

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6463 SENATE RESOURCES

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required to implement Federal control of such activities.

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Subpart C - General Requirements

30.30 Licenses, permits, harvest tickets, tags, and fees

(a) All persons engaged in subsistence activities must comply with State procedures and conditions regarding licenses, permits, harvest tickets, tags, and the payment of fees.

(b) No person may refuse, upon request from a State or Federal law enforcement officer, inspection of licenses, permits, harvest tickets, tags, or other pertinent documents, or any apparatus designed to be, or capable of being used, to take fish or wildlife.

30.31 Rural residents

(a) Subsistence activities conducted pursuant to the provisions of this part are limited to rural Alaska residents, as defined in Section 30.4(b)(1) of this part and in accordance with supplementary criteria established for this purpose by the Federal Board.

(b) In units of the National Wildlife Refuge System and the National Park

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System in Alaska, subsistence activities shall be further limited to local rural residents, as designated by the appropriate Federal land management agency.

30.32 Aircraft use

(a) Except as otherwise provided in this section or in regulations established by Federal land management agencies, the use of aircraft of any type for access to or from public lands for subsistence activities is prohibited. This prohibition applies to all aircraft use, including access to areas to be used; transportation of participants, equipment, supplies, and fish or wildlife taken; and searching for available fish or wildlife.

(b) In extraordinary cases where no reasonable alternative exists, Federal land management agencies may permit, subject to specified terms and conditions, an eligible subsistence user to use aircraft for access to or from public lands for subsistence activities. Such an exception may be granted only in extraordinary cases where no reasonable alternative exists, based upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access, or other emergency situation, requires such relief. Such extraordinary cases will be rare and shall not permit aircraft to become a routine means of access to subsistence resources.

30.33 Commercial activities

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No person may purchase, sell, or barter fish, wildlife, or the parts or products thereof if the fish or wildlife was taken in subsistence activities, except as follows:

(a) Handicraft articles made of nonedible byproducts of fish or wildlife taken for personal or family consumption may be sold.

(b) Fish or wildlife or their parts may be bartered for other fish or wildlife or their parts for personal consumption; for other food; or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(c) Customary trade not constituting a significant commercial enterprise shall be permitted, subject to the provisions of such regulations as may be necessary to further define customary trade.

30.34 Penalties

A person who is convicted of violating a provision of any regulation in Subparts C, D, E, or F of this part shall be subject to the penalties prescribed by Federal laws or regulations applicable to the lands on which the violation occurred.

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Subpart D - Subsistence Hunting and Trapping

30.50 Definitions

(a) The following definitions shall apply to all regulations contained in this subpart:

(1) "Airport" means an airport listed in the Federal Aviation Agency Alaska Airman's Guide and chart supplement.

(2) "Animal" means those species with a vertebral column (backbone).

(3) "Bag limit" means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional animals are taken; a subsistence bag limit and a general bag limit for the same species are not cumulative.

(4) "Big game" means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.

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(5) "Bow" means long bow, recurve bow, or compound bow, but not crossbow.

(6) "Broadhead" means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eighths inch.

(7) "Brow tine" means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

(8) "Bull moose" means any male moose.

(9) "Closed season" means the time when wildlife may not be taken.

(10) "Cub bear" means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

(11) "Dire emergency" means a situation in which a person

(i) Is in a remote area.

(ii) Is involuntarily experiencing an absence of food required for sustenance.

(iii) If wild game food is not immediately taken and consumed, will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems; and

(iv) Cannot expect to obtain alternative food sources in time to avoid the consequences described in (iii) of this sub paragraph.

(12) "Domicile" means the location of a person's primary residence;

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evidence of domicile may include, but is not limited to, the following:

(i) Statements made to obtain a license to drive, hunt, fish, or engage in an activity regulated by a government entity.

(ii) Affidavit of the person, or of other persons who may know of that person's domicile.

(iii) Place of voter registration.

(iv) Location of residences owned, rented, or leased.

(v) Location of storage of household goods.

(vi) Location of business owned or operated.

(vii) Residence of spouse and minor children or dependents.

(viii) Governments to which taxes are paid.

(ix) Whether the person has claimed residence in another location for the purpose of obtaining benefits provided by the governments in that location.

(13) "Drawing permit" means a permit issued in a limited number to people who are selected by means of a lottery held for all people submitting valid applications for such permits and who agree to abide by the conditions specified for each hunt.

(14) "Falconry" means the sport of taking wildlife by means of trained raptors.

(15) "Full curl horn" means the horn of a mature male mountain or Dall sheep, the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side.

(16) "Fur animal" means coyote, arctic fox, red fox, lynx, raccoon, red squirrel, wolf, or wolverine, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting

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license.

(17) "Fur bearer" means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, sea otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

(18) "Highway" means the drivesable surface of any constructed road.

(19) "Household" means that group of people domiciled in the same residence.

(20) "Hunting area" for a species means that portion of a game management unit where a season and a bag limit for that species are set.

(21) "Motorized vehicle" means a motor-driven land, water or air conveyance.

(22) "Open season" means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

(23) "Permit hunt" means a hunt for which permits are issued on a drawing or registration basis.

(24) "Person" means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

(25) "Poison" means any substance which is toxic or poisonous upon contact or ingestion.

(26) "Registration permit" means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received and are issued:

(i) Beginning on a date announced by the Alaska Department of Fish and Game and continuing throughout the open season, or until the season is

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closed by emergency order when a harvest quota is reached; or

(ii) Beginning on a date announced by the Alaska Department of Fish and Game and continuing until a predetermined number of permits have been issued.

(27) "Regulatory year" means July 1 through June 30.

(28) "Sealing" means placing a mark or tag on a portion of an animal by an authorized representative of the Department of Fish and Game; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

(29) "Seven-eighths curl horn" means the horn of a mature mountain sheep, the tip of which has grown through seven-eighths of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side.

(30) "Skin" means any tanned or untanned hide of an animal, including its claws.

(31) "Small game" means all species of grouse, hares, rabbits, ptarmigan and waterfowl, cranes and Wilson or jacksnipe.

(32) "Tine" or antler point refers to any point on an antler whose length is at least one inch, and, is greater in length than in width, measured in a straight line across the base.

(33) "Transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(34) "Unclassified game" means all species of game not otherwise classified in the definitions.

(35) "Unit" means one of the 26 geographical areas listed under game

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management units in the Alaska Department of Fish and Game's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

(36) "Year" means calendar year unless another year is specified.

30.51 Methods of taking wildlife.

(a) All big game may be taken as follows:

(1) With a shotgun, muzzle-loading rifle, or rifle or pistol using center-firing cartridges.

(2) With a crossbow, except that a crossbow may not be used to take big game in areas restricted to taking by bow and arrow only.

(3) With spears that are hand held or thrown.

(4) With a longbow, recurve bow, or compound bow capable of casting a broadhead-tipped arrow at least 175 yards horizontally, which collectively are termed "bow and arrow" for the purposes of these regulations. Arrows must be tipped with broadheads, and arrow and broadhead together must weigh at least one ounce (437.5 grains). Broadheads may not be barbed.

(5) Black bears may be taken with the use of bait; however

(i) Only biodegradable materials may be used for bait; only the heads, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait.

(ii) No person may use bait within one-quarter mile of a publicly maintained road or trail.

(iii) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed

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recreational facility.

(iv) A hunter using bait shall clearly mark the bait station with a sign which displays the hunter's name and current address, phone number, and hunting license number.

(v) A hunter using bait shall remove litter and equipment from the bait station site when hunting is completed.

(6) Black bears may not be hunted using dogs.

(7) A motor driven boat underway may be used in taking wolves and coyotes in all units, and caribou in Unit 23.

(b) Small game and unclassified wildlife may be taken by any method unless prohibited in paragraph (f)

(c) Fur animals may be taken while hunting by any method unless prohibited in paragraph (f)

(d) Fur bearers may be taken while trapping by any method unless prohibited in paragraph (f), Section 30.54 of this part, or in State regulations.

(e) Waterfowl, snipe and cranes may be taken only:

(1) With a shotgun not larger than 10 gauge, and which is plugged to a three shell capacity, or less.

(2) With a bow and arrow.

(3) With a trained raptor, controlled by a falconer who holds a permit under State regulations.

(f) The following methods of taking game are prohibited:

(1) By shooting from, on, or across a highway.

(2) With the use of poisons except with the written consent of the Federal Board.

addition to the prohibitions in Section 30.51 of this part:

- (a) With the use of a dog, trap snare, net or fish trap; or aircraft.
- (b) By disturbing dens.

30.54 Unlawful methods of trapping fur bearers.

The following methods and means of trapping fur bearers are prohibited in addition to the prohibitions in State regulations:

- (a) Disturbing or destroying dens (except that muskrat pushups or feeding houses may be disturbed in course of trapping).
- (b) Disturbing or destroying beaver houses.
- (c) Taking beaver by any means other than steel traps or snares, except that firearms may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8 and 23.
- (d) Taking beaver by persons under 11 years of age.
- (e) Taking river (land) otter with steel traps having a jaw spread of less than five and seven-eighths inches during the closed season on mink and marten in the same game management unit.
- (f) With the use of a dog, net or fish trap (except a blackfish or fyke trap).
- (g) Trapping by methods other than with a snare, trap, mesh, or other implement designed to entrap animals other than fish.

30.55 Unlawful methods of hunting waterfowl, snipe, and cranes.

(a) The following methods and means of taking waterfowl, snipe, and cranes are prohibited in addition to the prohibitions in Section 30.51 of this part:

(1) With a rifle or pistol.

(2) From a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased.

(3) From any mechanical vehicle; however, a power or sailboat may be used as a means of retrieving dead or injured birds.

(b) A hunter may pluck waterfowl in the field, but must leave one fully feathered wing or the head attached while transporting the waterfowl.

(c) No person may take waterfowl from sunset to one-half hour before sunrise.

30.56 Local restrictions on taking wildlife.

(a) In addition to statewide restrictions on taking wildlife, the following restrictions apply locally as specified:

(1) In Units 1 through 5, no person may take big game, except wolves, from a boat.

(2) In Jim Creek in Unit 14(C) upstream from the confluence of the Swan Lake outlet stream, no person may take waterfowl or transport waterfowl, parts of waterfowl, waterfowl hunters, or waterfowl hunting gear, with the use

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of a motorized vehicle.

(3) No person may take a wolf in Units 12 and 20(E) during April and October with a steel trap or snare smaller than 3X.

30.57 Unlawful possession or transportation of wildlife.

(a) No person may possess, transport, or place into the possession of another, any wildlife or parts of wildlife that the person has taken in violation of these regulations.

(b) No person may possess or transport wildlife or parts of wildlife received from a person who took the items contrary to these regulations, if the person receiving the items knows, has reason to know, or should know that the item was taken in violation of these regulations.

(c) No person may possess or transport wildlife or parts of wildlife that the person knows were taken in violation of these regulations.

30.58 Evidence of sex and identity.

(a) No person may possess or transport a mountain sheep unless both horns accompany the animal.

(b) If the taking of an animal, except sheep, is restricted to one sex,

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no person may possess or transport the carcass of the animal which does not have sufficient portions of the external sex organs attached to indicate conclusively the sex of the animal. However, this section does not apply to the carcass of a big game animal which has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(c) If a moose bag limit includes an antler size or configuration requirement, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow lines on one antler must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph does not apply to a moose carcass or its parts that has been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

30.59 Marked or tagged wildlife.

A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify State or Federal officials with the date when, and the place where, the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned.

30.60 Sealing of bear skins and skulls.

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(a) No person may possess, transport, or export from Alaska, the skin or skull of a bear, whether taken inside or outside of Alaska, unless the skin and skull have been sealed by an authorized representative within 30 days of the taking, or a lesser time if requested. Seals must remain on the hides while in Alaska or until the tanning process has commenced. A brown bear taken in Unit 8 may not be transported from that unit until it has been sealed.

(b) A person who possesses a bear skin and skull must bring the skin and skull for sealing to an authorized representative and must complete a report on the appropriate form provided. A skin and skull accompanied by a completed temporary sealing form signed by the person who took the bear shall be considered properly tendered for sealing if it is received by an authorized representative within 30 days from the time of taking.

(c) The hide and skull of a bear must accompany each other until a rudimentary premolar tooth has been removed from the skull and both the skull and the hide have been sealed.

(d) As used in this section, "bear" means brown and grizzly bear in all units, and black bear (including the cinnamon and blue color phases) in Units 1 through 7, 11 through 16, and 20.

(e) No person may falsify any information required to be set forth, either on the sealing form provided or on the temporary sealing form.

30.61 Sealing of Marten, Lynx, Otter, Wolf or Wolverine.

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(a) No person may possess, transport, or export from the state, the untanned skin of a marten (in Units 1 through 5 only), or the untanned skin of a lynx, river (land) otter, wolf or wolverine, whether taken inside or outside the state, unless each skin has been sealed according to the following schedule:

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SPECIES/METHOD OF TAKING	LATEST DATE FOR SEALING
Wolf and wolverine by hunting	60th day from date of taking.
Wolf and wolverine by trapping	30th day following close of trapping season for the species in the unit where taken.
Lynx by hunting	30th day following close of lynx hunting season in the unit where taken.
Marten (Units 1-5 only), Lynx, and River (Land) Otter, by trapping	30th day following close of trapping season for the species in the unit where taken.

(b) The sealing periods in (a) of this section may be reduced.

(c) A person who takes a species listed in (a) of this section must bring the skin for sealing and must complete a report on a form. The long bones of the left front leg (radius and ulna bones) must remain naturally attached to the hide of any wolf taken in Units 20, 23, 24, and 26 until the hide is sealed.

30.62 Wildlife as animal food or bait.

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(a) The use of wildlife as food for dogs or fur bearers, or as bait, is prohibited except for the following:

(1) The hide, skin, viscera, or bones.

(2) The skinned carcass of a bear, fur bearer, or fur animal.

(3) Hare, rabbit, and red squirrels.

(4) Legally taken unclassified wildlife.

30.63 Salvage of meat, furs, and hides.

(a) Subject to additional requirements set out for a specific unit, the following parts of any carnivore taken must be salvaged for human use:

(1) The hide of a wolf, wolverine, coyote, fox, or lynx.

(2) The hide and skull of a brown/grizzly bear.

(3) The hide and skull of a black bear taken in a game management unit in which sealing is required.

(4) Either the hide or the meat of a black bear taken in any game

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management unit in which sealing is not required by regulation.

(b) Any animal killed or injured by a vehicle is the property of the State. The operator of a motor vehicle that collides with a big game animal resulting in death or injury to the animal must notify the State Troopers or Division of Fish and Wildlife Protection as soon as possible.

(c) The meat of caribou taken in Units 22 through 26, and in Units 18 and 21 north of the Yukon River, must be removed immediately from the field.

(d) Salvage of meat from wildlife (1) The following definitions shall apply to this paragraph:

(i) "Wild fowl" means species of wild fowl for which seasons or bag limits have been established by State or Federal law.

(ii) "Edible meat" means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, "edible meat" of big game or wild fowl does not include: meat of the head; meat that has been damaged and made inedible by the method of taking; bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

(2) It is unlawful for a person who kills an animal or species of wild fowl to fail to salvage for human consumption the edible meat of the animal or fowl. Failure to salvage from a big game animal at least the hindquarters as

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far as the distal joint of the tibia-fibula (stifle joint) will result in the imposition of additional fines and penalties.

(3) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(4) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for that animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

30.64 Feeding of Wildlife.

No person may intentionally feed a bear, wolf, fox or wolverine, or intentionally leave human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping fur bearers or hunting black bears consistent with this subpart.

30.65 Taking cub bears and female bears with cubs prohibited.

No person may take a cub bear or a female bear accompanied by a cub bear.

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30.66 Emergency taking of wildlife.

Nothing in this subpart prohibits a person from taking wildlife for food during a closed season in case of dire emergency. Whenever it is reasonable to do so, all edible portions of the meat of an animal so taken must be salvaged and all portions surplus to the alleviation of the dire emergency must be surrendered to the State.

30.67 Taking of wildlife in defense of life or property.

(a) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if:

(1) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(2) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(3) All other practicable means to protect life and property are exhausted before the animal is taken.

(b) Wildlife taken in defense of life or property is the property of the State. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide and surrender it to the State immediately. In the case of brown or grizzly

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bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the Alaska Department of Fish and Game of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the Department within 15 days of the taking.

(c) As used in this section, "property" is limited to:

- (1) A dwelling, permanent or temporary.
- (2) An aircraft, boat, automobile, or other means of conveyance;
- (3) A domesticated animal.
- (4) Other property of substantial value necessary for the livelihood or survival of the owner.

30.68 Endangered species.

(a) The following wildlife species are endangered in Alaska:

Eskimo curlew	<u>Numenius borealis</u>
Alautian Canada goose	<u>Branta canadensis leucopareia</u>
American peregrine falcon	<u>Falco peregrinus anatum</u>
Arctic peregrine falcon	<u>Falco peregrinus tundrius</u>
Short-tailed albatross	<u>Diomedea albatrus</u>

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Subpart E - Subsistence Fishing

30.80 Subsistence fishing permitted.

Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on public lands, by any method, unless restricted by the regulations in this part. Salmon may be taken for subsistence purposes only as provided in this part.

30.81 Types of legal gear.

- (a) All gear shall be operated in a manner conforming to its basic design.
- (b) The size of meshes of a gill net shall be substantially consistent.
- (c) All references to mesh size in the regulations are considered to be "stretched measure."
- (d) Unless otherwise provided, the following are legal types of gear for subsistence fishing:
 - (1) A gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.
 - (2) A set gill net is a gill net that has been intentionally set, staked, anchored or otherwise fixed.
 - (3) A drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.
 - (4) A purse seine is a floating net designed to surround fish and

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which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

(5) A hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

(6) A beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

(7) Power gurdy troll gear consists of a line or lines with lures or baited hooks which are drawn through the water by a gurdy.

(8) Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand powered crank and not by any type of electrical, hydraulic, mechanical or other device or attachment.

(9) A fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

(10) A ring net is a bag-shaped net suspended from a circular or rectangular frame.

(11) A longline is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

(12) A fyke net is a fixed, funneling (fyke) device used to entrap fish.

(13) Diving gear is any type of hard hat or skin diving equipment.

(14) A grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

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(15) A dip net is a bag-shaped net suspended from a frame, which may not exceed five feet in diameter, the frame is attached to a single handle and is operated by hand.

(16) Jigging gear consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand.

(17) A spear is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand.

(18) A lead is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(19) An abalone iron is a flat device used for taking abalone and which is more than 1 inch (25 mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

(e) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas.

(f) Taking or molesting fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(g) The use of explosives and chemicals is prohibited.

(h) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(i) Each subsistence fisherman shall plainly and legibly inscribe his

first initial, last name, and address on his fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(j) No person may use a gill net web that contains less than 30 filaments in the taking of salmon for subsistence purposes.

30.82 Unlawful possession of subsistence finfish.

No person may possess, transport or place into the possession of another person, raw or unprocessed subsistence-taken fish or their parts that the person has taken contrary to State or Federal law or regulation.

30.83 Bristol Bay area

(a) Description. The Bristol Bay area consists of all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(b) Fishing seasons and weekly fishing periods. (1) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Bristol Bay area.

(2) Within any district, salmon may only be taken during open weekly commercial salmon fishing periods except as follows:

(i) During the period from June 15 through 9:00 a.m., July 17, salmon for subsistence purposes may be taken in the Nushagak district from the Department of Fish and Game regulatory marker two statute miles below Bradford

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Point to a marker at Red Bluff on the west shore of Wood River, only during the following periods: 9:00 a.m. Monday to 9:00 a.m. Tuesday, 9:00 a.m. Wednesday to 9:00 a.m. Thursday, 9:00 a.m. Friday to 9:00 a.m. Saturday.

(ii) During the period from June 23 through 9:00 a.m. July 17, salmon for subsistence purposes may be taken in the Naknek, Egegik and Ugashik rivers only during the following period: 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(3) Subsistence fishermen should check with the National Park Service before fishing in Naknek Lake.

(c) Lawful gear and gear specifications. (1) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets.

(2) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(3) The maximum lengths for set gill nets used to take salmon are as follows:

(i) In the Naknek, Egegik and Ugashik Rivers, and in Naknek Lake as described, set gill nets may not exceed 10 fathoms in length.

(ii) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(4) No part of a set gill net may be operated within 300 feet of any part of another set gill net, except that in the Nushagak district from the Department of Fish and Game regulatory marker two statute miles below Bradford Point to a marker at Red Bluff on the west shore of Wood River, no part of a set gill net may be operated within 100 feet of any part of another set gill

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net.

(5) No set gill net may obstruct more than one-half the width of a stream.

(6) Each set gill net must be staked and bouyed.

(7) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(d) Waters closed to subsistence fishing. (1) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(2) Gill nets are prohibited in that portion of the Naknek river upstream from Sovonaski.

(3) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14:

Lower Talarik Creek	Roadhouse Creek	Nick G. Creek
Middle Talarik Creek	Alexi Creek	Copper River
Upper Talarik Creek	Tazimina River	Kakhonak River
Pete Andrew Creek	Young's Creek	Gibraltar River
Zacker Creek	Chekok Creek	Dennis Creek
Newhalen River	Tomokok Creek	Belinda Creek

(e) Subsistence fishing permits. (1) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(2) Only one subsistence fishing permit may be issued to each

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household per year.

(3) Subsistence salmon fishing permits for the Naknek River drainage will be issued only to those persons domiciled in the Naknek and Kvichak River drainages.

(4) Subsistence salmon fishing permits for the Iliamna-Lake Clark drainages will be issued only to persons domiciled in the Iliamna-Lake Clark drainages.

(f) Marking of subsistence taken salmon. After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(g) Subsistence bag and possession limits. The total annual possession limit for a subsistence salmon fishing permit issued for the fisheries described is 200 sockeye salmon.

30.84 Aleutian Islands area

(a) Description. The Aleutian Islands area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172 degrees E., and south of 54 degrees 36' N.

(b) Fishing seasons. (1) In the Unalaska district, salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence

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fishing permit.

(2) In the Akutan, Umnak and Adak districts, salmon may be taken at any time.

(3) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(c) Lawful gear and gear specifications. (1) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(2) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(d) Waters closed to subsistence fishing. The waters of Unalaska Lake (at Unalaska Village), its drainages and the outlet stream, and within 500 yards of its terminus are closed to subsistence fishing.

(e) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak districts.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned.

30.85 Alaska Peninsula area

(a) Description. The Alaska Peninsula area includes all Pacific Ocean waters of Alaska between a line extending southeast (135 degrees) from the tip

of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(b) Fishing seasons. (1) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(2) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(c) Lawful gear and gear specifications. (1) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(2) No set gill net may exceed 100 fathoms in length.

(d) Waters closed to subsistence fishing. The following waters are closed to subsistence fishing for salmon:

(1) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon.

(2) Trout Creek and within 500 yards outside its mouth.

(3) Inshore of a line from the Pacific Pearl dock to Black Point including the inlet and Humboldt Creek.

(e) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under the authority of a subsistence fishing permit.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned no later than October 31.

30.86 Chignik area

(a) Description. The Chignik area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156 degrees 20'13" W., (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135 degrees) from the tip of Kupreanof Point.

(b) Fishing seasons. Fish may be taken at any time, except as may be specified by the subsistence fishing permit.

(c) Lawful gear and gear specifications. Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, salmon may not be taken with purse seines.

(d) Waters closed to subsistence fishing. Salmon may not be taken in the Chignik River, upstream from the weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(e) Subsistence fishing permits. (1) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned no later than October 31.

30.87 Kodiak area

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(a) Description. The Kodiak area includes all waters of Alaska south of a line extending east from Cape Douglas (58 degrees 52' N.), west of 150 degrees W., north of 55 degrees 30' N.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156 degrees 20'13" W.).

(b) Fishing seasons. Salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from June 1 through July 30.

(c) Lawful gear and gear specifications. (1) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear listed in Section 30.84(d) of this part.

(2) Salmon may be taken only by gill net and seine.

(3) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(d) Waters closed to subsistence fishing. The following locations are closed to the subsistence taking of salmon:

(1) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance.

(2) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay.

(3) All waters closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Slatery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last

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Point to the tip of River Mouth Point in Afognak Bay.

(4) All waters 300 yards seaward of the terminus of Monks Creek.

(e) Subsistence fishing permits. (1) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes.

(2) A subsistence salmon fishing permit allows the holder to take 25 salmon plus an additional 25 salmon for each member of the same household whose names are listed on the permit. An additional permit may be obtained if it can be shown that more fish are needed.

(3) All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned by February 1 of the year following the year the permit was issued.

30.88 Cook Inlet area

(a) Description. The Cook Inlet area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58 degrees 52' N.) and a line extending south from Cape Fairfield (148 degrees 40' W.).

(b) Description of district and subdistricts. (1) Districts and subdistricts are as described in State regulations, 5 AAC 21.200.

(2) In addition to (1) of this paragraph, the Tyonek subdistrict includes those waters of the Northern district within mean lower tide from a point one mile south of the southern edge of the Chuitna River south to the easternmost tip of Granite Point.

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(c) Fishing seasons and weekly fishing periods. (1) Unless restricted or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(2) Salmon may be taken for subsistence purposes only as follows:

(1) In the Tyonek subdistrict:

(A) From June 1 through June 15 from 4:00 a.m. to 8:00 p.m. on Tuesdays, Thursdays and Fridays.

(B) From June 16 through October 30 from 6:00 a.m. to 6:00 p.m. on Saturdays.

(C) The season described in (B) of this subparagraph shall not open until July 1 if 4,200 king salmon are taken before June 16.

(ii) In the Port Graham subdistrict from June 1 through June 15, from 6:00 a.m. Monday until 6:00 a.m. Wednesday, and from 6:00 a.m. Thursday, until 6:00 a.m. Saturday.

(d) Lawful gear and gear specifications. (1) Salmon may be taken only as follows:

(i) In the Tyonek subdistrict by set gill nets not exceeding 10 fathoms in length, six inches in mesh size and 45 meshes in depth.

(ii) In the Port Graham subdistrict by set gill nets not exceeding 35 fathoms in length, six inches in mesh size and 45 meshes in depth.

(iii) No part of a set gill net may be set or operated within 600 feet of any part of another set gill net.

(2) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(3) Smelt may be taken only with gill nets and dip nets. Gill nets

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used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(4) Gill nets may not be used in fresh water, except for the taking of whitefish in the Tyonek River drainage.

(e) Waters closed to subsistence fishing. (1) All salt water is closed to the taking of finfish, except for the Tyonek and Port Graham subdistricts.

(2) Salmon may not be taken in waters described in 5 AAC 39.290.

(3) Trout, grayling, char, and burbot may not be taken in fresh water.

(f) Subsistence fishing permits. (1) Only one subsistence salmon fishing permit may be issued to each household per year.

(i) Subsistence salmon fishing permits for the Tyonek subdistrict will be issued only to those persons domiciled in the village of Tyonek.

(ii) Subsistence salmon fishing permits for the Port Graham subdistrict will be issued only to those persons domiciled in the villages of Port Graham and English Bay.

(2) Whitefish may be taken only in the Tyonek River drainage.

(g) Marking of subsistence taken salmon. (1) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(2) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(h) Subsistence bag and possession limits. The total annual possession limit for each subsistence salmon permit is as follows:

(1) There is no total annual possession limit for holders of Port Graham subdistrict subsistence salmon fishing permits; subsistence salmon

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catches must be recorded.

(2) Twenty-five (25) salmon for the head of household and 10 salmon for each dependent of the permit holder.

(3) In addition to the limits in (2) of this paragraph; the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon.

30.89 Prince William Sound area

(a) Description. The Prince William Sound area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(b) Description of districts and subdistricts. The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of Slana River downstream to an east-west line crossing the Copper River at the upstream side of Haley Creek as designated by regulatory markers:

(1) The Chitina Subdistrict consists of waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River from the upstream edge of the bridge to a regulatory marker located one quarter of a mile upstream of the bridge.

(2) the Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(c) Fishing seasons. (1) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound area.

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(2) Salmon may be taken in the Upper Copper River District only as follows:

(i) In the Glennallen Subdistrict, from June 1 through September 30.

(ii) In the Chitina Subdistrict, only when that subdistrict is open to personal use salmon fishing.

(iii) When the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon. The fishery may be reopened September 1 for the taking of coho salmon.

(d) Lawful gear and gear specifications. (1) Salmon may be taken only by the following types of gear:

(i) In the Glennallen Subdistrict by fishwheels or dip nets.

(ii) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict.

(2) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only one fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(3) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred.

(4) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address

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are plainly visible.

(a) Waters closed to subsistence fishing. (1) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(2) Crosswind Lake is closed to all subsistence fishing.

(3) Salmon may not be taken in any area closed to commercial salmon fishing.

(4) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(5) Salmon may not be taken on the east side of the Copper River from the upstream edge of the Chitina-McCarthy Road Bridge upstream to the ADF&G regulatory marker located one quarter of a mile upstream of the bridge.

(f) Subsistence fishing permits. (1) Except as provided in this paragraph, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(2) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(3) Only one subsistence fishing permit will be issued to each household per year.

(4) Subsistence salmon fishing permits for the Upper Copper River District will be issued only to persons domiciled in Game Management Units 11, 13-A, 13-B, 13-C and 13-D as described in State regulation, (5 AAC 90.010), in the Jacksina River drainage to its confluence with the Nabesna River, and in the communities of Tetlin, Northway, Dot Lake, Tanacross, and Tok. The following apply to Upper Copper River District subsistence salmon fishing

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permits:

(i) Only one type of gear may be specified on a permit.
(ii) Only one permit per year may be issued to a household.
(iii) Permits must be returned to the department no later than October 31, or a permit for the following year may be denied.

(5) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(i) Thirty (30) salmon for a household with one person.
(ii) Sixty (60) salmon for a household with two persons.
(iii) Ten (10) salmon for each additional person in a household over those specified in (ii) of this subparagraph.

(iv) Upon request, permits for additional salmon will be issued with the following limits:

(A) No more than a total of 200 salmon for a permit issued to a household with one person.

(B) No more than a total of 500 salmon for a permit issued to a household with two or more persons.

(g) Marking of subsistence taken salmon. No person may possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the dorsal fin has been immediately removed from the salmon.

(h) Subsistence bag and possession limits. (1) Possession limits for salmon in the Upper Copper River District are described in subparagraph (f) (5) of this section.

(2) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon

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Limit is as follows:

- (i) Fifteen (15) salmon for a household with one person.
- (ii) Thirty (30) salmon for a household with two persons.
- (iii) Ten (10) salmon for each additional person in a household over those specified in (2) of this subsection.
- (iv) No more than five king salmon may be taken per permit.

30.90 Yakutat area

(a) Description. The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(b) Fishing seasons. (1) Unless restricted in this part, or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(2) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(c) Lawful gear and gear specifications. Fish may be taken by gear listed in Section 30.81 (d) of this part, unless restricted in this section or under the terms of a subsistence fishing permit.

(d) Subsistence fishing permits. Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(e) Marking of subsistence taken salmon. Subsistence fishermen must remove the dorsal fin from subsistence caught salmon when taken.

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30.91 Southeastern Alaska area

(a) Description. The Southeastern Alaska area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(b) Description of districts and sections. Districts and sections are as described in State regulation (5 AAC 33.200).

(c) Fishing seasons. Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska area at any time.

(d) Lawful gear and gear specifications. Fish may be taken by gear listed in Section 30.81 (d) of this part, except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(1) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing.

(2) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the latitude of Zimovia Point to one mile upstream of Wells Bridge.

(3) Beach seines and gaffs only may be used to take coho salmon from Salt Lake and Mitchell Bay from August 1 through October 31.

(e) Waters closed to subsistence fishing. The following waters are closed to subsistence salmon fishing.

(1) District 1:

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(1) Mahoney Creek in George Inlet.

(11) Naha Bay: Roosevelt Lagoon and within one statute mile of the falls at the outlet of Roosevelt Lagoon.

(2) District 11: The Taku River drainage.

(3) In District 15: Lynn Canal including Chilikat, Chilikoot and Lutak inlets, during the closed period of the commercial salmon net fishery in the district.

(f) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(2) Permits will not be issued for taking king or coho salmon, except for king and coho salmon in the Chilkat River adjacent to Klukwan and for coho salmon as provided in subparagraph (d) (3) of this section.

(3) In the Chilkat River north of the latitude of Zimovia Point, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(4) Subsistence salmon fishing permits for the fishery provided for in subparagraph (d) (3) of this section will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.

(5) Permits may be issued specifying times, areas, species and numbers of fish that may be taken.

(g) Marking of subsistence taken salmon. Subsistence fishermen shall remove the dorsal fin from all salmon when taken.

(h) Subsistence fishing policy for the Juneau, Petersburg, Wrangell, Sitka

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and Ketchikan road systems. Salmon streams flowing across or adjacent to the road systems of Juneau, Petersburg, Wrangell, Sitka and Ketchikan support only limited runs of salmon. Harvestable numbers of salmon in excess to the spawning escapement needs for those streams are normally of such a small magnitude that these numbers alone are not sufficient to support the consumptive demands of those communities. Therefore, permits allowing the use of nets shall not be issued for streams along the road systems of those communities.

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Subpart F - Procedures for Issuance of Annual Regulations

30.100 General provisions

(a) Purposes and scope: The rules of this subpart apply to the issuance of annual regulations establishing seasons and bag and possession limits for subsistence activities. The rules in this part are supplemented by 36 CFR Part 13 and 50 CFR Part 36, containing subsistence regulations specific to the National Park System and the National Wildlife Refuge System, respectively.

(b) Regulation development: The Federal Board shall recommend to the Secretary of the Interior annual regulations governing subsistence activities. The Federal Board will develop regulations in consideration of the following:

(1) The policies established by ANILCA to provide for a preference for subsistence uses of fish and wildlife, as set out in Section 30.5 of this part.

(2) Public input, scientific information, and recommendations received from the general public and from agencies and bodies such as local advisory committees, park and park monument subsistence resource commissions, regional councils, the State Boards of Fisheries and Game, the Alaska Department of Fish and Game, and Federal land management agencies.

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(3) Applicable non-conflicting State and Federal laws and regulations.

30.101 Subsistence hunting and subsistence trapping seasons and bag limits.

This section provides for annual hunting and trapping seasons and bag limits on big game, small game, fur animals, fur-bearers and unclassified game, and the units portion of units to which they apply.

Note: For Federal Register citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected in the Finding Aids section of this volume.

30.102 Subsistence fishing seasons and taking and possession limits.

This section provides for annual fishing seasons and taking and possession limits for aquatic plants and finfish, and the areas to which they apply.

Note: For Federal Register citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected in the Finding Aids section of this volume.

SUBSISTENCE OPTIONS EXPLORED BY THE DEPARTMENT OF LAW

- *1 Ask the Alaska Supreme Court to reconsider its decision in McDowell
- *2 Amend the Alaska Constitution to authorize a subsistence priority for rural residents
- *3 Amend ANILCA to eliminate the federal subsistence priority for rural residents
- *4 Amend ANILCA to preempt state law as necessary to grant rural residents a subsistence priority statewide
- *5 Interpret section 804 of ANILCA as preempting state law on federal lands (as those may ultimately be defined by the courts), with implementation carried out by state officials
- *6 Seek cooperative agreements with the Secretaries of Interior and Agriculture under which the ANILCA priority would be implemented by them, perhaps only through closure authority to avoid dual management of the resource
- *7 Amend state law to provide a subsistence priority to state residents most dependent on fish and wildlife, and then amend ANILCA to conform to the state law
- *8 Use current management tools -- seasons, bag limits, same-day (or even two-day) airborne prohibitions, etc. -- creatively to benefit those most dependent on fish and wildlife
- *9 Challenge the ANILCA subsistence priority for rural residents and/or Congress' power to require such a priority on constitutional grounds



UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106
Juneau, AK 99801
907-586-2820

UNITED FISHERMEN OF ALASKA

ISSUE PAPER ON SUBSISTENCE

UFA supports subsistence-based use of fish and game populations in Alaska, but believes that such uses must be bound at an historical level.

UFA recognizes the problems of conflicting federal and state laws relative to subsistence. UFA members and all other commercial fishermen in Alaska have a great deal at stake as subsistence law and practices are re-defined in the wake of recent legal decisions. We desire to work with the administration, legislature, Congress, and subsistence users in resolving this complex issue.

Any resolution must, to be acceptable to UFA, address the following points:

* Problems resulting from multiple jurisdiction in fisheries management (i.e. Glacier Bay) need to be addressed immediately. If the federal government takes over, the state should attempt to reach an agreement that would limit jurisdiction over fish and game resources on state lands and waters. The question of how far beyond federal lands the jurisdiction extends for purposes of subsistence management must be answered to the state's satisfaction. Should the state pursue control of our fish and game resources to protect the conservation of the resources and economic stability of its residents?

* Clear policy direction needs to be provided to the Boards of Fisheries and Game and other regulatory agencies creating subsistence regulations.

* UFA members are concerned with an apparent pattern of increasing sales of subsistence harvests. The potential for major growth of subsistence catches sold under the "customary trade and barter" clause as evidenced in the *U.S. v. Tadamitsu Sakurai* decision needs to be examined.

* An enforceable and mutually protective definition for "priority" as it relates to competing fishery uses must be developed. There is a flurry of law suits, both filed and pending, that are using subsistence "priority" as a legal weapon against commercial fishermen.

* The definition of subsistence "use" and subsistence "user" needs to be clarified for the public as it relates to the implementation of Title VIII, Section 804 of ANILCA which affords priority.

* Alaska's population has grown over time and will continue to do so. As urban and rural areas become more heavily populated, it will not be possible to provide for the increasing subsistence demands for fisheries resources without displacing other users, including historical subsistence users and commercial fishermen. Subsistence conflict resolution must provide protection for existing commercial fisheries.

***Subsistence
Meeting
4-11-90
(With Sec. of
Interior, Lujan
in Anchorage)***

Alaska State Legislature

Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman
Senator Jay Kertula, Vice Chairman
Senator Dick Eliason
Senator Steve Frank
Senator Rick Hallford
Senator Ariss Stupajewski
Senator Fred Zbaroff

PO Box A
Juneau, Alaska 99811
(907) 465-1907

M E M O R A N D U M

To: Members, Senate Resources Committee
From: Senator Bettye Fahrenkamp, Chairman *Bettye*
Re: Committee Meeting on Subsistence
Date: April 4, 1990

As you may know, the Alaska Federation of Natives is holding a conference at the Egan Convention Center on Tuesday, April 10, and Wednesday, April 11, on the issue of subsistence.

Wed
In conjunction with the conference, I have scheduled a joint hearing with the House Resources Committee from 5:30 p.m. to 9:00 p.m., to be held at the Egan Convention Center, in the Summit Room, for the purpose of taking public testimony on subsistence. I have made arrangements for the meeting to be teleconferenced to Juneau (Butrovich Room), for those of you who are unable to attend.

It is my understanding that Secretary of the Interior Manuel Lujan will speak before the Anchorage Chamber of Commerce on Wednesday morning. Although he has been invited to participate at the conference, and at our hearing, confirmation has not yet been received.

As per session policy, travel authorizations must be approved by the Senate President.

I am enclosing a copy of the conference schedule for your information. The issue of subsistence is vitally important to all of us and I urge your participation.

SUBSISTENCE: A STRATEGY FOR OUR FUTURE
DRAFT AGENDA

Wednesday, April 11

9:00am WELCOME - Julie Kitka, AFN

9:00am WELCOME - Julie Kitka, AFN
INVOCATION - Rev. Anna Frank, Athabascan, Episcopal
Diocese of Alaska

9:45 INTRODUCTION & PURPOSES - Ralph Eluska, AFN
PRESENTATION - Walter Charley, Athabascan Elder

9:00 REVIEW OF AGENDA - Co-moderators Perry Eaton &
Marlene Johnson
CHALLENGES FACING ALASKA NATIVES - SUBSISTENCE

ISSUE #1: (Assuring there is not resolution by July 11)
Federal Pre-emption & Dual Management of Fish & Game

9:30 Speaker: *To Be Announced*, "The Federal Government's
Responsibilities to Alaska Natives"

9:50 FEDERAL/STATE PANEL: "How Would It Work?"
Panel Moderator: Johnny Hawk
Glenn Ellison, USF&S Steve Behnke, ADF&G
Tom Kooster, Dept. of Law Stan Leaphardt, CACFA
WRITTEN QUESTIONS FROM THE FLOOR

10:45 Break

11:00 SPEAKER: *To Be Announced*, "Dual Federal/State
Management"

11:20 PANEL: "How Will It Affect Us?"
Panel Moderator: Chris McNeil
Trofon Angasan, "Unanswered Questions & Continuing
Litigation"
Ken Johns, "Impacts on Villages Surrounded by State
Land"
Myron Naneng, "Impacts on Y-K Delta"
Clare Swan, "Kenaitze Lawsuit"
Ed Thomas, "Co-management Under '638'"
Walter Sampson, "Living with Federal Management"
WRITTEN QUESTIONS FROM THE FLOOR

12:30pm Break for lunch

2:00 REMARKS BY CO-MODERATORS (AGENDA/PRODEDURES)
ISSUE #2: CONGRESS & ANILCA

2:05 PANEL: "Opening ANILCA"
Panel Moderator: Edgar Blatchford
TBA, Rural CAP Sheryl Sutton, KPFA
Willie Kasayulie, ANC Robert Willard, SENSC
Mitch Demientieff, TCC TBA, Sierra Club
TBA, Alaska Outdoor Council
WRITTEN QUESTIONS FROM THE FLOOR

4:00 PRESENTATION BY SENATOR TED STEVENS VIA TAPE
Staff Representative: Mario Matsuno Nash

4:20 CLOSING REMARKS, Eddie Hopson, Inupiat Elder

4:30 Recess

9:00am OPENING REMARKS, Rev. Billy Sheldon, Sr., Inupiat Elder

9:10 REMARKS BY CO-MODERATORS (AGENDA/PRODEDURES)
ISSUE #1: STATE CONSTITUTIONAL AMENDMENT

9:20 Mike Irwin, Office of the Governor

9:40 QUESTIONS & ANSWERS

10:15 Break

10:30 LEGISLATORS' PANEL: "The Next Four Weeks - Options
Available to the Alaska State Legislature"
Panel Moderator: Nels A. Anderson, Jr.
Sen. Al Adams Rep. Eileen MacLean
Rep. George Jacko Rep. Kay Wallis
Sen. Jack Coghill *Others To Be Announced*
WRITTEN QUESTIONS FROM THE FLOOR

12:00pm Break for lunch

1:30 REMARKS BY CO-MODERATORS (AGENDA/PRODEDURES)
ISSUE #4: CONSTITUTIONAL AMENDMENT APPROACH

PANEL: Village Perspective
Will Mayo, Interior Tom Tildon, Bristol Bay
TBA, Southeast Gary Oskolkoff, Southcentral
TBA, Western Alaska TBA, North Slope

2:20 PANEL: Regional Perspectives
Myron Naneng, AVCP Bob Willard, SENSC
Mitch Demientieff, TCC *Others To Be Announced*
Trofon Angasan, Bristol Bay
Sam Demientieff, Fairbanks Native Association

3:10 Break

3:30 PANEL: Statewide Perspectives
Ralph Eluska, AFN Matthew Iya, RARA
TBA, Rural CAP Sen. Al Adams
Willie Kasayulie, ANC Rep. Eileen MacLean
Others To Be Announced

4:20 CLOSING REMARKS Dr. Walter Soboleff, Tlingit Elder

4:30 BENEDICTION Bishop Jacob Nelson, Moravian Mission
CONFERENCE CLOSING

6-9:00pm JOINT HOUSE/SENATE RESOURCES HEARING

SUBSISTENCE: A Strategy for Our Future

THE PURPOSE OF THE SUBSISTENCE SUMMIT CONFERENCE IS:

- * To provide Alaska Native leaders with the best available **INFORMATION** on the current political and legal challenge to our subsistence way of life, and to present such information in ways which respect the diversity of interests within the Native community and empower Natives to act.
- * To provide the opportunity for Native leaders to express their **POSITIONS, OPINIONS AND FEELINGS** on the subsistence issue, on its present and future impacts on the well-being of our people, and on effective strategies for protecting our long-term interests.
- * To generate creative **IDEAS** on how the Alaska Native community can deal effectively with the political opposition on subsistence and related issues of public policy.
- * To develop an effective network of **COMMUNICATION** in the statewide Native community between individuals, communities and organizations as we confront the external challenge to our subsistence economies and cultures.
- * To encourage **TRUST AND COOPERATION** among all Alaska Natives and their organizations, while respecting the cultural, geographical and generational diversity of our people.

To Alaska Native People:

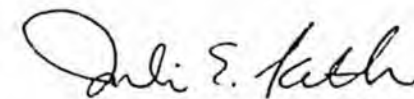
On behalf of the Alaska Federation of Natives, I invite you to attend an important statewide summit conference of the Alaska Native community on subsistence issues. The meeting will be held on April 10-11, 1990, at the Egan Convention Center in Anchorage. Its theme will be ***SUBSISTENCE: A Strategy for Our Future***.

At this conference we plan to provide the best possible information on the consequences of the recent Alaska Supreme Court decision (McDowell v. State) which declared the state subsistence law unconstitutional.

We will provide a broad framework for discussion of several different options available to Native people, and the implications of each. The conference will be an educational opportunity for all of us to say what we think and listen to each other. Representatives of villages and Native organizations will be able to return home carrying accurate information and a broad perspective on this complicated issue.

Protection of subsistence hunting and fishing is critically important to the future of Alaska Natives and to the survival of our villages. I urge you to attend the conference.

Sincerely,



Julie Kitka
President

MEMORANDUM

TO: Senator Betty Fahrenkamp VIA TELECOPY

FROM: William P. Horn *WPH*

RE: Observations and Analysis of Subsistence Issues

DATE: March 22, 1990

The following memorandum is an effort to provide a comprehensive overview of the subsistence situation. It is divided into three primary sections discussing strategies and issues, consequences that may arise from federal takeover, and a conceptual proposal that emanates from the group meeting we had in Juneau last month.

I. ISSUES AND STRATEGIES

Two court rulings have totally unravelled the 1986 subsistence scheme devised by the State with the concurrence of the U.S. Department of the Interior. The 1986 plan (52 SLA 1986) represented an effort to retain control over fish and wildlife management by adopting a subsistence preference limited to rural residents as provided in Sections 803, 804 and 805 of ANILCA. The McDowell case (McDowell v. State of Alaska, ___ F.2d ___ (Ak. 1989)) is the immediate cause of concern as it held that any State effort to limit subsistence privileges to rural residents violates Art. VIII, Sections 3, 15, and 17 of the Alaska Constitution. The State now faces the prospect of federal takeover of fish and game management of federal lands as mandated in § 805 of ANILCA.

Resolution of the McDowell matter will merely shift the focus to the problems created by the Kenaitze decision (Kenaitze Indian Tribe v. State of Alaska 860 F.2d 312 (9th Cir. 1988)). That decision declared the actual definition of "rural" in the 1986 Statute to be too restrictive and inconsistent with ANILCA. In the absence of federal changes in case law or in ANILCA, the State must also pass a new law to conform with Kenaitze or face federal takeover.

In order to forestall federal takeover, both matters must be addressed. McDowell may be resolved by pursuing the following courses of action:

McDowell Option 1 -- Alaska amends its Constitution to authorize the creation of a subsistence class limited to "rural residents" (the actual definition of "rural" to be addressed

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
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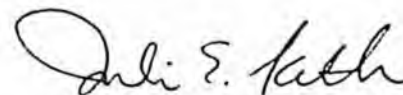
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Julie Kitka
President

PRE-REGISTRATION

Name: _____

Organization: _____

Address: _____

YES, I DO plan to attend.

NO, I DO NOT plan to attend.

ACCOMMODATIONS

The Anchorage Westward Hilton is offering special room rates during the Subsistence Summit Conference. Single- or double-occupancy room rates are \$70 per night. PLEASE MAKE YOUR TRAVEL AND HOTEL ARRANGEMENTS IN ADVANCE. You may call the Anchorage Westward Hilton toll-free at 1-800-478-3616.

PLEASE DETACH AND MAIL TO:
Alaska Federation of Natives, Inc.
411 West 4th Avenue - Suite 301
Anchorage, AK 99501

(907) 274-3611

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**SUBSISTENCE:
A Strategy for Our Future**

Egan Convention Center
Anchorage, Alaska
April 10-11, 1990



A Conference of the Native Community

SUBSISTENCE: A Strategy for Our Future

MEMORANDUM

TO: Senator Betty Fahrenkamp VIA TELECOPY
FROM: William P. Korn *WPK*
RE: Observations and Analysis of Subsistence Issues
DATE: March 22, 1990

The following memorandum is an effort to provide a comprehensive overview of the subsistence situation. It is divided into three primary sections discussing strategies and issues, consequences that may arise from federal takeover, and a conceptual proposal that emanates from the group meeting we had in Juneau last month.

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Resolution of the McDowell matter will merely shift the focus to the problems created by the Kanaitze decision (Kanaitze Indian Tribe v. State of Alaska 860 F.2d 312 (9th Cir. 1988)). That decision declared the actual definition of "rural" in the 1986 Statute to be too restrictive and inconsistent with ANILCA. In the absence of federal changes in case law or in ANILCA, the State must also pass a new law to conform with Kanaitze or face federal takeover.

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McDowell Option 1 -- Alaska amends its Constitution to authorize the creation of a subsistence class limited to "rural residents" (the actual definition of "rural" to be addressed

later). Attendant implementing legislation is also enacted. No amendments to ANILCA are enacted.

McDowell Option 2 -- A new Alaska subsistence program is crafted without regard to existing state or federal law. After the program is developed, amendments to state law and ANILCA are prepared to ensure that the law conforms to the new program. The new State program may or may not include a Constitutional amendment.

McDowell Conclusion -- I have no doubt that in the absence of any changes in ANILCA a constitutional amendment provides the only avenue for State compliance with the federal law. I cannot conceive of any legislative or regulatory fix that can reconcile the McDowell ruling and Sections 803, 804 and 805 of ANILCA. The State may take practical steps to provide a defacto preference to rural subsistence users but this is highly likely to be deemed inadequate as a matter of law.

Kenaitze follows the same option track. Arguing over the definition of "rural" makes sense only if the State amends its constitution to permit the creation of a rural subsistence class. On the other hand, if a program is negotiated per McDowell Option 2 that does not require any definition of "rural" and ANILCA is appropriately amended, Kenaitze becomes moot.

Kenaitze Option 1 -- Following adoption of McDowell Option 1, amend state law to conform with the Kenaitze ruling. That will require an expansive definition of "rural" and ensure that the subsistence class entitled to preferential fish and game allocation will be quite large. Under no circumstances can residents of Anchorage, Fairbanks, or Juneau be eligible. The effects of such an approach can be substantial. A very large subsistence class ensures a large number of users who must be satisfied before commercial and sport interests receive any allocation. A Kenaitze fix consistent with the 9th Circuit ruling is likely to have major effects on commercial fishing.

Kenaitze Option 2 -- Negotiate a new program and attendant statutory amendments that bypass the decision.

Observations -- I have a strong personal predilection for both Options 2. I am frustrated that the "tail keeps wagging the dog". Every time that the State has acted to conform with ANILCA, a state or federal court has changed the ground rules and triggered a new crisis. A constitutional amendment and a new statute may resolve McDowell and Kenaitze but that is no guarantee that another court will rule that the new regime is inconsistent with ANILCA. The State has acted three times to conform to ANILCA (the 1978 statute, the 1982 regulations and the 1986 statute) and each time a court has determined that the State missed the mark. In reality,

Title VIII has proven to be a moving target: the tail (ANILCA) keeps wagging the dog (the State and its citizens).

I am persuaded that continued attempts to react to courts makes no sense. Instead, initiating a new program that can secure the support of the major interests and then molding the state and federal law around the new program may offer a more permanent solution. It is foolhardy to have "subsistence crises" every two years.

This strategy contemplates and requires amending ANILCA. This is not an unachievable objective under the correct circumstances. ANILCA has been amended eight times since its enactment in 1980 and some of these changes have been significant (e.g. the Submerged Lands Amendment to Section 901). The key is to ensure that all of the major Alaska interests support the amendments. Under such circumstances, Sections 803, 804 and 805 could be amended without major political and substantive costs.

The following sequence of events is one means of achieving this goal. First, the major interests are convened to negotiate a new state subsistence program without regard to existing law. The negotiated program can resolve both the McDowell and Kenaitze problems simultaneously. This can be expected to take time and therefore plans for reacting to federal takeover must be made. Second, arrange with Interior a benign temporary takeover to cover the negotiation period. Third, have the State adopt the agreed to program which may or may not include a constitutional amendment. Fourth, secure passage of amendments to ANILCA that expressly sanction the new state program.

II. CONSEQUENCES OF FEDERAL TAKEOVER

The prospects of successful negotiation are not now strong. This is due largely to perceptions among various entities that their interests are served by the status quo. Some sportsmen think federal takeover is an empty threat. Some Natives see takeover as tantamount to "victory". Commercial fishermen have been slow to recognize the threat of federal preemption attendant to takeover. Until all of the interests understand the enormous risks each faces, good faith negotiation will not progress. This section briefly outlines the risks that various interests may face as a result of inaction and subsequent hostile federal takeover.

Sportsmen -- Sporting interests in Alaska face significant threats from federal takeover of subsistence management on federal lands. If Interior pursues an aggressive posture, it will assert authority to preempt state regulations on state and private land to ensure that harvestable surpluses of migrating fish and wildlife reach federal land areas. Interior could seek to preempt state fishery management on many rivers to ensure that

adequate fish get upstream to subsistence users on federal land. The same may apply to mobile game species like caribou or brown bear. Under these circumstances, regulation of sport fishing and hunting would effectively pass to Interior with unknown consequences. The prospect of the National Park Service (NPS) acquiring primacy over fish and wildlife management on the 50 million acres of NPS areas ought to scare most sportsmen.

A potentially greater threat involves closures. If Interior has inadequate resources (personnel and money) to manage fish and game on the 60% of Alaska that is federal land, the department can guard against suspected over-harvest by closing hunting and fishing on federal lands. If Interior is pressed to undertake an aggressive takeover, I think closures will become a genuine problem. Animal rights activists can be expected to pursue judicial intervention, most likely in Washington, D.C., on this front.

A more benign takeover raises a different, more insidious threat. If Interior defers heavily to the State, it is probable that animal rights activists or some tribal advocates will sue Interior to press it to become aggressive. A federal suit, which could be brought in Washington D.C., could press for a liberal reading of the takeover requirement in §805. A judge that agreed could take two courses. He would order Interior to act aggressively and specify what that means, the court would instruct the department on how to act. In the alternative, a judge, convinced that Interior was willfully avoiding its obligations under §805, could takeover the program. Federal courts have taken over administrative direction of school systems, prisons and fishing programs -- judicial takeover of subsistence management is a distinct possibility that must be reckoned with.

Natives -- Native interests face many of the same risks. Closures by Interior pose the same risks to Native interests that are posed to sportsmen. Similarly, the judicial takeover threat is by no means a benefit to Natives. Animal rights activists are as implacably opposed to Native taking as they are to non-Native hunting. The chance to get a federal judge -- probably in Washington, D.C. -- engaged in day-to-day wildlife management is an opportunity the anti-hunting activists will not let pass and Native interests could be severely harmed in the process.

Interior may confound the Natives and successfully pursue a very benign takeover. The Department's lawyers think the chance of successfully asserting preemption is less than 50%. If that outlook proves correct, takeover will be a paper tiger. The State would be free to run its fish and game programs on state and private lands, totally unencumbered by any subsistence preference requirement.

Lastly, please note that the Interior takeover -- if it does not seek preemption -- does not extend to Native corporation lands. Fish and game management on such lands would remain exclusively under State control. With no State subsistence law in place (since it has been struck down by McDowell), rural Natives would have to leave their land to obtain preferential treatment.

Commercial Fishermen -- Federal preemption poses its greatest risks to the fishing industry. Whether it is pursued administratively by Interior or as a result of judicial intervention is immaterial -- the prospects of federal tampering with anadromous fishery management are frightening.

The classical hypothetical involves a federal agency (NPS or the Fish and Wildlife Service (FWS) preempting offshore salmon harvest to ensure what the agencies deem to be sufficient escapement and provide appropriate subsistence harvest. Salmon runs in Bristol Bay, the Copper River, and the Yukon River may be most susceptible to federal intervention.

Conclusion -- Each of these interests is playing Russian roulette by acquiescing to stalemate that produces federal takeover pursuant to §805. No one can accurately predict what will transpire after the July 1st date when the State is officially in non-compliance with ANILCA. Suffice it to say, every one of the consequences noted above could occur. Since all of these interests face some substantial peril, that should work to facilitate negotiations and compromise.

III. CONCEPTUAL PROPOSAL

At our group meeting in Juneau the participants discussed different types of subsistence programs. Outlined below is a development of the ideas and concepts that emerged from those talks. It presumes that ANILCA will be amended as the proposal is inconsistent with existing federal law. Moreover, it does not include a constitutional amendment. I concur with your political judgment that amending the constitution ought to be avoided. This proposal may be worth pursuing in the context of a negotiated subsistence agreement that leads to amendment of state and federal law.

Purpose -- The purpose of the program (and new law) is to protect and maintain harvest opportunities for citizens that use and rely on fish and game resources as a primary means of sustenance.

The State Supreme Court has held this to be a legitimate state interest that may be pursued by constitutional means.

Findings -- The legislature would find that use of resources for subsistence purposes is a beneficial use under Article VIII, Section 4 of the Alaska Constitution.

The court has made clear that the Constitution does not prohibit differential treatment of user groups. Beneficial uses of fish and game resources may be subject to allocations. This ensures that subsistence qualifies as a beneficial use.

Subsistence Class I -- Establish a narrowly defined class of Alaska citizens to qualify for preferential treatment in terms of fish and game allocation. To qualify individuals must satisfy three requirements:

- (1) customary and traditional participation in subsistence activities (a) as an individual or (b) by their family;
- (2) use of fish and game resources proximate to where they live; and
- (3) subsistence activities constitute the primary means of securing sustenance.

The court made it clear that the class had to be reasonably open to new entrants. The law should indicate that newcomers can satisfy the first requirement by participation in subsistence activities during a period of time when the individual does not qualify for preference.

To reduce burdensome application and administrative requirements, it may be possible to authorize the State that it may presume that residents of small communities not connected to the road system will satisfy the criteria. This presumption would be for administrative convenience only and does not presumptively entitle residents of such areas entry into the class.

Class I users will be the beneficiaries of a "hard preference". This is the same kind of preference created in the 1986 state statute. Class I users must be satisfied before resources can be allocated to other users. When resources in a given area are inadequate to satisfy the reasonable requirements of eligible Class I members, allocation of resources within the class shall be based on (1) availability of alternative resources and (2) length of individual or family participation in subsistence activities.

Subsistence Class II -- The law would establish a broader class of subsistence users entitled Class II users. Eligibility would be determined by two criteria:

(1) Citizens must have customarily and traditionally taken fish and game resources for personal or family use; and

(2) These subsistence activities must constitute a significant means of securing personal or family sustenance.

This class of citizens will be entitled to a "soft preference". The Boards of Fish and Game would be required to afford this class reasonable opportunities to satisfy their reasonable needs. However, there would be no requirement to eliminate sport or commercial take before restricting Class II take. If resources are short, Class II harvest may be reduced concurrently with sport and commercial take. Moreover, Class II would be subject to a total out-off to provide for the needs of Subsistence Class I.

Graphically, the program would work as follows:



TIER 1 - Hard Preference

TIER 2 - Soft Preference

I am persuaded that this kind of program addresses the needs of the major interests, is workable, and is constitutionally sound (no amendment needed). However, ANILCA would have to be amended because the program would permit (albeit in limited cases) urban residents to qualify for Class I.

The program should have reasonable practical efforts. It defines a narrow class of genuine subsistence users -- those citizens who rely on fish and game resources and have few alternative means of support. Since the class entitled to a hard preference is restricted, adverse effects on commercial and sport interests should be minimal.

Class II subsistence should encompass a large group of citizens. Accommodating this broader group should help eliminate the "sting" of those who will find themselves ineligible for Class I. The soft preference ensures this group of an allocation without crippling other user interests.

IV. CONCLUSION

To summarize, the State has two basic courses of action. The first approach is to attempt to react to McDowell via a constitutional amendment and follow with a new statute that also reacts to and resolves Konaitze. The second is to negotiate a new program regardless of McDowell, Konaitze, and ANILCA. After a program is crafted, the State would seek new state law (including constitutional amendment if deemed appropriate) and conforming amendments to ANILCA. A benign takeover agreement with Interior will be an essential ingredient of the second approach.

Federal takeover puts all of the major interests at risk. The groups need to understand these risks so that they are prepared to negotiate in good faith to craft a mutually acceptable solution that will restore fish and game management to the State.

Finally, a new two-tiered system is offered for your consideration. It may provide the basis for discussions. However, it does not provide an immediate fix. To the contrary, the proposal seeks to reverse the order of things so that the law follows a political accommodation rather than have a political accord squeezed into this year's judicial rendering of ANILCA or state law.

I hope this is helpful. Please let me know if I can answer any questions or provide additional information. In addition, I will shortly provide an analysis of the other proposals you recently faxed to me.

BIRCH, HORTON, BITTNER AND CHEROT

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*D.C. BAR
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1187 WEST SEVENTH AVENUE
 ANCHORAGE, ALASKA 99501
 (907) 276-1880
 TELECOPIER (907) 276-2622

KEY BANK BUILDING
 100 CUSHMAN STREET, SUITE 311
 FAIRBANKS, ALASKA 99701
 (907) 452-1888
 TELECOPIER (907) 452-5055

ONE BEALASKA PLAZA, SUITE 301
 JUNEAU, ALASKA 99801
 (907) 586-8890
 TELECOPIER (907) 586-0614

MEMORANDUM

TO: Senator Bettye Fahrenkamp

FROM: William P. Horn *WPH* VIA TELECOPY

DATE: April 6, 1990

SUBJ: Interim Subsistence Law and Benign Takeover Concept

The following outlines in greater detail the concept we discussed yesterday. It does not forestall Federal takeover but provides for a benign, cooperative takeover effort. Ideally, this will buy time for the respective parties to negotiate a more permanent resolution.

1. The Alaska Legislature Enacts a New Subsistence Law Consistent with McDowell.

The new law would establish a subsistence class that could include some urban residents. Appropriate criteria would ensure that rural residents would constitute most of the class. Although I personally believe the subsistence class should be kept small, a larger class, in the interim, would facilitate the benign takeover as the larger class concept is consistent with Title VIII as construed by Kenaitze.

In addition, a key criterion is likely to be local residents taking resources proximate to where they live. This would prevent an urban subsistence class member from flying out to a remote area and getting preferential treatment to the detriment of the residents of the remote area. The program concept outlined in my March 22nd memorandum should fit nicely into this program.

2. The Boards of Fish and Game Promulgate Regulations to Provide Subsistence Opportunities Consistent with the New State Law.

Factually, the objective is to create a circumstance where rural residents, as defined by Title VIII of ANILCA, are provided

Senator Bettye Fahrenkamp
April 6, 1990
Page 2

appropriate opportunities to take subsistence resources. The need for a heavily interventionist, preemptive form of Federal takeover would be obviated if the class of citizens to be provided opportunities per Title VIII is in fact being provided for by the State. A situation where the State is in de facto compliance with the primary purpose of ANILCA even though it is in de jure noncompliance makes it possible for the U.S. Department of the Interior to cooperate with the State.

3. Interior Department Adopts Applicable State Regulations as Parallel Federal Regulations.

Interior's requirement under ANILCA is to ensure that rural residents who engage in subsistence on Federal lands are provided reasonable opportunities to take subsistence resources. State action, as outlined above, effectively satisfies this requirement in fact. Factual satisfaction, however, does not satisfy ANILCA which requires State enactment of consistent law.

Interior could adopt the State regulations as parallel Federal regulations if the Department were satisfied that the regulations would provide adequate opportunities to rural residents. The Federal regulations would control subsistence activities on Federal lands and constitute a demonstration that "takeover" has occurred.

4. Interior Contracts with State to Authorize the State to Carry Out the Parallel Federal Regulations.

Since Interior lacks the resources to run an on-the-ground fish and game operation, it could "hire" the State to do the job. The State would enforce the Federal subsistence regulations. Done properly, this should not create any legal difficulties for the State since the Federal regulations would be essentially the same as the State regulations. This arrangement should minimize disruption.

CONCLUSION

This kind of system would keep Federal costs low, ensure a high degree of deference to the State, guard against wholesale Federal land closures to hunting and fishing, and satisfy ANILCA. If done correctly, it should keep the lid on the controversy and permit the interests to pursue negotiations in a less rancorous atmosphere.

Rec'd 1:30 P
3/30/90

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

1155 CONNECTICUT AVENUE, N.W. • SUITE 1800 • WASHINGTON, D.C. 20036 • (202) 698-8600 • TELECOPIER (202) 698-1017

THOMAS L. ALBERT**
 J. GEOFFREY BENTLEY*
 RONALD G. BIRCH**
 WILLIAM M. BITTNER**
 KATHRYN A. BLACK
 DOUGLAS BLANKENSHIP
 PHILIP BLUMSTEIN
 CORY R. BORGESON
 STEPHANIE R. BOSTON
 MARGARET M. BRAUNT
 WILLIAM BUMPERS*
 JOHN J. BURNE
 GERALDINE M. CARR*
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KIM DUNN
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 ELIZABETH A. PHILLIPS
 STEVEN PRADILL
 MICHAEL V. REUBING
 ELIZABETH H. ROBB**
 JONATHAN S. RUBINI
 E. BUDD SIMPSON
 STEPHEN F. SORESEN
 AMERICAN STRICKLAND**
 JONATHAN K. TILLINGHAET
 MOLLY WARDS
 T. HENRY WILSON

OF COUNSEL
 JAMES D. NORDALE

*D.C. BAR
 **D.C. AND ALASKA BAR
 †MARYLAND BAR
 ‡VIRGINIA BAR
 ALL OTHERS ALASKA BAR

127 WEST SEVENTH AVENUE
 ANCHORAGE, ALASKA 99501
 (907) 278-1830
 TELECOPIER (907) 278-2882

KEY BANK BUILDING
 101 CUSHMAN STREET, SUITE 311
 FAIRBANKS, ALASKA 99701
 (907) 452-1866
 TELECOPIER (907) 452-5088

ONE BEALASKA PLAZA, SUITE 301
 JUNEAU, ALASKA 99801
 (907) 586-2220
 TELECOPIER (907) 586-0814

MEMORANDUM

TO: Senator Bettye Fahrenkamp
 FROM: William P. Horn *WPH*
 DATE: March 30, 1990
 SUBJ: Comments on Davidge and Lundahl Subsistence Proposals

VIA TELECOPIY

I have reviewed the subsistence proposals submitted to you by Mr. Ric Davidge and Mr. Richard W. Lundahl. Neither proposal offers a legal solution to the problems posed by the McDowell and Kenaitze rulings. Specific comments on each proposal are outlined below.

Davidge Proposal

The draft bill is essentially a reiteration of Title VIII of ANILCA. By enacting the measure, State law would be almost identical with the existing Federal statute. The apparent key to the proposal is that the subsistence preference established in State law would be limited to Federal lands.

The bill seeks to establish a subsistence priority based on rural residency. Consequently, the State would still have to amend its Constitution as the McDowell ruling proscribes the creation of a distinct rural classification.

The proposed definition of rural is not unreasonable. However, a similar regulatory definition triggered the Kenaitze decision. Unless ANILCA is amended, the Kenaitze opinion would invalidate any State provision limiting "rural" to communities of 2,500 people or less per Davidge.

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Senator Bettye Fahrenkamp
March 30, 1990
Page 2

The approach contained in the draft bill could work if (1) The Alaska Constitution is amended, and (2) ANILCA is amended. It is doubtful that a policy of limiting the subsistence program to Federal lands will secure substantial support.

Lundahl Proposal

Lundahl's proposal is interesting in that it establishes a comprehensive six-tier priority system. The thrust of his proposal is to establish a direct tie between commercial fishing and subsistence taking. The apparent purpose of this linkage is to grant commercial fishing a statutory priority over sport fishing.

His effort to equate commercial take with subsistence is the result of a misreading of the language and legislative history of ANILCA Title VIII. The commercial sale references in Title VIII were designed to permit small scale fur trapping to continue under the rubric of subsistence. It is legally untenable to seek to expand the references to include commercial fishermen operating with limited entry permits. Yet that is the apparent crux of Lundahl's plan.

Additionally, the proposal would, at the minimum, require a Constitutional amendment: it presupposes a rural/urban delineation inconsistent with McDowell. The plan may resolve Kenaitze as it appears that Lundahl contemplates a broad definition of rural.

WPH:jap
WPH231M.ASR

DRAFT PROPOSAL FOR A BILL FOR SUBSISTENCE

by Richard W. Lundahl

2/24/90

(revised 3/2/90, 3/6/90, 3/8/90 and again 3/12/90)

DISCUSSION OF TYPES OF ATTEMPTS MADE TO DATE TO COMPLY WITH ANILCA

All attempts to date by the State to comply with ANILCA have relied upon and have been built upon:

INDIVIDUAL HISTORY OF SUBSISTENCE USE DATA

COMMUNITY HISTORY OF SUBSISTENCE USE DATA

INDIVIDUAL HISTORY OF AREAS OF SUBSISTENCE USE DATA

COMMUNITY HISTORY OF AREAS OF SUBSISTENCE USE DATA

INDIVIDUAL HISTORY OF SPECIES OF SUBSISTENCE USE DATA

COMMUNITY HISTORY OF SPECIES OF SUBSISTENCE USE DATA

This type of data is extremely prejudicial, biased and discriminatory. Too much so. It is also too costly to collect and too subjective.

People throughout Alaska and especially in the rural areas truly do rely upon their renewable resources. This type of data does not allow for the real and/or changing needs of either individuals or their communities. It does not allow for changes in fish and wildlife populations, especially from area to area. It leaves no alternatives if a particular species suffers a severe population decline. It cannot react timely to changing populations. It involves too much litigation from individuals and communities. It is unacceptable.

DISCUSSION OF ATTEMPTS MADE BY THE STATE TO COMPLY
WITH THE SUBSISTENCE NEEDS OF ITS CITIZENS PRIOR TO ANILCA

Pelican ADF&G Advisory Committee has gone on record in 3/3/82 with its views of the subsistence issue. At its 3/3/90 meeting it again unanimously supported the exact same position. This position supports State control of its fish and game resources and requests the State to demand its right to do so. See Appendix I for that position paper.

DISCUSSION IN FAVOR OF A DIFFERENT TYPE OF APPROACH

DISCUSSION OF INTENT OF ANILCA (PLACE OF RESIDENCE - RURAL ALASKA)

ANILCA (as far as subsistence is concerned) obviously intends (or means) to protect the life-style, culture, and livelihoods of rural Alaskans from the urban Alaskans and from the residents of the south 48 and from foreigners. This is because the rural Alaskan has absolutely no (or almost) no alternative life-style, culture, or livelihoods to fall back on if their supply of fish and game is significantly diminished or wiped out. They absolutely depend on their wild renewable resources.

DISCUSSION OF INTENT OF ANILCA (NATIVE VERSUS NON-NATIVE)

ANILCA is basically an Act about Lands in Alaska which are of National Interest. Although ANILCA has large portions dealing with Native lands and the Alaska Native Claims Settlement Act, ANILCA very specifically and clearly states, in Section 801.(1) (see Appendix III), that, as far as subsistence is concerned, Natives and non-Natives are to be treated alike.

DISCUSSION OF INTENT OF ANILCA (CUSTOMARY TRADE VERSUS COMMERCIAL USE)

"Customary Trade" (as used in ANILCA Section 803) (see Appendix III) can be easily defended as meaning that for purposes of fish and game laws and regulations, "any and all commercial harvesting of fish and game as has been legally allowed, licensed and/or permitted by in the State of Alaska to this date".

Clearly, Alaska residents had the history of some 60 years of US Law and Regulation and Management before Statehood to decide what was acceptable commercial practice ("customary trade") in the harvesting of its wild renewable resources.

With Statehood (when Alaska residents received the right to make laws and regulations based on these decisions) many changes were implemented (i.e., elimination of fish traps). After a further 15 year history, Alaska amended its constitution to allow for the protection of its residents from non-Alaskan residents and entrepreneurs (i.e., Limited Entry in the commercial fisheries).

The enactment of Commercial Fisheries Entry Legislation brought about an almost immediate migration of permits (opportunities of livelihood) out of the rural areas of the State to the urban areas of the State and to an even greater extent out of the State entirely. This is probably the chief reason for the enactment of the Subsistence Section (Title VIII) of the ANILCA legislation. And it happened within 6 years of the (final) enactment of limited entry.

The past ten years of trial and error regulations designed to implement ANILCA subsistence have been very frustrating, unproductive, and extremely fear provoking. (ANILCA subsistence could very possibly destroy the very life-style, culture, and livelihoods it was designed to create).

It should be clear from a perusal of the history of the regulations designed for the protection of Alaskan residents, especially rural residents, who in many cases are commercial users, that ANILCA's clear intent is to protect the commercial user; and it can do so by defining customary trade as in the following bill proposal.

DISCUSSION OF INTENT OF ANILCA (PLACE OF RESIDENCE - URBAN ALASKA)

Further, this perusal of the history of Alaska law and regulations and ANILCA (as far as subsistence is concerned) can easily further be interpreted to intend (or mean) to protect the life-style, culture, and livelihoods of urban Alaskans from the residents of the south 48 and from foreigners (see ANILCA Section 804 in Appendix III). This is because the urban Alaskans have almost no (or very little) alternative life-style, culture, or livelihoods to fall back on if their supply of fish and game is significantly diminished or wiped out. They also very much depend on their wild renewable resources.

DISCUSSION OF INTENT OF ANILCA (SPORT VERSUS COMMERCIAL HARVESTING)

Sport hunting and fishing (and trapping?) as now separated from "Personal Use" hunting and fishing (and trapping?), can be viewed either as a direct use of the resource for recreation or an indirect use of the resource for livelihood (as in the case of sport fishing and hunting suppliers, outfitters, guides, and lodges).

Commercial fishing and trapping (and hunting?) can be viewed as a direct use of the resource for livelihood.

Study of ANILCA, then, in its Section 803 (see Appendix III) definition of subsistence uses, seems to give commercial fishing and trapping (and hunting?) a higher priority than sport fishing and hunting.

Study of ANILCA Sections 801.1 and 801.4 (see Appendix III) seems to give the same interpretation.

Study of ANILCA Sections 801.3 (see Appendix III) seems to allow for a use priority schedule such as is given in this proposal.

Following the actual proposal are two pages of additional discussions, which are more detailed and are best studied after the proposal itself is read.

The above two page discussion, together with the additional discussion, should show that the intent of the ANILCA subsistence sections can be acceptably implemented by the enactment of the following bill proposal.

INTENT OF PROPOSAL

PRIORITY LIST

1. Every resident of a rural Alaskan community (Pelican) should be able to eat wild fish and game before residents of an urban Alaskan city (Juneau) eat wild fish and game.
2. Every resident of an urban Alaskan city (Juneau) should be able to eat wild fish and game before other residents of USA eat wild fish and game.
3. Every resident of a rural Alaskan community (Pelican), who holds a valid Commercial Fisheries Entry Permit or some such Alaska commercial license, should be able to harvest wild fish and/or game before residents of an urban Alaskan city (Juneau), who hold a valid Commercial Fisheries Entry Permit or some such Alaska commercial license, should be able to harvest wild fish and/or game; and before nonresident sport fishermen, hunters and trappers harvest fish and game.
4. Every resident of an urban Alaskan city (Juneau), who holds a valid Commercial Fisheries Entry Permit or some such Alaska commercial license; and every nonresident sport fishermen, hunters and trappers should be able to harvest wild fish and game before non-Alaska residents, who hold a valid Commercial Fisheries Entry Permit or some such Alaska commercial license harvest fish and game.
5. Nonresidents of Alaska, who hold a valid Commercial Fisheries Entry Permit or some such Alaska commercial license should be able to harvest fish and game before any US commercial fisherman, hunter, or trapper, who does not hold a valid Commercial Fisheries Entry Permit or some such Alaska commercial license harvests fish or game.
6. Every US citizen should be able to harvest fish and game in a legal manner before any foreign person or enterprise harvests fish and/or game.

DRAFT PROPOSAL FOR A BILL FOR SUBSISTENCE

by Richard W. Lundahl

2/24/90

(revised 3/2/90, 3/6/90, 3/8/90 and again 3/12/90)

Be it hereby enacted:

1). That for purposes of fish and game laws regulations, the phrase "customary trade" as used in ANILCA Section 803 shall be defined as meaning "any and all commercial harvesting of fish and game as has been legally allowed, licensed and or permitted by in the State of Alaska to this date. And,

2. That for the purposes of fish and game laws and regulations the phrase "Alaskan resident" shall mean: any living, real US citizen who is currently living in the state of Alaska, and has lived within the state of Alaska for the preceding year, and who intends to remain living within the State for at least another year, and who is eligible for an Alaska Permanent Fund Dividend. And,

3. That further, for the purposes of fish and game laws and regulations the "residence" of an Alaskan resident shall mean, and shall be determined by: the address to which eligible Alaska Permanent Fund Dividends are sent. And,

4. That for the purposes of Subsistence as defined in ANILCA, the State of Alaska, hereby designates six Categories of Users of its fish and game resources.

Category 0 Users shall include:

- a). All Category 1 Users, and
- b). All rural Alaskan resident subsistence and personal use fishermen, hunters, and trappers.

Category 1 Users shall include:

- a). All Category 2 Users, and
- b). All non-rural Alaskan resident subsistence and personal use fisherman, hunters and trappers.

Category 2 Users shall include:

- a). All Category 3 Users, and
- b). All rural Alaskan resident commercial harvesters who hold valid Alaska resident licenses, and/or permits (such as: An Alaska resident trapping license, or an Alaskan resident Commercial Fisheries Entry Permit).

Category 3 Users shall include:

- a). All Category 4 Users, and
- b). All rural Alaskan resident sport harvesters who hold valid Alaska (rural?) resident licenses,
- c). All non-rural Alaskan resident commercial harvesters who hold valid Alaska resident licenses, and or permits (such as: An Alaska resident trapping license, or an Alaskan resident Commercial Fisheries Entry Permit).

Category 4 Users shall include:

- a). All Category 5 Users, and
- b). All (non-rural?) Alaskan resident sport harvesters who hold valid Alaska resident licenses, and all non-Alaskan nonresident US citizen sport harvesters who hold nonresident Alaska sport fish, hunting or trapping licenses.
- c). All official and all non-official Alaska fishing derbies and trophy hunts and their participants.
- d). All commercial harvesters who reside outside of the State of Alaska and who hold valid Alaska resident licenses, and/or permits (such as: An Alaska resident trapping license, or an Alaskan resident Commercial Fisheries Entry Permit).

Category 5 Users shall include:

- a). All Other Users, and
- b). All foreigners holding valid Alaska nonresident sport fishing, hunting or trapping licenses.
- c). All US commercial harvesters who reside outside of the State of Alaska and who do not hold valid Alaska resident licenses, and/or permits (such as: US trawlers and US factory trawlers).

Other Users include:

- a). Any and all others including foreign (non US citizens) commercial fishing and hunting operations.

5. That for the purposes of Subsistence as defined in ANILCA, the State of Alaska, hereby designates seven categories of Subsistence Emergencies for its fish and game resources as hereby defined.

- A. "No Subsistence Emergency" shall mean that no level of emergency exists and all peoples (Other Users) may harvest fish and game in any manner legally provided for by Alaska laws and/or regulations.
- B. A "Class 6 Subsistence Emergency Closure" shall mean that a low level of subsistence emergency exists and all Other Users shall be prohibited (excluded) from harvesting the resource designated.
- C. A "Class 5 Subsistence Emergency Closure" shall mean that a low level of subsistence emergency exists and all Category 5 Users shall be prohibited (excluded) from harvesting the resource designated.
- D. A "Class 4 Subsistence Emergency Closure" shall mean that a higher level of subsistence emergency exists and all Category 4 Users shall be prohibited (excluded) from harvesting the resource designated.
- E. A "Class 3 Subsistence Emergency Closure" shall mean that a higher level of subsistence emergency exists and all Category 3 Users shall be prohibited (excluded) from harvesting the resource designated.

- F. A "Class 2 Subsistence Emergency Closure" shall mean that a higher level of subsistence emergency exists and all Category 2 Users shall be prohibited (excluded) from harvesting the resource designated.
- G. A "Class 1 Subsistence Emergency Closure" shall mean that the highest level of subsistence emergency exists and all Category 1 Users shall be prohibited (excluded) from harvesting the resource designated.
- H. A "Conservation Class Emergency Closure" shall mean that the very resource itself is threatened and that the highest possible level of resource emergency exists and that it is both realistic and possible by strict adherence to sound biological methods and management to bring that resource back to health and all Category 0 Users shall be prohibited (excluded) from harvesting the resource designated.

OTHER PROVISIONS NEEDED IN THE PROPOSAL (after debate and discussion).

Emergencies which arise could be recognized by:

1. Alaska Board of Fisheries and/or Game,
2. Alaska Department of Fish and Game,
3. Appropriate Regional ADF&G Advisory Council,
4. Appropriate Local ADF&G Advisory Committees,
5. Local City, Town, or Village Council,
6. Petition by concerned groups or individuals.

Emergencies, including which species and areas were involved, and class or seriousness of emergency would be determined jointly by:

1. The Appropriate Alaska Board of Fisheries and/or Game,
2. The Alaska Department of Fish and Game, and
3. The Appropriate Regional ADF&G Advisory Council, with
The Appropriate Local ADF&G Advisory Committees required
in attendance.

Definitions for "general", "overall" conservation closures for entire regions or the entire state may be needed and enacted.

Provisions and/or regulations for declaring and implementing these closures must be written and passed.

FURTHER DISCUSSION IN FAVOR OF THIS PARTICULAR BILL PROPOSAL DRAFT
and/or
THIS TYPE OF SUBSISTENCE LEGISLATION

DISCUSSION OF EFFECTS OF THIS PROPOSAL OR THIS TYPE OF PROPOSAL

Determination of eligibility to harvest fish and/or game in any particular legal manner will be easily made based on:

- a). Status of resource.
- b). Place of residence.
- c). Legal licenses and permits held.

A person may become eligible or ineligible to harvest if they move, or (commercially) if they buy or sell their permit. Commercial permits should migrate back to the rural villages without direct government involvement as they become valueless to nonresidents if that class emergency is declared.

Costs of collecting and analyzing great amounts of individual and community historical use data will be eliminated or greatly reduced.

Fish and Game managers will be able to determine harvest levels for particular species in relatively broad or very specific areas as the biology, habitat, movement, population, etc. of that species dictates.

Obviously, general and overall "Conservation Class Emergency" and "Class 1 Subsistence Emergency" and Class 2 Subsistence Emergency" Closures are exceptional cases indicating that the entire State's (or Region's) economy has failed or is failing.

Specific species or specific area Conservation or Subsistence Emergency Closures would be more common. The harvest of one species of fish and/game may be severely restricted in an area while another species in the same area is being harvested commercially by all users.

LEGAL TYPE DISCUSSION OF CUSTOMARY TRADE (See Appendix III)

This proposal defines the term "Customary Trade" which is used in the ANILCA Section 803 definition of "subsistence uses". Notice that the term "Barter" (which is also used in the ANILCA definition of "Subsistence Uses", and which is itself actually defined in ANILCA Section 803.(2)) is separated from the term "Customary Trade" by a phrase and by a semicolon. This seems to imply that, although "barter" is a noncommercial use of the resources, "customary trade" may in fact be a commercial use. It further implies the term "customary trade", since it is not defined in ANILCA, is open to State interpretation and the legislative definition thereof.

LEGAL TYPE DISCUSSION OF CATEGORIES OF SUBSISTENCE USERS (See Appendix III)

This proposal creates "categories of subsistence users" which is in complete compliance with the "preferences for subsistence uses" as stated in ANILCA Section 301. ANILCA'S intention seems obviously meant to protect the rural Alaskan resident both "personal use-wise" and "commercial use-wise".

It just as obviously seems to mean to protect the urban Alaska resident both "personal use-wise" and "commercial use-wise", but on a lower priority level. As discussed previously [in this paper and in ANILCA Section 301.(1)] both rural and urban commercial user has customary and direct dependence upon the resource as the mainstay of livelihood. Between the rural and urban Alaska commercial user, only their "availability of alternative resources" [ANILCA Section 804.(3)] is different and it is severely limited in both cases.

DISCUSSION OF PREVIOUS LEGAL PROBLEMS IN COMPLYING WITH ANILCA

This type of proposal should not require any constitutional amendment based on the following logic.

1. The constitutional amendment which enabled limited entry to be enacted enables us to discriminate between users based on conservation needs.
2. Limited Entry further allowed us to discriminate between users based on past participation.
3. All this proposal does is recognize conservation needs and, in compliance to ANILCA, spreads the discrimination over several categories of users based upon the severity of the emergency, the customary and direct dependence upon the resource populations as the mainstay of livelihood, the availability of alternative resources, and subsequently upon a person's residence.

This type of proposal seems legal under ANILCA, our past Alaska legislation, and our constitution.

QUESTIONS TO ASK YOURSELF

1. OVERVIEW Do we want to support this type of legislation?
 Generally?
 Specifically?
 Can you support it individually?
2. Are there gross errors in the proposal or in the discussion.?
3. Is each user group in the category you would like to see it in?
 And can you support your preference?
4. Are there other user groups not included that should be?
5. What about Sport Commercial Charter Boats? Are they in the correct category? Where should they fit into the category range? Should they be required to buy a Power Troll Permit?
6. What about Commercial Guides?
7. How should emergencies be recognized and by whom? Who should see that they are actually responded to?
8. What about elderly people who have lived off the land in rural communities but are now forced to live in urban areas because of ill health and the need to be near medical facilities?
9. Will this proposal cause a migration of nonresidents into rural areas instead of a migration of commercial permits into these areas, creating even worst situations?
10. How extensive should Subsistence Class Closures be? Should "Conservation Closure" and "Class 1 and Class 2" Subsistence Emergency closures "kick in" limited to their areas only?
11. DOES THIS PROPOSAL REALLY DO WHAT WE THINK IT DOES?

PELICAN'S POSITION ON SUBSISTENCE

PELICAN ADF&G ADVISORY COMMITTEE

SUBSISTENCE COMMENTS

3/3/82

In attempting to come up with Pelican's definition of subsistence we have come to realize that:

1. Every man "needs" to subsist;
2. Every man will utilize any resource to stay alive and/or to keep his family alive, be it fish, fowl, flora, or fauna, a renewable resource or a non-renewable resource;
3. That our governments (community, state, and federal) have been created to safeguard these basic needs and rights;
4. That our Alaska Boards of Fisheries and of Game, in particular, have been created to and have been doing just that.

We have also come to recognize the Con Game of the ANILCA subsistence issue for what it is:

1. An insidious method of gaining further Federal control over Alaska's resources, and
2. A method for lawyers, attorneys, Federal bureaucrats, and other Con Men to milk the public.

We citizens are tired of expending great amounts of time, effort, and monies in "good faith" attempts to sit down with highly paid attorneys and bureaucrats to develop realistic definitions and laws for resource management, only to find that we have wasted our family lives and exhausted our personal finances, while the attorneys have been getting rich, and further, only to find that once the issues, definitions, and laws have been ironed out and agreed upon in "good faith" and enacted, that these same lawyers and bureaucrats will then "take the other side" and further drain our treasuries and pocket books by representing various groups (supposedly wronged by legislative or regulatory oversight) in court using legal loopholes.

We recognize the Con Game for what it is --- a highly evolved and very expensive method for milking the public under the guise of protecting our rights, our interests, and our resources.

We feel that the Alaska Boards of Fisheries and of Game do now, and always have had the Alaskan citizen's interests at heart; and that they have shown exceptional sensitivity in meeting subsistence needs of the Alaskan without the expensive Con Game of statutes, definitions, and regulations. We feel that the State of Alaska has a very good batting average in the management of its resources -- at least the few that it is allowed to manage.

On the other hand, we feel that the Federal Government has shown a real lack of understanding of Alaskans and the needs of Alaskans, and consequently, has a history of insensitivity to Alaska's needs; witness:

Clearcut logging,
The Marine Mammal Act,
Wolf control, etc., and now
The subsistence issue.

We feel that the State of Alaska should at this time take a strong stand against federal control of subsistence in Alaska and/or federal mandates to Alaska concerning subsistence. The State should sue the federal government if necessary. We should be demanding our State's rights to manage our own renewable resources. We fought for these rights at Statehood and we should not be letting the Federal Government abridge them.

We feel that the Federal Government should re-examine the implications of ANILCA and back off.

Our nation was founded with the concept of all men being equal under the law. We ask, then, that the Federal Government re-examine the ANILCA Subsistence Sections as creating classes of people with different rights:

Subsistence users over "others",
Rural over urban,
Traditional user over "??????".

Further, we ask that the United States Government cease and desist this practise of taking over State's rights and authorities under the guise of righteously protecting its citizens.

AUTHOR'S REASONS FOR PROPOSAL

DISCUSSION OF THE AUTHOR'S REASONS FOR THIS PAPER AND PROPOSAL

Although I am on the Pelican ADF&G Advisory Committee and wholeheartedly support its position on Subsistence and State's rights (see Appendix I), it is my opinion that:

1. The Federal government will continue to usurp our State's rights, despite their obvious ignorance of our traditional, customs, and needs.
2. The State of Alaska, The Office of the Governor, The Alaska State Legislature, The Boards of Fisheries and Game, and The Department of Fish and Game either lack the desire, the will, the muscle, and/or the courage to fight the Federal government; or they truly know that they would lose this battle at further loss to the State.
3. The Boards of Fisheries and Game have occasionally (but very rarely) bowed to political pressures and put the interest of the urban users above the needs of the rural user (i.e. the Cook Inlet/Kenia River Subsistence issue).
4. Many other State agencies do not have the protectionist attitude toward "subsistence" and "personal use" rural users that the Alaska Boards of Fisheries and Game has shown (i.e. the clearcut, no buffer strip policies of the Alaska Department of Natural Resources).

It is for these reasons that I submit this paper. I do so with great reluctance as I feel that State will take any alternative it can to and avoid this very necessary battle over its right to govern itself, regardless of the lack of existence of acceptable legislation for compliance to ANILCA.

It is with these reservations, therefore, that I submit this paper. I feel that, notwithstanding the need for a strong stand over Alaska's right to govern itself, the preceding approach to compliance with ANILCA Subsistence is the least disruptive to the State and the customs, life-style, and livelihoods of its citizens both rural and urban. It should, I believe, allow the State to manage its fish and game resources pretty much as it has in the past.

If we accept this proposal, however, the State will continue to be ruled by our absentee owners in Washington D.C. and we will continue to have many such conflicts in the future (i.e. the Tongass Reform issue, the Glacier Bay Park versus Commercial Fishing issue).

Sincerely,
Richard W. Lundell

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

Sec. 801. The Congress finds and declares that—

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

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

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

48 USC 1601
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress 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 by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

Sec. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized