistence Fishery - Enhancement
Time Frame: Present & Future
Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)
Community or Impact Area: Chilkoot River & Inlet
Date of Interview: April 24, 1990

Nature of Problem: Subsistence users have recommended that salmon fingerlings be dumped into the Chilkoot River and not in the Chilkoot Inlet in order to ensure salmon return.

Resource Use: State Subsistence Management
Time Frame: Present & Future
Source: Marilyn Wilson
Community or Impact Area: All Areas
Date of Interview: April 24, 1990

Nature of Problem: Ms. Wilson suggests that the Board of Fisheries and the Board of Game make determinations from the criteria of each unit rather than statewide determination, such as the bear population in Haines highly impacts the population of moose which is causing an imbalance in the population. She also suggests more accountability and consistency in Board determinations concerning subsistence areas and subsistence uses; that the State actively seek financial assistance promised to them by ANILCA for implementation; that rules and regulations be simplified and minimized; and that the State ensure that only subsistence representatives sit on regional councils in compliance with ANILCA.

Resource Use: Subsistence Uses
Time Frame: Present & Future
Source: Klawock Heenya Fisheries Committee (Corrine Garza)
Community or Impact Area: Area 3B
Date of Interview: April 25, 1990

Nature of Problem: The Klawock Heenya Fisheries Committee supports the AFN, SENSC and CCTHITA position on subsistence. For their area, they recommend that Area 3B be closed to commercial harvest of wild stocks of yane (sea cucumber), macrosistis kelp, black seaweed, red ribbon seaweed, geoducks, abalone, crab, sea otter,

wild asparagus, and herring eggs. They especially object to the removal of kelp from their area for use in the Prince William Sound Fishery. It is particularly disturbing since the herring roe on kelp pound fishery proposal was rejected by the Board of Fisheries.

Resource Use: State Subsistence Management
Time Frame: Present & Future
Source: Klawock Heenya Fisheries Committee (Corrine Garza)
Community or Impact Area: All Areas
Date of Interview: April 25, 1990

Nature of Problem: Klawock has recommended that faxed permit applications should be accepted since ADF&G personnel are not in their office during harvest times but are out on their boats enforcing the permit regulations. Fines for not having a permit in possession should be nominal if the person already has a permit. Permits should be transferrable when issued to the elderly or handicapped.

Resource Use: Subsistence Fishery - Halibut & Red Snapper
Time Frame: Present & Future
Source: Klawock Heenya Fisheries Committee (Corrine Garza)
Community or Impact Area: All Areas
Date of Interview: April 25, 1990

Nature of Problem: Klawock recommends that commercial fishing of red snapper year round be cut and that the red snapper subsistence limit be increased. They also recommend that ADF&G provide for year round subsistence taking of red snapper and halibut.

Resource Use: State Subsistence & Sport Fishing Management
Time Frame: Present & Future
Source: Klawock Heenya Fisheries Committee (Corrine Garza)
Community or Impact Area: All Areas
Date of Interview: April 25, 1990

Nature of Problem: Klawock recommends that ADF&G not require sport fishing license for subsistence activities. For example, clam digging.

Resource Use: State Subsistence & Commercial Fish Management
Time Frame: Present & Future
Source: Klawock Heenya Fisheries Committee (Corrine Garza)
Community or Impact Area: All Areas
Date of Interview: April 25, 1990

Nature of Problem: Klawock recommends that ADF&G allow seiners to give caught king salmon to subsistence users rather than to throw them back when they may have already died.

Resource Use: State Subsistence Uses - Traditional
Time Frame: Present & Future
Source: Klawock Heenya Fisheries Committee (Corrine Garza)

Community or Impact Area: All Areas
Date of Interview: April 25, 1990

Nature of Problem: Klawock recommends that ADF&G allow for taking of subsistence foods out of season for traditional ceremonies and practices, such as potlatches and 40-day parties.

Resource Use: Sitka Subsistence Fishery
Time Frame: Past and Present
Source: Mark Jacobs, Jr.
Community or Impact Area: The Region
Date of Interview: April 25, 1990

Nature of Problem: Mr. Jacobs speaks to the issue of designation of subsistence species. In Sitka's case only sockeye and herring were determined subsistence species. He contends that this sort of screening and designation defeats the purpose of ANILCA and seriously erodes Native rights. He speaks to the long term uses of all wild resources in the area by Native people and of their ongoing importance and use in traditional, religious and cultural activities.

ALSC
Daniels/Caldwell
April 26, 1990

Exhibit B

CONCERNS WITH STATE OF ALASKA'S IMPLEMENTATION OF THE SUBSISTENCE PROVISIONS OF ANILCA

As a result of the AFN sponsored statewide Subsistence Summit Conference held in Anchorage on April 10 and 11, 1990, Native leaders passed resolutions urging the AFN Board to adopt and implement a comprehensive subsistence policy. By a unanimous vote, the conference adopted a resolution directing AFN "to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands". Resolution No. 90-3. In a separate resolution, the Native community conditioned its support for a constitutional amendment upon the State's agreement to, prior to July 1, 1990:

> review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaskan Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstances have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

Resolution 90-1.

That there is widespread dissatisfaction with the State's implementation of the subsistence priority is reflected by the proliferation of litigation in recent years. At the heart of the problem is the State's reluctance to fully embrace the concept of providing a priority for subsistence users. Indeed, the results

of a recent RurAL CAP survey indicate that the State's fish and game management system generally favors sport and commercial interests over subsistence interests. Results of A Survey: Implementation of ANILCA's Subsistence Priority and Advisory Committee System by the State of Alaska, Rural Alaska Community Action Program, Subsistence Department, September, 1989. Plainly, a thorough review of the State's regulatory system is needed, as is a review of the State's position in all pending subsistence cases in state and federal courts. The following list of major concerns need to be addressed,.

I.
THE PRIORITY

a. Definition of "Rural"

The State's current definition of rural was invalidated in the Kenaize case. On April 17, 1990, Judge Holland ruled that the Court of Appeals' decision in Kenaize cannot be read as finding that the entire Kenai Peninsula is rural. Instead, he found that the Court of Appeals in Kenaize only provided the district court and the parties with its definition of the term "rural" and left the district court and the Alaska fisheries regulators the job of applying that definition. He suggested that should Alaska's subsistence law survive the McDowell decision, a remand to the Board of Fisheries (or the Joint Boards) would be required so those bodies could determine what portions of the Kenai Peninsula are rural in accordance with the interpretation of the term "rural" by the Court of Appeals. Judge Holland gave no guidance to the State on what would be acceptable in the way of a definition of rural.

The definition of "rural" should be resolved in a non-judicial manner. If a constitutional amendment is approved by the Legislature, and then by the voters in November, which would allow the State to continue to manage subsistence uses on the public lands in Alaska, the State should amend its statutory definition of rural in such a manner as to ensure that the maximum number of Alaska Natives who wish to continue to participate in a subsistence way of life have the opportunity to do so. As was proposed in negotiations with the State prior to the McDowell decision, this could be accomplished by adopting the proposal submitted by RARA which essentially calls for a freeze of all current rural designations and the implementation of a permit system for individuals, who, either themselves or a member of an identifiable group, household or tribe, have engaged in customary and traditional uses in the past. This would give non-

rural subsistence users a priority over sport and commercial users, but not over rural subsistence users. Such a system would be consistent with ANILCA and could be implemented in non-rural areas by a permit system.

b. Customary and Traditional Uses

1. The "eight criteria" for identifying customary and traditional subsistence users as set out at 5 AAC99.010(b) needs to be revised so as to be more helpful to the Boards of Fisheries and Game and to more accurately reflect the diverse subsistence lifeways and lifestyles of rural Alaska. See RuRAL CAP's Comments in Support of Discussion Proposal for Revising the Eight Criteria (submitted to Joint Boards on 10/24/89).

2. Eliminate statutory and regulatory prohibitions on subsistence uses of certain species and stocks, i.e., those recently introduced or reintroduced, or those which historically have been utilized as a secondary subsistence resource.

3. The Boards of Fish and Game must be consistent in their respective application of criteria for determining customary and traditional uses.

4. The boards have applied the criteria for customary and traditional uses by focusing on the number of people in a community with subsistence uses, rather than on the existence of such uses. This excludes people from the priority simply because a majority of their neighbors do not have such uses.

c. Customary Trade

1. The Board of Fisheries prohibits any cash sales of fish and fish by-products taken for subsistence purposes. See 5 AAC 1.010(d). This regulation is currently the subject of challenge in Tanana Fish and Game Association v. Alaska. The plaintiff asserts that the regulation violates §804 of ANILCA which mandates that customary and traditional uses, including customary trade, be given priority over competing non-subsistence uses.

Under ANILCA, the State is affirmatively obligated to provide for customary trade. Since ANILCA's passage, the State has concluded no studies to determine the extent of customary trade of fish and fish by-products and thus has enacted no regulations which provide for such uses. The Subsistence Division has reportedly undertaken such a study; it should be directed to complete its research and, where customary limited exchanges for cash are found, the Board of Fisheries should enact regulations providing a priority for such customary trade.

2. The State currently has no definition of "customary trade". One should be included in the State's revision of the "eight criteria". This definition should make plain that in identifying "significant commercial enterprises" as opposed to

subsistence "customary trade", the boards should evaluate the income earned from the trade by the subsistence users and not the earnings, processors, wholesalers, etc. The court in United States v. Sakurai dismissed criminal charges against two residents of Hydaburg who had earned $7,000 to $9,000 for the sale of herring roe-on-kelp during the previous two years finding that such sales were "customary trade" within the meaning of ANILCA and that such amounts did not constitute a "significant commercial enterprise".

d. Reasonable opportunity

1. Title VIII of ANILCA requires that subsistence uses be given priority. The "reasonable opportunity" standard has been used to deny the priority. This statutory term should be defined in a way that is meaningful. In John v. Alaska, the State used the "reasonable opportunity" standard to deny residents of Mentasta and Dot Lake the right to fish at their historical fishing site of Batzulnetas on the upper Copper River.

e. Tier II Situations

1. The State needs to develop standards for protecting subsistence uses where there is a shortage of the resources. There are some hunts open to sport hunters which should be limited to local subsistence users. The Nelchina caribou herd in Game Management Unit 13 is a good example. It is heavily harvested by hunters from the Anchorage bowl, the Matsu Valley and the Glenn Highway areas. At the same time, subsistence hunts are severely restricted. The State should consider invoking Tier II protections in such areas.

f. Seasons, bag limits and means restrictions

1. Regulations which impose seasons and bag limits should be reviewed to determine their consistency with traditional hunting seasons and harvest practices. The federal court in Bobby v. Alaska invalidated such restrictions on subsistence moose and caribou hunting in Lime Village because they were inconsistent with traditional hunting seasons and with the communal system of sharing game resources. Where seasons and bag limits are imposed, they must conform to actual subsistence practices.

2. The same can be said for means restrictions.

3. State regulations need to allow flexible, exigency-of-the-occasion, hunting inasmuch as it is an inextricable part of Alaska Natives subsistence way of life. Hunting in such situations should not be illegal.

g. Controlled use by sport fishermen

Use by sport fishermen should be controlled on certain rivers where their use disturbs traditional harvest areas used by local subsistence users, e.g. on the Togiak, Kanektok and Goodnews rivers. Their use has also resulted in habitat destruction, as along the banks of the Russian River on the Kenai Peninsula.

II.
SUSTAINED YIELD

a. The Department of Fish and Game and the boards have time and again provided for commercial fishing, or sport hunting and fishing, or some other use or allocation of plant, fish and wildlife resources without first establishing the scientific and baseline management information necessary to determine sustained yield and subsistence requirements. This determination must be made for each resource before allocation can be made to commercial, sport and other uses.

b. The State needs to protect subsistence resources that are currently experiencing trouble, e.g.,

1. Salmon (over-harvest and high-seas interception)

2. Abalone (predation pressures added by expanding sea otter herd)

3. King crab (possible over-harvest and natural unexplained causes)

4. Dungeness crab (overharvest and loss of habitat due to log transfer sites)

5. Problems with certain fish runs in streams affected by logging along stream banks.

c. The State should develop subsistence management plans for newly developing commercial fisheries, such as sea cucumbers, urchins and Goeducks. The lack of such a plan for sea cucumber harvests in Southeast Alaska is currently the subject of litigation in Tlingit and Haida Central Council v. State.

d. At the same time, the State must define "sustained yield" and stop invoking the concept as an excuse for denying subsistence uses when no scientific sustained yield determination has been made. The lack of any articulated definition of the statutory term combined with the absence of any formal game management plan for the Kilbuk caribou herd is the subject of litigation in Kwethluk IRA Council v. Alaska.

III.
ACCESS

[Any problems here? What about use of ATV's by subsistence users, or use of airplanes by sport hunters?]

IV
REGIONAL COUNCILS AND LOCAL ADVISORY COMMITTEES

Congress intended the system of local and regional advisory committees to serve as the major mechanism to ensure local and regional participation in making decisions which affect subsistence uses of fish and wildlife on federal and other lands in Alaska. This system has never been properly implemented. See Southeast Regional Council White Paper, dated November 1989. Some of the problems include:

a. The regional councils and advisory committees are not adequately funded. Lack of funds for staffing and travel contribute to the committees' and councils' inability to fulfill their statutory mandate. The councils and advisory committees should be provided sufficient funding to attend meetings prior to scheduled meetings of the Fish and Game Boards. They should also be given sufficient funding to send a representative to the board meetings.

b. Members of the regional councils and local advisory committees receive little or no training. As a result, many do not understand what their role is, what the function of the committee or council is, or how the whole system of fish and game management works.

c. Composition of the councils and committee often is heavily weighted in favor of sport and commercial interests. "Indeed, in the Southeast region, commercial users outnumbered subsistence users, and in the South Central region, both sport and commercial users outnumbered subsistence users". See RuRAL CAP Survey. Congress mandated the advisory committee and regional council system so subsistence concerns could be addressed. This purpose is frustrated when the committees and regional councils are dominated by commercial or sports interests.

d. Reports by committees to the Secretary of the Interior are seldom completed because of lack of funds and/or staff. When reports are submitted, there is no follow-up from either the State or the federal government.

V.
LAND USE DECISIONS

Technical and policy interaction with federal agency planning and administration for activities on federal lands which may impact subsistence resources has occurred on a limited basis by State ADF&G, ADNR and other appropriate State agencies. More effective research, interface, advocacy and management needs to occur.

VI
BOARDS OF FISH AND GAME

a. Composition

The Boards are heavily weighted to favor sport and commercial interests. This is perhaps the most fundamental problem encountered by Native subsistence users. As the Kotzebue Advisory Committee has concluded:

> The process used in the past to create the state wildlife regulations did not allow Native participation. The system currently used by the Alaska Board of Game and the Alaska Department of Fish and Game effectively precludes Native participation in the design, implementation and enforcement of state game regulations. While there is the appearance of participation in the form of advisory committees competing statewide sport-hunting and commercial-hunting interests seem always to outweigh Native Alaskan testimony in front of the Board of Game. The Alaska Department of Fish and Game still does not allow effective, local input into the design of management plans before the plans are brought to the Board. The situation is just as if the State of Alaska had invited the Native Alaskan hunter to the meeting, then asked him to please sit in the back and remain quiet.

Kotzebue Fish & Game Advisory Committee, Regulation Review: A Review of Game Regulations Affecting Northwest Alaska 25 (October, 1986). And as former Board of Fisheries member Jessee Foster recently observed about the processes of the fish board:

> fishermen from Western Alaska...most of the time are treated as strangers to the State management system. In most cases, they have to sit by themselves, and usually are treated accordingly by most of the Board members and ADF&G staff.

The Tundra Drums 13 (4/5/90)

These comments point to another aspect of the problem, and that is the overwhelming influence of the Department of Fish and Game on the decision-making process of the boards. As reported by the Legislature's Senate Advisory Council, for example:

> Since 1976, the board has approved over 92% of the 1500 plus department regulatory proposals that have come to a vote. Less than 26% of the 2600 voted on proposals from other sources have been approved. The bulk of the 1400 to 1700 proposals not voted on by the board, and thus rejected, were proposed (by) non-departmental resources.

The Alaska Board of Fisheries: Fisheries Management Alternatives 12 n.1 (October 1987). This problem could be ameliorated if the Department made recommendations favorable to subsistence uses, but it does not, and neither does the Department's Subsistence Division. As RurAL CAP noted in its October 1989 comments to the Joint Boards on the eight criteria (pp. 1.2):

> The problem, as we see it, is that the mere random listing of all of the known components of subsistence uses has not proved especially helpful in the regulatory process. One more reason for this is that the Subsistence Division, which has the expertise to do so, has refused to make specific recommendations on whether a particular use either does or does not qualify as a subsistence use under the eight criteria. Rather, the Division is content simply to present all of the known facts (sometimes in great detail) about a particular use or use pattern, leaving it to the boards without guidance to sort through the facts and attempt to apply the criteria. We are not suggesting that the boards should be bound by the recommendations of the Subsistence Division, just that they should direct the Division to make such recommendations for the benefit of the boards. It is, after all, the statutory duty of the Division not only to gather the facts, but also to "make recommendations to the Board of Game and Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing", AS 16.05.094(6).

b. Procedures

1. The Fish and Game Boards routinely ignore recommendations of the Regional Councils. Although required by state law to explain their reasons for rejecting Regional Council recommendations in writing, the Boards rarely do so. This practice is currently the subject of litigation in federal district court in Sumner Strait Advisory Committee v. Alaska, No. 90-040 Civ.

2. The Joint Boards' anti-petition policy, 5 AAC 96.625(f), violates the Administrative Procedure Act, AS 44.62.220 et seq., which gives interested persons the right to petition the Board of Game for the adoption, modification or repeal of a regulation at any time, regardless of the existence of an emergency. It also violates the Boards' affirmative duty under ANILCA and AS 16.05.258 to repeal, modify and adopt regulations necessary to accord priority to subsistence uses. The validity of 5 AAC 96.625(f) is currently the subject of litigation to State

Superior Court in Native Village of Dot Lake v. Alaska. No. 5FA-89-997 Civ.

3. Fish and Game Board proposals dealing with subsistence must sometimes wait up to two years to be calendared for action. The Boards provide no priority for subsistence proposals.

4. Agendas for Board meetings provide no way for interested persons to know when a specific proposal will be considered. This is a strong disincentive to participate in the process by attending the meetings.

5. The Boards must regulate in a fashion that is both consistent with scientific management procedures and in a manner that has the least possible impact o subsistence users.

6. The Boards need to make findings of fact with respect to data presented and identify any scientific principles which are being applied.

7. The Board of Game should enact separate subsistence regulations for subsistence hunting. Often, all seasons and bag limits are the same for commercial, sport and subsistence users.

[8. No subsistence defense, AS 16.05.259--is this still a problem after Bobby?]

VII.
ALASKA DEPARTMENT OF FISH AND GAME

a. The Division of Subsistence receives inadequate funding, staff, or support within State Government.

b. The Division of Habitat lacks legal and management authority with respect to subsistence resources and uses. It also receives inadequate funding, staff, or support within State Government.

c. The Division of Subsistence needs to develop comprehensive subsistence harvest plans for each region which can be integrated with sport and commercial fish and wildlife plans. Such plans will require a quantitative analysis of past and present subsistence harvests in each area of the state.

d. The Division of Subsistence, which is responsible for researching and documenting subsistence use, does not interact with the resource management authority, especially the Regional Council and Advisory Committee system.

e. As noted above, the Division of Subsistence has the statutory duty not only to gather information about the subsistence socio-economic/socio-cultural systems of rural Alaska, but also to "make recommendations to the Board of Game and Board of Fisheries regarding adoption amendment and repeal of

regulations affecting subsistence hunting and fishing". AS 16.05.094(6). Instead of making specific recommendations to the Boards on whether a particular use qualifies as a subsistence use under the eight criteria, the Division simply presents all the known facts about a particular use or use pattern, leaving it to the Boards to attempt to sort through the facts and attempt to apply the criteria. The Division should be advocating on behalf of subsistence users--as the sport and commercial division do for their user groups.

f. ADF&G enforcement policies and procedures are lacking in consistency, uniformity, guidance and sensitivity to the rights of Alaska Natives and others. The many court decisions and pending cases reflect this fact.

g. A computerized database of all subsistence information in Alaska should be created from which all interested parties can retrieve and/or contribute information.

VIII
MISCELLANEOUS

a. Catch and release

b. State regulations are often inconsistent with traditional practices, i.e., grizzly bear regulations which violate traditional values.

c. Coastal Zone Management Plans not implemented to protect subsistence.

d. State should adopt regulations to protect anadromous fish habitat.

By: Chris McNeil, Esq.
April 20, 1990

Subsistence Legal Issues

I. Why Are we Here?

A. The Deal among the Federal Government, the State of Alaska and Native People has been upset.

1. Title VIII of ANILCA is the Agreement

2. The rule of ANILCA is that the State is entitled to manage fish and game on federal lands, if and only if, they provide for a subsistence priority for rural residents. Otherwise, the State is not entitled to manage fish and game on federal lands.

3. The manner in which the State must fulfill their part of the deal is through a law of general applicability.

4. The State attempted to fulfill that promise with the 1986 State Subsistence law which provided for a rural subsistence preference.

5. The McDowell case (McDowell v. State, December 1989, Supreme Court of Alaska) upset the applecart because it held that the rural priority in the State Subsistence law was unconstitutional under the State's Constitution.

6. The McDowell case is a focal point and catalyst of this subsistence conference, but not the only reason.

a) We also need to examine how ANILCA is being implemented by the State in relationship to other issues.

B. Where does this leave us?

1. Under the McDowell case, the State has until July 1, 1990 to comply with ANILCA, or it is likely the there will be dual management of fish and game.

a) Various federal agencies would manage federal lands

b) The State would manage State lands

2. It is more probable than not that if the State does not meet the deadline, there will be dual management.

a) Mr. Stieglitz, Regional Director of the US Fish and Wildlife Service has indicated that the federal agencies are planning for *all contingencies* to implement federal management.

b) Judge Holland in the recent Kwethluk v. State (District Court Alaska) has already invited the federal government to enforce fish and game priorities in a subsistence case, prior to July 1st.

(1) While McDowell is unresolved, a federal judge is prepared to direct the federal government to enforce when he is concerned that the State may not do so.

II. Subsistence is a Resource Management *and* a Resource Allocation Issue

A. THEORY: A key issue is that the State has already *allocated* fish and game resources, notwithstanding the fact that much of the public debate about subsistence is couched in terms of resource management and equal access.

1. We cannot overlook the obvious. According to the Alaska Department of Fish and Game, in 1985, 95% of the fish went to commercial fisherman, 1% to subsistence users, and 4% to sport fisherman. *Alaska Fish & Game, November - December 1989, p.18*

2. The percentages might be subject to some debate either way, but one cannot miss the fact that the vast majority of the fisheries resource goes to commercial fishermen. This was a fact which was not lost on the Court of Appeals in the Kenaitze case (860 F.2d 312, 9th Circuit, 1988).

3. How can this be? In order to understand this, one must look to how plant, fish and game resources are managed and allocated under the State constitution. First Concepts.

B. Resource Management is a concept which relates primarily to the concept of keeping the resource healthy.

1. This is stated in the *Sustained Yield* concept in Article VIII, Section 4 of the State Constitution.

2. Article VIII, Section 4. *Fish, forests, wildlife, grasslands, and all other replenishable resources belongs to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.*

C. Resource Allocation is a concept which related primarily to how one divides up the pie of the fish and game resource.

1. The State Constitution also has a provision for this in the same section.

2. The Phrase "*... subject to preferences among beneficial uses.*" effectively permits the State, by law and regulation to allocate the resources among classes of uses.

3. In other words, within the concept of *sustain yield* the State can give more or less of the resource to one use over another. This is how 95% of the resource can be allocated to a commercial fishery and much less to subsistence and sport fisheries.

4. Equality of allocation of the plant, fish and wildlife resources is not required by the State Constitution.

a) Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, (628 P.2d 897, Alaska 1981)

D. In order to understand how this works we must review these concepts from State Constitutional Perspective in addition to understanding how the federal subsistence priority works under ANILCA.

E. Three Major Fish and Game Management Decisions types by the State Supreme Court

F. The general rules are these:

1. The fish and game resources of the State are for the common use of the people.

a) That is, there is to be open access to the fish and game resources by all of the people.

b) Article VIII, Section 3. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

2. There will be no exclusive rights or special privileges, unless you have an exception within the State Constitution.

a) This further describes the general idea that fish and game resources are generally available to the people and cannot be limited by special rights unless you have an exception to the general rule.

b) Article VIII, Section 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fisher-

men and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

c) This same section outlines what appears to be the only exception to the rule of no exclusive rights or special privileges: It states: *This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.*

3. What does this all mean? I suggest that as things stand today and under Alaska Constitutional law, the exception has literally swallowed the rule, hook line and sinker.

a) The exception in the State Constitution which allows the establishment of limited entry fishery has become the rule. 95% of the fishery resource is effectively allocated to commercial fishery. This provision would probably not be constitutional, but for the exception.

b) Access to the remaining 5% of the States fish and wildlife resources, including subsistence and sport fishery, is governed by the common use rule and no exclusive rights or special privileges.

c) Native people and the sports fishermen are fighting with each other about a very small percentage of the overall States fisheries resources. And this is all notwithstanding the fact that the letter of the State subsistence law is to provide subsistence users with a preference for use of the resource.

d) How does this work?

4. Limited Entry for Fish

a) Commercial Fisheries Entry Commission v. Apokedak, (606 P.2d 1255, Alaska 1980)

b) Stands for the proposition that grandfathering fisheries rights is ok under the Alaska Constitution. The fact that you had to be a gear owner and hold a gear license in order to qualify for a limited entry fishery permit passes the Equal Protection test of the State and federal Constitutions.

c) State v. Ostrosky, 667 P.2d 1184 (Alaska 1983)

(1) Held the Limited Entry Permit law constitutional according to Article VIII, Sections 3, 15, and 17.

(2) This is structurally exactly the same constitutional analysis which was made in McDowell, but the Court upheld the LEP law, rather than struck it down.

5. Exclusive Guide Areas

a) Owsichek v. State, 763 P.2d 488 (Alaska 1988)

(1) The State Statute which provided for Exclusive Guide Areas which were effectively *owned* by guides, was held unconstitutional in violation of Article XIII, Section 3, the common uses of fish and wildlife clause

(2) When reviewed in the context of overall State constitutional law on fish and game management, it meant that unless there was some constitutional exception, like for limited entry fisheries, the law is unconstitutional.

(3) Section 3 - Common Use. Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

6. Subsistence

a) Madison v. State, 696 P.2d 168 (Alaska 1985)

(1) Subsistence regulations imposed by the Fisheries Board which gave a preference to rural residents were struck down as inconsistent with the 1978 Subsistence statute. This concerned first tier subsistence rule which allowed a subsistence preference when there was no resource scarcity and the State statute did not expressly state a rural residency requirement.

b) McDowell v. State, December 1989, Supreme Court of Alaska

(1) McDowell held that the rural residency requirement of the 1986 State Subsistence law was unconstitutional because it was in violation of Articles VIII,

(a) Section 3: Common Use

(b) Section 15: No exclusive rights or special privileges

(c) Section 17: Equal Protection for access to Natural Resources

i) Article VIII, Section 17. Laws and regulation governing the use or disposal of natural resources shall apply equally to all person similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

G. What is the moral of this story?

1. A constitutional amendment to the State Constitution is necessary in order to bring the State into compliance with ANILCA Title VIII.

2. The State is accustomed to allocating it fish an wildlife resources among uses and with it, to users.

3. The allocation of State fish and wildlife resources does not have to be equal and it is not equal.

4. The Supreme Court is imposing increasingly stringent equal protection standards on fish and wildlife management and allocation issues.

a) The limited entry fishery statute was subjected to only least stringent equal protection standards, as the court found that no fundamental right was at stake.

b) On the other hand, the Exclusive Guide Areas and the Rural Subsistence Preference were both subjected to harsher and more difficult court equal protection standards.

5. If the State Subsistence dispute is not resolved through some form of negotiations among all of the parties which have an interest in it, it will be resolved piecemeal by litigation or a probable attempt to get Congress to resolve the dispute.

6. The most inevitable dispute should the State decide not to comply with ANILCA and there is dual management will be who has jurisdiction over the fish-

eries under ANILCA. The State could contend that it has control of the fisheries because it has jurisdiction of navigable waterways. On the other hand, the claim could be made that the federal government has jurisdiction over fish under ANILCA because the navigable waterways are defined as *public lands* under ANILCA

III. Compliance with ANILCA: Disputes between the State and Native people who are subsistence users over the implementation of the ANILCA Subsistence priority.

A. Definition of *RURAL*: Kenaitze v. State. The State failed to provide a subsistence priority for the Kenaitze Tribe because it determined that the entire Kenai Peninsula was not *rural*. The Court held that the State's definition of *rural* in the State Subsistence Statute is inconsistent with the definition of rural in Title VIII of ANILCA. The Court ordered the State to provide a limited subsistence fishery to the Kenaitze.

1. The State definition of *rural area* is where subsistence is a "principle characteristic of the economy", where the Court said that *rural* should be given its ordinary meaning, consistent with how the term is used in other federal statutes.

2. Even if the State should amend its constitution to provide a rural preference, there is a strong likelihood that the Kenaitze issue of the definition of rural would still be unresolved, unless the State also amended its subsistence law to meet the ANILCA standards.

3. The Court has suggested that perhaps a numerical criteria would be the answer to a definition of what is rural and what is not.

4. While Kenaitze has been criticized by some as failing to understand Alaska and ANILCA's legislative history, the 9th Circuit Courts decision recognizes culture and a dynamic view of cultural change within the framework of ANILCA. In the Courts view, the simple infusion of cash into cultural and traditional uses does not defeat a subsistence right.

5. The Court announced that it will not necessarily defer to either the Secretary of the Interior or the State of Alaska when it comes to interpreting ANILCA.

B. Customary and Traditional Uses: The State Boards of Fisheries and Game have not agreed with Alaska Native definitions of *Customary and Traditional Uses* and how these uses should impact seasons and bag limits, among others. The courts have said in:

1. Bobby v. State, (Alaska Civil No. A84-544). The State Game Board had imposed a closed season and bag limit on the Lime Village for caribou and mouse. The Court held that the closed season was inconsistent with traditional hunting seasons and the bag limits were not consistent with the traditional communal sharing of the resources.

a) The Court also decided that the State was required to make a scientific determination of game populations and subsistence uses when it made regulatory decisions concerning subsistence. The State had not done this in this case and because of this the Court refused to defer to the Boards judgment..

2. John v. State, (Alaska Civil No. A85-698). The State had closed a traditional fishing site on the upper Copper River [Batzulnetas] since 1964. None of personal use, sport use, or commercial fishery had been restricted in the Copper River drainage in favor of subsistence. The State had not gathered sufficient information concerning fish management to support its regulatory decision to keep subsistence fishery closed. By injunction, the Court permitted a 1000 sockeye subsistence catch for 1989.

3. The Court revisited the case in January 1990 to resolve outstanding issues. This issues included:

a) A key issue was the location of the subsistence fishery. The State argued that it could locate the subsistence fishery so long as it afforded a reasonable opportunity to subsistence users. The Court concluded that it was the Boards obligation to identify customary and traditional uses and fish stocks and that the Boards intense focus on location was misdirected.

b) Once a record shows that there is a customary and traditional use of a fish stock, the Board is compelled to implement a subsistence fishery by the least intrusive means. These regulations must provide a realistic expectancy that the customary and traditional use *levels* of each stock will be achieved.

c) The Board has the power to regulate subsistence fishery in times plenty in Tier I as well as in times of shortage, in Tier II.

4. Kitka v. State. (Complaint filed June 30, 1989, U.S. District Court Alaska), The Board of Fisheries determined that Sitka qualified for "customary and traditional uses" for sockeye salmon and herring roe, but not for any other fish or shell fish. Kitka claims that these determination are in violation of ANILCA Title VIII. While the case is undecided, the Court has indicated that it could find some parts of Sitka to be non-rural for purposes of ANILCA.

C. Sustained Yield. Under the State Constitution, the State is compelled to manage fish and game resources on a sustained yield principle, including subsistence.

1. Kwethluk v. State. (District Court Alaska). Kwethluk IRA sought an emergency caribou hung from the Kilbuck herd. The State Game Board determined that the herd could not maintain a sustained yield even with a limited hunt.

a) The State had neither a management plan for the herd, nor even an applicable definition of sustained yield.

b) The Court concluded that the Game Board was making game management decisions based upon its own views of "policy", rather than upon scientific game management principles.

c) The Court ordered an unusual 50 caribou hunt:

d) The State was ordered to issue special registration permits

(1) The IRA Council was ordered to a special reporting relationship of the hunt date to the ADFG

(2) The US Fish and Wildlife Service was ordered to assist in administration of the hunt, including enforcement.

(3) This scheme suggests a new three cornered implementation of ANILCA while the State's role is limited by its own laws and uncertain.

2. THCC v. State. (District Court Alaska). The Tlingit and Haida Central Council recently challenged the standard method of ADFG management of a "new"

fishery, in this case sea cucumbers and seaweed, which permits open fisheries until the resource appears to be depleted.

a) The case all requests that the State follow the State Subsistence priorities and resource determination regimes.

b) It request closure until these determinations are made.

D. The Court's Role in Implementing ANILCA and State Subsistence laws construing ANILCA. The Court has been making a concerted effort to define the limits of its involvement in the implementation of ANILCA. To this point, however, its role is constantly enlarging, rather than diminishing.

1. The Court has stated that it will be the final arbiter of the interpretation of ANILCA, rather than the Secretary of the Interior or the State of Alaska. In Indian rights cases, the ordinary rule would be to defer to the judgment of the federal agency. Kenaitze

2. The Court has stated that it does not intend to be a fish and game manager.

3. The Court regards its role as reviewing a record of Board rulemaking of subsistence regulations according to applicable standards, rather than starting all over again and substituting its judgment for a fish or game board. John v. State

4. The Court is prepared to defer the scientific game management expertise of State game managers in defining and implementing sustained yield if they utilize their professional scientific expertise, rely on proper methodologies and relevant data.

E. Customary Trade

1. US v. Skinna. On appeal to the 9th Circuit as to whether or not Skinna's take of herring roe for interstate trade falls within the meaning of customary trade under ANILCA. The question is important to determine how customary trade is implemented and how much cash is permitted before it become a commercial activity.

F. Aboriginal Hunting and Fishing Rights.

1. Gambell v. Lujan is currently being litigated in the federal district court whether there are remaining aboriginal hunting and fishing rights beyond the territorial boundaries of the State.

by: Chris McNeil, Jr.

(4/90)

SUMMARY RECOMMENDATIONS AND CONCLUSIONS OF SEALASKA'S SOUTHEAST REGIONAL COUNCIL WHITE PAPER

The subsistence lifestyle is important to Alaska's Native people for cultural, religious, social and economic reasons. It is the least threatening of all resource uses, yet because of its complexity, it has become one of Alaska's most controversial and most misunderstood issues. In order to better understand the issue, Sealaska has authorized certain research projects. The Southeast Regional Council (SERC) White Paper is a part of that effort. The conclusions and recommendations resulting from that study are summarized here.

THE REGIONAL COUNCIL - FEDERAL AND STATE LAW

ANILCA establishes an extremely specific and discreet area of concern and responsibility for the regional councils over subsistence uses and needs. Under state law, the local advisory committees and regional advisory councils have a much broader area of concern. The local advisory committees provide a forum on matters relating to the management of *all* fish and wildlife resources - not just subsistence uses. Not only must the regional council system provide for public participation in the regulatory process to help protect subsistence uses, but it must also provide a forum for input on matters relating to all fish and wildlife resources.

The Southeast Regional Council recognized the tension created by these two governing laws in November 1986 when they determined that first priority would be given to subsistence-related issues and proposals with other region-wide fish and game issues to be discussed as time allowed. Non-subsistence allocations issues would not be discussed unless all other business has been completed and adequate time remained for proper discussion and consideration.

While the councils have not been effective, with proper guidance and budgetary support, they could ensure that the resources are managed in accordance with the priority subsistence provisions and consistent with the important mandate under ANILCA.

THE PRESENT SYSTEM AS IMPLEMENTED BY THE STATE

ANILCA requires an administrative structure be established to enable rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands in Alaska. At the time ANILCA passed, the state already had a network of local advisory committees making it necessary to establish the regional councils to comply with ANILCA. The ADF&G Division of Boards administers state and federal funds which maintain the committee/council system.

There are 79 local advisory committees and 6 regional councils in the state. In Southeast there are 21 local committees. The chairmen of which comprise the regional council. Committees and councils meet twice a year in the fall and spring before the regulatory hearings. Council representatives attend 2 board meetings each year.

SERC has held 20 meetings since 1982 (1-2 meetings/year). Individuals most likely to understand the importance of subsistence to the Native/rural communities have comprised the majority at 60% of the meetings. This figure demonstrates that while the composition of the council is important, composition alone cannot guarantee that subsistence concerns will be met. In order for the regional councils to effectively ensure that the land and its resources are being properly managed to meet the needs of subsistence users as provided by ANILCA, there must be strong guidance and support for the regional councils from the state, both from a policy perspective and budgetary perspective.

Comparison of Regional Council Proposals and Board of Fisheries Regulations

Section 805(d) requires the Board to adopt the advice and recommendations of the regional councils unless such recommendations are not supported by substantial evidence, violate recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs.

At the Board's Juneau hearing in February 1989, the Board of Fisheries refused to accept SERC recommendations because they had not been transmitted to the Board ten (10) days prior to their meeting. However, even in cases where SERC has met the ten (10) day notification requirement or the requirement has been waived, the Board has almost always ruled contrary to the advice of SERC without setting out the factual basis and reasons for its decision. ANILCA does not impose an artificial timeline for the conveyance of those recommendations. The Board of Fisheries is out of compliance with the requirements of ANILCA.

Section 805(a) of ANILCA requires the committees and regional councils to advise the boards on the subsistence use of fish and wildlife resources. The state system requires the committees/councils to advise the board on the management of all fish resources (commercial, sport, personal use, subsistence). Under state law, the members of the advisory committees must be representative of all user groups in the area. These requirements create a tension on the committees and councils that is inimical to the primary purpose for which Congress enacted the subsistence provisions in ANILCA - to assure the ability of rural people engaged in a subsistence lifestyle to continue to do so. The state advisory committee/regional council system is out of compliance with ANILCA.

The Alaska Department of Law has an opinion which seems to support Sealaska conclusions:

> Title VIII is important for four major reasons. First is that it establishes an absolute priority for subsistence users over all other competing consumptive purposes. Second is that it guarantees subsistence users access to fish and game on federal land which would otherwise be closed to hunting and fishing. Third is that it requires federal land managers to incorporate subsistence uses in their land use decision process. Fourth is that it establishes an administrative structure which would potentially serve to increase the representation of Alaska Native interests in fish and game management. [1989 Subsistence Update, Alaska Native Law Section]

ROLE OF REGIONAL COUNCILS WITH RESPECT TO OTHER AGENCIES

The role of the regional councils, as envisioned by ANILCA, is critical to both the federal management and state regulatory processes. In addition to providing recommendations to the state boards, ANILCA requires that the regional councils and local advisory committees be permitted to influence the decisions of all other federal agencies having authority over public lands, where agency decisions could significantly affect subsistence.

In Southeast, the primary federal agency having the authority to manage public lands is the Forest Service. The USFS and Sealaska differ on the priority to be given to subsistence pursuant to ANILCA. Sealaska's position is that ANILCA requires that subsistence must be given the priority over all other consumptive uses of the forest. This, in turn, would result in the "least adverse impact possible on rural residents who depend upon subsistence uses . . . consistent with . . . the purposes for each unit established, designated or expanded by or pursuant to Titles II through VII of this Act."

In Sealaska's opinion, to effectively manage subsistence (as well as other consumptive uses) in the Tongass, the USFS must investigate and identify subsistence in the forest prior to making any determinations of use of the forest. Only after the USFS has determined the subsistence use and area, and only then, can it make section 810 determinations. The burden of proof should not be on the rural residents to establish how they are adversely affected, but on the federal agency to meet the terms and conditions of section 810(a)(1)-(3).

To comply with section 810 of ANILCA, first the agency must make a threshold determination whether its proposed action may "significantly restrict" subsistence uses, including an evaluation of the *cumulative and synergistic effects* as well as the immediate effects of the proposed action. That is, whether the proposed action presents a threat to subsistence uses from "the effects of the proposed action when combined with those of *past, present, or reasonably foreseeable future actions.*" Hanlon v. Barton. The District Court for Alaska has stated "the threshold for triggering ANILCA's notice and hearing requirement is quite low: it is triggered whenever the contemplated action may significantly restrict subsistence uses." Sierra Club v. Penfold, citing Tribal Village of Akutan v. Hodel; People of Village of Gambell v. Hodel; Kunakana v. Clark.

Second, if the agency finds that the proposed action may significantly restrict subsistence uses, the agency must give notice of the proposed action to the applicable *advisory committees, regional council, state agency, and local residents*, and make specific findings regarding the impact of the land proposal upon subsistence. The second stage is not reached if the agency finds that no significant restriction will occur.

Affected parties may challenge a federal agency finding of no significant possibility of signficant restriction in federal court. A court will review the agency finding under an "abuse of discretion" standard. [Hanlon v. Barton] Agency findings can be challenged if they are unsupported by the record, illogical, or implausible, or if improper factors were considered or proper factors were ignored. If the challenge is successful, the court may enjoin the proposed action, remand the threshold question back to the agency for proper findings, or order the agency to hold hearings. Sierra Club v. Penfold, 664 F.Supp. at 1309.

Similarly, after the agency has given notice and held hearings under Section 810(a)(1) and (2) and made findings pursuant to Section 810(a)(3), affected parties can challenge agency findings concerning the proposed action. Often the challenge can be

coupled with the claim that the agency failed to follow NEPA and issued an erroneous or incomplete environmental impact statement.

Federal courts have addressed the proper interpretation of the ANILCA phrase *"significantly restrict subsistence uses."* For example, the Hanlon case indicated that if clearcutting caused deer populations to move further away from a dependent village. The need for hunters to travel greater distances could qualify as a significant restriction even where the population of deer remained the same. Forest Service failure to consider the distance factor could constitute a violation of ANILCA and invalidate USFS decisions to allow clearcutting and its environmental impact statement. Also, the USFS was required to consider whether a substantial decline in deer populations, occurring as long as 100 years after the agency action, *"significantly restricted"* subsistence uses at an earlier date.

While subsection (d) of 810 refers to its requirements as "procedural", legislative history states that the word "procedural" was added to clarify that "until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses."

DRAFT 1989 ANILCA SECTION 806 SUBSISTENCE MONITORING REPORT

Section 806 of ANILCA requires the Interior Secretary to advise the State of Alaska and Congress annually on the implementation of Title VIII. The 806 Report must address the state's provision of preference in accordance with section 804 and explain any exercise of the Secretary's closure or other administrative authority to protect subsistence resources or uses.

Section 805 authorizes regional councils to submit annual reports to the Secretary which identify subsistence needs and make recommendations for subsistence management on federal lands. Only the Southcentral Regional Council submitted a 1989 report. The Southeast council did submit a late 1988 report. The Fish and Wildlife Service fails to investigate why this might have occurred. Sealaska suggests several reasons: lack of policy guidance from the state, lack of technical support from the state, lack of funding and other support services to enable the regional councils to effectively carry out their responsibilities. It is important to know why the regional council system is not operating in accordance with its legal mandates.

The 806 report recognizes the lack of coordination between state and federal land/resource agencies and functions in the following manner:

> Due to the concerns of the Federal agencies that there has not been a consistent, coordinated Federal presence at State Board of Game meetings, a Federal/State working group on subsistence requested that the Fish and Wildlife Service take the lead in providing a Federal representative at all meetings, primarily to act as a conduit for information to all concerned Federal agencies.

The report, however, makes no reference to the role that the regional councils should play in facilitating and channeling information to federal agencies.

ADMINISTRATION/FEDERAL ASSISTANCE

Subsections 805(e)(1) and (2) of ANILCA provide for reimbursement of reasonable costs relating to the establishment and operation of councils and committees not to exceed $5,000,000 in any one fiscal year. The Interior Secretary is to advise Congress on a 5 year basis whether the amount is adequate to ensure the effectiveness of the state program established to provide preference for subsistence uses.

Each year the ADF&G Division of Subsistence and Division of Boards cooperatively apply for federal assistance from the U.S. Fish and Wildlife Service in order to execute the state subsistence management and use program. From the time the State began to request reimbursement from the Secretary, it has received less than 50% of its costs and considerably less than the $5,000,000 upper limit. As a matter of fact, internal DOI budget constraints have restricted the reimbursement to about $1,000,000 a year. ADF&G has asked the Secretary Interior to request funds for adequate reimbursement from Congress. The Interior's response was that federal budgets were tight and that one must consider the relative importance of the subsistence grant in relation to other high priorities in the Interior.

Attorney General's opinion on the funding situation is that: "It is practically 'black letter law' that an Act authorizing the expenditure of funds by Congress in no way requires Congress to actually appropriate funds for that purpose. . . . For that reason, we view our opportunity for legal redress on the issue to be, at best, very limited."

Of the money received from the federal government, relatively small portions have gone to support the committee/regional council system. ADF&G has admitted that their support of the system has been rather limited. However, since the reorganization of the Division of Boards, 6 regional program assistants have been hired to staff the committees. It is ADF&G's hope that they will improve council effectiveness.

ADF&G recognizes more more fundamental problems with the current system.

We believe the committees/councils can be more effective than they currently are because their role lacks an agreed upon definition. For example, are the committees supposed to simply pass along popularity type advise, act as agency watch dogs, depolarize interests that are at each others throats, build a constituency for the agency's cause, act as referees in particular disputes, carry messages back and forth, to give the agencies content-type advice? Or, are the committees/councils to provide a local forum for competing users to narrow options for the boards to consider or provide recommended solutions where possible?

Four objectives in ADF&G's FY 1990 proposal. The first involves working with the committees to develop consent about their role in the regulatory process. The second recognized that meetings alone are not a very effective way of ensuring that boards/committees get the best possible information. The objective, therefore is to identify and implement other techniques which will increase public involvement. The third objective is to identify changes in the regulatory process which will focus attention on problem solving rather than on position taking. The fourth objective is to streamline the process for developing regulations, including board sessions, and to make it more efficient. As a result of the improved process proposed in their FY 1990 Application for Federal Assistance, ADF&G contends that the "public, through the committees, will be intimately involved".

Sealaska feels that two advisory committee meetings and two regional council meetings a year is hardly intimate public involvement, nor does it seem adequate to carry out the responsibilities and authorities listed in ANILCA. It also does not remedy the problem of interaction (or the lack thereof) with the Boards of Fisheries and Game, which operate to the exclusion of any real meaningful input from the councils and committees. Similarly, this does not address the role of the regional councils in the federal land/resource management processes.

Conclusion - The state government and the federal government (as the ultimate authority for implementing the law - ANILCA) have been remiss in their responsibility to the regional council system and subsistence users. This conclusion brings us to the question "can the federal government implement the law more effectively than the state government?"

There are advantages and disadvantages to both management authorities. Under state management, there is a question about whether they are willing or whether they have the constitutional basis of meeting the needs of the Native community as a specific user group through recognition of their historic, aboriginal connection to the land and its resources. On the other hand federal law recognizes the special trust relationship that they have with the indigenous people of the land. However, like the state's attitude the attitude of the federal government is also in question. There is also a problem of what sort of funding treatment we would receive in the highly competitive national budgeting process.

SUBSISTENCE SUMMIT CONFERENCE
Alaska FEDERATION OF NATIVES
RESOLUTION NO. 90-1
APRIL 11, 1990

ENTITLED: Alaska NATIVE SUBSISTENCE RIGHTS:
AN AFFIRMATION AND A STRATEGY

WHEREAS, the Alaska Federation of Natives, constituted of Regional Corporations, Regional non-profit organizations and other affiliated groups from throughout Alaska, represents those entities and communities in advancing their subsistence rights and interests; and

WHEREAS, approximately four percent (4%) of all fish and wildlife harvested in Alaska is taken by subsistence users; and

WHEREAS, less than one percent (1%) of salmon harvested in the State is taken by subsistence users; and

WHEREAS, in the 1980s, 50,000 Natives and 60,000 non-Natives were subsistence users; and

WHEREAS, approximately 40,000 urban Natives are deprived of their subsistence rights; and

WHEREAS, under ANILCA, the determination of priority subsistence rights among resource users is made only when it is necessary to restrict the taking of populations of fish and wildlife in order to protect the continued viability of such populations; and

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

WHEREAS, as identified in Alaska Native Health Service studies, Alaska Natives may be adversely affected by the unavailability or scarcity of traditional foods and changes in Native lifestyle; and

WHEREAS, Title VIII of ANILCA was enacted in part to fulfill the unmet subsistence oriented requirements and purposes of ANCSA and to essentially protect the cultural and traditional Alaska Native lifestyle;

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives is directed by the delegates herein assembled at the Subsistence Summit Conference to adopt as its principal direction and recommends to all appropriate Native organizations the following:

-- Act to continue to support the inherent Native rights to subsistence resources and uses.

-- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and provides that the State shall exercise management of subsistence resources therein in accordance with applicable federal law.

-- Act prior to July 1, 1990, to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

-- Act immediately to request and to take action to involve affected Native organizations directly and fully in development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall resist, with all possible

force, any attempt by the State of Alaska to contract with the federal government for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.

-- Act to initiate a vigorous campaign to educate and familiarize public officials and legislators with all aspects of subsistence resources and uses.

-- Act to initiate a vigorous registration campaign across the State of Alaska.

BE IT FURTHER RESOLVED that all Native entities and organizations shall withdraw after July 1, 1990, their support for State subsistence management on federal lands and for a State constitutional amendment if there is not a satisfactory resolution pursuant to the review and revision of State subsistence management requested herein; and

BE IT FINALLY RESOLVED that in the event of the above withdrawal of Native support, all affected Native organizations shall pursue with all appropriate resources any and all legal and Congressional actions to secure their rights to Alaska's subsistence resources and uses.

Passed and approved this 11th day of April, 1990, by delegates to the AFN Subsistence Summit Conference.

Julie E. Kitka
President

SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-2
APRIL 11, 1990

ENTITLED: ALASKA NATIVE SUBSISTENCE RIGHTS: A PRIORITY FOR ALASKA NATIVE TRIBAL MEMBERS

WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

WHEREAS, members of Alaska Native tribes today, and in the future, rely on the right to harvest subsistence resources to nourish their bodies, and for the survival of their culture; and

WHEREAS, the only way to guarantee subsistence rights for members of the Alaska Native tribes is for tribal members to be given a priority to harvest subsistence resources on all lands in Alaska that they have traditionally and customarily used;

NOW THEREFORE BE IT RESOLVED that Native tribes and organizations will work in the long-term to gain a subsistence priority for Alaska Native tribal members, and to affirm the power of Alaska Native tribes to manage and regulate subsistence uses by their members.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

Julie E. Kitka
President

SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-3
APRIL 11, 1990

ENTITLED:

WHEREAS, the McDowell v. State decision by the Alaska Supreme Court puts the State out of compliance with the federal subsistence preference found in Title VIII of ANILCA and will lead to a federal assumption of fish and game management authority on federal lands in the State after July 1, 1990, unless the law is changed; and

WHEREAS, there is a substantial doubt that the law can be changed in time to avoid federal takeover of fish and game management on federal lands; and

WHEREAS, joint State and federal planning for implementing a dual fish and game management system in the State after July 1, 1990, has taken place without participation or over consultation with the Alaska Federation of Natives or other Native organizations; and

WHEREAS, the sound management of Alaska's fish and game resources is inseparable from Native culture and tradition and must be protected by all possible means; and

WHEREAS, Representative Lyman Hoffman has proposed a State constitutional amendment which would allow the State to manage subsistence resources in accordance with federal law and retain fish and game management authority on federal lands.

NOW THEREFORE BE IT RESOLVED that the body assembled herein directs the Alaska Federation of Natives to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

Julie E. Kitka
President

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 2
H. Judiciary 1/24/89

Volume 1, Issue 4

INTERLOCK Technology NEWS

...using science and engineering to deter drunken driving

Summer 1987

New technology may change drink/drive behavior and reduce rate of repeat drunken driving offenses

Ohio judges initiate study on interlock technology

Ignition interlock technology is quickly emerging as an important force in the nation's battle against drunken driving; as a result, researchers are also quickly finding opportunities for investigating its effectiveness.

Judges with the Hamilton County Municipal Court in Cincinnati, Ohio are selecting certain convicted offenders to participate in a two-year study to determine the effectiveness of ignition interlock systems in deterring repeat drunken driving offenses, and in changing a person's drink/drive behavior for the better. An ignition interlock system is a technological device which, once installed in a vehicle, deters would-be drivers from starting the engine if they fail its breath test because of their blood alcohol level. (See details on the technology, including its features which deter tampering and circumvention, on page three.)

"There's no question this study will be closely watched by the nation's judicial community," says Presiding Judge Deidra Hair, of the Hamilton County Municipal Court, the first court system in the country to initiate its own study on the technology. The Hamilton County study will help court officials determine if the Guardian Interlock™ ignition system is more effective than license suspension or revocation in reducing recidivism among

—first time offenders arrested for driving with a blood alcohol concentration (BAC) of .20 or more,

—repeat offenders convicted of driving drunk more than once within ten years, and

—offenders who have refused to have their blood tested for alcohol content at the time of their arrest.

For a minimum of one year, "the Guardian Interlock will remain in a person's vehicle as a condition of probation," says Delbert Elliott, Ph.D., a sociologist with the University of Colorado Institute of Behavioral Science and the director of the study. "But the study will continue after the device has been removed from the vehicle so we can see if there is a lower recidivism rate. If so, this would support the conclusion that the equipment in the car can lend to changes in a person's drinking and driving patterns."

Several Hamilton County judges began ordering selected offenders to use the Guardian Interlock last summer as a condition of probation. The device is manufactured by Guardian Interlock Systems, Inc., a Denver, Colorado-based company. As a service to all courts, the company requires those using its product to participate in the Guardian Interlock Responsible Driver Program™. The program provides for the installation of the device, as well as checking it at scheduled intervals for attempted tampering and circumvention. The Guardian Interlock contains technology which can detect such attempts.

"One out of 10 persons driving on a weekend evening are doing so under the influence of alcohol," says Judge Nadine Allen with the Hamilton County court who is ordering some convicted offenders to the Guardian Interlock program. "And, generally speaking, one out of 50 are driving under the influence on any given day."

Allen believes ignition interlock technology teaches people their drinking limit before they attempt to drive, and that it will help keep drunken drivers off the roads. "An interlock device focuses directly on the problem of drinking and driving. It really focuses on immediate public safety."

***Many states** are considering legislation that would authorize judges or state agencies to use ignition interlock systems as optional sanctions in drunken driving cases. Since September, 1986, five states have passed such bills into law, and two states* (Hawaii, Delaware) have passed related resolutions. Although judges in many states may already sentence offenders to use the devices, legislation can help remove their pioneering efforts*

Payment plan begins

Guardian Interlock Systems has launched a National Payment Plan to give more drunken driving offenders an opportunity to participate in the Guardian Interlock Responsible Driver Program™, announced Richard Freund, director of program development.

"We have developed this payment option in response to the courts and in response to the economic realities faced by offenders," said Freund.

The new payment plan reduces by more than half the up-front cost of enrolling in most Guardian Interlock programs. For instance, if an offender is sentenced to the 12-month program, he would initially pay $195 at the time the device is installed in the car. The offender then makes a payment each time he returns to the service center for his regular appointment, and until his program ends. The payment plan applies to all Guardian Interlock programs, regardless of length.

"The typical DWI (driving while intoxicated) offender incurs considerable costs with fines, court costs and attorney fees before the court system has even begun to address education or rehabilitation," said Marita Re, associate chief of

See "Payment" back page

Texas, Michigan, Oregon pass 'interlock' bills!

Since mid-June, three more states have passed legislation regarding use of ignition interlock technology to help stop drunken driving.

Governors James Blanchard of Michigan and Bill Clements of Texas have signed bills giving all judges who preside over drunken driving cases in their states the authority to order convicted offenders to have their vehicles equipped with ignition interlock devices.

Additionally, Gov. Neil Goldschmidt of Oregon has signed a bill, H.B. 2449, sponsored by Rep. Richard Springer, to set up a statewide pilot program to evaluate the impact of the technology on repeat drunken driving offenses. The technology will be deemed "a success" if it reduces the recidivism rate by at least 10 percent within one year. In the next few months, a state agency will determine the counties or jurisdictions to be included in the pilot project.

California passed the first "interlock" bill in the nation in September, 1986; Washington state passed the second such bill last April. The Michigan and Texas bills are similar in that they give judges the option to require use of the devices "as a reasonable condition of probation" for drunken driving offenders, according to Laurel Nelson, legislative specialist at Guardian Interlock Systems, Inc. Both states, as well as Oregon, also provide a means for certifying the devices to assess their accuracy, safety and ability to deter tampering and circumvention.

"The best thing about the Michigan bill is that it hopes to resolve the quandary judges face with granting restricted licenses to drunken driving offenders," says Rep. David Honigman, sponsor of the Michigan bill, H.B. 4469. "Judges don't want the offenders to lose their means of livelihood, yet they worry about the possibility of their drinking and driving despite restricted driving privileges. Interlocks offer the best of both worlds by allowing a person to work while helping to ensure he or she can no longer drink and drive."

Rep. David Honigman: *"Interlock devices constitute an extremely effective method to deter drunken driving, even by alcoholics."*

The Texas bill, H.B. 655, hailed by its sponsor, Rep. Betty Denton of Waco, as a "huge stride" for the Lone Star state, allows a judge "to utilize the ignition interlock system" in the sentencing of second and subsequent offenders as an alternative or adjunct to traditional sanctions.

Dallas Judge Harold Entz, has been ordering DWI (driving-while-intoxicated) offenders to use ignition interlock devices beginning July, 1987. "Under Texas law, a person whose license is suspended for DWI may petition the court to get an occupational restricted license for job-related purposes," he says. "I have begun making the interlock a required condition of that occupational license. If you want to drive to work, you can only do so with an occupational license and with the Guardian Interlock in your car."

The Forum

Judges view existing laws on driving-under-the-influence of alcohol and drugs (DUI/DUID) as over-emphasizing punishment at the cost of rehabilitation and deterrence. So concluded a 1984 study of 570 judges who hear such cases in California, Colorado, Georgia, Maryland, Pennsylvania and Wisconsin.

Lee Perry Robbins, Ph.D., a professor in the Department of Human Resource Administration at Temple University in Philadelphia, presented the results of his '84 study last year at a conference of the National Commission Against Drunk Driving. Among his findings: Although citizen activism focuses on harsh punishment against DUI offenders, there is scant scientific evidence supporting its effectiveness. As a result, Dr. Robbins suggests other alternatives, one being ignition interlock technology. Below, he discusses his study and how this new technology may well help society in its battle against drunken driving.

THE STUDY of 570 judges for which I did the field research through the Wharton School at the University of Pennsylvania showed that judges support a "package" of four sanctions for the typical DUI/DUID offender: license suspension, rehabilitation and education, a fine, and community service or a short jail term. Most of the judges supported mandatory jail sentences for repeat offenders, while only 20 percent supported mandatory jail sentences for first-time offenders.

In each of the six states studied, the majority of judges believed that the law overstresses punitive objectives at the cost of deterrence and rehabilitation.

This viewpoint sharply contrasts with the widespread opinion, not supported by research, that harsher penalties will decrease accidents caused by drunken driving. Most researchers estimate 50 to 80 percent of DUI offenders are

See "Forum"—back page

Dr. Lee Robbins: *"During the '80s, strong citizen activism focused on harsher laws to punish drunken drivers. Legislators, influenced by the activist groups and the media, enacted these laws without researching the viewpoints of judges. Now we see that the success of curbing drunken driving with strong punitive sanctions remains doubtful."*

Guardian Interlock good for first offenders

The Guardian Interlock(tm) is as appropriate for first-time offenders with suspected drinking problems as it is for repeat offenders, according to Delbert Elliott, Ph.D., a sociologist with the University of Colorado Institute of Behavioral Science.

"Many of those arrested for the first time for driving-under-the-influence of alcohol are problem drinkers," says Elliott. "When a person is identified as a problem drinker, even on a first arrest, it is essential that we intervene now because that person will be drinking and driving again."

Currently, judges and magistrates are sentencing mostly repeat offenders to the Guardian Interlock Responsible Driver Program(sm), a program launched last year to monitor those using the company's product.

"Our track record is very promising," says Gary Schlatter, vice president of marketing at Guardian Interlock Systems. "Our re-arrest rate for those offenders using the Guardian Interlock is less than two percent within 15 months." (Since the last newsletter, a few offenders in the Guardian Interlock program have been re-arrested for drunken driving.) In comparison, a study released by the National Highway Traffic Safety Administration (NHTSA) shows that, of those with previous arrests for drunken driving, an average of 20 percent are re-arrested for the same offense within 15 months, and more than 50 percent are re-arrested within three years.

Elliott is currently investigating whether the Guardian Interlock will show greater success in modifying the behavior of persons with alcohol dependency problems than traditional treatment programs. "The potential significance of the Guardian Interlock is that it provides a constant reinforcement day-after-day, and that it has potentially more power for change," says Elliott. "The Guardian Interlock provides immediate negative consequences when a person is denied the opportunity to start his or her vehicle after drinking."

It's customized

Home arrest

Several counties in Colorado and Maryland now use Guardian Alternative Technologies home arrest systems, and the company is gearing up to add 10 more jurisdictions in the next 90 days.

"The reason we have been so successful is that we emphasize choice," says Guardian Alternative Technologies director Bud Kiebler. "Not all clients are alike, so we offer a number of flexible alternatives for unique problems."

Using innovative technology and customized services, the company (formerly called Guardian Home Arrest Technologies) can tailor its "full menu of services" to suit nearly any jurisdictional need for incarcerating a client in his or her home. Among the options:

—Clients can be "actively tracked" by electronic monitoring. The client wears an ankle bracelet which transmits information by radio frequency to the monitoring center in the client's home if he or she steps beyond the center's 150 foot range, or tampers with the equipment. The home monitoring center, which includes a specially-equipped telephone, in turn "tells" of the violation over the telephone lines to the company's central computers located and operated by personnel at corporate headquarters in Denver. The local corrections officer is provided with an on-line terminal, so he or she can receive information about the client at anytime.

—The central computer can randomly call clients at home to verify their presence with "speaker identification" technology. This technology helps to ensure the client is accurately identified by comparing his or her voice to that of samples stored in the home monitoring center. Because of its "comparison testing" capabilities, the system is completely multi-lingual. Plus, the technology eliminates problems with interference inherent in telephone lines by communicating in nonverbal computer language.

—Clients can be monitored for alcohol use with technology similar to that of the Guardian Interlock. The computer randomly calls the clients and asks them to first pass the speaker identification test, then blow into the breath testing device to determine blood alcohol concentration. The BAC reading is transmitted to the computer.

"We monitor clients 24 hours a day, seven days a week," says Kiebler. "Our level of monitoring would require a jurisdiction to allocate at least five people to do the same job."

Guardian Alternative Technologies offers its systems on a leased basis, requiring no up-front costs, "which makes it an affordable choice," says Kiebler.

Officials in Adams County, Colorado, chose Guardian Alternative Technologies primarily because of its monetary benefits. Sums up Penny Collins, the county jail administrator:

"We see no reason to keep people in jail at $55 a day when full-service home arrest is available for only a fraction of the cost. It's ridiculous to put work-release people in an overcrowded jail. Our jails are already overcrowded. Home arrest can also significantly reduce our contraband problem."

Please excuse our redundancy, but we owe new readers an explanation! The Guardian Interlock™ connects a hand-held breath analyzer to a vehicle's ignition. Before a person can start a vehicle equipped with the device, he or she must first blow into the breath analyzer. If the would-be driver's blood alcohol concentration (BAC) meets or exceeds the BAC setting on the device, the car will not start. However, even if a person passes the breath test, he or she must also blow a "breath code" into the analyzer to access the system. This code deters others from trying to start the vehicle for the intended driver. A growing number of judges nationwide are requiring drunken driving offenders to have their vehicles equipped with ignition interlocks as a condition of probation, and to help stop repeat drunken driving offenses.

As a service to the courts, Guardian Interlock Systems launched a program more than a year ago to monitor those sentenced to use the company's product. Called the Guardian Interlock Responsible Driver Program™, the program provides for the installation and calibration of the Guardian Interlock, and it includes scheduled appointments for checking the device for attempted tampering or circumvention.

Service centers open in California, Washington

Guardian Interlock Systems has opened centers near San Diego and San Francisco, Calif., and near Seattle, Wash., to provide for the installation and service of the Guardian Interlock™ for those using it.

"My goal is to ultimately put Guardian Interlocks in the vehicles of all second-time offenders, and in those of first-time offenders when appropriate," says Judge Runston Maino, with the North County Judicial District, San Diego County Municipal Court.

The Guardian Interlock was the first ignition interlock system in the country to meet any state requirement for accuracy and reliability when the device was certified by the California Office of Traffic Safety (OTS) in May, says Greg Manuel, a legislative analyst with OTS.

According to a spokesman with the California office of the National Highway Traffic Safety Administration, ignition interlock technology offers "one of the best" chances to deter drunken driving. "And there's a trend sweeping the country that leans more toward this kind of action," states Al Crancer, the state program coordinator.

The National Highway Traffic Safety Administration, an agency of the U.S. Department of Transportation, will hold a workshop in October at DOT headquarters in Washington, D.C., to review new developments in ignition interlock technology and exchange information about its application. For more information on the workshop, call or write: Dr. James Frank, Research Psychologist, Office of Driver and Pedestrian Research, NHTSA, 400 Seventh St., SW, Washington, DC 20590 (202) 366-5593.

New features enhance benefits of Guardian Interlock

The Guardian Interlock™ now features several more new advances which further enhance its ability to deter drunken driving.

One new feature, called Memo Minder™ reminds the offender of his or her next appointment at the company's nearest service center. Three days before the appointment, a "reminder" light on the device will start flashing. If the offender does not visit the center on the day of the appointment, the device will emit a sequence of tones and the light will continue flashing one week longer. If the offender still fails to show, the device will revert to "standby," and the car will not start.

Another feature has been added to Guardian Interlock's repertoire of tamper-resistant technology. Should an offender attempt to tamper with the device, Guardlink™ will push it into Memo Minder so the user has no other choice than to report to the service center, otherwise, the car will not start. All incidences of attempted tampering or circumvention are reported to the offender's probation officer or other designated person. Other Guardian Interlock features include:

—Coordinated Breath Pulse Access™ CBPA requires the driver to not only pass the initial breath test for sobriety, but also blow into the breath analyzer a short series of "breath pulses." If the correct code is not delivered within three attempts, the vehicle will not start for 45 minutes.

—technology which determines if the driver's blood alcohol level has risen due to alcohol in the stomach not yet absorbed into the bloodstream. If the device has detected alcohol from the driver's previous breath test (although still within legal limits), it will require the driver to retest every 20 minutes. If the driver does not pull over (the system allows ample time), stop the engine and take the breath test, the car's horn will sound until he or she does so.

"Forum"—continued from page 2

problem drinkers and alcoholics. When sober, these individuals lack the ability to avoid harming their health, families and careers by stopping their abuse of alcohol. When drunk, they are unlikely to have the judgment to drive safely.

IN LOS ANGELES, the courts hear over 100,000 DUI/DUID cases a year, more than most states. Here, another side of stronger penalties surfaces. A 1982 California law added mandatory jail and fines, restricted plea bargaining, and required treatment programs. Subsequently, the number of jury trials rose 33 percent, probation revocation hearings rose 64 percent, and guilty pleas dropped, though only by two percent.

In a separate study of a northern California county, it was discovered that the time needed to close a DUI/DUID case rose by nearly 80 percent from 48 days in 1981 to 86 in 1984. Fully 55 percent of the offenders studied had had either a prior or subsequent DUI/DUID arrest, which indicates a high probability that they were problem drinkers or alcoholics. A third, broader study on mandatory jail sentences published by the National Institute of Justice concluded that "new and heavy" demands were placed on the courts, probation services and jails.

EMPIRICAL DATA AND LOGIC suggest that adding further and harsher penalties will do little to limit injuries and deaths.

Judges should have greater responsibility in DUI/DUID issues, and there should be more judicial education in this area. But better informed judicial decisions will not work unless society provides judges with effective choices. Alcohol and drug users should be closely supervised and given long-term treatment. Communities should require offenders to develop and execute DUI/DUID prevention and education programs rather than use them for cheap labor for municipal chores. And ignition interlock systems should be widely tried and evaluated.

IGNITION INTERLOCK systems separate the alcohol abuser from his or her vehicle, thus dangerous behavior can be deterred at minimal cost and without harsh sanctions. While the results of full field studies on the effectiveness of interlock systems are still needed, even occasional evasion* by drivers would be far less dangerous than the widespread failures of existing sanctions.

Traditional approaches currently used against drunken driving offenders are very costly. They prevent needed attention to the growing problem of drugged driving which, studies suggest, may account for 10 to 30 percent of impaired driving problems.

Ignition interlock systems are not designed for deterring drugged driving, but they free up resources needed to help solve this problem and other issues of highway safety.

**The Guardian Interlock™ ignition system contains features which deter abuse of the system. Additionally, offenders sentenced to use the device are monitored through the Guardian Interlock Responsible Driver Program™*

Dr. Robbins is a writer, researcher and speaker on issues concerning drunken and drugged driving and the role of the judiciary. He holds degrees from Harvard University and the University of Pennsylvania. He may be reached at: Human Systems Research/Management, 2013 Pine St., Philadelphia, Penn., 19103. (215) 546-5377.

"Payment"—continued from page 1

probation at the Hamilton County Municipal Court in Cincinnati. "This new payment plan enables the courts to enroll a wider range of people who can qualify for the interlock program."

According to Re, the Guardian Interlock program benefits the courts by reducing the number of arrests for driving while intoxicated under license suspension, helping prevent another DWI charge, and providing continuing education and constant feedback on the effects of drinking and driving.

Interlock Technology News
Guardian Interlock Systems, Inc.
1009 Grant Street, Denver, CO 80203
303/831-6333 or toll-free 800/457-0001

ELLEN MOORE
DEPT OF PUBLIC SAFETY
HIGHWAY SAFETY PLAN. AGCY
POUCH N
JUNEAU, AK

998.1

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: HB 2
Publish Date: 1/9/89

Revision Date:
Title: An act relating to ignition interlock devices
Sponsor: Gruenberg, Koponen, Ulmer, ..
Requestor: House Health & Social Services

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0
POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel — Phone: 264-8228
Division: Alaska Court System — Date: 01/23/89

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 01/23/89
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 2
PUBLISH DATE: 1-9-89

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to ignition interlock devices."
Sponsor: Rep. Gruenberg, Koponen, Ulmer,
Requestor: et al

Agency Affected: Department of Corrections
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation will have no fiscal impact upon the Department of Corrections.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Division: Administrative Services
Phone: 465-3376
Date: 1-23-89

Approved by Commissioner: [signature]
Agency: Department of Corrections
Date: 1-23-89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 2
PUBLISH DATE: 1-9-89

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to ignition interlock devices.:
Sponsor: Gruenberg, et al.
Requestor:

Agency Affected: Health & Social Services
BRU: Alcohol & Drug Abuse Services
Components: Alcohol Safety Action Program (ASAP)

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Felix Coordinator
Division: Office of Alcoholism & Drug Abuse
Phone: 586-6201
Date: 1/23/89

Approved by Commissioner: 1/23/89
Agency: Health & Social Services
Date: 465-3030

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 2
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to ignition interlock devices."
Sponsor: Representative Gruenberg
Requestor: House HESS

Agency Affected: Public Safety
BRU: Highway Safety Planning Agency, Alaska State Troopers
Component:

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact for the Department of Public Safety.

Prepared by: T. Michael Lewis, Program Director
Phone: 465-4374
Division: Highway Safety Planning Agency
Date: 1/15/89

Approved by Commissioner: Arthur English
Date: 1-20-89
Agency: Department of Public Safety

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 2
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to ignition interlock devices..."
Sponsor: Repr. Gruenberg
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 23, 1989

Richard L. Pegues /FOR/

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Date: January 23, 1989
Agency: Department of Law

Distribution (by preparer):
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Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

Fo: Bill/Resolution No. HB 2

This bill amends AS 12.55 by adding a new section that provides that, as a condition of probation for a DWI conviction, a court may require that a convicted defendant may not operate a motor vehicle unless the vehicle is equipped with an ignition interlock device. Such a condition would take effect after any period of license revocation imposed under AS 28.15.165(d) or AS 28.15.181(c). The penalty for violating this section would be a violation. The Department of Law does not anticipate a fiscal impact because prosecution of violations does not usually require attorney time in court, and the number of violations is not expected to be great.

2 2

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

January 23, 1989

MEMORANDUM

To: House HESS Committee Members

From: Max Gruenberg MG

Re: HB 2 "An Act relating to ignition interlock devices."

HB 2 is identical to CS HB 261 (Judiciary), which passed the House 38 to 0 last session.

HB 2 will allow judges to require persons convicted of alcohol-related offenses to install, at their expense, an "ignition interlock" device on their motor vehicles. This "mini-breathalyzer" prevents the car from starting unless the driver "blows clean."

Courts around the country have started to require these devices. At least six other state legislatures are presently considering ignition interlock legislation. Eleven states have already enacted laws establishing an interlock program. California passed the first ignition interlock statute in 1986. It was followed in 1987 by Texas, Iowa, Idaho, Kansas, Maryland, Michigan, New York, Ohio, Oregon and Washington. Pennsylvania has started an ignition interlock program through its court system without a statute.

Nationwide studies show that multiple DWI offenders sentenced to an ignition interlock program are at least three times less likely to be reconvicted than are those sentenced under conventional DWI sentencing practices. The DWI recidivism rate nationally is 15 per cent. Preliminary recidivism results in jurisdictions with ignition interlock programs range from 1.2 per cent to 4 per cent. Moreover, a survey of offenders who have installed the device shows that most

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Members of the House HESS Committee

FROM: Max F. Gruenberg, Jr.

DATE: January 19, 1989

SUBJ: Sectional Analysis for HB 2 "An Act relating to sentencing in criminal actions involving alcohol."

Section 1
AS 09.50.250 (4) Provides the state with immunity in civil actions arising from the use of an ignition interlock system which has been certified by the Department of Corrections.

Section 2
AS 11.76.130 Makes it a violation to tamper with an ignition interlock system or rent or loan a motor vehicle with the knowledge that to do so would help someone violate their probation.

Section 3
AS 12.55.102 (a) Allows the court to require, as a condition of probation, that a person convicted of any alcohol-related offense, only drive a vehicle equipped with a certified ignition interlock system.

AS 12.55.102 (b) Allows the court to permit a limited exemption for a person to drive their employer's vehicle on the job.

AS 12.55.102 (c) Requires the surrender of the driver's license and the issuing of a special driver's certificate or a copy of the defendant's judgment of a conviction while the ignition interlock driving restriction applies. The defendant must bear all costs of installing and maintaining the device.

AS 12.55.120 (c) Defines ignition interlock device as a device certified by the Commissioner of Corrections that will prevent a motor vehicle from starting if the driver has consumed alcohol.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

CORRECTION

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Alaska State Legislature

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Nationwide studies show that multiple DWI offenders sentenced to an ignition interlock program are at least three times less likely to be reconvicted than are those sentenced under conventional DWI sentencing practices. The DWI recidivism rate nationally is 15 per cent. Preliminary recidivism results in jurisdictions with ignition interlock programs range from 1.2 per cent to 4 per cent. Moreover, a survey of offenders who have installed the device shows that most

offenders themselves believe this is an effective method of preventing DWI's.

The cost to the defendant is about $500 per year for installation and maintenance of the interlock device. The judge may deduct this cost from the defendant's fine if the defendant cannot afford it. There is no cost to the state.

HB 2 has zero fiscal notes from the Departments of Corrections and HESS. The court system has not yet submitted a fiscal note this year; it submitted a zero fiscal note last year.

HB 2 has the support of both Anchorage CHAR and Anchorage MADD. If we can keep people with known alcohol-related problems from driving while intoxicated, we can save many lives.

A letter of intent similar to that passed by the House last year is also enclosed in your bill packet.

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Members of the House HESS Committee

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AS 12.55.102 (c) Requires the surrender of the driver's license and the issuing of a special driver's certificate or a copy of the defendant's judgment of a conviction while the ignition interlock driving restriction applies. The defendant must bear all costs of installing and maintaining the device.

AS 12.55.120 (c) Defines ignition interlock device as a device certified by the Commissioner of Corrections that will prevent a motor vehicle from starting if the driver has consumed alcohol.

AS 12.55.120 (d) Allows a court to deduct the cost of an ignition interlock device as part of the fine imposed against the defendant.

Section 4
AS 28.35.030 Amends the DWI statute to allow the imposition of an ignition interlock restriction as a condition of probation.

Section 5
AS 28.35.030 (h) Amends the statute that sets minimum fines for DWI conviction in order to allow the court to deduct the cost of an ignition interlock device from the fine imposed.

Section 6
AS 28.35.032 (g) Amends the statute that sets minimum fines for refusal to submit to a chemical test to allow the imposition of an ignition interlock restriction as a condition of probation.

Section 7
AS 28.35.032 (k) Amends the statute that sets the minimum fines for refusal to submit to a chemical test in order to allow the court to deduct the cost of an ignition interlock device from the fine imposed.

Section 8
AS 33.05.020 (c) Requires the Commissioner of Corrections to adopt regulations for the certification, maintenance, and monitoring of ignition interlock devices. Requires the manufacturer of the interlock device to bear the cost of the certification.

AS 33.05.020 (d) Requires that a warning label that states the penalties for circumventing or tampering with an ignition interlock device be affixed to the device as a condition of certification.

Misc.txt/CL

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3808

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 1, 1988

SUBJECT: CSHB 261(Judiciary)

TO: Representative Max Gruenberg

FROM: Michael F. Ford
Legislative Counsel

You have asked if AS 12.55.102(d) that allows the court to include the cost of an ignition interlock device as a part of the fine imposed against the defendant, creates any due process, equal protection or other constitutional problems. I do not see that this subsection raises a constitutional issue. This is particularly true since the court is already required under AS 12.55.035 to take into account the financial resources of the defendant and the nature of the burden that payment of a fine will impose.

You have also asked if any problems are created by the fact that maintenance and operation of an ignition interlock device may be affected in the colder areas of the state. Again I do not see that this creates any difficulties. Under section 8 of CSHB 261(Jud) the commissioner of corrections has authority to establish standards for ignition interlock devices. This authority appears adequate to meet any particular requirements concerning maintenance or operation of the interlock device.

Please contact if you have further questions.

MFF:bb
wkb3/061

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

House HESS Committee

Letter of Intent
for
HB 2 "An Act Relating to Ignition Interlock Devices"

The Legislature recognizes that ignition interlock systems may not function in cold temperatures, that a person may not reside in an area where installation, maintenance and monitoring of these devices is possible, and that routine cold temperature vehicle maintenance may be perceived by these systems as tampering.

It is the intent of the Legislature that before requiring a person to obtain an ignition interlock device, the court consider these circumstances and not place selected individuals under unreasonable hardship.

_____

Johnny Ellis, Chair
House HESS Committee

(1)

Date Referred: January 25, 1989 FURTHER REFERRALS:

Date of Committee Action: Feb 8, 1989

The JUDICIARY Committee recommends that:

HOUSE BILL NO. 2 [IGNITION INTERLOCK DEVICES]
"An Act relating to ignition interlock devices."

[X] be replaced with CS for HB 2 (Judiciary) [X] the same title
[ ] a new title

[ ] have attached amendment(s)

[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: House Judiciary letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[ ] zero fiscal note
[ ] zero with analysis

APPROVES PREVIOUS:

[ ] fiscal note(s) published:

_____

[ ] zero fiscal notes(s) published:

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SIGNING DO PASS:

Terry Martin
[illegible]
Mod Greenberg

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Clyde Davidson (no rec)
[illegible]
Mike Davis NO REC

[illegible]
Chairman's signature

Alaska State Legislature

House of Representatives
House Judiciary Committee

P. O Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

HOUSE JUDICIARY COMMITTEE

Letter of Intent
for
HB 2 "An Act Relating to Ignition Interlock Devices"

The Legislature recognizes that ignition interlock systems may not function in cold temperatures, that a person may not reside in an area where installation, maintenance and monitoring of these devices is possible, and that routine cold temperature vehicle maintenance may be perceived by these systems as tampering.

It is the intent of the Legislature that before requiring a person to obtain an ignition interlock device, the court consider these circumstances and not place selected individuals under unreasonable hardship.

Peter Goll, Co-Chair

Max Gruenberg, Co-Chair
House Judiciary Committee

Original sponsors: Gruenberg, Koponen,
Ulmer, et al.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 2 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to ignition interlock devices."

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

* Section 1. AS 09.50.250 is amended to read:

Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.-040(c). A person who may bring an action under AS 36.30.560 - 36.-30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an [NO] action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(4) arises out of the use of an ignition interlock device certified under AS 33.05.020(c).

* Sec. 2. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.140. AVOIDANCE OF IGNITION INTERLOCK DEVICE. (a) A person may not knowingly

(1) circumvent or tamper with an ignition interlock device in a manner intended to allow a person on probation under AS 12.55.102 to avoid using the device; or

(2) rent, loan, or lease a motor vehicle to a person on probation under AS 12.55.102, unless the vehicle is equipped with an ignition interlock device described in AS 12.55.102.

(b) Notwithstanding AS 11.81.250, a person convicted of violating this section is guilty of a misdemeanor. The maximum term of imprisonment that may be imposed is 30 days and the maximum fine that may be imposed is $500.

* Sec. 3. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.102. ALCOHOL RELATED OFFENSES. (a) The court may order as a condition of probation that a defendant convicted of an offense involving the use, consumption, or possession of an alcoholic beverage may not operate a motor vehicle during the period of probation unless the vehicle is equipped with a properly functioning, monitored, and maintained ignition interlock device. A condition of probation imposed under this subsection takes effect after any period of license revocation imposed under AS 28.15.165(d) or 28.15.181(c).

(b) The court, in imposing probation under (a) of this section, may allow the defendant limited privileges to drive a motor vehicle without an ignition interlock device if the court determines that the defendant is required as a condition of employment to drive a motor vehicle owned or leased by the defendant's employer and that the

defendant's driving will not create substantial danger. If the court imposes probation described by this subsection, the court shall require the defendant to notify the defendant's employer of the probation, and shall require that the defendant, while driving the employer's vehicle, carry a letter from the employer authorizing the defendant to drive that vehicle.

(c) A court imposing a condition of probation under this section shall require the surrender of the driver's license and shall issue to the defendant a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction. The defendant shall pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device.

(d) The court may include the cost of the ignition interlock device as a part of the fine required to be imposed against the defendant under AS 28.35.030(c) or 28.35.032(g).

(e) In this section, "ignition interlock device" means equipment designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage, and that has been certified by the commissioner of corrections under AS 33.05.020(c).

* Sec. 4. AS 28.35.030(c) is amended to read:

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum

sentence of imprisonment of not less than 20 consecutive days and a fine of not less than $500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Probation may be conditioned as provided in AS 12.55.102. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

* Sec. 5. AS 28.35.030 is amended by adding a new subsection to read:

(h) Notwithstanding (c) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (c) of this section by the cost of the ignition interlock device.

* Sec. 6. AS 28.35.032(g) is amended to read:

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than $500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000, if, within the previous 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under this section or another law or ordinance with substantially

similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Probation may be conditioned as provided in AS 12.55.102. Imposition of sentence may not be suspended. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked under AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate. The sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the committed person.

* Sec. 7. AS 28.35.032 is amended by adding a new subsection to read:

(k) Notwithstanding (g) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device.

* Sec. 8. AS 33.05.020 is amended by adding new subsections to read:

(c) The commissioner shall by regulation

(1) establish standards for calibration, certification, maintenance, and monitoring of ignition interlock devices required as a condition of probation under AS 12.55.102; and

(2) establish a fee to be paid by the manufacturer for the cost of certifying an ignition interlock device.

(d) The commissioner shall notify the manufacturer of the ignition interlock device when the device is certified. The commissioner may not certify an ignition interlock device unless the device prominently displays a label warning that a person circumventing or

tampering with the device in violation of AS 11.76.140 may be imprisoned up to 30 days and fined up to $500.

HBZ

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

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PHONE: (907) 279-7424

February 4, 1989

The Honorable Max Gruenberg
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

Yesterday the Director of the Scientific Crime Detection Laboratory, George Taft, sent me the enclosed information relating to ignition interlock devices. I draw your attention to the conclusions reached on page 4 of the Ad Hoc Committee Report.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

Attachment

cc: The Honorable Peter Goll

03 C31LH

AD HOC COMMITTEE REPORT ON:

THE USE OF ALCOHOL IGNITION INTERLOCK DEVICES AS A JUDICIAL SANCTION

COMMITTEE ON ALCOHOL AND OTHER DRUGS

HIGHWAY TRAFFIC SAFETY DIVISION

NATIONAL SAFETY COUNCIL

ORLANDO, FLORIDA, OCTOBER 18,1988

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