

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
6055 HOUSE RESOURCES

8672

459

(9)

Date Referred: March 7, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 4/30/90

The RESOURCES Committee considered:

HJR 90

HOUSE JOINT RES. NO. 90 CONSTITUTIONAL AMENDMENT: SUBSISTENCE

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of plants, fish, and wildlife by Alaska Native residents and rural residents.

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note House RES- zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass

No REC

Amend

	Do Not Pass	No REC	Amend
<i>Mike Youvan</i> NAVARRE	X		
<i>Scott Menard</i> MENARD	X		
<i>Chip Davidson</i> DAVIDSON			X
<i>Mike Davis</i> DAVIS		X	

Chip Davidson
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Constitutional Amendment:
 Subsistence
 Sponsor: Transportation Comm.
 Requestor: House Resources Committee

Agency Affected: All Agencies
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
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	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
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: House Resources Committee Phone: 2487
 Division: Representative Cliff Davidson Date: 4/30/90

Approved by Commissioner: _____ Date: _____

Agency: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MAR 15 1990

POUCH V STATE CAPITOL
UNEAU ALASKA 99511
907 465 3300

MEMORANDUM

March 15, 1990

SUBJECT: Sectional Summary of House Joint Resolution 90;
Proposing an amendment to the Constitution of
the State of Alaska relating to subsistence
uses of plants, fish, and wildlife by Alaska
Native residents and rural residents

TO: Representative Kay Wallis

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of HJR 90.

A summary or analysis of a resolution is not an authoritative interpretation of the resolution. The resolution itself is the best statement of its contents.

Section 1 of the resolution amends the Natural Resources Article, Article VIII, of the Alaska State Constitution by adding a new section 19 entitled: Subsistence Uses of Plants, Fish, and Wildlife.

The legislature is specifically authorized to limit the taking of plants, fish, and wildlife for subsistence uses to residents of the state who are Alaska Natives or who reside in rural areas. The legislature may further restrict subsistence uses of plants, fish, and wildlife by Alaska Natives and rural residents on the basis of local or community residence, availability of alternative resources, cultural, traditional, and customary uses of plants, fish, or wildlife, or dependence on plants or a fish or wildlife population as a mainstay of livelihood.

This section exempts the legislature from those provisions of the Alaska Constitution that would otherwise prohibit it from limiting subsistence rights to certain classes of persons.

Section 2 of the resolution provides that this amendment shall be placed on the ballot at the next general election for acceptance or rejection by the voters of the state.

GU:mi
wkmi6/057

PREPARE



Special Subsistence Edition

March, 1990

An Ecumenical Educational Legislative Information Network for Alaskans who care about Peace, Justice & Creation

My Story

If a rite of puberty for boys growing up in South Texas existed 50 years ago, it most certainly included some form of hunting and/or fishing.

By the time I reached 12, my great ambition was to have my very own .22 rifle.

There was nothing wrong with my father's old bolt action rifle, which he freely loaned for rabbit and squirrel hunts with my buddies - after repetitious training in the safe handling of firearms, of course. But just as most boys now yearn for "wheels" of their own, I wanted my very own semi-automatic that I could clean and oil and keep in my own closet!

I still have that first rimfire .22 which my Dad allowed me to choose from the vast stock at Corpus Christi Hardware. It was a reward for practicing hard and winning first in a State music contest when I was 14. Since that time I have enjoyed the thrills of hunting the brown bear of Chichagof Island (not with that little .22, of course), and hooking the king salmon favorite Channel as well as the halibut of Homer.

I share this bit of personal history because you have a right to

know where I am coming from as I make this effort to shed light on what at first may appear to be simply hunting, fishing and gathering by Native Alaskans - Aleuts, Eskimos and Indians.

My education into the life and cultures of of Alaska's indigenous

ness of the sacred was woven into the whole fabric of their lifestyle and culture.

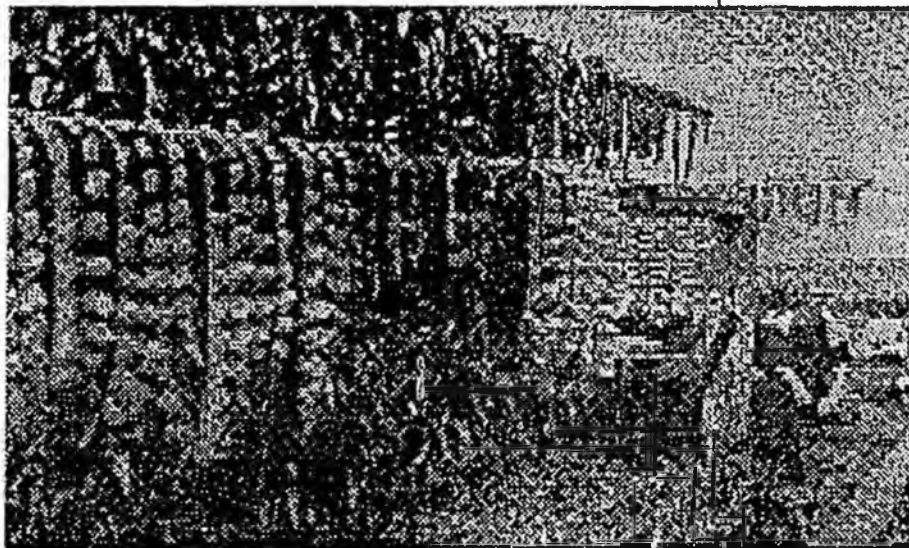
Culture & Tradition

I have come to understand now that what we call "subsistence" is not the same as sport hunting and fishing. It is not simply "living off the land", either. In the words of Jonathan Solomon of Fort Yukon,

When we talk about subsistence in the areas, we should be talking about Native culture and their land. I never heard the word subsistence until 1971

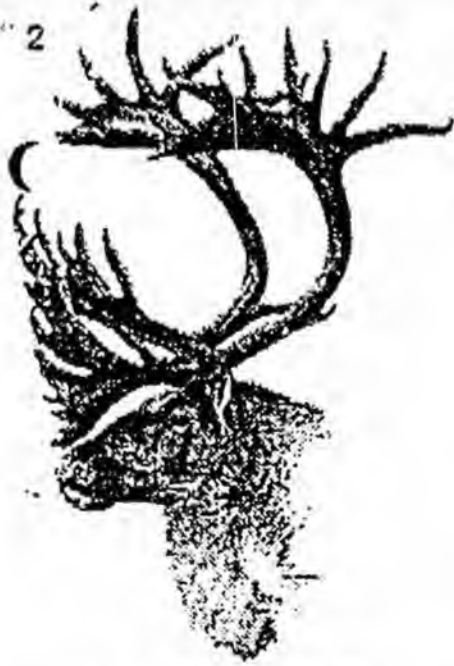
under the Native land claims act. Before that time, when I was brought up in the culture of my people, it's always been 'our culture' and 'our land'. You cannot break out subsistence or the meaning of subsistence or try to identify it, and you can't break it out of the culture. The culture and the life of my Native people are the subsistence way of life. It goes hand in hand with our own culture, our own language, and all our activities.

Culture includes that which matters most to any people - values, religion, all that is sacred. And this may explain why Native Americans (including Alaskans) have never been able to



peoples began in Juneau in 1956. For 10 years I was pastor of the Juneau Methodist Church there. During that time I was fortunate to have a close working relationship with our Choir Director, Richard Newton. Richard is a wise and wonderful Tlinget leader then employed by the U. S. Forest Service; and a fine musician who shaped our chancel choir into one of the best in Alaska.

From Richard I learned much about the culture of the rain forest people - including the sacred ritual of returning salmon bones to the river from which they had come. All of life for his people had been tuned to the cycles and recycling processes of nature. The aware-



reach a common understanding about the land with white Europeans and others who immigrated to this continent.

The Land

Land is traditionally not simply "real estate" for Native peoples. It is essence of existence, identity and belonging.

For European immigrants, on the other hand, ...land was merchantable. Law and usage had developed a complicated system of privileges and obligations, all deriving from the notion of a transferable fee title in land. Land that was not encompassed within some form of recorded title was outside of law itself . . . When these Europeans found that Indians had no proceedings for recording title, indeed had no titles, they readily assumed that there was no ownership. ²

This is not to suggest that the Europeans simply occupied and appropriated the land of Native Americans. The Puritans, for example, believed that the confiscation of property was wrong whether boundary markers existed or not. Roger Williams, among others, proposed that the land be purchased from the Native Americans at a reasonable price. This approach, as much as his theological ideas, perhaps, contributed to his banishment from Plymouth! ³

Political reality – perhaps more than morality – induced European immigrants to secure land and resources by negotiation rather than by conquest. Hostile environment, Quaker and Puritan ethics, combined with principles of British and International Law (as well as military necessity) reinforced this pattern. During the American Revolution the colonists who cultivated alliances with East Coast tribes became obligated to them for support or – at least – neutrality. ⁴

Such is the historical background for the more than 200 years of treaties between colonial, state and federal governments and Native Americans. As has been well documented, this history has been marred by broken treaties and legislated plunder.

ANCSA

The relationship of the federal government to Alaska Natives both before and after the Alaska Native Claims Settlement Act of 1971 has been essentially the same as that of other Native Americans under American law. ⁵

The highest hopes of Alaska Natives have included the preservation of their land claims, subsistence and self-government. ANCSA addressed only the land claims. However, the Conference Committee report made it clear that the subsistence needs of Alaska Natives were to be protected.

Subsistence

The Conference Committee after careful consideration believes that all Native interests in subsistence resource land can and will be protected by the Secretary (of the Interior) through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by nonresidents when subsistence resources for these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State (of Alaska) to take any action necessary to protect the subsistence needs of the Native. (Emphasis added.) ⁶

ANILCA

Since neither the Secretary of the Interior nor the State of Alaska fulfilled these expectations, Congress added Title VIII to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

ANILCA requires the state to manage fish and game resources according to federal subsistence requirements as the price to be paid for the right of managing fish and game on federal (public) lands. ⁷



Failure to provide subsistence preference to those who depend customarily and directly on fish and wildlife the mainstay of livelihood, who are local residents, and have no alternative resources available, will mean the transfer of management of public lands to the federal government. *

Conclusions

The conclusions drawn by David Case in his monumental study are worth quoting at length:

To some extent, federal treaties and statutes have protected Alaska



Native subsistence interests for many years. Earlier enactments afforded minimal exemptions, often limited to specific species or wildlife taken by primitive hunting methods. In all likelihood more realistic forms of protection were unnecessary because there was little real conflict over the exercise of aboriginal hunting and fishing rights. However, Alaska statehood, the enactment of ANCSA and the relatively rapid development of the new state exacerbated these conflicts. The federal response has not been the abandonment of Native subsistence values, but the protection of those values in the form of exemptions from recent wildlife conservation treaties and statutes. Moreover, the state has been virtually compelled under ANILCA to adopt statewide subsistence protections, structured in significant part to protect

Native subsistence interests.

Although the umbrella of federal protection now shelters both Natives and non-Natives, the fact does not entail a diminishment of Native values so much as an acknowledgement that in Alaska significant numbers of non-Natives now share those values by their participation in the subsistence economy. Nor do recent federal enactments necessarily preclude the possibility of some tribal control of subsistence hunting and fishing. In fact, recent amendments to the Lacey Act imply that, even in Alaska, tribal fish and game management may receive additional support through federal enforcement. Particularly when

issued a stay, postponing until July 1³ the effects of the December 22 decision. This means that the State of Alaska has very little time to change either the State Constitution to accommodate the ANILCA protection of Alaska Native subsistence rights OR get Congress to change ANILCA to accommodate the Alaska Constitutional position, which has been supported by influential special interest groups of sports hunters and fishermen, commercial fishermen and hunters, environmental and animal rights groups.

In our view, the historic federal trust position of protecting traditional Native American subsistence culture and rights must prevail. The alternative would mean the extension of "the trail of broken treaties" to the remaining great land capable of keeping at least some of the promises of democracy made to the people who were here first.

It is important, of course, for Native Alaskans and other Alaskans who value the subsistence way of life to cooperate and – if possible – reach a consensus on the best way to ensure its preservation.

As Representative Eileen Panigeo MacLean of Barrow wrote recently,

It is up to us Alaska Natives to be aware of subsistence issues and to understand the arguments as we advocate for our hunting and fishing rights. If we do not, we will lose control over our destiny and our culture shall not survive.

We must continue to stand up and speak for our needs, so that we will not wake up one day to find that we are no longer able to gather the resources which sustain us. We must keep our authority of local control.

We must give support and encouragement to the various groups and commissions that advocate for our way of life and show our appreciation for their efforts and dedication. They are working to protect our resources and our right to the resources not just for themselves, but for us and for our future generations.¹⁰

Alaska IMPACT adds its voice to those who advocate for the Native Alaska subsistence way of life. As has

The Conflict

Last December 22, the Alaska Supreme Court ruled that Alaska's subsistence statute giving rural residents priority in hunting and fishing privileges discriminated against urban residents. The decision was based on the Alaska Constitution's "common-use" clause which provides that all residents have equal rights to use fish and wildlife.

On January 5, Alaska's Supreme Court Chief Justice Warren Matthews

been demonstrated time and again in the "South 48" and in Hawaii, it is easy for a dominant majority to ride roughshod over minority cultures and their customs and traditions.

Our hope is expressed in these wise words of our noted legal authority on the impact of American laws on Alaska Native peoples:

Perhaps in Alaska, in the waning days of the twentieth century, we will at last find one place where the relationships between immigrant and aboriginal Americans can be structured so that each may enrich the other, and thereby ensure the diversity that is the hallmark of a free society. "

Is There A Solution?

On February 1, 1990, the Board of Directors of the Alaska Federation of Natives adopted a position statement on subsistence, including the following:

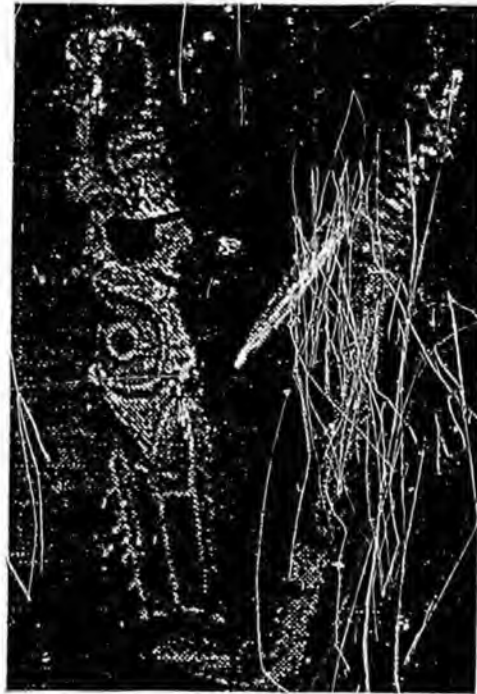
We believe that if Alaskans are going to solve this problem:

a) *an amendment to the Alaska Constitution to enable the legislature to enact and the administration to implement a rural subsistence priority which protects customary and traditional use of fish and game by Alaska Natives and other rural residents is the preferred solution; and*

b) *AFN is committed to working with the Governor and legislative leadership in considering other solutions which meet AFN'S policy goal.*

Senator Stevens

In his address to the Joint Session of the 16th Alaska Legislature



on January 17, Senator Ted Stevens pointed out that a federal solution would risk serious losses to the state. "I would urge you not to think that the federal solution is the one that is easiest," he said, "because we will lose more than we gain."

Governor Cowper

Governor Steve Cowper has stated that,

Subsistence is a way of life for thousands of Alaskans, not a weekend hobby, and we've got to do everything possible to protect that way of life. I'll be working with the Alaska Federation of Natives, other Native groups and the legislature to shape a solution to this latest problem that the (Alaska) Supreme Court has dropped in our laps. "

Several legislative measures have already been introduced in Juneau, including:

SCR 39 by Senator Jay Kerttula of Palmer which would establish a Commission to review the legal situation and identify possible options for a solution for the Senate

HR 415 by Representative Ramona Barnes of Anchorage, which would amend the Alaska subsistence law and base "subsistence user" criteria on 1) local residency and 2) direct dependency on subsistence resources and income below the national poverty level.

HJR 74 by Representative George Jacko would amend the Constitution by adding a section to give the legislature authority to grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources.

Very likely there will be many more measures by various pressure groups during this session. Alaska IMPACT will alert members to advocacy action possibilities as appropriate.

This edition of Prepare was written by the Executive Director of Alaska IMPACT. If you have information, questions or suggestions, please write or phone:

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Fairbanks, Alaska 99709
(907) 474-0700

Notes:

- ¹Village Journey, Thomas R. Berger, Hill & Wang, 1985, p. 52
- ²Indians and Other Americans, Fay & McNickle, Harper, 1959, p. 26
- ³Behind the Trail of Broken Treasures, Vine Deloria, Delta, 1974, p. 95
- ⁴Alaska Natives & American Law, David S. Case, U of A Press, 1984, p. 47
- ⁵Ibid., p. 47 ff.
- ⁶Senate Report 92-581, 92nd Congress, 1st Session, December 14, 1971 at 37
- ⁷Case, op. cit., p. 300
- ⁸Ibid., p. 303
- ⁹Ibid., pp. 313, 314
- ¹⁰"Tundra Times", January 29, 1990, p. 29
- ¹¹Case, op. cit., p. 477
- ¹²AFN Newsletter, Special Issue, February 1990, p. 7

Credits courtesy of:

- Alaska Federation of Natives: Sarah Dyring, page 1
- Doug Lindstrom's Asian Settlements, Caribou & Wardenburg, page 2
- Alaska Federation of Natives: Ice Fishing, page 3
- Sheep Museum Press, Marbut Hood, page 4
- Vancouver Art Gallery & University of British Columbia, Paper Canoe, page 5



3/18/90

TCC supports Native subsistence priority

Interior Alaska's largest Native organization voted Thursday to throw its support behind an amendment to the state constitution that would give Alaska Natives priority hunting and fishing rights.

Tanana Chiefs Conference, a non-profit social services organization that serves 43 Interior villages, also voted against rejoining the Alaska Federation of Natives at its annual convention Thursday.

"Tanana Chiefs Conference . . . urges the state of Alaska, the general public and all Alaska Natives to support the proposed amendment to the Alaska State Constitution to provide for Native subsistence preference," the resolution said.

Native organizations in the state now are divided over whether to support Fort Yukon Rep. Kay Wallis' amendment

that would give all Alaska Natives and rural residents priority hunting and fishing rights. The Alaska Federation of Natives supports Gov. Steve Cowper's amendment that would give subsistence priority to rural residents only.

The Alaska Federation of Natives, a statewide Native organization, backs Cowper's amendment because it believes the Native-preference bill has no chance of passing in the Legislature, AFN Board of Directors chairman Ralph Eluska told TCC delegates earlier this week.

Tanana Chiefs Conference withdrew from AFN two years ago because it felt the organization wasn't adequately representing village needs and fighting to protect tribal lands.

VILLAGE PARTICIPATION CONFERENCE RESOLUTION # 90 - 16

TITLED: Resolution of information concerning subsistence as a way of life, not a way of law, and,

WHEREAS, Currently new people have tried to make difficult or impossible laws governing our customary and traditional use of these resources, and,

WHEREAS, Despite of all the laws that have been forced upon us, we have continued to live in our customary and traditional ways; and,

WHEREAS, The people have shared these resources with members in their communities and other communities since time immemorial; and,

WHEREAS, The law administrators have attempted to administer and enforce laws in Alaska that have created genocidal social cultures and suppressed indigenous lifestyle, and,

Now therefore be it

RESOLVED: That the 1990 Village Participation Conference hereby informs the administrators of Alaska and Law enforcement officials that the Alaska Native People will continue to live their traditional and customary lifestyles in spite of any laws they create.

ADOPTED this 23rd day of February, 1990 at the Village Participation Conference in Juneau, Alaska.



Chester Ballot, Chairman
1990 Village Participation Conference

SUBSISTENCE NOW, SUBSISTENCE FOREVER!

"DEFENDING A WAY OF LIFE"

by Nels A. Anderson, Jr.

AS WE ARE GATHERED HERE TO ADDRESS THE ISSUE OF SUBSISTENCE, WE ARE GIVEN THE OPPORTUNITY TO DEFEND SUBSISTENCE WHICH IS OUR WAY OF LIFE. I CANNOT THINK OF A MORE IMPORTANT ISSUE THAN SUBSISTENCE. I CANNOT THINK OF A TIME WHEN IT IS SO CRITICAL FOR ALL OF US TO UNITE AND WORK TOGETHER TO DEFEND OUR WAY OF LIFE IN ALASKA.

IN ALASKA, "SUBSISTENCE" MEANS SUSTENANCE GAINED FROM THE FISH, GAME, MARINE MAMMALS, BIRDS AND BERRIES FROM THE LAND, WATERS AND AIR OF ALASKA. THE ALASKA FISH AND GAME NEWSLETTER OF NOVEMBER-DECEMBER 1989 STATES THAT SUBSISTENCE USES "VARY FROM 10 POUNDS PER PERSON TO A HIGH OF 1498 POUNDS PER PERSON PER YEAR. THE AVERAGE HARVEST IS 250 POUNDS. IN APPROXIMATELY HALF OF THE SAMPLED ALASKA COMMUNITIES, WILD FOOD HARVESTS ARE GREATER THAN THE AVERAGE 222 POUNDS PER PERSON OF STORE-BOUGHT MEAT, FISH AND POULTRY PURCHASED BY FAMILIES IN THE WESTERN UNITED STATES EACH YEAR."

ALONG WITH THE FOOD VALUE, SUBSISTENCE HAS A DEEPER, FAR-REACHING MEANING. IT IS THE RELATIONSHIP THAT OUR ANCESTORS HAD WITH THE LANDS AND WATERS OF ALASKA. IT IS THIS RELATIONSHIP THAT MAKES THOSE OF US WHO LIVE HERE FEEL WHOLE AND ONE WITH NATURE. SUBSISTENCE DEFINES WHO WE ARE AS NATIVES OF ALASKA. WITHOUT SUBSISTENCE WE ARE NOTHING. *not a culture.*

SUBSISTENCE FOOD HAS TRADITIONAL, HISTORICAL, AND CULTURAL VALUE. SUBSISTENCE FOOD HAS BEEN AND IS SHARED WITH THE FAMILY, THE AGED, THE WIDOWS, AND EVERYONE ELSE IN THE COMMUNITY. SUBSISTENCE FOOD HAS BEEN AND IS SHARED ACROSS THE STATE WITH FRIENDS AND RELATIVES FROM BARROW TO METLAKATLA. SUBSISTENCE FOOD HAS BEEN AND IS SHARED AMONG NATIVE AND WHITE ALIKE.

THE WORD, "SUBSISTENCE", WAS THE MEANING OF LIFE FOR OUR ANCESTORS. IT MEANS THE SAME THING FOR THOSE OF US TODAY.

OUR ANCESTORS, THE FIRST PEOPLE OF ALASKA, THE INDIANS, ESKIMOS, AND ALEUTS, LIVED OFF THE LAND FOR THEIR SURVIVAL. THEY USED THE RESOURCES THAT WERE AVAILABLE. THEY BUILT UP OUR CULTURES, TRADITIONS AND VALUES THAT ENCOMPASSED THE USE OF THE RESOURCES THAT NATURE HAD TO OFFER.

PAGE TWO OF SIX

AFTER THE FIRST CONTACT WITH THE WHITE CULTURE, IT WAS NECESSARY TO REDEFINE OUR VIEW OF HOW WE WOULD PROTECT WHAT WE HAD USED FOR FOOD AND CLOTHING AND SHELTER FOR CENTURIES AND CENTURIES.

IN THE 1970'S THERE WAS RAPID GROWTH IN OUR POPULATION. THERE WAS MORE AND MORE PRESSURE ON OUR FISH AND GAME BY SPORT HUNTERS AND SPORT FISHERMEN. MANY VILLAGE PEOPLE FELT THREATENED AND STARTED TO SPEAK UP ABOUT WANTON WASTE OF FISH AND GAME.

RURAL LEGISLATORS RESPONDED BY SPONSORING LAWS THAT MORE CLEARLY DEFINED WANTON WASTE AND WHAT PARTS OF ANIMALS COULD BE LEFT IN THE FIELD WITHOUT PENALTY. THERE WERE EFFORTS TO BRING FISH AND GAME MANAGEMENT CLOSER TO HOME BY FORMING LOCAL AND REGIONAL FISH AND GAME BOARDS WITH AUTHORITY TO MANAGE OUR RESOURCES.

EVEN WITH LAWS GUARDING AGAINST WASTE OF FISH AND GAME, WE, AS A PEOPLE, WERE MISSING THE POINT. WE WERE SPEAKING ALL AROUND THE PROBLEM BUT WE COULD NOT DEFINE WHAT WAS BOTHERING US. WE ALL KNEW THAT WE HAD TO PROTECT OUR ANCESTORAL RIGHTS TO SUBSISTENCE FISH AND GAME. THE BIG QUESTION WAS HOW COULD IT BE DONE?

CONCERN WAS ALSO EXPRESSED BY OUR VILLAGES THAT SOMETHING NEEDED TO BE DONE NOT ONLY TO PROTECT OUR FISH AND GAME BUT ALSO ACCESS TO THEM AS WELL. ELDERS BEGAN TO THINK THAT A TIME WOULD COME WHEN OUR FISH AND GAME RESOURCES WOULD BECOME SCARCE. HOW WOULD WE FEED OUR CHILDREN AND OURSELVES IF THERE WERE NO MORE FISH AND GAME?

SOMETHING HAD TO BE DONE. IN 1977, THE STATE HOUSE OF REPRESENTATIVES FORMED A SPECIAL COMMITTEE ON SUBSISTENCE. THE COMMITTEE HAD EIGHT MEMBERS. THEY WERE REPRESENTATIVES BILLY AKERS, NELS ANDERSON (CHAIR), SAM COTTEN, STEVE COWPER (NOW GOVERNOR), PHILIP GUY, JOE HAYES, AL NAKAK AND LEO SCHAEFFER.

A SUBSISTENCE COMMITTEE OFFICE WAS OPENED IN DILLINGHAM. THE OFFICE WAS STAFFED BY DOROTHY LARSON AND FORMER REPRESENTATIVE ADELHEID HERRMANN.

THE COMMITTEE'S TASK WAS TO TACKLE THE ISSUE OF SUBSISTENCE AND DRAFT LEGISLATION FOR CONSIDERATION BY THE LEGISLATURE. IN 1977 AND 1978 THE COMMITTEE HELD HEARINGS ACROSS THE STATE, IN URBAN AND RURAL ALASKA. IT WAS CLEAR THAT THERE WERE STRONG FEELINGS THAT A BILL TO PROTECT SUBSISTENCE WAS NEEDED.

PAGE THREE OF SIX

THERE WERE A FEW VOICES OF OPPOSITION DURING THE HEARINGS. ALTHOUGH THERE WERE SOME WHO THOUGHT THAT SUCH LEGISLATION WAS NOT NEEDED, IT WAS THE CONSENSUS OF THE SPECIAL COMMITTEE ON SUBSISTENCE THAT LEGISLATION HAD TO BE DRAFTED AND ACTED ON.

HOUSE BILL 960 PASSED THE HOUSE ON MAY 26, 1978, WITH 28 YEAS, 8 NAYS AND 4 EXCUSED.

HOUSE BILL 960 PASSED THE SENATE ON JUNE 16, 1978, WITH 17 YEAS AND 3 NAYS.

GOVERNOR HAMMOND SIGNED THE BILL AND WE HAD OUR SUBSISTENCE BILL IN THE LAW BOOKS OF ALASKA.

THIS IS A BRIEF LEGISLATIVE HISTORY OF HOW SUBSISTENCE BECAME A PART OF OUR FISH AND GAME MANAGEMENT SCHEME IN ALASKA.

WHERE DO WE GO FROM HERE?

WHEN WE ON THE SPECIAL COMMITTEE OF SUBSISTENCE DEBATED SUBSISTENCE, WE NEVER ONCE CONSIDERED THE ISSUE ON RACIAL OR ECONOMIC TERMS. WE NEVER THOUGHT THAT ONLY NATIVES COULD BE SUBSISTENCE USERS. WE NEVER THOUGHT THAT SUBSISTENCE SHOULD BE BASED ON NEED LIKE A WELFARE PROGRAM.

SUBSISTENCE USERS WERE TO BE CONSIDERED IN ALL FISH AND GAME MANAGEMENT DECISIONS. IF FISH AND GAME RESOURCES DECLINED TO SUCH A POINT THAT ACCESS HAD TO BE RESTRICTED, SUBSISTENCE USERS WOULD BE THE LAST TO BE AFFECTED. SPORT HUNTING, SPORT FISHING AND COMMERCIAL FISHING WOULD BE RESTRICTED BEFORE SUBSISTENCE USE WAS STOPPED.

RURAL DESIGNATIONS FOR CUSTOMARY AND TRADITIONAL USES OF FISH AND GAME HAVE CHANGED SINCE 1978 BUT WERE ADJUSTED BY THE FISH AND GAME BOARDS TO MAKE SURE THAT SUBSISTENCE WAS NOT THREATENED. WHEN CONGRESS PASSED THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, GENERALLY KNOWN AS ANILCA, IT INCLUDED A SUBSISTENCE PRIORITY ON FEDERAL LANDS.

ANILCA, TITLE VIII, VERY CLEARLY STATED THAT ALASKA HAD TO PROTECT SUBSISTENCE AND GIVE A PRIORITY TO RURAL RESIDENTS OF ALASKA, INCLUDING NATIVES AND NON-NATIVES ON PUBLIC LANDS. OUR STATE HAS TO COMPLY WITH THIS LAW OR THE FEDERAL GOVERNMENT IS MANDATED TO COME IN AND MANAGE FISH AND GAME ON FEDERAL PUBLIC LANDS.

PAGE FOUR OF SIX

OVER THE YEARS. THE ISSUE OF SUBSISTENCE HAS BEEN DEBATED FURTHER IN THE LEGISLATURE, ALASKA AND FEDERAL COURTS AND THE U.S. CONGRESS.

IN 1982 THE SUBSISTENCE LAW WAS CHALLENGED BY AN INITIATIVE THAT WOULD HAVE REPEALED SUBSISTENCE. THAT YEAR WE ALL WORKED TOGETHER AND DEFEATED THE INITIATIVE BY A WIDE MARGIN. WE WERE UNITED THEN AND WE NEED TO UNITE ONCE AGAIN TO DEFEND SUBSISTENCE WHICH IS OUR WAY OF LIFE.

IN 1986 THE LEGISLATURE AMENDED THE 1978 SUBSISTENCE LAW WHICH LIMITED SUBSISTENCE USE TO FISHERMEN AND HUNTERS IN "RURAL AREAS". THIS HAD TO BE DONE TO BRING OUR LAW INTO COMPLIANCE WITH ANILCA.

YOU CAN SEE HOW IMPORTANT IT IS TO PROTECT TITLE VIII IN ANILCA. IT IS THE KEY TO MAKING SURE THAT SUBSISTENCE IS PROTECTED.

ON DECEMBER 22, 1989, THE ALASKA SUPREME COURT GAVE US A CHRISTMAS PRESENT AND SAID THAT OUR SUBSISTENCE LAW IS UNCONSTITUTIONAL. IT IS UNCLEAR WHAT THE DECISION REALLY MEANS BUT IT IS CLEAR THAT THE SUBSISTENCE LAW IS IN TROUBLE. WE HAVE TO FIGURE OUT HOW TO FIX THE PROBLEM.

WE HAVE TO CONSIDER LEGISLATION INTRODUCED BY REPRESENTATIVE RAMONA BARNES, REPRESENTATIVE GEORGE JACKO AND SENATOR JAY KERTTULA.

REPRESENTATIVE BARNES' LEGISLATION AMENDS CURRENT LAW TO ADDRESS WHO IS A SUBSISTENCE USER. HER ORIGINAL BILL WOULD IDENTIFY SUBSISTENCE USERS BASED ON LOCAL RESIDENCY AND ON ANNUAL INCOME, OR NEED. I BELIEVE THAT REPRESENTATIVE BARNES HAS INTRODUCED A SPONSOR SUBSTITUTE THAT WITHDRAWS NEED AS A CRITERIA FOR SUBSISTENCE USE.

SENATOR KERTTULA HAS A RESOLUTION IN THE SENATE THAT CREATES A COMMISSION TO REVIEW THE SUBSISTENCE QUESTION AND COME UP WITH OPTIONS FOR THE SENATE'S CONSIDERATION.

REPRESENTATIVE GEORGE JACKO INTRODUCED LEGISLATION THAT AMENDS THE CONSTITUTION THAT WOULD BRING THE STATE OF ALASKA INTO COMPLIANCE WITH THE FEDERAL LAW. IT WOULD ALLOW THE LEGISLATURE TO ENACT LAWS THAT WOULD COMPLY WITH TITLE VIII OF ANILCA.

PAGE FIVE OF SIX

WE ALL KNOW THAT WE NEED TO WORK TOGETHER TO PROTECT AND DEFEND SUBSISTENCE IN ALASKA. IT IS AN ALASKAN PROBLEM AND WE SHOULD NOT GO OUTSIDE OF OUR STATE LOOKING FOR A SOLUTION. OUR CURRENT SUBSISTENCE LAW WAS FOUND TO BE OUT OF COMPLIANCE WITH THE STATE'S CONSTITUTION. THAT DECISION WAS NOT UNANANOUS BUT STANDS AS THE LAW OF THE LAND AT THIS TIME. SINCE WE HAVE NO SUBSISTENCE LAWS ON OUR BOOKS, WE ARE NOW OUT OF COMPLIANCE WITH FEDERAL LAW.

WHAT ARE WE GOING TO DO? DO WHAT WE DID IN 1978 AND 1982.

FIRST, WE ALL HAVE TO WORK TOGETHER. ALL OF OUR PROFIT AND NON-PROFIT VILLAGE AND REGIONAL CORPORATIONS HAVE TO WORK TOGETHER AND SPEAK WITH ONE VOICE. WE HAVE TO SET ASIDE OUR DIFFERENCES AND WORK AS ONE TO PROTECT SUBSISTENCE.

SECOND, WE HAVE TO AGREE ON A PLAN OF ACTION THAT WILL GUARANTEE THAT SUBSISTENCE IS PROTECTED.

IT IS MY VIEW THAT WE SHOULD MAKE SURE OF THE FOLLOWING:

1. WE SHOULD NOT MAKE SUBSISTENCE A RACIAL ISSUE.
2. WE SHOULD NOT MAKE SUBSISTENCE A WELFARE PROGRAM.
3. WE SHOULD ALL AGREE ON ONE PLAN OF ACTION AND CARRY IT OUT UNITED AS ONE VOICE.
4. WE SHOULD NOT TRY TO AMEND ANILCA IN CONGRESS.
5. WE SHOULD MAKE SURE THAT EVERY ELIGIBLE VOTER IS REGISTERED SO THEY CAN VOTE IF THERE IS A CONSTITUTIONAL AMENDMENT TO PROTECT SUBSISTENCE ON THE BALLOT IN NOVEMBER.

FROM MY PERSPECTIVE AS A LEGISLATOR IN 1978 AND AFTER VERY CAREFUL CONSIDERATION, I THINK A CONSTITUTIONAL AMENDMENT IS NEEDED. THE AMENDMENT WOULD GRANT A RURAL PREFERENCE. IT WOULD ALLOW THE LEGISLATURE TO ALLOCATE FISH AND GAME ON THE BASIS OF LOCAL RESIDENCY AND CUSTOMARY AND TRADITIONAL USE OF FISH AND GAME FOR FOOD, CRAFTS, CLOTHING AND SHELTER. IF THIS IS DONE, ALASKA'S CONSTITUTION WOULD BE IN COMPLIANCE WITH FEDERAL LAW.



MAR 29 REC'D

KAWERAK, INC.



P BOX 948 • NOME, ALASKA 99762



(907) 443-5231

SERVING THE
VILLAGES OF:

- BREVIQ MISSION
- COUNCIL
- DIOMEDE
- ELIM
- GAMBELL
- GOLOVIN
- KOYUK
- NOME
- SAVOONGA
- SHAKTOOLIK
- SHISHMAREF
- SOLOMON
- STEBBINS
- ST. MICHAEL
- TELLER
- UNALAKLEET
- WALFIS
- WHITE MOUNTAIN

March 22, 1990

Citizen Advisory Commission on Federal Areas
 250 Cushman Street, Suite 4H
 Fairbanks, AK 99701

Dear Commission Members:

I am pleased to know of your public hearing on Subsistence on March 31, 1990. Subsistence is indeed a controversial and much misunderstood issue. The more it is discussed the more understanding will come, hopefully.

In addition to the possible loss of lands, subsistence is the most critical issue facing Natives of Alaska. One of the issues misunderstood is that Natives want racial preference with regards to subsistence. This is not true. It is a political issue for Natives. Alaska Natives have a political relationship with the U.S. Government.

Most important of all is the cultural aspects of subsistence. Subsistence is much more than mere sustenance. Before the cultural interruption and devastation, Natives lived in a sacred manner respecting all living things. It was and is still believed that all life evolved from one Great Spirit Source so that all living things have a spiritual nature. Therefore, one must respect all living things. (There are variations on this theme from village to village and tribe to tribe.) Most of our ceremonies revolve around subsistence. Our songs and dances revolve around subsistence. Our lives and livelihood revolve around subsistence. It is difficult to segregate any part of Native lifestyle that does not include subsistence in some important way. In many christian teachings, it is said that we all are one with God. A subsistence lifestyle is the perfect analogy of that teaching. Subsistence is very much a part of our lives spiritually, physically and psychologically.

We are all aware of the fallout of the great changes to Alaska Native cultures. The social devastation of broken families, unemployment, substance abuse, school dropout rates, suicide of our young adults, etc. They have been widely chronicled in the AFN Report and the Anchorage Daily News "People in Peril" series. The U.S. Federal Government and the State of Alaska consider the problem serious enough to be exploring a Joint Task Force to address the problems.

Subsistence is the last vestige of important cultural connection for Natives. When the early Christians tried to destroy our outward spiritual practices, they disturbed our entire belief system. Our respect for all living things including our own life worth or value came into question. Many of us lost our self-esteem, became ashamed and uncomfortable about life in general. It was easy to consume the alcohol which was introduced to us. Many of us became self destructive. We lost our respect for all life including our own. If Native subsistence needs are disregarded, I don't want to venture to guess the outcome in terms of further social and political alienation. I hope that all the thoughtful Alaskans who worked so hard to pass the subsistence proposition last time will do so again.

I am enclosing resolutions and position statements of Rural Alaska Resource Association (RARA), Bristol Bay Native Association, SE Native Subsistence Committee and AFN. Kawerak, Inc. Board Subsistence Committee has not yet developed a position statement. One is expected by mid-April.

Sincerely,

KAWERAK INCORPORATED



Elizabeth L. Keating
President

cc: Bush Causus Members ✓
Representative Cotten, House Speaker
Senate President, Tim Kelly
AFN

RURAL ALASKA RESOURCES ASSOCIATION

P.O. Box 200908
Anchorage, Alaska 99520
(907) 279-2511

MEMBERS:

Aleutian/Pribilof
Islands Association Inc

Bristol Bay Native
Association

Central Council
Tribes & HADA

Copper River Native
Association

Kawerak Inc

Kodiak Area Native
Association

Manilaq Association

The North Pacific Rim

North Slope Borough

Unum
-Mutsisi

Tanana Chiefs
Conference Inc

Tyonex
Native Village of

ASSOCIATE MEMBERS:

Koyukon
Development Corporation

Bering Sea
Fishermen's Association

RURAL CAP STAFF:

Bob Polasky

RARA Position Statement in Regards to the McDowell Decision

It is the position of the Rural Alaska Resources Association that the State Supreme Court Decision in McDowell v. State of Alaska of December 22, 1989, seriously jeopardizes the subsistence rights of Alaska Natives. The McDowell decision places the State Subsistence law out of compliance with the Alaska National Interest Lands Conservation Act (ANILCA) which requires a subsistence preference for rural Alaskans.

It is RARA's position that the preferred solution to the McDowell decision is to recommend that the State's Constitution be amended to include specific language providing for a subsistence priority for Alaska Natives, in recognition of their culture. Such an amendment would insure that the customary and traditional rights of Alaska's Native people are protected. A priority amendment which includes a priority for Alaska Natives could also provide, through other language, equal subsistence preferences or priorities for non-Native rural Alaskans. It is RARA's position that a subsistence preference in the State Constitution be sought with a "Native Preference" as our first concern to insure current and future generations of Alaska Natives maintain their customary and traditional rights to subsist.

It is also our position, that we would oppose efforts to amend ANILCA as an initial approach to a solution, and also would oppose any solution incorporating a permit system.

BRISTOL BAY NATIVE ASSOCIATION
P.O. Box 310
Dillingham, Alaska 99576
(907) 842-5257

*1/24/90
TO DAVID
258-2157*

PRESS RELEASE

February 28, 1990

Delegates to the Second Annual Bristol Bay Tribal Government Conference today strongly endorsed a subsistence priority for Alaska Natives to be implemented by "any possible means" by state, federal or tribal governments. The action was taken in anticipation of a statewide subsistence conference to be held in April by the Alaska Federation of Natives.

While endorsing a Native preference for subsistence, conferees did not exclude other methods of protecting subsistence rights. The delegates supported a proposed amendment to the state constitution which would allow a preference for subsistence uses on the basis of local residency, customary or traditional use, or dependence on the resources for food and other purposes. Legislation to place the amendment on the November ballot has been introduced by State Representatives George Jacko and Peter Goll.

The amendment would overturn the recent "McDowell" decision in which the Alaska Supreme Court found the state's subsistence priority law to be unconstitutional and placed state law in direct conflict with federal law.

The three-day tribal conference focused on protecting subsistence rights in the aftermath of the Supreme Court's ruling. Conference delegates gave clear direction to the Bristol Bay Native Association and other Native organizations to continue educational and informational efforts at the village level as they attempt to forge a position of statewide unity on subsistence.

Statement of Robert Willard, President
Southeast Native Subsistence Commission
Before the Egan Forum, Democratic Luncheon
Baranof Hotel, Juneau, AK
February 14, 1990

Thank you. My name is Robert Willard. My real name is *Kitch Nalx'*. I am from Angoon, but I reside in Juneau—where I now serve my people as the elected President of the Southeast Native Subsistence Commission.

In Tlingit, the word for what has become known as subsistence is *Haa koos tee yee* which means "our culture." Prior to any regulation, it was called *haa ut ayee*—"our food." Subsistence is the birth right of the Native people.

The Southeast Native Subsistence Commission is an affiliate of the tribal governing Central Council of the Tlingit & Haida Indian Tribes of Alaska which is federally-recognized. The Subsistence Commission is supported by and represents the view of the Grand Camp of the Alaska Native Brotherhood, the Grand Camp of the Alaska Native Sisterhood, Sealaska Corporation, and the Central Council of the Tlingit & Haida Indian Tribes of Alaska, and we believe in the best interests of the IRA governments of Southeast.

The Commission of 23 members, representing all southeast Alaska communities and our tribal members in Anchorage, as an instrumentality of the tribal government, must and will speak for the Tlingit and Haida Nations, which

number approximately 16,000 as relates to subsistence matters.

Establishing an entity that addresses only subsistence has long been a dream of many of the Native leadership. In December of 1989, Richard Stitt, Grand President of the Alaska Native Brotherhood issued his order and created what is now called the Southeast Native Subsistence Commission.

At its February 2-3, 1990 meeting the Commissioners decided to take the position that as a prerequisite to an amendment to the Alaska Constitution that a Native priority be incorporated into such an amendment.

I would like now to explain to you, to the Governor, to the Alaska State Legislature and mostly to the residents of Alaska as to why we require that an Alaska Native priority clause be incorporated into the Alaska Constitution.

Firstly, the Commissions' position of an Alaska Native priority is not to the exclusion of all others that reside in remote villages, or other settlements in rural Alaska.

Foremost though the Commissioners felt that anything less than a Native priority would effectively threaten the survival of the cultures of the Alaska Native people. For the sake of the cultures of the Tlingit and Haida Nations, and the future generations, we will now take our stand.

The Commission is emphatic in this deliberate and serious endeavor to advise the Alaska legislative, administrative, regulatory and judicial branches of state

government that in its collective processes, the net effect of their actions may carry with it the destruction of the Alaska Native cultures.

Before we approve any Constitutional amendment, the Commissioners want to know what an Alaska Statute and its promulgated rules and regulations will contain before we advise our constituents on how to vote should the Legislature pass a measure that will place a Constitutional amendment before the voters.

The Commissioners and the supporting Southeast Native regional organizations feel strongly that with only a "rural priority" it will take a different form. I speak of a form that it may take with only a rural priority, when the Legislature gets through with it. By the time the rule-making Alaska Board of Fisheries, and the Alaska Board of Game gets through with it, you won't even recognize it, because the rule-making agencies give no consideration to the effect a regulation may have upon the cultures.

In 1925, our people in Hoonah were told that in creating the Glacier Bay National Monument, "it will be good for you. We'll preserve the Native food for you!" Did they ever preserve it. Now the National Park Service will not even let the Tlingits of Hoonah into Glacier Bay. The Hoonah Tlingit people have evidence of use and occupancy for subsistence purposes into the Glacier Bay that date back thousands of years.

A further concern of the Commission is that without clear and convincing language, written into the Alaska Constitution, the Alaska Courts will, by common law, establish law that takes no consideration as to the effects upon the cultures of the nations of the Haida, the Inupiaq, the Yupik, the Athabaskan, the Aleut, the Eyak, the Tsimshian and the Tlingit.

The Commissioners are concerned that without direction from the Governor, that the regulatory agencies will continue to disregard the cultural implications—irrespective of what the Governor might publicly say.

If the regulatory agencies were guided by clear and definitive Constitutional language that any action they take may have a detrimental effect upon the cultures of the Alaska Native, then we may have arrived at a solution to part of our concern. That is what we mean by a law taking a different form when it goes through its process. A rural preference or priority is too ambiguous and leaves too much to the interpretation of the Alaska Courts.

The Southeast Native Subsistence Commission, as an affiliate of the regional governing Central Council of the Tlingit & Haida Indian Tribes of Alaska will advocate a Native priority on grounds of the effect it will have to save the Native cultures. It follows therefore that the tribal members will look to this Commission as to whether a State Constitutional amendment is acceptable.

The Commissioners believe that the State of Alaska must now recognize the cultures and the cultural traits of the Alaska Native people. That before you pass any law, promulgate any regulation, issue any policy, that you measure its impact upon the cultures of the Alaska Native people.

We realize that an Alaska Native priority policy goes beyond the provision found in the Alaska National Interest Land Conservation Act. We realize that the implication of an Alaska Native priority may mean that the State of Alaska might give formal recognition to the tribal governments in Alaska. It is likely timely that the State of Alaska give formal recognition to the federally-recognized tribal governments, but that is a separate state policy consideration.

In the subsistence issues though, the Southeast Native Subsistence Commission would like to see subsistence institutionalized as the official State policy in recognition of the cultures of the Alaska Native people. The State of Florida is known as a State that gives special recognition to its elderly people—because it is the State's public policy to do so. If the State of Alaska would establish subsistence as is the official State policy is the reason that we ask for an Alaska Native priority to be incorporated into the Alaska Constitution. Subsistence is the last remaining evidence of the cultures of Alaska's Native people, and I hope this represents the feelings of the Commissioners of the Southeast Native Subsistence Commission, and the

concurring Southeast Native regional organizations as to our rationale in a Native priority being incorporated into any State Constitutional amendment. Anything less would mean that we would be party to the destruction of the cultures of the Alaska Native people and we will not do that.

ALASKA FEDERATION OF NATIVES, INC.



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

POSITION STATEMENT ON SUBSISTENCE

As they have for generations, Alaska Natives continue to depend upon hunting and fishing and gathering to obtain food to feed their families.

Hunting, fishing and other subsistence activities remain the linchpin of traditional Alaska Native culture and Alaska Native spiritual values.

For almost a century the United States Congress has consistently recognized the necessity to protect Alaska Native subsistence activities, the most recent expression of this important national policy being Title VIII of the ANILCA of 1980, which establishes hunting and fishing for subsistence uses by Alaska Native and other residents of rural villages as the priority use of Alaska fish stocks and game populations.

For more than a decade, successive Alaska legislatures and administrations have enacted and administered legislation intended to implement Congress's subsistence policy.

In December 1989, in McDowell v State the Alaska Supreme Court held that the legislature's attempt to implement Congress's subsistence policy violated Article VIII of the Alaska Constitution.

The McDowell v State decision threatens the State's ability to continue to regulate the taking of fish and game on all lands and within all waters in Alaska.

Any solution to this situation must be consistent with the Congressional policy that Alaska Natives and other rural subsistence hunting and fishing activities are the priority use of Alaska's fish stocks and game populations.

We believe that if Alaskans are going to solve this problem:

- (a) an amendment to the Alaska Constitution to enable the legislature to enact and the administration to implement a rural subsistence priority which protects customary and traditional use of fish and game by Alaska Natives and other rural residents is the preferred solution; and
- (b) AFN is committed to working with the Governor and Legislative leadership in considering other solutions which meet AFN's policy goals.

Approved and adopted by the Board of Directors, February 1, 1990.

AVCP

Association of Village Council Presidents
P.O. Box 219 • Bethel, Alaska 99559 • Phone 543-3521

March 5, 1990

Julie E. Kitka, President
Alaska Federation of Natives, Inc.
411 West 4th Avenue, Suite 301
Anchorage, Alaska 99501

Dear Julie,

The purpose of this letter is to urge AFN to temporarily restrain from expressing support for the Governor's proposed constitutional amendment which merely reinstates the past "rural" subsistence system. AVCP believes that support for such an amendment would be premature before other options, including some form of Native preference, are fully explored. It is also AVCP's position that AFN should not take such a position until it has attempted to reach a consensus on this issue with other Native groups active in this area.

AVCP believes that it is important to view the current subsistence situation as a possibility to strengthen Native subsistence rights. We should not be too quick to settle for the old system. As we all know, the "rural" subsistence law, and the State's implementation of that law, was far from ideal. The State's definition of "rural" ignored the vital role subsistence plays in Native culture, and instead focused on subsistence as an economic and needs based system. The State's definition of "rural" was thrown out by the Ninth Circuit Court of Appeals, but it remains on the State's books, and quite possibly remains in State plans. Additionally, the Federal District Court may define the term "rural" in the Kenaitze case, and may do so in a way that would restrict subsistence rights in regional centers like Barrow, Nome, Kotzebue, Dillingham and Bethel, and in many Southeast and Southcentral communities.

"Rural" subsistence rights will not protect Native subsistence rights far into the future even if the State and the courts allow a broad definition of that term. In the foreseeable future, more Native communities will grow, develop and change. Inevitably, some communities will lose their "rural" status, and the Alaska Natives in those communities will lose their subsistence rights and an essential part of their culture. It is a cruel irony that once Natives achieve the goal of economic development that so many encourage, they risk losing subsistence rights and culture. Accepting a "rural" priority may protect most Alaska Natives in the short term, but it will not provide the kind of protection many desire for the long term.

The definition of "rural" is not the only problem with going back to the status quo. The State Boards of Fish and Game, who

are responsible for assuring that the subsistence priority is carried out, have time and again sided with sport and commercial interests over subsistence. Some have suggested that a separate Board be created to deal with subsistence issues. Additionally, the system of Advisory Committees and Regional Councils, created to guarantee that subsistence users have real, substantive input into subsistence regulation, is largely ineffective. The Committees and Councils in some areas are dominated by interests hostile to subsistence. In other areas the Committees and Councils are underfunded or understaffed.

Does the current situation present opportunities to remedy the problems with the Boards and the Advisory Committees and Regional Councils? Are there realistic options available which guarantee subsistence rights for Alaska Natives rather than settling for protection of only those who fall within some unknown definition of "rural"? These questions need to be asked and answered with a full understanding of what the risks and possibilities are. These questions need to be answered before Native organizations lend their support to a "rural" constitutional amendment.

Furthermore, AVCP strongly urges AFN to withhold support for a "rural" constitutional amendment until attempting to form a consensus with other Native organizations active in this area. Alaska Natives must work together if a State statute, constitutional amendment, or ANILCA amendment is to be accomplished. The Southeast Native Subsistence Commission, Rural Alaska Resource Association, Village Participation Conference, and BBNA have all expressed support for some form of Native preference. Tanana Chiefs, the Alaska Native Coalition, AVCP and others have yet to express their position. There must be a meeting of the leadership of these various Native groups for discussion and consensus building. Such a meeting should be held at the earliest possible opportunity. Only after such a meeting will AFN know the strength of Native support for a "rural" constitutional amendment versus other realistic options.

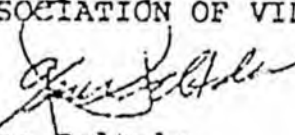
Finally, AVCP unequivocally believes that Alaska Natives should not choose an opening position in the subsistence debate that represents the least that they will settle for. It may be that some form of "rural" solution will prove to be acceptable and possible as the debate progresses. However, if Alaska Natives start off supporting a return to the status quo, they may foreclose the possibility of getting anything better. The place to begin the debate is with a position that strengthens and improves Native subsistence rights. At the very least, AFN should refrain from supporting a "rural" amendment until it is clear that such an amendment is the best possible solution.

AVCP plans to attend AFN's March 7th meeting in Anchorage, and will be available to answer any questions the AFN Board may have in regards to this letter. AVCP looks forward to continued
15 NOT THE ONLY PROBLEM WITH GOING
open to

cooperation and communication with AFN on this most important of issues.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS



Gene Peltola
President

cc: Willie Kasayulie, Chairman of the Board, AVCP
Mitch Demientieff, President, Tanana Chiefs Conference
Robert Willard, President, Southeast Native Subsistence Comm
Mathew Iya, Chairman, RARA

H J R

91

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/19/90

The RESOURCES Committee considered:

HJR 91

HOUSE JOINT RES. NO. 91

OIL SPILL EQUIPMENT DEPOT FOR ALASKA

Urging the Petroleum Institute Resource Organization to locate a regional oil spill equipment depot in the State of Alaska.

[] be replaced with _____ [] 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: _____ letter of intent

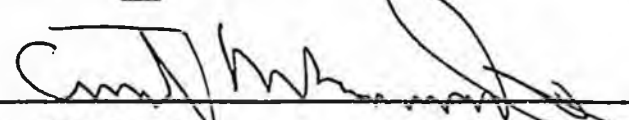
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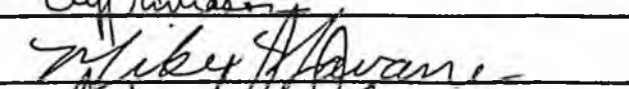
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- zero fiscal note
- zero with analysis

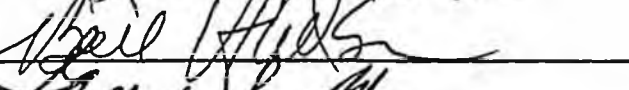
APPROVES PREVIOUS:

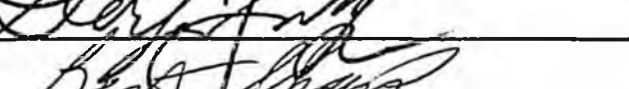
- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

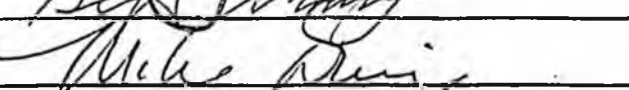
SIGNING DO PASS:



Cliff Davidson


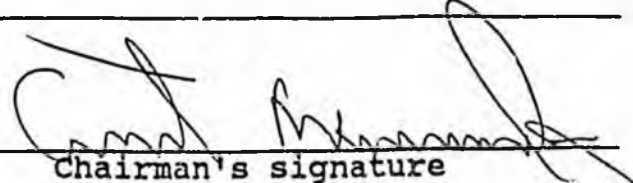
Mike Hagan


Neil Hill


Bert


Mike

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


Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Oil Spill Equipment Depot
For Alaska
 Sponsor: Resources Committee
 Requestor: House Resources Committee

Agency Affected: All Agencies
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
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: _____ Resources Committee Phone: 465-4944
 Division: _____ ative Curt Menard Date: 3/19/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

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

Alaska State Legislature



Representative Mike Navarre

March 19, 1990

MEMORANDUM

TO: Rep. Curt Menard, Co-Chair
Rep. Cliff Davidson, Co-Chair
All Members, House Resource Committee

FROM: Rep. Mike Navarre *Mike*

SUBJECT: HJR 91, relating to an oil spill equipment depot for Alaska

As you know, state agencies, the legislature, and industry are all working together toward the ultimate goal of preventing any future spills. That's as it should be.

However, since no one can guarantee complete success in attaining this goal, a practical, efficient, and reliable method of response must be in place, in case future spills do occur. Part of that system must include readily available response equipment. The Exxon Valdez disaster made it apparent that adequate oil spill response equipment located in Alaska is sorely lacking. HJR 91 stresses the importance of an Alaskan based depot for such equipment.

Some have suggested that the City of Kenai, located in my district, as a potential site for such a depot. Certainly, if PIRO planned on locating the depot in Kenai, I would support it.

I want to make it clear, however, that my purpose in proposing this resolution is not parochial. The purpose is this: **an equipment depot must be situated in Alaska at a site where a spill response can be carried out in a timely manner.**

I respectfully urge the committee's favorable consideration of HJR 91.

APR 18 1990 10:59 AM ALASKA SENATE RESOURCE COMMITTEE 80-282 7532 P. 1 3

Statement of
Jim Butler, Special Assistant to the Mayor
Kenai Peninsula Borough
before the Alaska Senate Resource Committee
SJR No. 80
Juneau, Alaska

March 16, 1990

Madam Chair and committee members. My name is Jim Butler and I work as a special assistant to Mayor Don Gilman of the Kenai Peninsula Borough. Since the grounding of the Exxon Valdez nearly one year ago, the Kenai Peninsula Borough has been actively involved in responding to and dealing with the impact of oil on the communities of the Kenai Peninsula Borough.

Because of the many issues that surfaced as a result to the spill, Mayor Gilman brought me on board his staff. For the past year I have coordinated the borough's activities associated with the ongoing response effort. I have also begun to work closely with the local oil industry in Cook Inlet, along with the Alaska Department of Conservation, to look for new ways to prevent and respond more effectively to oil spills in Cook Inlet.

Previously, I have worked as a U.S. Senate staffer in Washington D.C. on transportation, fisheries and commerce issues of importance to Alaska. During my staff work in Washington, D.C. I continued to return home and work in the local Kenai congressional district office in the summer, as well as commercial fish. My background in Cook Inlet includes 12 years as a commercial salmon and halibut fisherman, the past 7 yrs. running my own fishing boat. I also participated in the 1987 Glacier Bay oil spill incident by acting as a liaison to the Alaskan Congressional Delegation.

Today I would like to address your committee on SJR 80, a resolution encouraging the American Petroleum Institute, Petroleum Industry Response Organization (PIRO) to locate a oil spill response equipment cache in Alaska.

As you are probably aware, after the grounding of the Exxon Valdez, it became painfully obvious that a lack of oil spill response equipment in Alaska contributed significantly to the delayed mobilization of an adequate oil control, containment and recovery effort. Many familiar with Cook Inlet also remember the same frustration of equipment shortages from the 1987 response to the Glacier Bay oil spill in Cook Inlet.

While it is clear that the Alaskan oil industry should be better prepared to respond to medium and large size oil spills in Alaska, and in fact they are becoming better prepared, the costs associated with the initial capitalization of large inventories of equipment which are likely to be used seldomly, often run so high many operators simply cannot afford it.

Initial attack oil spill equipment may be available in the area of a spill but if the spill is larger than local resources can handle, valuable time is wasted while equipment is mobilized from the lower 48 to help the cleanup effort. All the variables of the logistical equation of moving big equipment far distances must add up just right or you end up with a tragically slow response and a far greater likelihood of major environmental impact.

The American oil industry has recognized the need to pool the cost of acquiring and holding major oil spill response equipment in regional centers so it might be readily available to local response co-ops that are faced with a spill that over taxes their response capabilities. With the lessons of the Exxon Valdez fresh in the collective national industry mind,

the API has begun to explore how through the Petroleum Industry Response Organization Inc, or PIRO, the oil industry might develop equipment caches with response experts in regional centers around the nation. Unfortunately, Alaska has not been identified at this point as a location for such a response center.

While the API and PIRO have made great strides in developing a concept that addresses acquiring and holding regional inventories of major oil spill response equipment using many of the lessons of the Exxon Valdez to support their positions, it seems rather short sighted to exclude Alaska from their plan. Given the role Alaska plays in the production and transportation of a large part of the nations oil and the likelihood of major oil spills in remote locations associated with this activity, the Kenai Peninsula Borough agrees that a closer examination of the needs of the Alaska oil production region is in order.

The Kenai Peninsula Borough has felt the impacts of oil spills on its environment and economy in two of the last three years and we continue to experience impacts of the most recent oil spill. We know to well that all to often valuable time is lost during the critical first few hours and

days of a oil spill searching for more equipment as local initial attack equipment is overtaxed.

We recognize that much of the Cook Inlet field is in decline and facing narrowing operating margins. We also recognize that more and more fields in Alaska are in decline and that it is these marginal fields that will continue to employ Alaskans and contribute significantly to our economic base. A centralized inventory of large spill equipment that can be mobilized throughout the state when needed will help industry better afford the new cost of higher levels of oil spill response preparedness and hopefully, keep them economically viable and employing Alaskans longer.

More importantly, the citizens and communities that face the highest risk of environmental and economic impact in the areas of potential oil spills will benefit if response equipment can be rapidly deployed from an Alaskan based location.

With the still developing local response corps integrated with regional response plans, Alaska should be able to provide a system that can effectively utilize a central major oil spill equipment cache. Alaskans

should not have to wait for equipment from the west coast to be mobilized to Alaska by suppliers unfamiliar with Alaska's unique logistical challenges.

On behalf of the Kenai Peninsula Borough, I would like to thank your committee for considering SJR 80 and would encourage you to support it. This positive statement from the Alaska State Legislature will send a clear message to the nations oil spill planners.

With the nations most promising prospects for future oil exploration and development in Alaska, the State of Alaska and its citizens will continue to bear the frontline risk of oil spills. By encouraging the API and PIRO to take a closer look at Alaska's contribution to the nations oil consumption and the role Alaska could play in the PIRO strategy, we believe you are doing a service not only for the citizens of the Kenai Peninsula Borough but for the citizens of the State of Alaska as well.

That concludes my comments and I would be glad to answer any questions that the committee might have.

DRAFT

WHY ALASKA:

National attention is focused on Alaska

+ 25% of U.S. oil is produced in and shipped from Alaska

A structure will exist for PIRo to integrate equipment into

The oil industry expects to explore and develop major oil fields in Alaska

The Alaska location could be a trial program for the rest of the country

There is no liability associated with locating equipment in Alaska

A Seattle location is too distant; Alaska needs are unique, not like WA. state

WHY LOCATE P.I.R.O. IN KENAI

Kenai is located to a high oil traffic, complex oil industry activity

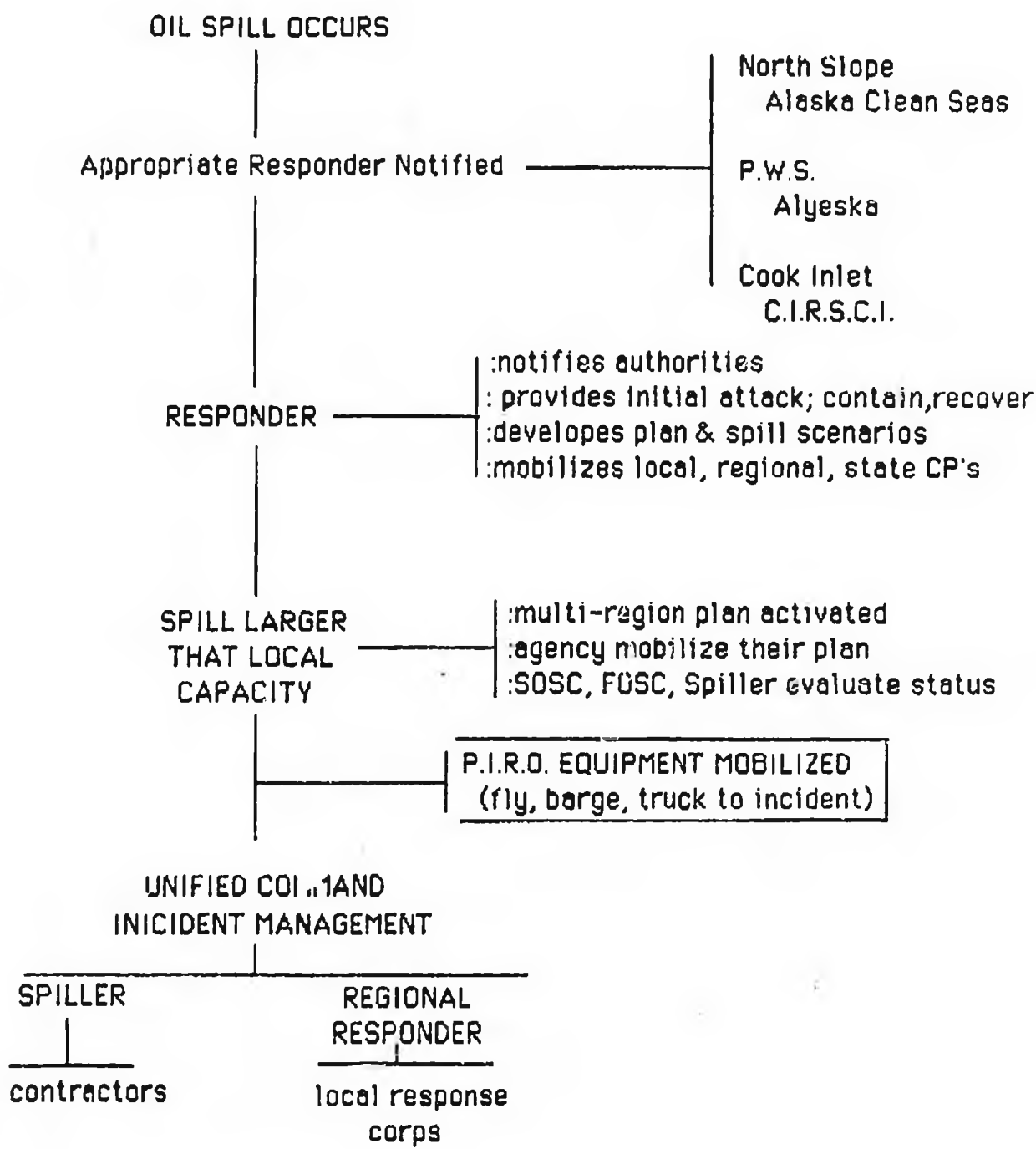
Oil spill training is available through the Mining and Petroleum Training Service

Kenai has an airport that will accommodate large cargo transport planes

Kenai has docks close by that would allow equipment to be loaded on barges

Kenai is centrally located and equipment could be mobilized statewide rapidly

PIRO Interface to Alaska Oil Spill Response Structure



DRAFT: Jim Butler
Kenai Peninsula Borough
262-4441

DRAFT

-TESTIMONY-

BEFORE THE HOUSE RESOURCE COMMITTEE

MARCH 19, 1990

*By Tim Robertson
Seldovia*

HELLO, MY NAME IS TIM ROBERTSON I AM REPRESENTING THE REGIONAL CITIZENS ADVISORY COMMITTEE FOR PRINCE WILLIAM SOUND (RCAC). THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU SUPPORTING HJR 91, REQUESTING PIRO TO LOCATE ADDITIONAL OIL SPILL EQUIPMENT IN ALASKA.

THE REGIONAL CITIZENS ADVISORY COMMITTEE STRONGLY SUPPORTS THE LOCATION OF ADDITIONAL OIL SPILL EQUIPMENT IN ALASKA. WE ARE COMPLETING A REVIEW OF THE "ALYESKA TANKER OIL SPILL PREVENTION AND RESPONSE PLAN". ONE ITEM THAT IS VERY APPARENT IS ALYESKA DOES NOT HAVE ADEQUATE SPILL RESPONSE EQUIPMENT OUTSIDE PRINCE WILLIAM SOUND. IN FACT THEY HAVE NO SPILL RESPONSE OUTSIDE PRINCE WILLIAM SOUND. YET, IN THE SAME PLAN THEY ACKNOWLEDGE THAT THEY CAN NOT CONTAIN AND REMOVE A SPILL OF OVER 2,000 BARRELS.

MY PERSONAL EXPERIENCE WITH THE EXXON VALDEZ OIL SPILL WAS FROM MY HOME IN SELDOVIA. WE HAD TO SEND CREWS INTO THE WOODS TO CUT TREES AND DIG FISHING GEAR OUT OF THE SNOW TO MAKE BOOM TO PROTECT OUR OWN FROM THE APPROACHING OIL. AS I SIT HERE TODAY, THERE IS STILL NO SPILL RESPONSE EQUIPMENT WITHIN 12 HRS. OF OUR COMMUNITY. THANK YOU FOR THE OPPORTUNITY TO COMMENT.

March 20, 1990

Senate Conferees
Senate Bill 686
U.S. Senate
Washington, D.C. 20510

Dear Senate Conferee,

The Alaska State Legislature is currently working on legislation to create a Citizen's Oversight Council on Oil and Hazardous Substances. In testimony before the House Resources Committee there has been some discussion that this legislation may duplicate provisions in Title 8 of HR 1465/S 686. We do not believe this to be the case. In fact, we believe that federal and state legislation will complement each other to provide the highest degree of citizen oversight possible.

House Bill 578 was introduced in the Alaska State Legislature at the request of the Alaska Oil Spill Commission. After eight months work, the Commission identified citizen oversight as an essential component of any oil spill prevention program. Our legislation creates a five member state council primarily to oversee and monitor state and federal regulatory agencies. As currently written, the Citizen's Oversight Council will be an arm of the Alaska State Legislature.

The role of the Council will be to ensure vigilance on the part of government. As a statewide entity, it will also have a role in coordinating among any regional citizen councils created by state federal or local governments.

Both the federal and the state government have a compelling interest in ensuring that a disaster such as the Exxon Valdez never again occurs. We encourage you to continue with your efforts to create strong regional citizen's groups in Cook Inlet and Prince William Sound.

Thank you for your efforts.

Sincerely,

Representative Cliff Davidson
Co-Chair

Representative Curt Menard
Co-Chair

H J R

92

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 13, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/30/90

The RESOURCES Committee considered:

HJR 92

HOUSE JOINT RES. NO. 92

FISHING IN GLACIER BAY NATIONAL PARK

Relating to subsistence and commercial fishing in Glacier Bay National Park.

RECOMMENDATIONS:

- be replaced with CS HJR 92 (RES) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note HOUSE RES.
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Bea Shay</u>		←	

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Fishing In Glacier Bay National Park
 Sponsor: Rules Committee
 Requestor: House Resources Committee

Agency Affected: All Agencies
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
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: House Resources Committee Phone: 465-4944
 Division: Representative Curt Menard Date: 3/30/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

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

GLACIER BAY NATIONAL PARK - SUBSISTENCE FISHING ISSUEIntroduction

This paper provides a summary of the National Park Service position on subsistence activities as related to Glacier Bay National Park. Although the Alaska National Interest Lands Conservation Act specifically provides for subsistence uses in many new national parks in Alaska, it did not authorize subsistence activities in Glacier Bay National Park. The legislative history of the Act further clarifies that subsistence use was to be allowed in the Preserve, but not in the Park.

Statutes and Regulations Regarding Subsistence Issue

- Federal Statutes

o National Park Service Organic Act, 1916: "The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified ... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. Sec. 1.

o Redwood National Park Act, 1978: "individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the system and to clarify the authorities applicable to the system. ... The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 16 U.S.C. Sec. 1a-1.

o Alaska National Interest Lands Conservation Act (ANILCA), 1980: "Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." 94 Stat. 2383, Sec. 203. Subsistence uses are not specifically permitted in section 202(1) of the Act, which created Glacier Bay

National Park, whereas other sections of the Act creating other national parks do intentionally contain language specifically permitting subsistence uses.

- Legislative History

o Senate Report No.96-413, 1979: "Subsistence uses will be allowed within the preserve, but not in the park." VI. Committee Amendments, Title II - National Park System, Section 202(1): Glacier Bay National Park and National Preserve.

o Senate Report No.96-413, 1979: "Gates of the Arctic, Mount McKinley, Katmai, and Glacier Bay National Parks -- are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." VI. Committee Amendments, Title II - National Park System, Overview, p. 137.

o Congressional Record, House of Representatives, November 12, 1980: "Subsistence uses ... are not allowed in the park. ... Subsistence uses ... are allowed in the preserve in accordance with the provisions of this Act." H 10539.

Summary

The aggregate of the laws and regulations concerning national parks, and particularly Glacier Bay National Park, mandate that the National Park Service manage the Park in such a way that the landscapes and the naturally diverse ecosystems of plants, mammals, birds, fish, and other life forms be protected in an unimpaired state for their scientific value and the enjoyment of present and future generations.

Alternative Actions

(1) Prohibit subsistence use of Glacier Bay National Park in accordance with ANILCA and the management mandates of the National Park Service Organic Act.

(2) Propose revised and new regulations which would allow a closely monitored, consumptive, "food source" style fishery, for local residents, in the Park for a specified period of time while data is collected showing the extent of resources taken and the overall effect of such taking on the Park. If research and data reveal that any levels of such a "food source" fishery can occur without impairing park purposes including protecting park resources, visitor enjoyment, and scientific values then the NPS would consider supporting further regulations to allow designated levels of "food source" fishing, or legislative changes to allow "subsistence" fishing, any such uses being subject to continued monitoring and regulation.



Southeast Alaska Conservation Council

SEACC • PO. Box 021692 • Juneau, Alaska 99802 • (907-586-6942)

GLACIER BAY NATIONAL PARK MANAGEMENT

- * SEACC supports protection of park values.
- * SEACC does not support kicking commercial fishing out of Glacier Bay National Park and adjacent waters.
- * SEACC supports the continuation of existing commercial fishing uses in Glacier Bay National Park and adjacent waters.
- * SEACC also supports the restoration of traditional subsistence rights in Glacier Bay National Park.

Glacier Bay and its surroundings constitute one of the world's great national parks. SEACC supports the protection of park values to maintain the integrity of this magnificent national treasure.

It is SEACC's position that management of the park must protect park values first, yet equitably provide for appropriate and sustainable levels of historical human uses.

SEACC strongly advocates establishing a process for local people and the National Park Service to work together to iron out an appropriate mix of traditional uses and park values that will be in the best long-term interest of both the Park and the people.

Specifically, we recommend that the Park Service suspend all proposed changes in commercial fisheries management until a local advisory commission and the Park Service have identified and resolved any major conflicts between local uses and park values.

REPRESENTATIVE
BEN GRUSSENDORF

P O Box 928
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature



WHILE IN JUNEAU
P O Box V
JUNEAU, ALASKA 99811
(907) 485-3824
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House of Representatives

RULES COMMITTEE CHAIRMAN

MEMORANDUM

TO: Rep. Cliff Davidson
Co-Chairman
House Resources Committee

Rep. Curt Menard
Co-Chairman
House Resources Committee

FROM: Rep. Ben Grussendorf

DATE: March 20, 1990

RE: HJR 92, "Relating to subsistence and commercial fishing in
Glacier Bay National Park"

The House Rules Committee introduced this bill in response to the concerns expressed by commercial fishermen and subsistence users. The Citizens' Advisory Commission on Federal Areas, at the request of the Park Service, held hearings in Juneau on March 5, 1990, regarding the closing of the entire Park, including three miles offshore, to commercial fishing and subsistence use. This fishing area is of critical importance to the fishing industry. Even though the Park Service has stated verbally that they will not enforce what they consider to be their statutory authority over this area, and will conduct studies to determine if commercial and subsistence use is harmful, we believe that a statement of the State of Alaska's position on this is critical to their consideration of the issues and their interpretations of their statutes.

We would like to request your scheduling of this resolution at your earliest convenience in order for the resolution's passage this session. We realize you have a heavy committee schedule. There are no opposing groups within the state that have testified, with the possible exception of the National Wilderness Society. (There was one individual ostensibly representing them at the hearings supporting the closing of the park.) The Southeast Alaska Conservation Council supports the use of the nonwilderness areas of the Park for commercial fishing and subsistence use.

Thank you for your consideration.

§ 2.3 Fishing.

(a) Except in designated areas or as provided in this section, fishing shall be in accordance with the laws and regulations of the State within whose exterior boundaries a park area or portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

(b) State fishing licenses are not required in Big Bend, Crater Lake, Denali, Glacier, Isle Royale (inland waters only), Mammoth Cave, Mount Rainier, Olympic and Yellowstone National Parks.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting or closing park areas to the taking of fish.

(d) The following are prohibited:

(1) Fishing in fresh waters in any manner other than by hook and line, with the rod or line being closely attended.

(2) Possessing or using as bait for fishing in fresh waters, live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe, except in designated waters. Waters which may be so designated shall be limited to those where non-native species are already established, scientific data indicate that the introduction of additional numbers or types of non-native species would not impact populations of native species adversely, and park management plans do not call for elimination of non-native species.

(3) Chumming or placing preserved or fresh fish eggs, fish roe, food, fish parts, chemicals, or other foreign substances in fresh waters for the purpose of feeding or attracting fish in order that they may be taken.

(4) Commercial fishing, except where specifically authorized by Federal statutory law.

(5) Fishing by the use of drugs, poisons, explosives, or electricity.

(6) Digging for bait, except in privately owned lands.

(7) Failing to return carefully and immediately to the water from which it was taken a fish that does not meet

size or species restrictions or that the person chooses not to keep. Fish so released shall not be included in the catch or possession limit: *Provided*, That at the time of catching the person did not possess the legal limit of fish.

(8) Fishing from motor road bridges, from or within 200 feet of a public raft or float designated for water sports, or within the limits of locations designated as swimming beaches, surfing areas, or public boat docks, except in designated areas.

(e) Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law.

(f) Authorized persons may check fishing licenses and permits; inspect creels, tackle and fishing gear for compliance with equipment restrictions; and inspect fish that have been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.4 Weapons, traps and nets.

(a) (1) Except as otherwise provided in this section and Parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited:

- (i) Possessing a weapon, trap or net
- (ii) Carrying a weapon, trap or net
- (iii) Using a weapon, trap or net

(2) Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in park areas where:

(A) The taking of wildlife is authorized by law in accordance with § 2.2 of this chapter;

(B) The taking of fish is authorized by law in accordance with § 2.3 of this part.

(ii) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated pursuant to special regulations.

(iii) Within a residential dwelling. For purposes of this subparagraph



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON DC 20240

MAY 5 1992

Jay Roy Spadey
RECEIVED
MAY 11 1992
GREG

Memorandum

To: Director, National Park Service
From: Associate Solicitor, Conservation and Wildlife
Subject: Commercial Fishing in Glacier Bay National Park

FACTS: The major portion of what is now Glacier Bay National Park was incorporated into the National Park System through a 1925 proclamation by President Coolidge designating the area as a national monument. 34 Stat. 225 (1925). The boundaries established by that order were modified in 1939 when President Roosevelt enlarged the monument and included certain inland and marine water areas. 53 Stat. 2534 (1939). With the enactment of the Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980) (ANILCA), the monument was redesignated as a national park, further enlarged, and an adjacent national preserve was established. 16 U.S.C. 410hh-1. In addition, subsection 701(3) of ANILCA, 16 U.S.C. § 1132(3), classified most of the park's land area and some of its water zones as "wilderness." The water areas designated as wilderness are Adams Inlet, Hugh Miller Inlet, Charpentier Inlet, Rendu Inlet, Scidmore Bay, part of Dundas Bay, and the water area around the Beardslee Islands. This classification was made in accordance with subsection 3(c) of the Wilderness Act. 16 U.S.C. § 1132(c).

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NATIONAL PARK SERVICE
MAY 11 1992
OFFICE

Commercial fishing has occurred in Glacier Bay for many years. For the most part, this activity is concentrated in Glacier Bay and its major inlets and along the coast in the Gulf of Alaska and the Cross Sound. Commercial fishing has also occurred, to some extent, in some of the waters designated as wilderness by subsection 701(3) of ANILCA. The National Park Service (NPS) is developing proposed regulations which would prohibit motorized use in some of those areas. Dundas Bay and a portion of the Beardslee Islands waterway will be left open to motorboat use. These closures will not prohibit the use of the wilderness water zones for emergency purposes.

ISSUE: Are commercial enterprises permissible in Glacier Bay wilderness areas?

CONCLUSION: Section 707 of ANILCA mandates that wilderness areas in Alaska be managed in accordance with the provisions of the Wilderness Act. Subsection 4(c) of the Wilderness Act prohibits commercial enterprises in wilderness areas. Under subsection 701(3) of ANILCA, certain Glacier Bay water areas are designated as wilderness. This classification was imposed to preserve those areas for recreational uses. Although the Wilderness Act vests the Secretary with authority to allow otherwise prohibited aircraft and motorboat activities to occur in designated areas if it is demonstrated that they are "established uses," there is no such exemption for commercial enterprises. Accordingly, the identified Glacier Bay water areas must remain closed to commercial fishing, which we conclude is a commercial enterprise. This closure applies to commercial fishing in a very small portion of the Glacier Bay water zone. Closure is not required by this opinion for those commercial enterprises which are relied upon to realize the recreational and other wilderness purposes of designated areas (e.g., in Alaska, such activities could include expedition support, hunting and fishing guides, trapping, backcountry outfitters and guides, tourboats). See 16 U.S.C. § 1133(d)(6).

The conclusion that commercial fishing is prohibited in Glacier Bay wilderness zones is consistent with subsection 1110(a) of ANILCA, 16 U.S.C. § 3170(a), which provides that certain modes of transportation may be used in conservation system units for traditional activities permitted by law. Because commercial fishing is an activity which is not "permitted" by the Wilderness Act, it cannot occur under subsection 1110(a). When subsection 1110(a) modes of access are used to perform traditional activities permitted by law, such as recreation, they may be prohibited only after notice and hearing and a determination that they are detrimental to the resource values of the unit.

DISCUSSION

A. Requirements of the Wilderness Act.

The Wilderness Act, 16 U.S.C. § 1131 et seq., was enacted in 1964, "[i]n order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition...." 16

U.S.C. § 1131(a). To effectuate this policy, Congress established the National Wilderness Preservation System composed of Congressionally designated federal areas "where the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain." 16 U.S.C. § 1131(c). Wilderness areas will also "generally [appear] to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable," present "outstanding opportunities for solitude or a primitive and unconfined type of recreation," have sufficient acreage, and contain, as appropriate, "ecological, geological, or other features of scientific, educational, scenic, or historical value." Id.

In order to preserve these values, Congress directed agencies responsible for administering wilderness areas to manage them for the "public purposes of recreational, scenic, scientific, educational, conservation, and historical use." 16 U.S.C. § 1133(b). In subsection 4(c), certain activities, judged to be inconsistent with these wilderness uses, are expressly prohibited:

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area . . . there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area. 16 U.S.C. § 1133(c) (emphasis added).

In recognition of the administrative and public use difficulties which could result from a blanket application of the subsection 4(c) prohibitions, the drafters of the Act created a limited exemption for certain "established uses:"

Within wilderness areas designated by this chapter the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary . . . deems desirable. 16 U.S.C. § 1133(d)(1) (emphasis added).

This exemption was also extended to measures necessary for the control of fire, insects, and diseases. Id. Under this subsection, the Secretary has discretion to allow these activities to occur. Should it be determined that "established" motorboat or aircraft activity is undesirable in a designated area because, for example, it would be detrimental to wilderness values, the Secretary need not invoke the "established use" exemption. Thus, under the Wilderness Act, a designated area can remain closed to all motorized use, unless paragraph 4(d)(1) is invoked, supported by appropriate administrative findings.

It is important to note that, unlike the use of motorboats and aircraft, established "commercial enterprises" were not exempted from the subsection 4(c) prohibition. This distinction is significant in that it indicates that a "commercial enterprise" which involves the use of a motorboat or aircraft cannot be allowed even if it is argued that the motorboat or aircraft is an "established use." The only exemption for commercial enterprises is found in paragraph 4(d)(6):

Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the area. 16 U.S.C. § 1133(d)(6) (emphasis added).

As is true of the paragraph 4(d)(1) "established use" exemption, the Secretary has discretion to allow these services to be performed.

B. Requirements of ANILCA.

The Glacier Bay Wilderness, consisting of approximately two million seven hundred and seventy thousand acres, was designated by subsection 701(3) of ANILCA. 16 U.S.C. § 1132(3). Although subsection 701(3) does not delineate boundaries for the wilderness area, it incorporates the official boundary maps described in section 103. 16 U.S.C. § 3103. Reference to maps GLBA-90,004 (October, 1978) indicates that the following water areas were included in the

wilderness portions of the park: Rendu Inlet, Scidmore Bay, Hugh Miller Inlet, Charpentier Inlet, Adams Inlet, part of Dundas Bay, and water areas in the vicinity of the Beardslee islands. 1/

As Senate Report No. 413 states, this small segment of the Glacier Bay water zone was set aside as wilderness to preserve its suitability for non-motorized recreational water activities:

Glacier Bay Wilderness consists of about 2,770,000 acres of lands and waters within the expanded Glacier Bay National Park. Almost all of the park, including some salt water areas and all islands will be managed as wilderness. Excluded from wilderness are most of the marine waters

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The Committee adopted the Administration recommendation that some water areas should be specified for non-motorized water recreation. S. Rep. No. 413, 96th Cong., 1st Sess. 217 (1979) (emphasis added).

The original Glacier Bay wilderness proposal, which served as the basis for the Congressional action, verifies this goal. Submitted to Congress in August, 1972, it emphasized that the identified water areas should be included because of their "unique saltwater wilderness opportunities." U.S. Department of the Interior, Wilderness Recommendation - Glacier Bay National Monument 11, 18, 19 (August, 1972) (wilderness Recommendation). This proposal recommended that Adams Inlet, the Hugh Miller/Charpentier Inlets complex (including Scidmore Bay), and part of Dundas Bay be designated as wilderness. Id. at 18. Congress modified this proposal by adding Rendu Inlet, and the waters around the Beardslee Islands.2/

The Wilderness Act's prohibition of commercial enterprises is applied to the Glacier Bay Wilderness through section 707 of ANILCA, which provides that, "[e]xcept as otherwise expressly provided for in this Act, wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act" Since ANILCA establishes no exception to the Wilderness Act's subsection 4(c) prohibition

of "commercial enterprises," the specified water areas of Glacier Bay are closed to commercial fishing, which is clearly a commercial enterprise.3/

The Congressional intent to prohibit commercial fishing in Glacier Bay's wilderness waters is supported further by the 1972 Wilderness Recommendation. As indicated in the ANILCA legislative history, subsection 701(3) merely codified, with some additions, the Interior Glacier Bay Wilderness Recommendation. S. Rep. No. 413, supra, at 217. Reference to the Recommendation demonstrates that special consideration was given to commercial fishing in the monument:

The use of ships, powerboats, and airplanes, and commercial fishing on waters of most of the monument are established by custom and are to continue. Powered vessels are required for safe and reasonable transportation on the major waterways. Therefore, these waters cannot be designated as wilderness, except where specific exclusions are made. Wilderness Recommendation, supra n. 1, at 17 (emphasis added).

After describing the proposed wilderness water areas and noting their "unique saltwater wilderness opportunities," the Recommendation explained, "[m]ost of the water is not proposed because of the existing use of motor-powered vessels and commercial fishing activities." Id. at 18.

Special consideration was therefore given to commercial fishing operations within the monument. Only after reviewing carefully the areas in which such activity occurred did the Administration recommend that certain zones be designated as wilderness. Those recommendations were made with the intent that commercial fishing be prohibited. Thus, by relying upon and assimilating the Interior Wilderness Recommendation, Congress adopted a designation which was designed to exclude commercial fishing from the enumerated wilderness water areas but allow it to occur in non-wilderness zones. Nothing in ANILCA mandates that non-wilderness water areas be closed to commercial fishing. Other commercial activities important to Glacier Bay wilderness purposes are not affected by this ban.4/

The prohibition of commercial fishing in Glacier Bay is consistent with subsection 1110(a) of ANILCA. 16 U.S.C. § 3170(a). That provision indicates that,

[T]he Secretary shall permit, on conservation system units. . .the use of snowmachines. . .motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites.

The language of this provision, along with its legislative history, support an interpretation that it is only the "activity" or end use (e.g., subsistence, hunting, recreation, commercial enterprise) which must be "traditional" and "permitted" by ANILCA or other law in order to allow utilization of the identified access modes. See, e.g., S. Rep. No. 413, supra, at 247-248, 299; H. Rep. No. 97, Part I, 96th Cong., 1st Sess. 238-239, 305 (1979). In other words, subsection 1110(a) should be construed to mean that the absence of an historical pattern of snowmobile use in an area for recreational pursuits is not a basis for closure to snowmobile travel, instead it must be shown that the activity, e.g., recreation, is not "traditional" or is not "permitted."

In the case of Glacier Bay, it is not necessary to determine if commercial fishing is a "traditional activity." As concluded above, commercial fishing is an activity which is precluded under subsection 4(c) of the Wilderness Act. 16 U.S.C. § 1133(c). For this reason, it is not an activity "permitted" by law and is not covered by subsection 1110(a).

Individuals who are engaged in activities allowed under the Wilderness Act, (e.g., recreation, education, science, etc., 16 U.S.C. § 1133(b)), ANILCA, or other law, however, may utilize the subsection 1110(a) modes of transportation, subject to reasonable regulations. 16 U.S.C. § 3170(a). The use of those methods of access for "traditional" and "permitted" activities may be prohibited only if, "after notice and hearing in the vicinity of the affected unit or area," the Secretary finds that "such use would be detrimental to the resource values of the unit or area."

The proposal to prohibit motorboats in the Glacier Bay wilderness water areas (except Dundas Bay and a portion of the Beardslees) is consistent with the legislative intent for subsection 701(3). See S. Rep. No. 413, supra at 217. In accordance with subsection 1110(a), NPS has made a preliminary determination that motorboat use of these areas would be detrimental to their wilderness values and to park resources. See S. Rep. No. 413, supra, at 217. A final determination on that issue will be made after notice and hearing.

In connection with this issue, it should be noted that the Wilderness Act prohibition on "commercial enterprises" should not be read to preclude traditional commercial activities in other Alaskan wilderness areas. Recreation is among the statutory purposes of wilderness areas. As the legislative history of ANILCA recognizes, guides, outfitters and similar commercial services can be essential to the recreational utilization of Alaskan public interest lands. See, e.g., S. Rep. No. 413, supra, at 171, 308; H.R. Rep. 1045, 95th Cong., 2d Sess. 179 (1978). Moreover, reference to the legislative history of specific park units indicates that recreational activities generally reliant upon hired guides or outfitters are among the Congressionally-authorized uses of areas which have also been designated as wilderness. See, e.g., Denali National Park, S. Rep. No. 413, supra, at 167 (staging for expeditions); Lake Clark, id. at 153 (climbing); Glacier Bay, id. at 164 (white water); Noatak, id. at 156 (hunting and fishing); Wrangell-St. Elias, 16 U.S.C. § 410hh(g) (mountaineering, climbing). Congress also indicated that trapping, subsistence as well as non-subsistence, is considered a permissible wilderness activity. See id. at 308.

When these legislative references are considered in conjunction with the Wilderness Act's exemption for commercial services which are "proper" for realizing wilderness purposes, it is clear that the overall objectives of ANILCA and the Wilderness Act will be served only if the prohibition on "commercial enterprises" is not extended to traditional Alaska activities.


J. Roy Spradley, Jr.

FOOTNOTES

1/ Although Map GLBA-90,004 indicates that Dick's Arm is a wilderness water zone, NPS has determined that this is a map error and that the indicated designation was not intended by Congress.

2/ The Glacier Bay wilderness water zones can be compared to other marine wilderness areas. In Everglades National Park, for example, commercial fishing is authorized within wilderness water areas. In these areas, however, only the submerged lands are designated as wilderness. The supervening water column was excluded from the designation purposely. As the Interior wilderness recommendation noted:

The parks submerged marine lands contain one of the richest ecosystems known to man. The bottoms are essential to an immense web of animal- and plant-life. . . . Commercial fishing also would continue as before over those portions of the submerged marine-land wilderness. U.S. Department of the Interior, Wilderness Recommendation - Everglades National Park 12 (August, 1974).

Unlike Everglades, the water column in the identified Glacier Bay areas was not excluded from the designated wilderness. Obviously, commercial fishing activity cannot occur in Glacier Bay, as it can in Everglades, without impacting the protected components of the designated wilderness.

3/ Special consideration is provided to commercial fishing in section 205 of ANILCA. 16 U.S.C. § 410hh-4. There it is declared that the Secretary of the Interior "may take no action to restrict unreasonably the exercise of valid fishing rights or privileges" in certain areas, including "the Dry Bay area of Glacier Bay National Preserve." If Congress had intended to allow commercial fishing to occur in the wilderness water areas of the Park, it would have undoubtedly done so in section 205. See S. Rep. No. 413, supra n. 1, at 172. The Malaspina Glacier Forelands in Wrangell-St. Elias, for example, contains a wilderness land area which serves as a base for support facilities for commercial fishing operations. Under section 205 these "commercial enterprises" will be allowed to continue. Moreover, section 1314 of ANILCA cannot be relied

upon to exempt commercial fishing. 16 U.S.C. § 3202. Although it allows for the taking of fish on the "public lands," it provides that such activity is subject to applicable State and Federal law. Thus, the Wilderness Act prohibitions must be applied.

4/ Early versions of the precursor to ANILCA - H.R. 39 - included a special exemption for commercial fishing within wilderness areas. See H.R. 39, 96th Cong., 1st Sess. § 612(d) (1979) (House); H.R. 39, 95th Cong., 2d Sess. § 607(j) (1975) (House). Under these proposed sections, commercial fishing would have been permitted in all areas designated under the Act as wilderness, except within national parks. This provision, contained in the House version of H.R. 39, was ultimately rejected in favor of the Senate approach, which included a general administration section in Title VII - section 707 - and listed specific exemptions in section 1315. 16 U.S.C. § 3203. The section 1315 exemptions adopted some of those listed in the House version (i.e., aquaculture, existing cabins, new cabins), added some not found in the House bill (i.e., timber contracts, beach log salvage), and deleted fishery research, commercial fisheries, and several other sections. See H.R. 39, 96th Cong., 1st Sess., § 1315 (1979) (Senate). Thus, Congress chose not to enact a special section to exempt commercial fishing from Wilderness Act management constraints. It should be noted, however, that even if this provision had been included in the Act, it would not have allowed commercial fishing in national park wilderness areas such as Glacier Bay.

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The purpose of this memorandum is to review legal and regulatory issues related to potential NPS restrictions on commercial, subsistence and personal use fishing in Glacier Bay National Park (GLBA). The memorandum includes a new perspective which could result in a NPS management stance allowing subsistence fishing and a less abrupt end to commercial fishing. Throughout this memorandum the GLBA abbreviation is used to refer to the entirety of Glacier Bay National Park, whereas the name Glacier Bay refers specifically to just the bay.

I. Commercial Fishing

A. Background

The marine waters of GLBA have been fished commercially since at least the 1890s. Commercial fishing continued despite the proclamation of the Glacier Bay area as a national monument in 1925, and its subsequent enlargement in 1939.

Under the Act of June 6, 1934, 43 Stat. 464, the Secretary of Commerce was authorized to "set apart and reserve fishing areas in any of the waters of Alaska . . . and within such areas . . . establish closed seasons during which fishing may be limited or prohibited" Alaska Fishery Regulations, Bureau of Fisheries, prohibited commercial fishing for salmon "in Glacier Bay

north of 58 degrees 27 minutes 54 seconds north latitude" in 1937. 2 Fed. Reg. 305 (February 12, 1937).

In 1939, regulation of Alaskan fisheries was transferred from the Department of Commerce to the newly formed Fish and Wildlife Service (FWS) in the Department of the Interior. By 1941, the area of Glacier Bay north of 58 degrees 27 minutes 54 seconds was opened to commercial trolling for salmon. See 6 Fed. Reg. 1252 (March 4, 1941); 50 CFR 222.17 (1941). NPS regulations during the same year acknowledged the allowance of commercial fishing in Glacier Bay National Monument. See 6 Fed. Reg. 1627 (March 26, 1941); 36 CFR 2.4(b) (1941).

In 1951, Glacier Bay north of 58 degrees 27 minutes 54 seconds was again closed to all salmon fishing. See 16 Fed. Reg. 2158 (1951); 50 CFR 117.8(d)(1951). NPS regulations continued to acknowledge FWS regulatory allowances for commercial fishing in GLBA. See 20 Fed. Reg. 618 (1955); 36 CFR 1.4(c) (1955).

In accordance with the Alaska Statehood Act of 1958, 72 Stat. 339, management of Alaska's fish and wildlife resources was transferred to the state except on "lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife" Id. at Section 6(c). Nevertheless, FWS regulations continued in full force and effect through 1959 while the state prepared adequate management provisions required by the Act. Id. The only fishing prohibited in GLBA by said regulations continued to be salmon fishing by means other than trolling north of certain latitudes. See 24 Fed. Reg.

2053 et. seq. (March 19, 1959); 50 CFR 101 et. seq. (1959). NPS regulations continued to reference Secretarial regulatory allowances for commercial fishing in GLBA through 1966. See 27 Fed. Reg. 6281 (July 3, 1962); 36 CFR 1.4(b) (1962).

NPS regulations regarding fishing were revised in 1966 and Secretarial allowances for commercial fishing in GLBA were no longer mentioned. Fishing for "merchandise or profit" was prohibited in fresh waters of parklands. 31 Fed. Reg. 12752 (Sept. 29, 1966); 36 CFR 2.13(j)(2) (1967). The revised regulations also stated that "Fishing shall be done in conformity with all state and local laws . . . unless further restricted herein or by special regulations." Id. at 2.13(a), Alaska State law presumably allowed commercial fishing in GLBA marine waters from shortly after statehood through the present.

Enactment of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980 included designation of some wilderness in GLBA. Sec 94 Stat 2371, § 701. In accordance with the Wilderness Act of 1964 consumptive commercial activities are prohibited in wilderness areas. 78 Stat. 892, § 4(c).

Consequently, commercial fishing should have come to a halt in the newly designated wilderness portions of GLBA. Nevertheless, it has been allowed to continue, most notably in the Beardslee Islands wilderness section where substantial crabbing activities are growing. ANILCA did not restrict commercial fishing in any other generally applicable wording.

In 1982, the NPS proposed revisions of general regulations including fishing regulations. See 47 Fed. Reg. 11598 et. seq. (March 17, 1982). The resultant final regulations put into effect in 1983 prohibited "commercial fishing, except where specifically authorized by Federal statutory law" including marine waters. 48 Fed. Reg. 30283 (June 30, 1983); 36 CFR 2.3(d)(4). Nevertheless, other NPS regulations related to the protection of humpback whales in the marine waters of GLBA make reference to continuing, and impliedly allowed, commercial fishing in GLBA marine waters. See 36 CFR 13.65. Whale protection regulations referring to commercial fishing were passed as early as 1980. See 45 Fed. Reg. 85471 (Dec. 30, 1980). Furthermore, both the NPS General Management Plan (GMP) and Final Environmental Impact Statement regarding wilderness recommendations for GLBA refer to existing and continuing commercial fishing operations.

B. Analysis

Past memoranda and opinions regarding the issue of commercial fishing in GLBA have reached varying and sometimes opposite conclusions. Generally, recent NPS memoranda have concluded that commercial fishing is not allowable. This conclusion was also presented in an informal memorandum prepared by DOI Solicitor, Ruth Ann Story, in August 1989. A formal Solicitor's opinion prepared by J. Roy Spradley, Jr. in August 1983 reached the opposite conclusion - that commercial fishing has been sanctioned by the NPS and is not prohibited. Memorandum to Deputy Undersecretary for Fish, Wildlife and Parks, from Office of the Solicitor, August 12, 1983.

IS COMMERCIAL FISHING CURRENTLY PROHIBITED IN GLBA?

Discussion of this issue should be prefaced with two seemingly unassailable conclusions. The first is that commercial fishing is specifically allowed by ANILCA in the Dry Bay Area of Glacier Bay National Preserve. See 94 Stat. 2384, § 205. The second is that commercial fishing is specifically prohibited in any designated wilderness portions of GLBA - i.e., upper Dundas Bay, Beardslee Islands area, upper Hugh Miller Inlet, Charpentier Inlet, Skidmore Bay, Rendu Inlet, and Adams Inlet. See id. at § 701; and 94 Stat. 2371, § 701.

It is clear that commercial fishing within GLBA, from the time of the original withdrawal in 1925 until 1983, was not prohibited. In fact, commercial fishing was acknowledged in NPS regulations, and regulated - in regard to methods of take, seasonal closures, etc. - by Department of Commerce and FWS regulations.

Taken at face value, the general NPS prohibition on commercial fishing, enacted in 1983, appears to prohibit any and all commercial fishing, "except where specifically authorized by Federal statutory law." 36 CFR 2.3(d)(4). However, as Solicitor Spradley's 1983 memorandum pointed out, in the case of GLBA where commercial fishing has been allowed, and even "sanctioned", it is important to look into the origin of the regulation to determine its applicability.

The revision of the NPS general regulations, that ultimately resulted in the enactment of 2.3(d)(4), was proposed in March 1982. 47 Fed. Reg. 11598. That proposal only prohibited commercial fishing in fresh waters. Id. at 11614, § 2.3(d)(5). As a result of one comment on the proposed regulations questioning the logic of the NPS prohibiting commercial fishing in fresh water but not in marine waters, the regulations were revised to enact 2.3(d)(4). See id. at 30256, 30283. The "Analysis of Comments" stated: "Engaging in commercial activities is prohibited under 36 CFR 5.3. The Service has clarified this provision to make it clear that all commercial fishing is prohibited unless authorized by federal statutory law or regulation." Id. at 30256.

A closer look at 36 CFR 5.3 and its historical relationship to NPS commercial fishing prohibitions or allowances nationwide is warranted. Section 5.3 was enacted in 1966 in its present form. Prior to that, similar regulatory language was contained in 36 CFR 2.31(b) which stated "No person, firm or corporation shall engage in or solicit any business . . . in a park or monument, without permission in writing from the Director." 36 CFR 2.31(b) (1942). The fact that at the same time this prohibition on commercial activities without permit existed, a separate regulation stating that "Fishing . . . for merchandise or profit . . . is prohibited" (except in GLBA, etc.), casts doubt on any intent that 2.4(b) was applicable to commercial fishing. 36 CFR 2.31(b) (1942). The same is true of the concurrent existence of 36 CFR 5.3 (commercial activities prohibition) and 2.13(j)(2) (commercial fresh water fishing prohibition) from 1967 to 1983. Consequently, the logic

behind using the commercial prohibition of 36 CFR 5.3 to legitimize a new prohibition on commercial fishing in marine waters, 36 CFR 2.3(b), without allowing for public comment, is questionable and potentially subject to attack.

Solicitor Spradley's opinion observed that because NPS regulations related to whale protection in Glacier Bay reference the existence of commercial fishing operations and even "indicate that NPS sanctions that activity," the activity should be considered authorized and, therefore, not prohibited by 36 CFR 2.3(d)(4). The validity of the Solicitor's conclusion is bolstered by the questionable process by which 36 CFR 2.3(d)(4) was promulgated.

The most sensible conclusion to this issue is that commercial fishing in the non-wilderness marine waters of Glacier Bay is exempt from the prohibition of 36 CFR 2.3(d)(4) due to the language of 36 CFR 13.65 sanctioning commercial fishing activities at levels at or below those existing in 1976. If it is concluded that 36 CFR 2.3(d)(4) was legitimately promulgated, it can also be argued that as of the date it took effect, October 3, 1983, commercial fishing in any areas of the park outside of Glacier Bay proper were immediately prohibited. Also, as mentioned before, as of the date of passage of ANILCA, December 2, 1980, commercial fishing was prohibited in the wilderness marine waters of GLBA.

DOES AUTHORITY EXIST TO PROHIBIT COMMERCIAL FISHING IN GLBA?

Generally, the NPS Organic Act of 1916 directs the Secretary of the Interior to "conserve the scenery and the natural and historic objects and the wildlife" in the areas within the national park system and to "provide for the enjoyment of same in such manner as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The Organic Act also grants the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service."

16 U.S.C. § 3. In addition, the Redwood National Park Act of 1978 states "The authorization of activities shall be construed and the protection, management and administration of" NPS areas "shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 92 Stat. 166.

Given the above responsibilities and authority spelled out by Congress, and in addition, the purposes for which GLBA was established - including study of flora and fauna - it is clear that authority exists for regulating, or even prohibiting, commercial fishing to protect park resources and/or visitor enjoyment of these resources.

The state of Alaska has raised a question regarding whether the NPS has authority to regulate activities on marine waters over submerged lands to which it claims ownership. However, numerous earlier memoranda including

Solicitor's opinions have concluded that the submerged lands are federal property and, therefore, the state's objections have no validity.

Nevertheless, the NPS must be cognizant of a potential State challenge to NPS jurisdictional authority on this basis.

C. Potential Actions

1. Wilderness Marine Waters

It is advisable that the NPS take immediate steps to prohibit all commercial fishing in designated wilderness waters. To allow such fishing to occur directly contradicts the mandates of the Wilderness Act of 1964.

This action will have a significant effect on commercial crabbing operations in the designated wilderness waters of the Beardslee Islands which have apparently been allowed to continue and grow. Nevertheless, there is no authority to allow for this or any other commercial fishing activity in designated wilderness waters to continue for any period of time. Immediate, courtesy public notice, in the form of a news release stating that commercial fishing in specifically-described designated wilderness waters is prohibited, may be advisable.

2. Other Marine Waters

A variety of options related to restriction and/or prohibition of commercial fishing in non-wilderness marine waters of GLBA exist.

It is important to point out that any regulatory restriction or prohibition should be accompanied by a well developed rationale to justify such action. Implementation of such regulations may result in challenges that the agency action is arbitrary and capricious. Although judicial review of administrative action is highly deferential to the agency and the courts have stated that the Secretary has "broad discretion in determining what actions are best calculated to protect park or public land resources," factually well supported justifications for restrictions will better protect the regulatory action from potential attack.

Rationales for restrictive or prohibitive regulatory actions might include:

- derogation of park resources by commercial fishing operations;
- derogation of whale habitat by commercial fishing operations;
- derogation of visitor enjoyment by commercial fishing operations; and,
- an increase in commercial fishing vessel use beyond 1976 use levels established by 36 CFR 13.65(b)(3)(iii)(A) as maximum unregulated use levels.

It should be noted that if further protection of whale habitat is cited as a reason for commercial fishing restrictions, such justification may activate all of the procedural requirements of 36 CFR 13.65(b)(2)(iii).

- a. Option #1 - Immediate prohibition of all commercial fishing in GLBA by repeal of allowance contained in 36 CFR 13.65. By revising 36 CFR 13.65 to eliminate all references to commercial fishing the existing regulatory allowance for such commercial fishing, as noted in the Spradley opinion as an exception to the 36 CFR 2.3(d)(4) prohibition, is removed. Consequently, 36 CFR 2.3(d)(4) would be fully effectual throughout GLBA and prohibit all commercial fishing. A good rationale for this action is required.

- b. Option #2 - Develop new regulations, and amend existing regulations to: limit commercial fishing in Glacier Bay proper to current, or 1976, levels; limit commercial fishing elsewhere in GLBA to current levels; and, prohibit all commercial fishing as of designated future date. In order to limit commercial fishing in Glacier Bay proper, permits could be issued under authority of 36 CFR 13.65(b)(3) if commercial fishing vessel use has exceeded 1976 levels, or otherwise be issued according to a new regulation generally requiring authorization of commercial fishing. To limit commercial fishing in other areas of GLBA, permits could be issued under authority of 36 CFR 5.3 or a new permitting regulation potentially necessitated for Glacier Bay proper. An amendment to

36 CFR 13.65 prohibiting all commercial fishing at a designated future date within a reasonable time period (3-5 years) would need to be promulgated. This would eliminate the need for potential subjective allowances under a different type of phase-out. A good rationale for this action is required.

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II. Subsistence and Personal Use Fishing

A. Background

There are indications of sporadic traditional fishing use of marine waters within GLBA by native populations of Hoonah and other local villages in prehistoric and historic times. Uses in some areas subject to glaciation have fluctuated with advances and retreats of glaciers.

As early as 1924, Congress recognized rights to subsistence/personal use fishing in Alaskan waters within the act authorizing the Secretary of Commerce

to regulate fishing in Alaska. 43 Stat. 464. That act stated: "That nothing contained herein shall prevent the taking of fish for local food requirements or for use as dog feed." Id. at 466.

By 1948, commercial fishing had apparently grown to the extent that the new managing agency, USFWS, found it necessary to more specifically protect native fishing rights. The following regulation was enacted:

§ 102.21 Native fishing rights. No trap shall be established in any site in which any Alaskan native or natives has or have any rights of fishery, by virtue of any grant or by virtue of aboriginal occupancy, by any person other than such native or natives, but this section shall not be construed as permitting any exercise of such rights contrary to any of the provisions of the regulations in this subchapter. Any native or natives claiming such rights may petition the Secretary of the Interior for a hearing with respect to the validity of such claim, and prior to any such determination such claimant and any interested parties desiring to appear in opposition to such claim shall have an opportunity to be heard.

13 Fed. Reg. 8687 (December 29, 1948); 50 CFR 102.21 (1949). "Natives and native Indians" were defined in the regulations as "Members of the aboriginal races inhabiting Alaska when annexed to the U.S. and their descendants of the whole or half blood." 13 Fed. Reg. 8685; 50 CFR 101.6. The regulations also defined "Personal use fishing" as "The taking or attempting to take of any

species of fish or shellfish for ultimate consumption by the taker and his family." 13 Fed. Reg. 8685; 50 CFR 101.9.

A 1959 amendment to the Alaska Statehood Act of 1958 mandated that:

As a compact with the United States said state and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe

73 Stat. 191.

As a result of Alaska statehood, and the resultant change in fisheries management authority from the Federal government to the State (see 72 Stat. 339 § 6(e)), federal regulations regarding general, commercial, and native fishing in Alaska waters changed. The USEFWS regulations enacted in 1959 to cover Alaskan fishing in the interim period before state management was begun did not include any mention of native fishing. See 15 Fed. Reg. 2054 et. seq. (March 19, 1959). The apparent importance of such regulations was to continue

strict regulation of commercial fishing. The regulations did redefine "personal use fishing" as "the taking or attempting to take of any species of fish or shellfish for purposes other than for sale or barter" including continued authorization of use as "dog-feed." Id. at 2055.

Bureau of Indian Affairs regulations, promulgated in 1960, covered native fishing rights. See 25 Fed. Reg. 3079 (April 9, 1960). The stated purpose of said regulations was to "protect certain fishing rights which have long been recognized; which derive from the Act of June 6, 1924, as amended, 48 U.S.C. 221 et. seq. [43 Stat. 464], other Federal statutes, regulations and custom; and which were secured to the Alaska Eskimos, Indians and Aleuts by section 4 of the Alaska Statehood Act of July 7, 1958." Id. The regulations also stated:

In all waters of Alaska Indians, Eskimos and Aleuts shall be permitted to take salmon or other species of fish for personal use except in those waters where the State of Alaska has determined that a complete prohibition on all fishing is necessary to prevent the destruction of existing salmon or other fish populations.

Id. at 3080; 25 CFR 88.7. This particular regulation was changed shortly thereafter to read:

Subsistence or personal use fishing rights granted by Federal law to the Indians of Alaska, are preserved in the Statehood Act. The 1960 edition of the Regulations of the Alaska Board of Fish and Game for Commercial Fishing in Alaska has substantially provided for continuance of these

rights and no additional provision therefor is made at this time in the regulations in this part.

25 Fed. Reg. 4864 (June 2, 1960).

Neither the proclamation creating GLBA in 1925, or that enlarging the Monument in 1939, made any reference to fishing. Early NPS regulations prohibited all forms of fishing in Glacier Bay National Monument, except commercial fishing, by methods other than use of a "hook and line, the rod or line being held in the hand" 36 CFR 2.4(b) (1942, 1956, 1962). In 1966 the NPS regulations regarding fishing were revised to limit the hook and line restriction to fresh waters only, thus allowing for fishing with nets, seines, traps, etc. in marine waters. See 31 Fed. Reg. 12752, § 2.13(j) (September 29, 1966). The most recent alteration of the regulations regarding fishing in marine waters specifically states that: "Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law." 48 Fed. Reg. 30283 (June 30, 1983); 36 CFR 2.3(e) (1988). NPS regulations have consistently stated that all fishing in park areas shall or must be done in conformity with state law unless otherwise provided. See 36 CFR 2.4(b) (1942); 36 CFR 2.13(a) (1967); 36 CFR 2.3(a) (1988).

In ANILCA, Congress addressed subsistence use of park areas in various respects. Section 203 directs the Secretary to administer areas of the National Park System and allow subsistence uses "in national preserves and, where specifically permitted by this Act, in national monuments and parks."

94 Stat. 2371 (1980). Said administration is specifically made "subject to valid existing rights." Id. Subsistence uses by local residents were not specifically permitted in Glacier Bay National Park. See id. at § 202(1).

In general regard to the taking of fish and wildlife, Section 1314(c) states:

The taking of fish and wildlife in all conservation system units shall be carried out in accordance with the provisions of this Act and other State and Federal law. Those areas designated as national parks or national park system monuments in the state shall be closed to the taking of fish and wildlife, except that . . .

(2) fishing shall be permitted by the Secretary in accordance with the provisions of this Act and other applicable State and Federal law.

Id. at § 1314(c)(2).

B. Analysis

There are two ways to analyze the laws and regulations regarding subsistence fishing use and to some degree, personal fishing use, in GLBA. One analysis results in a conclusion that subsistence fishing is strictly prohibited in GLBA, the other results in a conclusion that subsistence fishing and personal use fishing is allowable.

IS SUBSISTENCE FISHING CURRENTLY PROHIBITED IN GLBA?

Recent NPS memoranda have exclusively taken the position that subsistence fishing is prohibited in GLBA. Indeed, this conclusion is the most readily apparent, although not necessarily correct.

The conclusion that subsistence use is not allowable is based upon the language of ANILCA's Section 203 which directs the Secretary to allow such uses "where specifically permitted by this Act, in national monuments and parks." Because Section 202(1), which created GLBA does not specifically permit subsistence uses it can be argued that the Secretary may not allow such use. Furthermore, the legislative history of the Act supports this conclusion. Senate Report No. 96-413 on H.R.39, the formative bill preceding ANILCA, stated: "Subsistence uses will be allowed within the preserve, but not in the park." Id. at 164 (1979). The Congressional Record of November 12, 1980 contained a similar comment that "subsistence uses, sport hunting, sport fishing [apparently in error], and trapping are not allowed in the park." Id. at 10539. In addition, Section 816 states: "All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act." 94 Stat. 2430 (emphasis added). However, the section only references wildlife, not fish.

IS SUBSISTENCE FISHING, AND/OR PERSONAL USE FISHING, ALLOWABLE IN GLBA?

It is apparent that "subsistence/personal use" fishing was allowable within GLBA prior to the passage of ANILCA. The Act of 1924 authorizing the Secretary of Commerce to regulate Alaskan fisheries also recognized and

protected a right to take "fish for local food requirements or for use as dog feed." 43 Stat. 446. Nothing in the legislation creating (1925) or enlarging (1939) Glacier Bay National Monument specifically disallowed fishing. The pertinent language in the Act of 1924 remained the law of consequence until the Alaska Statehood Act was passed and amended in 1959 to ensure that fishing rights held by Indians, Eskimos, and Aleuts would be protected. See 72 Stat. 339, as amended by 73 Stat. 141, 334, 6(e). Although the State of Alaska assumed authority for management of fisheries in 1960, the Bureau of Indian Affairs clarified, in its regulations, that "subsistence or personal use fishing rights" were granted to Indians of Alaska and would be protected. See 25 Fed. Reg. 3079; and, 25 Fed. Reg. 4864.

ANILCA did not specifically prohibit subsistence/personal use activities in GLBA. AS noted, the Act did state that "subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." 94 Stat. 2371 at § 203. Language creating Glacier Bay National Park did not specifically permit subsistence uses within the Park. Nevertheless, Section 203 also states that the Secretary's administration of the parks is "subject to valid existing rights." Id. Subsistence fishing rights are arguably valid existing rights as described above.

Section 1314(c)(2) makes it clear that the taking of fish is to be permitted by the Secretary not only in accordance with the provisions of ANILCA, but as controlled by other applicable State and Federal law as well. See id. at

§ 1314. Again, as noted in the foregoing, Federal law not only allowed subsistence/personal use fishing in Alaskan waters but required the State to protect native subsistence fishing rights.

Finally, Section 1316(a) states: "On all public lands where the taking of fish and wildlife is permitted in accordance with the provisions of this Act or other applicable State and Federal law the Secretary shall permit, subject to reasonable regulation to ensure compatibility, the continuance of existing uses See id. at § 1316 (emphasis added). Subsistence fishing is permitted by State law, and arguably protected, at least for Indians, by Federal law. See 43 Stat. 464; and, 73 Stat. 141. In order to ensure the compatibility of fishing activities and protection of park resources the NPS has promulgated fishing regulations over the years. These general regulations have affected, but arguably never eliminated subsistence/personal use fishing rights in GLBA.

In passing ANILCA, Congress found and declared that: "The continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential" Id. at § 801(1) (emphasis added). Congress also found that: "continuation of the opportunity for subsistence uses of resources . . . is threatened" Id. at § 801 (3) (emphasis added). Consequently, Congress declared that it was necessary "to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands Id. at § 801(4)

for continued subsistence uses on the public lands Id. at § 801(4)

(emphasis added).

In light of all of the provisions and savings clauses of ANILCA regarding subsistence uses, the taking of fish and wildlife, and the protection of park areas, does it make logical sense to interpret the act to prohibit previously existing, legally sanctioned and protected, subsistence fishing rights in the waters of GLBA? Congress was obviously dedicated to protecting the continuance of subsistence uses. Where such uses are incompatible with the protection of park resources, Congress provided the authority to restrict or potentially eliminate subsistence use. See Id. at § 810 and § 815(1). Where subsistence uses are based upon valid existing rights predating ANILCA, the Secretary can still limit such uses to protect park resources under the broad protective authority of 16 U.S.C. §§ 1, 1a-1, and 3. Consequently, an interpretation of ANILCA that allows for subsistence use in GLBA is sensible and does not preclude protection of park resources, if necessary, even if restriction of subsistence uses must result.

C. Potential Actions

1. Option #1 - Prohibit subsistence and personal use fishing in GLBA by promulgation of regulations. Regardless of whether subsistence fishing in GLBA is considered statutorily prohibited or allowed by ANILCA, if the NPS wishes to make a prohibition enforceable it has been concluded that a regulation is needed. The regulation could

be literally aimed at prohibiting subsistence or personal use fishing, however, this might increase the likelihood of political reaction, or result in a battle of semantics with the Alaska Department of Fish and Game (ADF&G). If the regulation did specify a prohibition on subsistence and personal use fishing, those activities should be strictly defined.

As discussed, it might be more acceptable to generically prepare a new fishing regulation limiting all fishing, including fishing in marine waters, to use of "hook and line, with the rod or line being closely attended" based upon 36 CFR 2.3(d)(1). Of course, this would effectively eliminate commercial fishing as well. In addition, if such a simplified prohibition were adopted, the ADF&G might still issue subsistence and personal use permits and although permittees would be limited to use of hook and line they would not be subject to sportfishing bag limits.

2. Option #2 - Allow subsistence and personal use fishing to continue without regulation. As aforementioned, there is a substantial argument that subsistence and personal use fishing is allowable in GLBA. The ADF&G has issued permits for such use in 1989. If left unregulated, these uses would be limited by 36 CFR 2.3 and any applicable ADF&G regulations. Consequently, subsistence and/or personal use fishing could be pursued by permittees in fresh waters with a "hook and line" (36 CFR 2.3(d)(1)), and in marine waters "in accordance with State law" (36 CFR 2.3(c)).

There is the potential for conflict over the distinction between fresh and salt water zones. The State's definition could be accepted, or a regulation could be drawn up to define the difference. If the regulatory option is chosen in regard to this matter, it might be an issue best covered as a nation-wide regulatory amendment to 36 CFR 2.3.

3. Option #3 - Allow regulated subsistence fishing to continue, but eliminate personal use fishing. Again, this option relies on a stance that the law allows for subsistence use. Regulations within 36 CFR Part 13 would need to be revised to acknowledge allowances for subsistence fishing use in GLBA and identify criteria for qualification for such rights. It should be noted that interesting possibilities for limiting subsistence use fishing to Native Americans alone exist in this particular circumstance.

In order to eliminate personal use fishing, regulations specifically prohibiting such use in marine waters would need to be promulgated. Whether regulations prohibiting personal use in fresh waters would be deemed necessary is questionable.

Currently, wherever the State might permit personal use fisheries they can exist in the parks subject only to the NPS "hook and line" restriction. To our knowledge, State authorized personal use fisheries have not posed a problem in the fresh waters of any

park area. Prohibiting personal use fishing in the fresh waters of GLBA is probably not a substantive issue. Consequently, a regulation prohibiting salt water fishing by any means other than hook and line except for subsistence, and possibly commercial permittees, would eliminate all meaningful personal use fishing.

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COMMERCIAL FISHERIES STATISTICS

GLACIER BAY NATIONAL PARK

ALASKA DEPARTMENT OF FISH AND GAME
DIVISION OF COMMERCIAL FISHERIES
MARCH 2, 1990

Table . Southeast Alaska salmon fisheries.
 Total commercial catch of salmon
 in district 114 combined fishery.

Year	Chinook	Sockeye	Coho	Pink	Chum	Total
1960	23659	96	81461	3519	277	109012
1961	12823	127	85632	4793	535	103910
1962	21688	11	72122	3272	522	97615
1963	52755	751	176468	24749	999	255722
1964	71865	380	91692	15618	611	180166
1965	30568	257	135242	18477	1771	186315
1966	20053	229	71867	8746	1256	102151
1967	25714	27	114892	20726	2070	163429
1968	32505	124	177220	26375	1112	237336
1969	35973	495	126883	37858	430	201639
1970	18123	64	96298	29690	599	144774
1971	14913	225	102681	36130	3678	157627
1972	14423	204	94087	27335	4114	140163
1973	23590	293	96117	39022	4709	163731
1974	26979	351	89736	39488	4462	161016
1975	18865	160	13641	9599	490	42755
1976	18350	187	72273	6511	588	97909
1977	21843	1705	96460	56258	3605	179871
1978	19520	894	190039	120809	5710	337072
1979	9275	1002	24006	85616	3446	123345
1980	14821	696	25513	28770	2771	72571
1981	13908	2331	94155	134518	2521	247433
1982	16900	440	132858	83529	828	234555
1983	18018	2168	114657	130309	3968	269120
1984	23434	3257	115977	105058	6024	253750
1985	15088	3145	118448	481931	10860	629472
1986	7117	452	66492	12481	2752	89294
1987	10437	3553	80443	198539	3448	296420
1988	11741	3287	75506	143996	14918	249448
1989	10999	10480	196003	714461	10632	942575
Average	21868	1246	100962	88273	3324	215673

Combined gears: handtroll power troll

Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in district 114 power troll fishery.

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Mean	Std.dev
1	Jan. 3	0	0	0	0	0	0	0	0	0	0	0	0
2	Jan. 8	0	0	0	0	0	0	0	4	3	0	4	1
3	Jan. 15	0	0	0	2	1	0	2	1	0	1	1	1
4	Jan. 22	0	0	0	0	1	0	1	0	2	0	1	1
5	Jan. 29	0	0	0	0	1	4	1	2	2	0	2	1
6	Feb. 5	0	0	0	0	0	3	3	0	1	0	2	1
7	Feb. 12	0	0	0	0	2	0	1	0	2	0	2	1
8	Feb. 19	0	1	0	0	3	2	0	0	0	1	2	1
9	Feb. 26	0	0	0	2	4	1	0	1	3	0	2	1
10	Mar. 5	0	3	1	3	8	3	0	1	2	2	3	2
11	Mar. 12	0	0	0	0	12	3	1	1	6	1	4	4
12	Mar. 19	0	1	2	2	6	2	7	1	5	12	4	4
13	Mar. 26	1	0	1	6	14	9	12	2	10	17	8	6
14	Apr. 2	0	6	5	9	23	17	12	3	17	27	13	8
15	Apr. 9	0	7	7	10	30	15	7	4	9	31	13	10
16	Apr. 16	4	11	9	17	1	18	17	7	19	0	11	7
17	Apr. 23	17	0	0	0	0	1	0	0	0	0	9	11
18	Apr. 30	17	0	0	0	0	0	0	0	0	0	17	0
19	May 7	19	0	0	0	0	0	0	0	0	0	19	0
20	May 14	30	8	0	0	0	0	0	0	0	0	19	16
21	May 21	21	35	28	55	0	0	0	0	0	0	35	15
22	May 28	29	28	43	53	0	0	0	0	0	0	38	12
23	Jun. 4	29	29	62	49	25	63	0	0	0	85	49	22
24	Jun. 11	36	15	39	56	49	61	0	0	0	0	43	17
25	Jun. 18	26	20	24	0	49	0	9	6	0	53	27	18
26	Jun. 25	35	29	50	0	57	0	31	33	0	6	34	16
27	Jul. 2	24	1	43	9	1	66	26	30	9	32	24	20
28	Jul. 9	29	38	38	40	37	59	21	28	36	67	39	14
29	Jul. 16	22	55	47	54	53	62	34	45	45	84	50	16
30	Jul. 23	13	45	47	58	63	71	46	64	62	86	56	20
31	Jul. 30	19	54	60	49	83	116	37	54	66	89	63	28
32	Aug. 6	24	67	0	55	84	98	27	47	39	112	61	31
33	Aug. 13	9	44	118	0	61	75	24	38	108	71	61	36
34	Aug. 20	35	106	113	93	14	1	20	81	84	0	91	44
35	Aug. 27	8	161	111	102	133	90	67	74	74	0	109	39
36	Sep. 3	33	160	118	91	143	121	70	106	138	0	98	39
37	Sep. 10	20	107	83	93	121	147	65	106	139	0	66	28
38	Sep. 17	26	66	79	74	61	67	24	77	116	0	25	15
39	Sep. 24	0	29	44	27	0	4	7	26	37	0	5	6
40	Oct. 1	0	2	1	0	15	0	0	4	3	0	19	15
41	Oct. 8	0	2	10	11	18	0	0	26	44	0	11	13
42	Oct. 15	1	3	8	3	6	0	0	26	33	0	11	11
43	Oct. 22	0	1	7	3	8	0	0	18	31	0	10	9
44	Oct. 29	0	3	5	0	4	0	0	17	22	0	8	10
45	Nov. 5	1	0	4	1	2	0	0	13	25	0	6	8
46	Nov. 12	0	1	1	2	1	0	0	18	14	0	4	6
47	Nov. 19	1	1	7	1	1	0	1	16	9	0	5	5
48	Nov. 26	0	0	0	1	1	0	0	10	9	0	2	2
49	Dec. 3	0	0	0	2	0	0	1	4	0	0	1	1
50	Dec. 10	0	0	1	2	1	1	0	1	2	0	4	2
51	Dec. 17	0	0	0	0	0	0	1	5	5	0	2	1
52	Dec. 24	0	0	0	0	0	0	1	2	2	0	2	1

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Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in district 116 power troll fishery.

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Mean	Std.dev
1	Jan. 3	0	0	0	0	0	0	0	0	0	0	0	0
2	Jan. 8	0	0	0	0	0	0	0	0	0	0	0	0
3	Jan. 15	0	0	0	0	0	0	0	0	0	0	0	0
4	Jan. 22	0	0	0	0	1	0	0	0	0	0	1	0
5	Jan. 29	0	0	0	0	0	0	0	0	0	0	0	0
6	Feb. 5	0	0	0	0	0	0	0	1	0	0	1	0
7	Feb. 12	0	0	0	0	0	0	0	0	0	0	0	0
8	Feb. 19	0	0	0	0	0	0	0	0	0	0	0	0
9	Feb. 26	0	0	0	0	0	0	0	6	0	0	6	0
10	Mar. 5	0	0	0	0	0	0	0	0	0	0	0	0
11	Mar. 12	0	0	0	5	2	0	0	0	0	0	4	2
12	Mar. 19	0	0	0	2	1	0	0	1	0	0	1	1
13	Mar. 26	0	0	0	3	0	0	0	0	0	0	3	0
14	Apr. 2	0	0	0	0	1	0	0	0	1	0	1	0
15	Apr. 9	0	0	0	0	2	0	0	0	1	0	2	1
16	Apr. 16	0	0	3	3	0	0	1	0	0	0	2	1
17	Apr. 23	2	0	0	0	0	0	0	0	0	0	2	0
18	Apr. 30	10	0	0	0	0	0	0	0	0	0	10	0
19	May 7	4	0	0	0	0	0	0	0	0	0	4	0
20	May 14	8	2	0	0	0	0	0	0	0	0	5	4
21	May 21	5	18	9	60	0	0	0	0	0	0	23	25
22	May 28	6	19	9	74	0	0	0	0	0	0	27	32
23	Jun. 4	6	19	4	46	13	26	0	0	0	0	19	16
24	Jun. 11	2	16	14	26	19	32	0	0	0	0	18	10
25	Jun. 18	3	24	2	1	10	0	5	2	0	0	7	8
26	Jun. 25	3	19	24	0	17	0	25	11	0	7	15	8
27	Jul. 2	4	0	15	0	0	38	30	26	0	20	22	12
28	Jul. 9	6	33	6	16	14	36	17	11	13	28	18	11
29	Jul. 16	0	28	30	25	29	35	24	20	26	13	26	6
30	Jul. 23	3	25	27	34	29	63	30	50	52	18	33	18
31	Jul. 30	3	66	29	53	61	101	17	36	50	15	43	29
32	Aug. 6	3	52	0	51	65	77	10	34	44	59	44	25
33	Aug. 13	12	14	76	0	52	21	3	12	75	29	33	28
34	Aug. 20	27	8	83	82	0	0	15	44	54	0	45	30
35	Aug. 27	16	70	71	129	36	85	56	83	27	0	64	35
36	Sep. 3	11	57	69	86	37	48	55	62	58	0	54	21
37	Sep. 10	5	17	35	45	32	41	22	16	41	0	28	14
38	Sep. 17	2	2	23	59	8	12	9	1	23	0	15	18
39	Sep. 24	0	1	6	23	2	1	0	0	7	0	7	8
40	Oct. 1	0	0	0	1	0	0	0	0	0	0	1	0
41	Oct. 8	0	0	0	0	0	0	0	0	0	0	0	0
42	Oct. 15	0	0	0	0	1	0	0	0	1	0	1	0
43	Oct. 22	0	0	0	0	1	0	0	0	1	0	1	0
44	Oct. 29	0	0	0	0	0	0	0	0	0	0	0	0
45	Nov. 5	0	0	0	0	0	0	0	1	0	0	1	0
46	Nov. 12	0	0	0	0	0	0	0	0	0	0	0	0
47	Nov. 19	0	0	0	0	0	0	0	0	0	0	0	0
48	Nov. 26	0	0	0	0	0	0	0	0	0	0	0	0
49	Dec. 3	0	0	0	0	0	0	0	0	0	0	0	0
50	Dec. 10	0	0	0	0	0	0	0	0	0	0	0	0
51	Dec. 17	0	0	0	0	0	0	0	0	0	0	0	0
52	Dec. 24	0	0	0	0	0	0	0	0	0	0	0	0

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