

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 86/2

6991 HOUSE JUDICIARY

A case example of a small community with a mixed, subsistence-cash economy is Kaktovik, an arctic slope community with 224 people in 1990, of which 84.4 percent were Alaska Native, primarily from Inupiat cultural traditions. In 1986, the Division of Subsistence interviewed 42 of 53 households in Kaktovik to document the past 12-month's subsistence patterns. Based on that survey, 90.5 percent of Kaktovik households reported harvesting some wild foods in 1985-86. In terms of use, 100 percent of households used subsistence fish, 100 percent used big game, 88.1 percent used marine mammals, and 88.1 percent used wild birds. Most subsistence foods were harvested by a subset of the community's households: 30 percent of Kaktovik's households produced 70 percent of the harvest by weight. Wild foods were widely shared among households, so that use of major species was reported by a large majority of households. For instance, all households (100 percent) reported using char, 95.2 percent used caribou, 69.0 percent used ringed seal, and 61.9 percent used spotted seal. The community landed no bowhead whales that year, yet 83.3 percent of households used bowhead whale which were shared from other communities on the north slope. While 7.2 percent of Kaktovik households harvested moose, 45.2 percent of households used moose. While 2.4 percent of households harvested muskox, 42.9 percent used muskox. While no one reported harvesting broad whitefish, 47.6 percent used whitefish, received from other communities. Kaktovik residents harvested an average of about 328 lbs of wild foods per person in 1985-86, which contained 213 percent of an individual's recommended daily allowance of protein and 31 percent of the daily allowance of calories. The survey did not ask for estimates of individual or household consumption levels. However, because of the wide-spread sharing of wild foods, the mean per capita harvest estimate is probably a reasonable estimate of per capita consumption as well. Kaktovik's cash sector was relatively strong during the 1980s compared with most other small Alaska communities, due to employment generated from North Slope Borough oil revenues. The mean taxable income per income tax return in Kaktovik from 1981-85 was \$25,591, compared to \$6,629 for Venetie, a neighboring village to the south, and compared to \$24,677 for Fairbanks, an urbanized area to the south. The cost of food in Kaktovik is estimated to be 228 percent of prices in Anchorage. The Alaska Boards of Fisheries and Game determined that Kaktovik had a mixed, subsistence-cash economy during deliberations in 1986. State regulations provide for subsistence hunting and fishing in the Kaktovik area.

Kaktovik is just one example of the approximately 278 small communities with mixed, subsistence-cash economies in the state. Other communities show differences in terms of types of species used, harvest quantities, and the integration of subsistence activities with the pattern of local employment (Wolfe and Ellanna 1983; Wolfe and Walker 1987). However, most small communities are similar to Kaktovik in regards to the general characteristics of the mixed, subsistence-cash economy listed above. The Division has conducted studies in over 200 small communities, reported in the Division's technical paper series. Examples of other case communities for comparison with Kaktovik include Tyonek in the southcentral region (Fall, Foster, and Stanek 1984), Manokotak in the southwest region (Schichnes and Chythlook 1988), Fort Yukon in the interior region (Sumida and Andersen 1990), and Tenakee Springs in the southeast region (Leghorn and Kookesh 1986).

Communities with 2,500-7,000 people and Mixed, Subsistence-Cash Economies

There were seven mid-sized communities in Alaska with populations of 2,500-7,000 people in 1990: Cordova (2,579), Kotzebue (2,751), Unalaska (3,089), Petersburg (3,230), Barrow (3,469), Nome (3,500), and Bethel (4,674). Dillingham, with a growing population of 2,017 people, was approaching the 2,500 level. In 1986,

the Alaska Boards of Fisheries and Game determined each of these communities to have mixed, subsistence-cash economies. Studies have been done in most of these communities (cf, Ellanna 1983; Fall, Schichnes, Chythlook, and Walker 1986; Stratton 1989; Smythe 1988; Wolfe 1986). These studies have shown that, in general, in these communities, a majority of residents who hunt and fish probably meet the criteria of a subsistence user; however, some residents who hunt and fish in these communities probably do not. In general, the mixed, subsistence-cash economies of these communities share the characteristics of smaller communities, listed above, with a few important additions:

1. more employment opportunities commonly exist in the community in comparison with smaller communities, especially in government services, transportation, and/or commercial fishing;
2. greater between-household diversity exists in resource use patterns, due to greater cultural diversity in the population and more economic options;
3. other cultural traditions are found within segments of the population that affect a household's resource use patterns, such as the recreational-sport outdoors tradition and commercial fishing traditions of industrial-capitalism.

In general, research by the Division of Subsistence has found that most residents participate as consumers of wild resource products in mid-sized communities (2,500-7,000 people) with mixed, subsistence-cash economies. For instance, in Cordova in 1985, 73.3 percent of households used non-commercial salmon, 69.9 percent used halibut, 79.6 percent used big game, and 80.1 percent used marine invertebrates. In Petersburg in 1987, 96.9 percent used salmon, 81.4 percent used halibut, 76.1 percent used big game, and 80.3 percent used marine invertebrates. As in small villages, most wild foods are produced by a subset of very productive households in the community. Wild foods are commonly shared by highly productive households with less productive households, most frequently along kinship lines.

However, in general, the populations of mid-size communities are more culturally mixed in comparison with small communities, due to in-migrations of new residents during the past decades. Because of this, some households in the community fall outside of the extensive kinship networks used for sharing that characterize subsistence-cash systems. Some portion of households in mid-sized communities do not consume subsistence foods for this reason. In addition, some portion of households do not participate in the community's resource use pattern because they choose to participate solely in the cash sector of the community's economy. This choice appears to be due to the personal cultural background and economic situation of the household. Some segment of the population of mid-size communities engage in wild resource harvests from cultural traditions which are different from subsistence customs and traditions. In particular, some households hunt and fish primarily from a Euro-American recreational-sports outdoors tradition. Some households harvest fish primarily as part of the commercial fishing tradition of industrial-capitalism. Some households in these segments of the population may express ideologies in opposition to subsistence traditions, and disagree with laws providing special subsistence preferences. Therefore, although research supports the conclusion that a majority of residents in mid-size communities who fish and hunt are participants in a subsistence-type pattern of wild resource use, a portion of the residents in mid-sized communities who hunt and fish do not.

A case example of a mid-size community with a mixed, subsistence-cash economy is Kotzebue, a community in northwest Alaska with 2,751 people in 1990, of which 75.1 percent were Alaska Native, primarily from Inupiat cultural traditions.

Kotzebue served as a regional center to 11 villages of the northwest arctic. It provided a center for services, government, commerce, transportation, and administration of a developing regional minerals industry. Wage-paying jobs linked to these government-financed services and administrative functions are more numerous in Kotzebue in comparison with surrounding villages, and mean incomes were correspondingly larger. The mean taxable income per income tax return in Kotzebue from 1981-85 was \$20,444, compared to \$9,858 for Selawik, a neighboring village, and compared to \$24,457 for Anchorage, an urbanized area to the southeast. The cost of food in Kotzebue is estimated to be 155 percent of prices in Anchorage.

In 1986, the Division of Subsistence interviewed a random sample of 90 of 765 households in Kotzebue to document the past 12-month's subsistence patterns. Based on that survey, 78.5 percent of Kotzebue households reported harvesting some wild foods in 1986. In terms of use, 95.1 percent of households used subsistence fish, 88.1 percent used big game, 64.3 percent used marine mammals, and 64.0 percent used wild birds. Most subsistence foods were harvested by a subset of the community's households: 30 percent of Kotzebue's households produced 70 percent of the harvest by weight. Wild foods were widely shared among households, so that use of major species was reported by a large majority of households. For instance, 95.4 percent of households reported using salmon, 76.0 percent used sheefish, and 88.1 percent used caribou. Bearded seal was used by 47.2 percent. The community landed no bowhead whales (some Kotzebue residents helped Point Hope hunt), yet 41.1 percent of Kotzebue households used bowhead whale which was shared from Point Hope. While 8.4 percent of Kotzebue households harvested moose, 42.0 percent of households used moose. While 45.2 percent of households harvested caribou, 88.1 percent used caribou. Kotzebue residents harvested an average of about 398 lbs of wild foods per person in 1986, which contained 258 percent of an individual's recommended daily allowance of protein and 37 percent of the daily allowance of calories. The survey did not ask for estimates of individual or household consumption levels. However, because of the wide-spread sharing of wild foods, the mean per capita harvest estimate is probably a reasonable estimate of per capita consumption as well. The Alaska Boards of Fisheries and Game determined that Kotzebue had a mixed, subsistence-cash economy during deliberations in 1986. State regulations provide for subsistence hunting and fishing in the Kotzebue area.

There are substantial differences between the seven communities in this mid-size class in terms of how wild resources are integrated into each community's culture, economy, and way of life. These use patterns are influenced by the community's history and cultural composition. But underlying these differences in detail appear to be the characteristics common to mixed, subsistence-cash economies, listed above. Other mid-size communities where the Division of Subsistence has conducted studies which can be compared with Kotzebue include Nome (Ellanna 1983), Cordova (Stratton 1989), Petersburg (1988), and Bethel (Wolfe 1986). Dillingham, a community almost within this category, can also be compared (Fall, Schichnes, Chythlook, and Walker 1986).

Communities > 7,000 People

In 1990, about 441,521 people lived in Alaskan communities larger than 7,000 people, which was about 80.2 percent of the state's population. Areas with populations greater than 7,000 people include the Anchorage Borough (226,338), the Fairbanks North Star Borough (77,720), the Matanuska-Susitna area (39,415), the Kenai Peninsula area (36,651), and the Juneau Borough (26,751). In 1986, the Boards of

Fisheries and Game found that the use of non-commercial fish and game did not comprise a principal part of the economies of these areas. In general, these areas are supported by industrial-capital economies (cf, Wolfe and Ellanna 1983; Wolfe and Walker 1987; Schroeder et al 1987). Other large Alaska communities include the Ketchikan area (13,828), the Kodiak City area (12,230), and Sitka (8,588). In 1986, the Alaska Boards of Fisheries and Game determined that Ketchikan did not have a subsistence-cash economy, while Sitka and Kodiak City did.

In large urbanized areas with industrial-capital economies, the great majority of residents who hunt and fish are probably not subsistence users. In general, the pattern of resource uses of most residents in large urbanized areas with industrial-capital economies show certain characteristics:

1. fishing and hunting are primarily for commercial uses, recreational-sport uses, and personal uses (limited fishing for food)
2. small volumes of wild foods are produced and consumed by most fishers and hunters, with most meat and fish purchased from stores
3. distribution and exchange of wild foods products between households are relatively limited
4. hunting and fishing are typically intermittent breaks from regular wage employment work schedules, rather than a traditional seasonal cycle of harvesting and processing activities
5. a relatively narrow diversity of wild resources is produced and consumed by most households
6. fishing and hunting methods are commonly geared for "fair chase" recreational values, rather than efficient food production
7. both local and relatively wide-ranging land use patterns are common, especially using the public highway systems and aircraft for transportation
8. fishing and hunting values commonly derive from a Euro-American "sports-outdoors" tradition
9. wage employment in an industrial-capital economy provides the primary mode of food production for residents
 - a. strong cash sectors commonly provide wage employment opportunities to most households
 - b. there are relatively lower costs of imported goods and well-stocked retail stores
 - c. commonly there are secure sources of monetary incomes for families over the long term
 - d. commonly there are moderate to high income levels for a substantial proportion of families

In general, many residents of large Alaskan communities with industrial-capital economies fish and hunt. For instance, in 1989 there were an estimated 124,257 resident sport anglers in the Anchorage-Matsu area (West Cook Inlet-Lower Susitna Drainage) and an estimated 24,211 resident sport anglers in the Kenai Peninsula area (Mills 1990). While the numbers participating in fishing and hunting are substantial, estimates of mean per capita harvests in large, urbanized areas are relatively low compared with small communities (Anchorage -- 10 lbs per capita; Fairbanks -- 22 lbs per capita; Kenai -- 37 lbs per capita) (Wolfe and Walker 1987). Mean per capita harvest levels were significantly higher in communities like Sitka (146 lbs) and Kodiak City (147 lbs) for a number of economic, ecological, and cultural reasons (Division of Subsistence, Community Profile Database).

In general, most of the populations of urbanized communities fish and hunt as part of a Euro-American "sport-outdoors" tradition. However, there exists cultural and economic diversity between households in many large communities. In some large communities, there are households who are part of minority enclaves or social groups whose members continue to practice a distinct cultural tradition, such as using traditional wild foods in the home and in ceremonial occasions (Schroeder 1983). Some members of Alaska Native groups with subsistence traditions are examples of these residents. In some communities, there are households who choose to practice an Alaskan "homestead" tradition (or "frontiers tradition"), which includes harvesting for one's household to achieve cultural values of "self-sufficiency" and "healthful foods" from wild resources (Caulfield 1983; Schroeder 1983; Georgette 1983; Reed 1983, 1985). These kinds of households may desire to continue these traditions although it is more difficult in large, populated areas than small communities. Finally, there are some households in certain urbanized areas whose individual household economies resemble the "mixed, subsistence-cash economic systems" of rural communities, but at the domestic household level (Schroeder 1983). These households fish and hunt because it provides a more secure economic base than if they did not.

Thus, there are at least three cultural traditions that explain how subsistence users may exist in urbanized areas: "Alaska Native cultural traditions", an Alaskan "homestead (or frontier) tradition", and the "mixed subsistence-cash economic tradition" at the household level. Although the large majority of residents of large urbanized communities who fish and hunt do so as part of a sports-outdoors tradition, a minority of residents who hunt and fish may do so from these three other types of cultural and economic traditions.

There are differences among the communities in this third category in how fish and game uses are integrated into each community's economic and cultural patterns. Unfortunately, detailed household surveys have not been conducted in the largest urbanized areas (Anchorage, Fairbanks, and Matanuska-Susitna Borough) which are comparable to the surveys conducted in small Alaska communities (but see Caulfield 1983; Schroeder et al 1987). Comparative studies are available for Kodiak City (Kodiak Area Native Association 1983), the Kenai Peninsula area (Georgette 1983; Reed 1983, 1985), and Sitka (Gmelch, Gmelch, and Nelson 1984; Schroeder 1983).

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GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX G

THRESHOLD LEVELS AND BASIC RESOURCE LISTS FOR MEASURING RESOURCE DIVERSITY OF SUBSISTENCE USERS

February 1992

Resource Diversity

"Resource diversity" is the number of different kinds of wild resources used by families for food, raw materials, and other subsistence uses during the year. A relatively wide resource diversity can be used as one defining characteristic of a subsistence use pattern. Resource diversity can be measured by counting the number of different resource categories used by a person during the past year (a list of resource categories are shown in Table 1, discussed below).

Threshold Levels

The Governor's subsistence bill recommends that the Boards of Fisheries and Game establish threshold levels of resource diversity for subsistence users. This means that applicants for a subsistence permit with resource diversity counts below a certain number would not qualify as subsistence users. The threshold level would be set to meet certain standards: a large majority of residents in communities with populations of less than 2,500 people should be above the threshold; a majority of residents in communities with populations of 2,500 to 7,000 people should be above the threshold; and a small minority of residents in communities with greater than 7,000 people should be above the threshold. The threshold levels also could be specific to particular regions, to deal with variability in species availability between regions.

Measures of resource diversity by the Division of Subsistence, Alaska Department of Fish and Game are summarized in another report (**Resource Diversity As A Characteristic of Subsistence Uses**, by Robert J. Wolfe, Division of Subsistence, Alaska Department of Fish and Game, Juneau, 1992). Tables 2 and 3 derive from that report.

Table 2 presents a measure of resource diversity at the community level. It counts the resource categories used by 50 percent or more of sampled households in particular communities where the Division has conducted research. It illustrates that at the community level, the diversity of resources varies substantially by place and area. For instance, there were six resources used by 50 percent or more of sampled households in Kotzebue in 1987 (1990 population, 2,751 people). By comparison, there were 13 resources used by 50 percent or more of sampled households in Point Lay, and only 2 resources used by 50 percent or more of sampled households in Anderson. In general, this community-level data supports the assertion that resource diversity increases in smaller communities with subsistence-cash economies. As shown in Table 2, most small communities with subsistence-cash economies have community-level counts greater than 6 resources. However, a few are near or below that level, such as Haines (4), Tok (4), Copper Center (6), Gulkana (7), Chignik Bay (7), Galena (9), and Tanana (9) (see Table 2 for the complete list).

Table 3 presents a measure of resource diversity at the household level. It counts the percent of households using a certain number of resources for 15 selected communities where data are available. Resource categories are counted in two different ways in Table 3. The first list is full species list, while the second removes "plants" and "berries" and combines all salmon

species into a single category (the issue of counting resource categories is discussed below). As shown in Table 3, resource diversity at the household level (as measured by the first list) differs substantially between households within a community. For example, in Tanana, 7.8 percent of households used 5 or fewer resources, 51.6 percent of households used 10 or fewer resources, and 81.6 percent used 15 or fewer resources. By comparison, in Kotzebue, 20.6 percent of households used 5 or fewer resources, 45.9 percent used 10 or fewer resources, and 77.0 percent used 15 or fewer resources. As a third comparison, in Copper Center, 31.9 percent of households used 5 or fewer resources, 70.7 percent of households used 10 or fewer resources, and 93.1 percent used 15 or fewer resources.

The data in Tables 2 and 3 are similar to the types of information that the Boards of Fisheries and Game would be provided as they established minimum thresholds and scoring systems for this subsistence user criterion. For instance, if the Boards established a minimum threshold level of 6 for households in the northwest arctic region, then about 79 percent of Kotzebue households look like they exceed that level, according to Table 3 (that is, about 21 percent of Kotzebue households reported using 5 or fewer resources). The data in Tables 2 and 3 suggest that the Boards may want to consider establishing region-specific threshold levels. Region-specific thresholds may provide more sensitive measures of resource diversity than a statewide standard, because they would factor in differences in the availability of resources between areas of the state.

Basic Resource Lists

Measuring resource diversity is affected by the way resources are counted, as shown by comparing household frequencies in the first list with the second list in Table 3. To measure the resource diversity of a subsistence applicant, the Alaska Boards of Fisheries and Game must develop a systematic method for counting resource categories used by an applicant. As part of this method, the Boards must identify a standard list of resource categories for counting.

Table 1 is an example of a list of basic resource categories that might be considered by the Boards. The basic list contains about 90 different categories of wild resources which are commonly reported used within particular Alaska communities, according to Division of Subsistence surveys. Table 1 also lists about 115 other subsistence resource categories which are not included in the basic list, either because they are subsumed under a more general resource category or because the Boards may not choose to count the category for the purpose of measuring resource diversity.

As shown in Table 1, over two dozen species of migratory birds have been grouped into the general categories of "ducks" and "geese" in the basic list. Several varieties of shellfish have been grouped into the general categories of "clams", "cockles", and "crabs" in the basic list. A number of freshwater and saltwater fish species which are less commonly used are grouped into "other non-salmon fish" (including fish such as sturgeon, sea perch, shark, and needlefish). Trout are not included in the basic list because the Boards do not recognize them as subsistence species for most areas of the state.

TABLE 1
 SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
 BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
 AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
Chum Salmon	
Coho Salmon	
Chinook Salmon	
Pink Salmon	
Sockeye Salmon	
Salmon Roe	
Blackfish	
Burbot	
Cisco	
Grayling	
Pike	
Sheefish	
Sucker	
Whitefish, Broad	
Whitefish, Alaska-Humpback-Lake	
Whitefish, Round	
Black Cod-Sablefish	
Lingcod	
Tom Cod	
Pacific Cod-Gray Cod	
Halibut	
Herring	
Herring Roe on Kelp, Hemlock, Eelgrass	
Rockfish	
Red Snapper (Yelloweye Rockfish)	
Sculpin	
Smelt	
Eulachon (Hooligan)	
Arctic Char	
Dolly Varden	
Other Non-salmon Fish	
	Capelin
	Green Sturgeon
	White Sturgeon
	Whiting
	Flounder
	Sole
	Herring Sack Roe
	Blue Rockfish
	Sea Bass
	Sea Parch
	Surf Smelt
	Rainbow Smelt
	Greenling
	Wolf Eel
	Blenny Eel
	Lamprey Eel
	Dogfish
	Shark
	Pollock
	Skates
	Silver Hake
	Black Bass
	Blue Fin
	Tuna/Mackerel
	Needlefish
	Cutthroat Trout
	Lake Trout
	Rainbow Trout
	Steelhead

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
Black Bear	
Brown Bear	
Caribou	
Deer	
Goat	
Moose	
Muskox	
Sheep	
Arctic Fox	
Red or Cross Fox	
Beaver	
Coyote	
Arctic Hare	
Snowshoe Hare	
Land Otter	
Lynx	
Marmot	
Marten	
Mink	
Muskrat	
Porcupine	
Weasel	
Wolf	
Wolverine	
Tree Squirrel	
Parkia Squirrel (ground)	
Ermine	
Belukha	
Bowhead	
Bearded Seal	
Fur Seal	
Harbor Seal	
Ringed Seal	
Spotted Seal	
Seal Oil	
Walrus	
Polar Bear	
Sea Lion	
Sea Otter	
	Gray Whale
	Black Fin Whale
	Ribbon Seal
	Porpoise/Dolphin
Grouse	
Pteranigan	
Ducks	
Geese	
Swan	
Crane	
Bird Eggs	
	Snowy Owl
	Eider
	Scoter
	Harlequin
	Goldeneye
	Bufflehead
	Merganser
	Scaup
	Mallard
	Pintail

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
	Wigeon
	Teal
	Gadwall
	Oldsquaw
	Shoveler
	Canvasback
	Redhead
	Ringneck
	Brant
	Emperor Geese
	Snow Geese
	Whitefronted Geese
	Taverners
	Cacklers
	Lessers
	Vancouverers
	Dusky Geese
	Aleutian Geese
	Whistling (Tundra) Swan
	Trumpeter Swan
	Whooper Swan
	Snipe
	Plover
	Cormorants
	Loons
	Puffins
	Gulls
	Kittiwakes
	Murre
	Tern
	Grebe
	Great Blue Heron
	Murre Eggs
	Gull Eggs
	Cormorant Eggs
	Puffin Eggs
	Tern Eggs
	Plover Eggs
	Snipe Eggs
	Crane Eggs
	Duck Eggs
	Geese Eggs
	Swan Eggs
Abalone	
Clams	
Crabs	
Cockles	
Scallops	
Mussels	
Chiton	
Octopus	
Sea Cucumber	
Sea Urchin	
Shrimp	
Other Marine Invertebrates	
	Butter Clams
	Razor Clams
	Steamer Clams
	Little Neck Clams
	Softshell Clams

TABLE 1
SUBSISTENCE RESOURCE CATEGORIES USED BY ALASKAN COMMUNITIES
BASIC LIST FOR COUNTING RESOURCE DIVERSITY,
AND OTHER RESOURCES SUBSUMED BY OR NOT ON BASIC LIST

BASIC LIST	OTHERS
	Pinkneck Clams
	Horse Clams (Gaper)
	Dungeness Crab
	King Crab
	Tanner Crab
	Opis Crabs
	Hair Crab
	Box Crab
	Basket Cockles
	Heart Cockles
	Geoducks
	Blue Mussels
	Snails
	Limpets
	Squid
	Oyster
	Whelk
	Berries
	Plants/Greens/Mushrooms
	Black Seaweed
	Sea Ribbons
	Bull Kelp

Table 2
 Count of the Resources Used by 50 Percent or More of Sampled Households
 By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Subsistence ADFG

Community	Region	Big Game	Birds & Eggs	Marine Inverte- brates	Marine Mammals	Non- Salmon Fish	Plants & Berries	Salmon	Small Game/ Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
Kotzebue	Arctic	1	0	0	0	3	1	1	0	6	5	5
Nuiqsut	Arctic	1	2	0	2	5	1	1	0	12	11	11
Kaktovik	Arctic	3	5	0	3	2	1	0	0	13	13	13
Point Lay	Arctic	1	5	0	4	2	1	0	0	13	12	12
Shishmaref	Arctic	1	5	1	2	4	2	0	0	15	13	13
Brevig Mission	Arctic	1	4	0	3	4	2	2	0	16	14	13
Golovin	Arctic	2	6	1	3	5	2	1	1	21	19	19
Anderson	Interior	1	0			1	0	0	0	2	2	2
Healy	Interior	1	0			1	1	0	0	3	2	2
Tok	Interior	2	1			1	0	0	0	4	4	4
McKinley Park Villag	Interior	2	0			1	2	0	0	5	3	3
Galena	Interior	1	3			0	1	3	1	9	8	5
Tanana	Interior	1	3			1	1	2	1	9	8	6
Chisana	Interior	1	0			3	3	2	1	10	7	6
Fort Yukon	Interior	2	2			2	1	2	1	10	9	8
Northway	Interior	2	2			3	2	0	1	10	8	7
Tanacross	Interior	2	1			3	2	1	1	10	8	8
Tatlin	Interior	1	1			3	3	0	2	10	7	7
Dot Lake	Interior	2	1			4	3	1	1	12	9	9
Parks Highway Sout	Southcentral	0	0	0	0	0	1	1	0	2	1	1
Glennallen	Southcentral	1	0	0	0	0	1	1	0	3	2	2
Talkeetna	Southcentral	0	0	0	0	0	1	2	0	3	2	1
Tazlina	Southcentral	0	0	0	0	0	1	2	0	3	2	1
East Glenn Highway	Southcentral	1	0	0	0	0	2	1	0	4	2	2
Chistochina	Southcentral	2	0	0	0	0	2	1	0	5	3	3
Kenny Lake	Southcentral	0	0	0	0	1	2	2	0	5	3	2
Chitina	Southcentral	0	0	0	0	1	3	2	0	6	3	2
Copper Center	Southcentral	2	0	0	0	1	1	2	0	6	5	4
Petersville Road	Southcentral	1	1	0	0	1	2	1	0	6	4	4
Slana	Southcentral	2	0	0	0	1	2	1	0	6	4	4
Slana Homestead S	Southcentral	1	1	0	0	1	2	1	0	6	4	4
Tonsina	Southcentral	2	0	0	0	1	2	1	0	6	4	4

Table 2

Count of the Resources Used by 50 Percent or More of Sampled Households
By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Subsistence ADFG

Community	Region	Big Game	Birds & Eggs	Marine Inverte- brates	Marine Mammals	Non- Salmon Fish	Plants & Berries	Salmon	Small Game/ Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
Trapper Creek	Southcentral	1	0	0	0	2	1	2	0	6	5	4
Gulkana	Southcentral	2	0	0	0	1	2	2	0	7	5	4
Lake Louise	Southcentral	1	0	0	0	4	2	0	0	7	5	5
Siana Homestead N	Southcentral	1	1	0	0	1	2	2	0	7	5	4
West Glenn Highwa	Southcentral	2	0	0	0	2	2	1	0	7	5	5
Hurricane-Broad Pas	Southcentral	1	0	0	0	2	3	2	0	8	5	4
Mentasta Pass	Southcentral	2	1	0	0	1	3	1	0	8	5	5
Chase	Southcentral	1	1	0	0	3	3	1	0	9	6	6
Gakona	Southcentral	2	1	0	0	2	2	2	0	9	7	6
McCarthy Road	Southcentral	2	1	0	0	1	3	1	1	9	6	6
Mentasta	Southcentral	2	1	0	0	2	3	1	0	9	6	6
Paxson	Southcentral	2	2	0	0	3	1	1	0	9	8	8
Sourdough	Southcentral	2	1	0	0	2	2	2	0	9	7	6
South Wrangell Mou	Southcentral	2	1	0	0	2	3	1	0	9	6	6
Gold Creek	Southcentral	1	2	0	0	3	3	1	0	10	7	7
Nabesna Road	Southcentral	3	1	0	0	3	2	1	1	11	9	9
Chenega Bay	Southcentral	2	1	5	2	3	2	0	0	15	13	13
San Juan Bay	Southcentral	2	1	2	1	4	1	4		15	14	11
Port Graham	Southcentral	1	0	5	1	3	3	5	0	18	15	11
Tatitlek	Southcentral	2	1	2	3	4	2	5	0	19	17	13
English Bay	Southcentral	2	1	5	1	6	4	5	0	24	20	16
Sitka	Southeast	0	0	0	0	0	1	0		1	0	0
Skagway	Southeast	0	0	2	0	1	0	0		3	3	3
Haines	Southeast	0	0	0	0	2	1	1		4	3	3
Collman Cove	Southeast	1	0	2	0	2	1	1		7	6	6
Tenakee Springs	Southeast	1	0	2	0	2	1	1		7	6	6
Wrangell	Southeast	1	0	3	0	1	1	1		7	6	6
Craig	Southeast	1	0	2	0	3	1	1		8	7	7
Hyder	Southeast	0	0	3	0	2	2	1		8	6	6
Metlakatla	Southeast	1	0	3	0	1	1	2		8	7	6
Saxman	Southeast	1	0	1	0	2	2	2		8	6	5
Gustavus	Southeast	1	0	2	0	2	2	2		9	7	6

Table 2
 Count of the Resources Used by 50 Percent or More of Sampled Households
 By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Subsistence ADFG

Community	Region	Big Game	Birds & Eggs	Marine Inverte- brates	Marine Mammals	Non- Salmon Fish	Plants & Berries	Salmon	Small Game/ Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
Klawock	Southeast	1	0	2	0	2	2	2		9	7	6
Thorne Bay	Southeast	1	0	2	0	3	2	1		9	7	7
Petersburg	Southeast	1	0	4	0	1	2	2		10	8	7
Point Baker	Southeast	1	0	3	0	3	2	1		10	8	8
Whale Pass	Southeast	1	0	4	0	2	2	1		10	8	8
Hollis	Southeast	1	0	4	0	2	2	2		11	9	8
Klukwan	Southeast	0	0	0	0	5	2	4		11	9	6
Angoon	Southeast	1	0	4	0	2	2	3		12	10	8
Port Alexander	Southeast	1	0	2	0	3	4	2		12	8	7
Mayers Chuck	Southeast	1	0	4	0	3	2	3		13	11	9
Elfin Cove	Southeast	1	0	6	0	3	2	2		14	12	11
Keke	Southeast	1	0	4	1	2	3	3		14	11	9
Pelican	Southeast	1	0	5	0	4	2	2		14	12	11
Hoonah	Southeast	1	0	3	1	5	2	3		15	13	11
Kasaan	Southeast	1	0	5	0	4	3	2		15	12	11
Port Protection	Southeast	1	0	3	0	3	4	4		15	11	8
Yakutat	Southeast	1	0	4	1	3	3	3		15	12	10
Hydeburg	Southeast	1	0	5	0	5	3	3		17	14	12
Beecher Pass	Southeast	1	1	5	0	4	3	4		18	15	12
Edna Bay	Southeast	1	0	7	0	4	3	3		18	15	13
Dillingham	Southwest	2	0	0	0	0	1	3	0	6	5	3
Chignik Bay	Southwest	1	0	2	0	1	1	2	0	7	6	5
Egegik	Southwest	1	2	0	0	0	1	3	0	7	6	4
Kodiak City	Southwest	1	0	5	0	1	0	2	0	9	9	8
Chiniak	Southwest	1	0	3	0	3	0	3	0	10	10	8
Nelson Lagoon	Southwest	1	3	2	0	1	1	2	0	10	9	8
Port Heiden	Southwest	1	3	1	0	1	1	3	0	10	9	7
Port Lions	Southwest	1	1	4	0	2	0	3	0	11	11	9
Levelock	Southwest	2	5	0	1	3	2	0	0	13	11	11
Aktviok	Southwest	1	3	5	2	1	0	3	0	15	15	13
Chignik Lagoon	Southwest	2	3	2	0	2	2	4	0	15	13	10
Ekwok	Southwest	2	0	0	0	6	1	4	2	15	14	11

Table 2
 Count of the Resources Used by 50 Percent or More of Sampled Households
 By Community, Region and Resource Class, for Selected Communities

Source: Community Profile Database, Division of Subsistence ADFG

Community	Region	Big Game	Birds & Eggs	Marine Invertebrates	Marine Mammals	Non-Salmon Fish	Plants & Berries	Salmon	Small Game/Furbearers	Total Count	Total Count, No Plants/Berries	Total Count Salmon One Category, No Plants/Berries
New Stuyahok	Southwest	2	1	0	1	4	1	4	2	15	14	11
Old Harbor	Southwest	1	2	5	2	1	0	4	0	15	15	12
Chignik Lake	Southwest	3	3	2	1	1	3	3	0	16	13	11
Pilot Point	Southwest	1	7	0	0	1	1	4	2	16	15	12
Koligenek	Southwest	2	3	0	1	4	1	4	2	17	16	13
Larsen Bay	Southwest	1	1	8	1	5	0	4	0	18	18	15
Ugashik	Southwest	2	8	0	0	2	0	3	4	19	19	17
Ouzinkie	Southwest	1	2	6	1	5	0	4	1	20	20	17
False Pass	Southwest	1	6	5	1	3	2	4	0	22	20	17
Perryville	Southwest	3	2	5	1	4	3	4	0	22	19	16
Karluk	Southwest	1	4	5	2	7	0	4	0	23	23	20
Manokotek	Southwest	2	3	1	2	11	2	4	2	27	25	22
Ivanof Bay	Southwest	2	5	8	1	5	3	7	1	32	29	23

**TABLE 3. COUNT OF RESOURCES USED BY CUMULATIVE PERCENT OF HOUSEHOLDS
FOR SELECTED SURVEYED ALASKAN COMMUNITIES.
RESOURCE CATEGORIES COUNTED IN TWO DIFFERENT WAYS**

LIST 1. FULL SPECIES LIST AS COLLECTED BY SURVEY (CATEGORIES DIFFER SOMEWHAT BETWEEN COMMUNITIES)

LIST 2. SALMON COMBINED INTO A SINGLE SPECIES, PLANTS REMOVED FROM COUNT

COUNT	KOTZEBUE		KODIAK CITY		SITKA		GALENA		TANANA	
	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2
0	0.0	0.0	0.0	0.0	11.5	22.6	0.0	0.0	0.0	0.0
1	7.1	7.1	0.0	0.6	25.3	34.8	0.0	1.4	6.8	6.8
2	11.6	13.9	1.9	1.9	32.1	46.3	2.7	8.1	6.8	6.8
3	13.9	18.4	1.9	5.2	41.6	58.1	8.1	14.9	6.8	7.8
4	20.6	20.0	3.9	8.4	53.4	64.2	13.5	21.6	6.8	7.8
5	20.6	21.3	7.7	12.9	59.8	71.3	20.3	29.7	7.8	16.5
6	21.3	22.0	11.0	21.3	64.5	78.4	25.7	40.5	22.4	35.1
7	24.3	26.5	15.5	29.0	72.3	81.4	35.1	50.0	29.2	49.7
8	26.5	33.9	20.0	36.1	75.0	86.5	43.2	59.5	42.8	58.4
9	33.9	48.1	25.8	46.5	79.7	89.2	51.4	64.9	43.8	65.2
10	45.9	49.9	33.5	53.5	82.4	91.9	60.8	73.0	51.6	70.4
11	50.3	58.3	38.7	65.8	84.8	93.2	68.9	83.8	62.7	79.2
12	60.6	70.4	48.4	74.8	87.2	96.6	71.6	94.6	66.1	80.1
13	67.5	74.4	54.2	81.9	89.9	98.0	85.1	95.9	69.5	84.4
14	71.5	79.7	65.8	87.7	90.9	98.6	93.2	95.9	78.2	85.4
15	77.0	84.1	71.6	91.0	94.3	98.6	94.6	97.3	81.6	88.2
16	84.1	86.0	79.4	95.5	95.6	99.3	97.3	98.6	84.4	89.1
17	84.9	88.6	83.2	96.8	97.6	99.3	97.3	98.6	87.2	91.9
18	88.2	91.4	87.7	97.4	98.0	99.3	97.3	100.0	89.1	91.9
19	90.3	93.7	92.3	98.1	99.0	99.3	98.6	100.0	89.1	91.9
20	91.4	94.4	94.2	98.1	99.0	99.3	100.0	100.0	91.9	93.8
> 20	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

TABLE 3 (CONTINUED). COUNT OF RESOURCES USED BY CUMULATIVE PERCENT OF HOUSEHOLDS FOR SELECTED SURVEYED ALASKAN COMMUNITIES, RESOURCE CATEGORIES COUNTED IN TWO DIFFERENT WAYS

LIST 1. FULL SPECIES LIST AS COLLECTED BY SURVEY (CATEGORIES DIFFER SOMEWHAT BETWEEN COMMUNITIES)

LIST 2. SALMON COMBINED INTO A SINGLE SPECIES, PLANTS REMOVED FROM COUNT

COUNT	TOK		DOT LAKE		NORTHWAY		TANACROSS		TETLIN	
	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2
0	5.9	5.9	0.0	0.0	0.0	0.0	3.7	3.7	0.0	0.0
1	14.9	14.9	0.0	0.0	2.2	2.2	3.7	3.7	0.0	0.0
2	20.8	20.8	0.0	13.3	2.2	2.2	3.7	3.7	0.0	0.0
3	22.2	29.0	6.7	20.0	4.4	6.7	3.7	7.4	0.0	0.0
4	29.0	32.4	13.3	20.0	4.4	6.7	3.7	18.5	0.0	10.3
5	32.4	44.3	20.0	20.0	4.4	13.3	11.1	22.2	0.0	10.3
6	38.4	48.7	20.0	33.3	13.3	20.0	14.8	29.6	10.3	25.5
7	42.3	51.4	20.0	33.3	22.2	26.7	22.2	29.6	10.2	60.7
8	50.9	65.7	20.0	40.0	24.4	35.6	29.6	44.4	10.3	60.7
9	56.2	70.5	20.0	46.7	26.7	42.2	33.3	55.6	30.3	70.3
10	60.9	78.2	40.0	66.7	37.8	53.3	40.7	63.0	60.7	75.2
11	65.3	86.6	40.0	80.0	46.7	57.8	44.4	74.4	60.7	85.5
12	72.3	87.5	60.0	93.3	51.1	62.2	55.6	77.8	80.7	85.5
13	78.0	89.4	60.0	93.3	55.6	73.3	66.7	88.9	85.5	90.3
14	78.9	89.8	73.3	100.0	62.2	80.0	74.1	92.6	85.5	95.2
15	82.8	91.6	86.7	100.0	68.9	86.7	85.2	96.3	85.5	95.2
16	89.4	96.4	93.3	100.0	82.2	93.3	88.9	100.0	90.3	100.0
17	89.8	96.4	93.3	100.0	88.9	93.3	88.9	100.0	95.2	100.0
18	90.7	97.3	100.0	100.0	88.9	100.0	92.6	100.0	95.2	100.0
19	91.2	98.6	100.0	100.0	93.3	100.0	100.0	100.0	95.2	100.0
20	93.0	98.6	100.0	100.0	95.6	100.0	100.0	100.0	95.2	100.0
>20	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

TABLE 3 (CONTINUED). COUNT OF RESOURCES USED BY CUMULATIVE PERCENT OF HOUSEHOLDS FOR SELECTED SURVEYED ALASKAN COMMUNITIES, RESOURCE CATEGORIES COUNTED IN TWO DIFFERENT WAYS

LIST 1. FULL SPECIES LIST AS COLLECTED BY SURVEY (CATEGORIES DIFFER SOMEWHAT BETWEEN COMMUNITIES)

LIST 2. SALMON COMBINED INTO A SINGLE SPECIES, PLANTS REMOVED FROM COUNT

COUNT	GLENALLEN		GULKANA		COPPER CENTER		CHISTOCHINA		CHITINA	
	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2	LIST 1	LIST 2
0	0.0	4.1	5.0	5.0	0.0	4.7	0.0	3.6	5.6	5.6
1	4.1	20.6	10.0	15.0	9.4	9.4	3.6	10.7	5.6	16.7
2	24.7	39.1	20.0	25.0	10.0	24.1	14.3	21.4	5.6	27.8
3	39.9	50.4	25.0	45.0	14.7	28.8	21.4	39.3	22.2	44.4
4	48.4	66.9	35.0	55.0	30.3	40.3	28.6	50.0	38.9	77.8
5	58.7	73.1	40.0	60.0	31.9	49.7	42.9	53.6	44.4	77.8
6	61.8	86.5	55.0	70.0	37.3	55.9	46.4	71.4	50.0	83.3
7	67.9	90.6	65.0	80.0	39.6	79.3	50.0	78.6	61.1	88.9
8	82.4	91.6	70.0	90.0	43.4	83.2	57.1	82.1	72.2	94.4
9	88.5	93.8	75.0	95.0	54.4	90.8	60.7	82.1	83.3	94.4
10	91.6	95.9	80.0	95.0	70.7	92.4	67.9	85.7	88.9	94.4
11	93.2	99.0	80.0	95.0	78.3	92.4	75.0	85.7	88.9	94.4
12	93.2	100.0	85.0	95.0	81.4	97.7	78.6	85.7	88.9	94.4
13	95.9	100.0	90.0	95.0	86.1	98.4	82.1	89.3	88.9	100.0
14	97.9	100.0	90.0	95.0	93.1	100.0	85.7	89.3	94.4	100.0
15	97.9	100.0	95.0	95.0	93.1	100.0	85.7	89.3	94.4	100.0
16	97.9	100.0	95.0	95.0	98.4	100.0	85.7	100.0	94.4	100.0
17	99.0	100.0	95.0	95.0	98.4	100.0	89.3	100.0	94.4	100.0
18	100.0	100.0	95.0	95.0	100.0	100.0	96.4	100.0	94.4	100.0
19	100.0	100.0	95.0	95.0	100.0	100.0	96.4	100.0	100.0	100.0
20	100.0	100.0	95.0	95.0	100.0	100.0	96.4	100.0	100.0	100.0
> 20	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

GOVERNOR'S SUBSISTENCE BILL SECTIONAL ANALYSIS APPENDIX H

BIBLIOGRAPHY OF SOME
SUBSISTENCE STUDIES RELATED TO
COMMUNITY SIZE, ECONOMY, AND
AND CULTURE

February 1992

The Governor's subsistence bill states that there are relationships between patterns of wild resource use, types of communities, types of economy, and cultures in Alaska. This bibliography lists some subsistence studies done by the Division of Subsistence, Alaska Department of Fish and Game, which serve as basic references on subsistence use patterns within Alaska communities. A complete listing of subsistence studies published by the Division of Subsistence is contained in the abstracts of their Technical Paper Series, cited below. All technical papers are available on request from the Division of Subsistence headquarters office in Juneau (Division of Subsistence, ADF&G, Box 25526, Juneau, AK 99802-5526; 465-4147.

Basic Listing of Subsistence Studies

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HB

600

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Bill No. HB 600

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to subsistence hunting BRU: Trial Courts
 and fishing... Components: _____
 Sponsor: Barnes
 Requestor: _____ COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	15.0	10.0	5.0	2.5	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	15.0	10.0	5.0	2.5	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	15.0	10.0	5.0	2.5	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	15.0	10.0	5.0	2.5	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *C.S. Christensen III* Phone: 264-8228
 Division: Alaska Court System Date: 06/16/92

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *A.H. Snowden II* Date: 06/16/92
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System

HB 600

Analysis

ANALYSIS

This legislation provides a statutory priority for subsistence use of fish and game, relative to other consumptive uses of the state's fish and game resources.

Because of the continuing controversies surrounding this issue, it can be anticipated that the bill will face a vigorous legal challenge if it is enacted. It can also be anticipated that regulations adopted to implement this legislation will face legal challenge.

The fiscal note reflects pro tem judge costs that will be incurred in handling these matters expeditiously.

M E M O R A N D U M

DATE: June 16, 1992
TO: House Resources Committee Members
FROM: Representative Ramona Barnes
RE: Testimony with respects to House Bill (HB) 600

=====

Mr. Chairman, members of the Committee, who loses when a race war begins? Alaska, Mr. Chairman, and Alaskans, not just Native, rural, or urban Alaskans, but all Alaskans. That Mr. Chairman and members of the Committee, is what HB 600 is designed to prevent.

The following sections of Alaska's Constitution provide the basis of this Bill:

Article VIII, Sec. 2: GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Article VIII, Sec. 3: COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Article VIII, Sec. 15, in relevant part: No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. . .

Article VIII, Sec. 17. UNIFORM APPLICATION. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Article VIII, Sec. 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Section 1 of House Bill 600 amends AS 16.05.251(e) to include subsistence uses and further establishes the criteria for allocations for subsistence uses. Also, Section 1, lines 10 through 14 states that the Board of Fisheries may consider as appropriate the criteria established in this Bill.

Section 2 allows the Board of Fisheries to establish under their regulatory authority the criteria for determining the individuals who may take fish for subsistence uses.

Section 3 amends AS 16.05.255(a) in accordance with their regulatory powers to establish criteria consistent with AS 16.05.258 as to which individuals may take game for subsistence uses.

Section 4 amends AS 16.05.258(a) to direct the Board of Fish & Board of Game to identify fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence in each area identified by the Boards.

Section 5 directs the Board of Fish and Board of game to allocate by regulation the the percentages of stock or population that may be taken for subsistence, personal, sports and commercial uses. The percentage allocated must give a preference to satisfy subsistence uses.

Section 6 establishes the methods for subsistence fishing.

Section 7 amends AS 16.05.940(30) to say "subsistence uses" means the taking of, hunting for, or possession of game for subsistence uses by means defined by the Board of Game.

Section 8 amends AS 16.05.940(31) to include an individual who significantly depends on the resource and defines customary and traditional uses.

In short, House Bill 600 is based upon the following:

1. Article VIII, Section 4 of the Constitution;
2. the portion of the law that was severed under McDowell vs. State and not declared unconstitutional;
3. the regulatory powers of the Board of Fish and Board of Game;
and
4. the sustained yield provisions of the Constitution.

Thank you Mr. Chairman and members of the Committee.

HB

601

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Bill No. HB 601

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the taking of fish BRU: Trial Courts
 and game Components: _____
 Sponsor: Lincoln
 Requestor: _____ COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	7.5	12.5	7.5	2.5	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	7.5	12.5	7.5	2.5	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	7.5	12.5	7.5	2.5	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	7.5	12.5	7.5	2.5	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Division: Alaska Court System Date: 06/16/92

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System Date: 06/16/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System

HB 601

Analysis

ANALYSIS

This legislation provides a statutory priority for subsistence use of fish and game, relative to other consumptive uses of the state's fish and game resources.

Because of the continuing controversies surrounding this issue, it can be anticipated that the bill will face a vigorous legal challenge if it is enacted. It can also be anticipated that regulations adopted to implement this legislation will face legal challenge. These challenges will likely occur notwithstanding the passage of an underlying constitutional amendment.

The fiscal note reflects pro tem judge costs that will be incurred in handling these matters expeditiously.



Official Business

Alaska State Legislature

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

MEMORANDUM

TO: Members of the Alaska House

FROM: Representative Georgianna Lincoln *georg*

DATE: June 12, 1992

RE: Special session on subsistence

In preparation for the special legislative session on June 15, significant misinformation has been circulated to legislators and the public. I would like to take this opportunity to clarify the issue and to ask you to consider a more responsible course of action.

The Bills

There will be at least three subsistence proposals before us which were introduced in the regular session and not acted on:

- the Governor's bill (originally introduced as HB 552 and SB 443), with several minor changes;
- the Bush Caucus bill (originally introduced as HB 592), also with several minor changes; and
- constitutional amendments (originally introduced as HJR 79/SJR 49).

The Real Issue

Since the Alaska Supreme Court ruled in McDowell, our state has been caught between its own Constitution and the requirements of the federal subsistence law (ANILCA). Repeated failures to resolve the impasse have produced a situation in which our fish and game resources are now under dual management by the state and federal governments. This issue can only be resolved by adoption of an amendment to the Alaska Constitution and a new statute. If presented to the voters, a constitutional amendment that protects subsistence users will pass. The Governor's solution however, is to resolve the federal-state impasse only by getting Congress to amend ANILCA. That plan, strongly opposed by our Congressional delegation, will take several years, poison our internal state relationships - and fail.

Is the Governor's Bill the Solution?

The Governor's bill continues to suffer from three major flaws:

- ***It does not comply with federal law.*** If enacted, it will not return fish and game management to the state. Dual management will simply continue, and the political and social divisions among our people will widen.
- ***It is not constitutional.*** If enacted, it will be struck down by the courts - for the same reason that part of the 1986 state subsistence law was voided in McDowell. We'll be right back to where we are now, with no operative subsistence statute on the books.
- ***It is bad public policy.*** If enacted, it will not protect Alaskans who depend on fish and game to feed their families. It will threaten the survival of our most traditional villages and unfairly discriminate against legitimate urban subsistence users. Its adoption will send a negative message to the Congress and the nation which will guarantee that no solution will be forthcoming from Washington, D.C.

Here are examples of how the Governor's bill fails:

- **Its guarantee of subsistence eligibility for residents of rural villages is wholly inadequate.** As originally considered by the Governor's Subsistence Advisory Council, the bill would have afforded such individuals an irrebuttable presumption of eligibility for the preference. But late in the process, the Attorney General urged that "irrebuttable" be removed, on the theory that this would somehow strengthen the bill's shaky constitutionality. The only certain result, however, is the weakening of statutory protections for precisely those communities most dependent on fish and game.
- **The Governor's bill goes way beyond what must be done to solve the legal problem created by McDowell.** It excludes whole fish stocks and game populations - huge areas of the state - from subsistence uses, regardless of the individual subsistence eligibility of the people who live there. It is now clear that policy decisions were made by the Governor's Office to exclude subsistence from certain areas because of intense user-group competition. If we are going to define subsistence eligibility by lifestyle, then all Alaskans who live that way must be treated equally, no matter how difficult that makes it for the fish and game boards. To do otherwise is not only unfair, but unconstitutional. Moreover, it is not necessary.
- **If state law is to define subsistence as a lifestyle, we inevitably run into the problem of setting criteria of individual eligibility.** Under the Governor's bill, if any Alaskan is required to prove his or her eligibility, seven behavioral standards are rated on a point system. The Legislature should examine these criteria and ask whether they are measurable and enforceable. We cannot manage an emotionally charged issue on the "honor system." From past experience, we know that self-enforcement will produce a tangle of bureaucracy, investigation, cost and litigation.
- **Finally, the Governor's bill accords too much regulatory discretion to the Boards of Fish and Game.** History shows that clear policy direction must be given by the Legislature in order to prevent even the best statute from being effectively repealed in the regulatory process by powerful forces determined to reduce or eliminate subsistence protections.

There is a solution

The only fair and effective way to resolve the subsistence problem has three components:

- Alaska must have a subsistence statute which complies with the federal law and returns management of fish and game to the state government.
- That statute must protect legitimate subsistence users, while treating Alaskans fairly in the distribution of hunting and fishing opportunities.
- In order to have such a balanced statute, the Legislature must allow the people of Alaska to amend the constitution.

The Bush Caucus Bill

At the end of the regular session, the Bush Caucus introduced new subsistence legislation as an alternative to the Governor's bill. Minor changes are now being made in the text before its introduction in the special session. Here is what it does:

- It complies with the federal law, by retaining the ANILCA subsistence preference for residents of rural communities.
- It then adds a second-tier subsistence preference for eligible urban subsistence users.
- It treats eligible urban subsistence users fairly.
- It creates a new Subsistence Board, to work in cooperation with the Boards of Fish and Game, in order to insure more attention to subsistence species and practices.
- It gives clear statutory direction to the Boards of Fish and Game regarding management standards and the protection of eligible subsistence users in both urban and rural areas.
- It provides ordinary citizens with a greater degree of participation in the regulatory process through an improved system of advisory committees and regional councils.

The Bush Caucus alternative is balanced and workable. It solves the legal conflict. It gets back fish and game management. And it does so by being fair to people.

A Constitutional Amendment

The Bush Caucus bill, like any statute which proposes to solve the subsistence problem, will require a constitutional amendment. That is also true for the Governor's bill. The Legislature's legal counsel has given fair warning regarding the dubious constitutionality of the administration's bill.

What would an appropriate constitutional amendment on subsistence look like? One that is short and to the point. One that gives the Legislature the authority, which it does not now enjoy, to enact a statute defining who is a subsistence user.

False Claims

For several weeks, representatives of the Hickel administration have issued statements and documents trying to explain what the Governor's goal on subsistence really is, and why it was necessary to call a special session:

- Permanent Federal Regulations. Until recently, the Governor claimed that a special session was necessary to avoid the effective date of permanent federal subsistence regulations (July 1). The specter of a "permanent takeover" was given as the reason the Legislature had to adopt his bill immediately. The federal regulations are a "done deal" and cannot be prevented by any action of the Legislature during June. They were published in the Federal Register on Thursday, May 28, with a date certain of July 1. Our task is not to rush in to prevent a symbolic "event" which will change nothing. Rather, it is to solve the problem of subsistence in the right way and get back fish and game management permanently.
- Sport and Commercial Fishing: Kenai Peninsula. The Governor's Office now denies that the real problem of subsistence is the impasse between federal and state laws. The new problem is that the combination of the subsistence priority and the eligibility of all

Alaskans "...is soaking up so much of the resource that many commercial and sports fishing and general hunting opportunities will be eliminated." On June 9, the Commissioner of Fish and Game wrote all limited entry permit holders, urging them to contact their legislators in support of the Governor's bill because "...in many fisheries, subsistence will have a legal priority on so much of the resource that the commercial and recreational uses of the fish stock may be severely diminished or shut down entirely." Because of its large salmon fisheries and accessibility to Anchorage, the Kenai Peninsula is most frequently mentioned.

Subsistence fishing, even when open to all Alaskans, is not going to affect sport or commercial uses. Subsistence or personal use fishing, open to all Alaskans, has been allowed continuously in Cook Inlet since Statehood. The current Cook Inlet subsistence fishery has been in place for two fishing seasons, with subsistence allowed on beaches but not in the Kenai River. In 1991, 38,500 salmon were harvested for subsistence, of which 32,300 were sockeyes. In 1992, only 500 salmon have thus far been harvested in three setnet and four dipnet openings. For the remainder of the season, there will be only 14 days for setnets and 29 days for dipnets. The forecast for the 1992 commercial salmon harvest is a very healthy 3.6 million fish. If the entire subsistence fishery in Cook Inlet were to take twice as many fish and it did in 1991, this would still represent only 2% of the commercial take! No lawsuits are threatened to open the Kenai River to subsistence fishing or to create any open-ended fishery in Cook Inlet. The whole issue is a political scare tactic, unsupported by facts.

- Customary Trade. The Governor's Office claims that large-scale commercial sale of subsistence-taken harvests has occurred in the name of "customary trade." Everyone agrees that abuses must not be allowed. However, it is not clear why this requires a special session, since customary trade will be dealt with at the Board of Fisheries meeting in February, 1993. The Board has all the necessary authority to define the practice and to insure that commercial fishing is not done under the guise of subsistence.

- Federal Court Oversight. The Governor's Office states that, even if a constitutional amendment and a statute complying with ANILCA were passed, this would only restore state management as interpreted by federal courts. The Governor's solution to the presence of federal judges is to amend ANILCA. However, that is

very unlikely, according to the Alaska Congressional delegation. The law is the law, and if the state refuses to obey it, people will continue to sue.

- Native Sovereignty. On at least one occasion, even the specter of Native sovereignty has been raised as a reason why the Governor's subsistence bill must be passed. Title VIII of ANILCA has nothing to do with sovereignty. It deals only with the economic and cultural protection of small rural communities in Alaska.

BILL ANALYSIS

HB 601 - Lincoln Subsistence Bill

The purpose of HB 601 is to develop subsistence legislation which is consistent with ANILCA and which provides for subsistence uses by residents who do not reside in rural Alaska. This legislation accomplishes this purpose by retaining the subsistence priority for rural residents as mandated in ANILCA for rural residents, and then providing a secondary priority for persons who reside outside of rural Alaska (i.e., urban residents).

SECTION 1. FINDINGS

The bill contains four findings. The findings identify the importance of subsistence to rural and urban residents. They go on to recognize that fish and wildlife resources are not plentiful enough to meet the needs of all users and therefore it is necessary to provide a preference for subsistence uses over other consumptive uses. They conclude with a determination that there greater nutritional and economic alternatives in urban Alaska than in rural areas.

SECTION 3. - SUBSISTENCE ALLOCATION

In this section, the federal guidelines are used for purposes of defining rural in state law. By using the federal definition, the requirement in Sec. 805 of ANILCA that the state have a definition of subsistence consistent with the federal definition is satisfied. For those areas which are not rural, the Boards of Fisheries and Game are to determine which groups and individuals have cultural or economic dependence upon urban subsistence uses and are thereby eligible to participate in these uses.

This section provides the substantive provisions for allocating fish and game for rural and urban subsistence uses. The existing Boards of Fisheries and Game are to determine what the harvestable surplus is of each fish stock and game population used for subsistence and then develop subsistence regulations. This section uses the same method for allocating to rural subsistence uses as is contained in existing state law and satisfies the requirement of ANILCA regarding the priority for subsistence uses by rural residents. In addition, however, the section provides for allocations for urban subsistence uses and gives these uses a secondary priority after rural subsistence uses and before other consumptive uses. Once both rural and urban subsistence uses have been satisfied for those stocks and populations subject to subsistence uses, other consumptive uses are authorized.

SECTIONS 2 and 5 - CONFORMING SECTIONS

These sections of the bill provide authority to the Boards of Fisheries and Game and the Subsistence Division. There is no substantive impact from these sections.

SECTION 4. - REGIONAL COUNCILS

This section creates a regional council system in statute which currently existed only in regulation. The regional councils are to have significant authority in how their recommendations to the Boards on subsistence determinations and regulations are to be considered. The three part test contained in ANILCA is adopted in this section.

SECTION 6 - 10. - DEFINITIONS

These sections contain new definitions for "rural area", "urban area", "urban subsistence fishing", "urban subsistence hunting", and "urban subsistence uses." The existing definition of "subsistence uses" is maintained for rural subsistence uses, thereby satisfying the third and final requirement of ANILCA. The definition of urban subsistence uses is similar to the definition of subsistence uses (rural). Urban subsistence use is generally equivalent to personal use of fish and game by a state resident, though the personal use category is maintained because there are some fishing activities, such as dip net fisheries to harvest a return of hatchery fish, which would not be considered a subsistence use.

SECTION 11. - EFFECTIVE DATE

The effective date of this bill is the date on which a constitutional amendment authorizing rural and urban subsistence uses is approved by the voters.

HOUSE MAJORITY COMMITTEE SUBSTITUTE
TO PROPOSED SUBSISTENCE LEGISLATION

The proposed House Majority Committee Substitute solves two major problems that have been driving the subsistence debate. It fixes the problems with the Kenai fishery. It also fixes the problem with subsistence taken fish and game being sold in competition with that taken by commercial users.

The problems with the Kenai fishery are dealt with by:

1. Requiring the Boards of Fish and Game to define non-subsistence use areas and prohibiting subsistence activities from taking place in subsistence use areas;
2. Requiring the Boards of Fish and Game to grant customary use permits within ^{non} subsistence use areas based on criteria set by the Boards in regulation; and
3. Giving the Boards of Fish and Game the discretion to allocate fish and game resources to holders of customary use permits based on criteria set by the Boards in regulation.

In addition to fixing the Kenai problem, the House Majority Committee substitute defines "customary trade" to mean the limited exchange, for minimal amounts of cash (as defined by the appropriate board) of fish or game resources.

SUBSISTENCE LEGISLATION - DIFFERENCES BETWEEN LINCOLN BILL, GOVERNOR'S BILL, AND BARNES BILL.

ISSUE	LINCOLN BILL - HB 601	GOVERNOR'S BILL - HB 599	BARNES BILL - HB 600
Constitution	Requires a constitutional amendment to grant authority to pass legislation which is consistent with ANILCA and solves the problems created by <u>McDowell</u> .	Governor asserts his bill does not require a constitutional amendment. Legislative Legal Council believes amendment is necessary because of equal protection and common use clauses.	Probably does not require an amendment to the Alaska Constitution.
ANILCA Compliance	By retaining the three requirements of ANILCA: definition of subsistence, rural priority, and advisory committee/regional council system, bill complies with ANILCA.	Changes definition of subsistence uses, changes allocation priority, and retains advisory committee/regional council system. Does not comply with ANILCA.	Changes definition of subsistence uses, changes allocation priority, and retains advisory committee/regional council system. Does not comply with ANILCA.
Regains State Management	With passage of a constitutional amendment, would put state back in compliance with ANILCA and regain state management authorities.	Does not regain state management because it does not comply with ANILCA. Would require a change by Congress to regain management.	Does not regain state management because it does not comply with ANILCA. Would require a change by Congress to regain management.
Eligible participants	Rural residents who reside in communities which have customary and traditional uses of individual fish stocks and game populations. Urban residents who are part of a group or individually have a nutritional or cultural dependence upon fish and game for subsistence.	Residents of small communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of medium sized communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of large communities must qualify on an individual basis based upon their individual use of fish and game.	Eligibility is impossible to determine. The Board of Game sets eligibility standards for hunting, but Board of Fisheries has no authority similar authority for fishing. Each resident of the state is required to have an individual eligibility determination. Appears to require separate determination for each fish stock or game population an individual wishes to take for subsistence.

ISSUE	LINCOLN BILL - HB 601	GOVERNOR'S BILL - HB 599	BARNES BILL - HB 600
Eligible Fish Stocks and Game Populations	Subsistence uses would apply to any fish stock and game population, whether in rural or urban areas, which are taken for subsistence uses.	Subsistence uses would apply only to fish stocks or game populations which are taken for subsistence uses in rural areas. A person can qualify for subsistence based upon harvests in urban areas, cannot harvest for subsistence in those areas, and must go to rural areas to harvest stocks and populations which may not have been part of this person's harvest pattern. Does not allow subsistence uses to be established on transplanted game populations or new hatchery or enhancement fish stocks until 20 years of use has been established.	The "customary and traditional" definition is ambiguous as to whether subsistence uses apply to particular fish stocks and game populations that have been historically used by residents of rural Alaska or merely describes the generic uses that may be made of fish stocks and game populations taken for subsistence uses.
Customary Trade	Leaves the definition to the boards.	Prohibits customary trade other than from individual to individual. Very vague on how to treat customary trade in furs which is important in ensuring access by trappers to National Park lands.	Leaves the definition to the boards.

ISSUE	LINCOLN BILL - HB 601	GOVERNOR'S BILL - HB 599	BARNES BILL - HB 600
Regulatory Standard	<p>Provides significant protection to subsistence uses by requiring that regulations be written in a manner consistent with customary and traditional use patterns and which cause the least adverse impact on subsistence users.</p> <p>Requires the boards to provide for subsistence uses when harvestable surpluses exist on fish stocks and game populations subject to subsistence uses.</p>	<p>Provides greater authority to the boards by reducing the obligation to regulate based upon customary and traditional use patterns. Does not include the standard that regulations must cause the least adverse impact on subsistence uses.</p> <p>Provides wide discretion to the boards to determine when to allow subsistence uses even when a harvestable surplus exists.</p>	<p>Though the language is vague, the bill appears to repeal the existing reasonable opportunity standard and require the boards to satisfy subsistence uses.</p>
Priority	<p>First priority is for rural subsistence uses and a secondary priority for urban subsistence uses. Paramount rural priority allows for compliance with ANILCA. Secondary priority for urban subsistence recognizes the importance of subsistence to some urban residents.</p> <p>Recognizes differences between rural and subsistence uses. Subsistence uses are limited to fish stocks and game populations which are customarily and traditionally used by communities. There will be little overlap between which stocks and populations rural and urban subsistence users harvest and the difference in the priority will be insignificant in a practical sense.</p>	<p>Gives equal priority to rural and urban subsistence uses. Urban subsistence users will only be able to participate in rural subsistence opportunities. This will have a practical effect by creating more competition between rural and urban users and will require the boards to institute more "Tier II" situations.</p>	<p>The bill's language is vague in this regard. A literal interpretation is that the boards are required to allocate a portion or all of the harvestable surplus of a stock or population for subsistence use at a level equal to what it would take to satisfy subsistence uses prior to allocating to any other uses.</p>

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TO PROPOSED SUBSISTENCE LEGISLATION

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The problems with the Kenai fishery are dealt with by:

1. Requiring the Boards of Fish and Game to define non-subsistence use areas and prohibiting subsistence activities from taking place ^{non} in subsistence use areas;
2. Requiring the Boards of Fish and Game to grant customary use permits within subsistence use areas based on criteria set by the Boards in regulation; and
3. Giving the Boards ^{non} of Fish and Game the discretion to allocate fish and game resources to holders of customary use permits based on criteria set by the Boards in regulation.

In addition to fixing the Kenai problem, the House Majority Committee substitute defines "customary trade" to mean the limited exchange, for minimal amounts of cash (as defined by the appropriate board) of fish or game resources.

Version reflecting.
90 SLA 92 (HB 505)

7-LS2411A

4:45 pm

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking of fish and game."

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

3 * Section 1. AS 16.05.251(a) is amended to read:

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

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

9 (2) establishing open and closed seasons and areas for the taking of
10 fish; if consistent with resource conservation and development goals, the board may
11 adopt regulations establishing restricted seasons and areas necessary for persons 60
12 years of age and older to participate in sport, personal use, customary use, or
13 subsistence fishing;

14 (3) setting quotas, bag limits, harvest levels, and sex and size

- 1 limitations on the taking of fish;
- 2 (4) establishing the means and methods employed in the pursuit,
3 capture and transport of fish;
- 4 (5) establishing marking and identification requirements for means
5 used in pursuit, capture, and transport of fish;
- 6 (6) classifying as commercial fish, sport fish, guided sport fish,
7 personal use fish, customary use fish, subsistence fish, or predators or other
8 categories essential for regulatory purposes;
- 9 (7) watershed and habitat improvement, and management,
10 conservation, protection, use, disposal, propagation, and stocking of fish;
- 11 (8) investigating and determining the extent and effect of disease,
12 predation, and competition among fish in the state, exercising control measures
13 considered necessary to the resources of the state;
- 14 (9) prohibiting and regulating the live capture, possession, transport,
15 or release of native or exotic fish or their eggs;
- 16 (10) establishing seasons, areas, quotas, and methods of harvest for
17 aquatic plants;
- 18 (11) establishing the times and dates during which the issuance of
19 fishing licenses, permits, and registrations and the transfer of permits and registrations
20 between registration areas is allowed; however, this paragraph does not apply to
21 permits issued or transferred under AS 16.43;
- 22 (12) regulating commercial, sport, guided sport, customary use,
23 subsistence, and personal use fishing as needed for the conservation, development, and
24 utilization of fisheries;
- 25 (13) requiring, in a fishery, observers on board fishing vessels, as
26 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined
27 in AS 16.05.475(c), after making a written determination that an on-board observer
28 program
- 29 (A) is the only practical data-gathering or enforcement
30 mechanism for that fishery;
- 31 (B) will not unduly disrupt the fishery;

1 (C) can be conducted at a reasonable cost; and
2 (D) can be coordinated with observer programs of other
3 agencies, including the National Marine Fisheries Service, North Pacific
4 Fishery Management Council, and the International Pacific Halibut
5 Commission;

6 (14) establishing nonexclusive, exclusive, and superexclusive
7 registration and use areas for regulating commercial fishing;

8 (15) regulating resident or nonresident sport fishermen as needed for
9 the conservation, development, and utilization of fishery resources.

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

11 (e) The Board of Fisheries may allocate fishery resources among personal use,
12 sport, guided sport, customary use, and commercial fisheries. The board shall adopt
13 criteria for the allocation of fishery resources and shall use the criteria as appropriate
14 to particular allocation decisions. The criteria may include factors such as

15 (1) the history of each personal use, sport, guided sport, customary
16 use, and commercial fishery;

17 (2) the number of residents and nonresidents who have participated in
18 each fishery in the past and the number of residents and nonresidents who can
19 reasonably be expected to participate in the future;

20 (3) the importance of each fishery for providing residents the
21 opportunity to obtain fish for personal and family consumption;

22 (4) the availability of alternative fisheries resources;

23 (5) the importance of each fishery to the economy of the state;

24 (6) the importance of each fishery to the economy of the region and
25 local area in which the fishery is located;

26 (7) the importance of each fishery in providing recreational
27 opportunities for residents and nonresidents.

(8) The importance of each fishery in meeting the social and cultural needs of the region and local area in which the fishery is located.

28 * Sec. 3. AS 16.05.255(a) is amended to read:

29 (a) The Board of Game may adopt regulations it considers advisable in
30 accordance with the Administrative Procedure Act (AS 44.62) for

31 (1) setting apart game reserve areas, refuges, and sanctuaries in the

L

1 water or on the land of the state over which it has jurisdiction, subject to the approval
2 of the legislature;

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

5 (3) establishing the means and methods employed in the pursuit,
6 capture, and transport of game, including regulations, consistent with resource
7 conservation and development goals, establishing means and methods that may be
8 employed by persons with physical disabilities;

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

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

13 (6) methods, means, and harvest levels necessary to control predation
14 and competition among game in the state;

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

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

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

22 (10) regulating sport hunting, customary use hunting, and subsistence
23 hunting as needed for the conservation, development, and utilization of game.

24 * Sec. 4. AS 16.05.255 is amended by adding a new subsection to read:

25 (e) The Board of Game shall establish criteria for the allocation of game
26 resources among sport and customary use hunting. The criteria may, as appropriate
27 to particular allocation decisions, include factors such as

28 (1) the history of each sport and customary use hunt;

29 (2) the number of residents and nonresidents who have participated in
30 each hunt in the past and the number of residents and nonresidents who can
31 reasonably be expected to participate in the future;

1 (3) the importance of each hunt for providing residents the opportunity
2 to obtain game for personal and family consumption;

3 (4) the availability of alternative game resources;

4 (5) the importance of each hunt in providing recreational opportunities
5 for residents and nonresidents. ^{(b) the importance of each hunt in}
^{meeting the economic, social, and}
^{cultural needs of the region and local ar}

6 * Sec. 5. AS 16.05.258 is amended by adding new subsections to read: ^{in which the hunt}
^{is located.}

7 (g) The boards may not permit subsistence hunting or fishing in a
8 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
9 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
10 where dependence upon subsistence is not a principal characteristic of the economy,
11 culture, and way of life of the area or community. The boards shall identify by
12 regulation the fish stocks and game populations that have been customarily taken for
13 subsistence uses in each nonsubsistence area prior to the establishment of the
14 nonsubsistence area. The boards shall adopt regulations providing for the issuance of
15 permits ~~consistent with the~~ ^{consistent with the} customary use of those fish stocks and game populations
16 identified under this subsection for which the boards have determined that a
17 harvestable portion exists. The boards shall jointly establish eligibility for issuance
18 of a customary use permit ~~to an individual~~ to participate in the take of the harvestable
19 portion of the fish stock or game population that is allocated for customary use, based ^(which may be)
20 on the following criteria:

- 21 (1) the ^{permittee's} ~~individual's~~ proximity to the resource;
- 22 (2) the availability of alternative resources to the ^{permittee} ~~individual~~; and
- 23 (3) either
- 24 (A) the ^{permittee's} ~~individual's~~ dependence on wild, renewable resources
25 as a mainstay of livelihood; or
- 26 (B) the ^{permittee's} ~~individual's~~ cultural need to engage in personal or
27 family use and consumption of wild, renewable resources.

28 (h) In determining whether dependence upon subsistence is a principal
29 characteristic of the economy, culture, and way of life of an area under (g) of this
30 section, the boards shall jointly consider the relative importance of subsistence
31 compared to the totality of the following socio-economic characteristics of the area:

- 1 (1) the social and economic structure;
- 2 (2) the stability of the economy;
- 3 (3) the extent and the kinds of employment for wages, including full-
- 4 time, part-time, temporary, and seasonal employment;
- 5 (4) the amount and distribution of cash income among those domiciled
- 6 in the area;
- 7 (5) the cost and availability of goods and services to those domiciled
- 8 in the area;
- 9 (6) the variety of fish and wildlife species used by those domiciled in
- 10 the area;
- 11 (7) the seasonal cycle of economic activity;
- 12 (8) the percentage of those domiciled in the area participating in
- 13 hunting and fishing activities or using wild fish and game;
- 14 (9) the harvest levels of fish and game by those domiciled in the area;
- 15 (10) the cultural, social, and economic values associated with the
- 16 taking and use of fish and game;
- 17 (11) the geographic locations where those domiciled in the area hunt
- 18 and fish;
- 19 (12) the extent of sharing and exchange of fish and game by those
- 20 domiciled in the area; and
- 21 (13) similar factors the boards find relevant to their determinations
- 22 under this subsection.

23 * Sec. 6. AS 16.05.259 is amended to read:

24 Sec. 16.05.259. NO SUBSISTENCE OR CUSTOMARY USE DEFENSE.

25 In a prosecution for the taking of fish or game in violation of a statute or regulation,

26 it is not a defense that the taking was done for subsistence uses or customary uses.

27 * Sec. 7. AS 16.05.940(5) is amended to read:

28 (5) "commercial fishing" means the taking, fishing for, or possession

29 of fish, shellfish, or other fishery resources with the intent of disposing of them for

30 profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid

31 subsistence or customary use permit in possession, if required by statute or

1 regulation, is considered prima facie evidence of commercial fishing if commercial
2 fishing gear as specified by regulation is involved in the taking, fishing for, or
3 possession of fish, shellfish, or other fish resources;

4 * Sec. 8. AS 16.05.940 is amended by adding a new paragraph to read:

5 (36) "customary trade" means the limited exchange, for minimal
6 amounts of cash, as restricted by the appropriate board, of fish or game resources, this
7 paragraph does not restrict money sales of furs or furbearers.

Add: "customary use" means uses of
fish stocks and game populations
permitted under AS. 16. 05. 258(g)

Add immediate effective date

CS FOR HOUSE BILL NO. 601 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson, Ivan, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking of fish and game; and providing for an effective
2 date."

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

4 * Section 1. AS 16.05.251(a) is amended to read:

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

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

10 (2) establishing open and closed seasons and areas for the taking of
11 fish; if consistent with resource conservation and development goals, the board may
12 adopt regulations establishing restricted seasons and areas necessary for persons 60
13 years of age and older to participate in sport, personal use, customary use, or
14 subsistence fishing;

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

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

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

7 (6) classifying as commercial fish, sport fish, guided sport fish,
8 personal use fish, customary use fish, subsistence fish, or predators or other
9 categories essential for regulatory purposes;

10 (7) watershed and habitat improvement, and management,
11 conservation, protection, use, disposal, propagation, and stocking of fish;

12 (8) investigating and determining the extent and effect of disease,
13 predation, and competition among fish in the state, exercising control measures
14 considered necessary to the resources of the state;

15 (9) prohibiting and regulating the live capture, possession, transport,
16 or release of native or exotic fish or their eggs;

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

19 (11) establishing the times and dates during which the issuance of
20 fishing licenses, permits, and registrations and the transfer of permits and registrations
21 between registration areas is allowed; however, this paragraph does not apply to
22 permits issued or transferred under AS 16.43;

23 (12) regulating commercial, sport, guided sport, customary use,
24 subsistence, and personal use fishing as needed for the conservation, development, and
25 utilization of fisheries;

26 (13) requiring, in a fishery, observers on board fishing vessels, as
27 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined
28 in AS 16.05.475(c), after making a written determination that an on-board observer
29 program

30 (A) is the only practical data-gathering or enforcement
31 mechanism for that fishery;

1 (B) will not unduly disrupt the fishery;

2 (C) can be conducted at a reasonable cost; and

3 (D) can be coordinated with observer programs of other
4 agencies, including the National Marine Fisheries Service, North Pacific
5 Fishery Management Council, and the International Pacific Halibut
6 Commission;

7 (14) establishing nonexclusive, exclusive, and superexclusive
8 registration and use areas for regulating commercial fishing;

9 (15) regulating resident or nonresident sport fishermen as needed for
10 the conservation, development, and utilization of fishery resources.

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

12 (e) The Board of Fisheries may allocate fishery resources among personal use,
13 sport, guided sport, customary use, and commercial fisheries. The board shall adopt
14 criteria for the allocation of fishery resources and shall use the criteria as appropriate
15 to particular allocation decisions. The criteria may include factors such as

16 (1) the history of each personal use, sport, guided sport, customary
17 use, and commercial fishery;

18 (2) the number of residents and nonresidents who have participated in
19 each fishery in the past and the number of residents and nonresidents who can
20 reasonably be expected to participate in the future;

21 (3) the importance of each fishery for providing residents the
22 opportunity to obtain fish for personal and family consumption;

23 (4) the availability of alternative fisheries resources;

24 (5) the importance of each fishery to the economy of the state;

25 (6) the importance of each fishery to the economy of the region and
26 local area in which the fishery is located;

27 (7) the importance of each fishery in providing recreational
28 opportunities for residents and nonresidents;

29 (8) the importance of each fishery in meeting the social and
30 cultural needs of the region and local area in which the fishery is located.

31 * Sec. 3. AS 16.05.255(a) is amended to read:

1 (a) The Board of Game may adopt regulations it considers advisable in
2 accordance with the Administrative Procedure Act (AS 44.62) for

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

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

8 (3) establishing the means and methods employed in the pursuit,
9 capture, and transport of game, including regulations, consistent with resource
10 conservation and development goals, establishing means and methods that may be
11 employed by persons with physical disabilities;

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

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

16 (6) methods, means, and harvest levels necessary to control predation
17 and competition among game in the state;

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

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

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

25 (10) regulating sport hunting, customary use hunting, and subsistence
26 hunting as needed for the conservation, development, and utilization of game.

27 * Sec. 4. AS 16.05.255 is amended by adding a new subsection to read:

28 (e) The Board of Game shall establish criteria for the allocation of game
29 resources among sport and customary use hunting. The criteria may, as appropriate
30 to particular allocation decisions, include factors such as

31 (1) the history of each sport and customary use hunt;

1 (2) the number of residents and nonresidents who have participated in
2 each hunt in the past and the number of residents and nonresidents who can
3 reasonably be expected to participate in the future;

4 (3) the importance of each hunt for providing residents the opportunity
5 to obtain game for personal and family consumption;

6 (4) the availability of alternative game resources;

7 (5) the importance of each hunt in providing recreational opportunities
8 for residents and nonresidents;

9 (6) the importance of each hunt in meeting the economic, social,
10 and cultural needs of the region and local area in which the hunt is located.

11 * Sec. 5. AS 16.05.258 is amended by adding new subsections to read:

12 (g) The boards may not permit subsistence hunting or fishing in a
13 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
14 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
15 where dependence upon subsistence is not a principal characteristic of the economy,
16 culture, and way of life of the area or community. The boards shall identify by
17 regulation the fish stocks and game populations that have been customarily taken for
18 subsistence uses in each nonsubsistence area prior to the establishment of the
19 nonsubsistence area. The boards ^{may} ~~shall~~ adopt regulations providing for the issuance of
20 permits ^{for} ~~consistent with~~ the customary use of those fish stocks and game populations
21 identified under this subsection for which the boards have determined that a
22 harvestable portion exists. The boards shall jointly establish eligibility for issuance
23 of a customary use permit to participate in the take of the harvestable portion of the
24 fish stock or game population that is allocated for customary use, based on the
25 following criteria:

26 (1) the ^{persons} ~~permittee's~~ proximity to the resource;

27 (2) the availability of alternative resources to the permittee; and

28 (3) either

29 (A) the permittee's dependence on wild, renewable resources
30 as a mainstay of livelihood; or

31 (B) the permittee's cultural need to engage in personal or

1 family use and consumption of wild, renewable resources.

2 (h) In determining whether dependence upon subsistence is a principal
3 characteristic of the economy, culture, and way of life of an area under (g) of this
4 section, the boards shall jointly consider the relative importance of subsistence
5 compared to the totality of the following socio-economic characteristics of the area:

- 6 (1) the social and economic structure;
- 7 (2) the stability of the economy;
- 8 (3) the extent and the kinds of employment for wages, including full-
9 time, part-time, temporary, and seasonal employment;
- 10 (4) the amount and distribution of cash income among those domiciled
11 in the area;
- 12 (5) the cost and availability of goods and services to those domiciled
13 in the area;
- 14 (6) the variety of fish and wildlife species used by those domiciled in
15 the area;
- 16 (7) the seasonal cycle of economic activity;
- 17 (8) the percentage of those domiciled in the area participating in
18 hunting and fishing activities or using wild fish and game;
- 19 (9) the harvest levels of fish and game by those domiciled in the area;
- 20 (10) the cultural, social, and economic values associated with the
21 taking and use of fish and game;
- 22 (11) the geographic locations where those domiciled in the area hunt
23 and fish;
- 24 (12) the extent of sharing and exchange of fish and game by those
25 domiciled in the area; and
- 26 (13) similar factors the boards find relevant to their determinations
27 under this subsection.

28 * Sec. 6. AS 16.05.259 is amended to read:

29 Sec. 16.05.259. NO SUBSISTENCE OR CUSTOMARY USE DEFENSE.

30 In a prosecution for the taking of fish or game in violation of a statute or regulation,
31 it is not a defense that the taking was done for subsistence uses or customary uses.

1 * Sec. 7. AS 16.05.940(5) is amended to read:

2 (5) "commercial fishing" means the taking, fishing for, or possession
3 of fish, shellfish, or other fishery resources with the intent of disposing of them for
4 profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid
5 subsistence or customary use permit in possession, if required by statute or
6 regulation, is considered prima facie evidence of commercial fishing if commercial
7 fishing gear as specified by regulation is involved in the taking, fishing for, or
8 possession of fish, shellfish, or other fish resources;

9 * Sec. 8. AS 16.05.940 is amended by adding new paragraphs to read:

10 (36) "customary trade" means the limited exchange, for minimal
11 amounts of cash, as restricted by the appropriate board, of fish or game resources; this
12 paragraph does not restrict money sales of furs or furbearers;

13 (37) "customary use" means uses of fish stocks and game populations
14 permitted under AS 16.05.258(g).

15 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

AS 16.05.258

HCR

7

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 19, 1991

FURTHER REFERRALS:

Date of Committee Action: 3-7-91

The JUDICIARY Committee considered:

HCR 7

HOUSE CONCURRENT RESOLUTION NO. 7

RATIFY BILL OF RIGHTS BICENTENNIAL

Proclaiming 1991 to be the Bill of Rights Bicentennial year in Alaska.

RECOMMENDATIONS:

be replaced with CS HCR 7 (Jud) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

1 zero fiscal note Education

zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>W. Dale Douley</i>				
<i>Mark Stanley</i>				
<i>Terry Martin</i>				
<i>W. G. ...</i>				

W. Dale Douley

 Chairman's Signature

LAW OFFICES
ELY & HAVELOCK
608 WEST FOURTH AVENUE, SUITE 21
ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
276-1916
FACSIMILE
(907) 258-9053

ROBERT C. ELY
JOHN E. HAVELOCK

March 6, 1991

Rep. M.A. Miller and
Judiciary Committee
Alaska State House of Representatives
Juneau, Alaska

RE: HCR No. 7; Bill of Rights Bicentennial

Dear Friends,

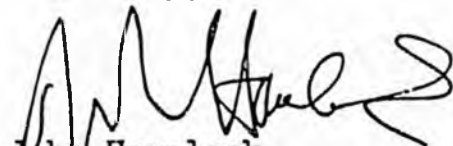
One report after another, confirming the crisis in American education, has stressed the central role, in the success of the American enterprise, of instruction in civics. The threat posed to our future by the failure of new generations to understand fundamental principles is grave.

I would hope that instruction in the meaning of the Bill of Rights is already underway in all our schools, for every class, every year. However, the bicentennial year poses a special opportunity to remind all, young and old, of the central nature of the concept of individual rights to our democracy.

Too many Americans equate democracy only with majority rule, yet the American Republic was founded on the principle that minorities of opinion and interest within a majority must have their rights respected as a restraint on majoritarian absolutism. Constitutionalism and the Bill of Rights are the prime virtues of the American system.

I urge your support for HCR 7.

Sincerely,



John Havelock
(Chair, Commission to Celebrate the U.S. Constitution.)

HCR

8

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCR 8

Revision Date: _____ Department Affected: Department of Law
 Title: "Relating to economic and scientific data...Exxon Valdez litigation." BRU: Exxon Valdez Litigation
 Component: Exxon Valdez Litigation
 Sponsor: Representative Navarre
 Requestor: House Judiciary COMPONENT SERIAL NO.

1	1	7	5
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 21, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 21, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HCR 8

House Concurrent Resolution No. 8 urges that any settlement agreement of the civil or criminal litigation arising from the Exxon Valdez spill provide that all economic and scientific studies generated by the litigation be open to public inspection and not treated as confidential material. While the approved settlement agreement does not include bar to the state releasing the data that it has developed, the Memorandum of Agreement between the governments does bar such a release unless the release is approved in writing between the Department of Law and the U.S. Department of Justice.

In addition to the requirements of the Memorandum of Agreement, the state should not release the data at this time because its liability claims are still being pursued against the Alyeska Pipeline Services Company and its owner pipeline companies. Moreover, the State of Alaska and the United States of America have agreed to make this data available to other plaintiffs for their civil litigation against Exxon. This information must therefore be kept confidential until the other plaintiffs' litigation has been resolved. The department will seek to have the information released to the public as speedily as these circumstances permit.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HCR 8

Revision Date: _____ Department Affected: Legislative Affairs Agency
 Title: Relating to economic and scientific data developed as a result of the Exxon Valdez litigation. BRU: _____
 Sponsor: Representative M. Navarre Component: _____
 Requestor: House Resources COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Rep. Cliff Davidson, Chairman Phone: 465-2487
 Division: House Resources Date: March 13, 1991

Approved by Commissioner: Rep. Cliff Davidson, Chairman *(Signature)*
 Agency: _____ Date: March 13, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA STATE LEGISLATURE
REPRESENTATIVE MIKE NAVARRE

Co-Chair
House Finance Committee
P.O. Box V
Juneau, Alaska 99811
(907) 465-3779

March 10, 1991

TO: Representative Cliff Davidson, Chair, House Resources Committee

FROM: Representative Mike Navarre *Mike*

SUBJECT: Sponsor Statement for HJR 25 & HCR 8, resolutions relating to the Exxon Valdez settlement data.

.....

House Joint Resolution 25 and House Current Resolution 8 are essentially the same in content. The only difference in the resolutions is in the last paragraph where directions are given to whom is to receive the resolutions. The Uniform Rules of the Alaska State Legislature in Rule 49 specifies the type of resolution and the appropriate manner in which the resolution is to be handled.

The essence of both resolutions is to require that the economic and scientific data collected from the studies of Exxon Valdez tragedy be released. It is unthinkable that some entity, individual, or organization would desire to lock-up data from an ecological mishap. The economic and scientific data is relevant and needed to avoid future mishaps or, if another mishap does occur society will be better able to handle the disasters aftermath.

Why does the Legislature need to ensure the release of the scientific and economic data from the Exxon spill?

1. Other entities that may litigate in the future may find the data useful.
2. To ensure proper resource management the data would be useful in determining the evolutionary happenings in the waters of Alaska.
3. Both the U.S. Congress and the Alaska Legislature need to know the effects on the marine environment, in order to determine the future of drilling and transport of oil in the Alaskan environment.
4. Long term policy involving the use double-hull tankers.
5. Release of the data to only Exxon should be unacceptable.
6. The public paid directly or indirectly for these studies, therefore it is unacceptable not to allow public access to the data generated as a result of the Exxon spill.

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7. To properly continue the restoration of Prince William Sound and other areas of the State data on what has been accomplished needs to be available.

It is difficult to see the downside of these two resolutions, but in order to be overly cautious one could consider the potential legal exposure that the State may have. The balance between blocking access and open information to any data in a free society must be carefully weighed as to its outcomes.

DISTRICT 5

34824 K-Beach Road • Soldotna, Alaska 99669 • (907) 262-7842



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HOUSE COMMITTEE REPORT

(9)
Date Referred: February 20, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3/10/91

The RESOURCES Committee considered:

HCR 8

HOUSE CONCURRENT RESOLUTION NO. 8 DISCLOSURE; EXXON VALDEZ SETTLEMENT DATA

Relating to economic and scientific data developed as a result of the Exxon Valdez litigation.

- RECOMMENDATIONS:
- be replaced with _____ [] the same title
 - _____ [] a new title
 - have attached amendments(s)
 - do pass
 - do not pass
 - no recommendations
 - individual recommendations
 - additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal impact _____ [] fiscal note(s) _____

zero fiscal note H RES [] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>Cliff Davidson</i> DAVIDSON	<i>Bill Hudson</i> HUDSON		X	
<i>Lincoln</i> LINCOLN	<i>Allen A. Lemay</i> LEMAY		✓	
<i>Tom Moyer</i> MOYER				
<i>John E. Ivan</i> IVAN				
<i>Frank E. Finkelstein</i> FINKELSTEIN				
	<i>Jim Zawacki</i> ZAWACKI		X	
	<i>Pat Carney</i> CARNEY		✓	

Cliff Davidson
Chairman's Signature

ANCHORAGE SCHOOL
DISTRICT, Appellant,

v.

ANCHORAGE DAILY NEWS, Appellee.

No. S-3148.

Supreme Court of Alaska.

Sept. 1, 1989.

Newspaper brought action against school district seeking declaratory and injunctive relief granting access to settlement documents to which school district was a party. The Superior Court, Third Judicial District, J. Justin Ripley, J., ordered district to disclose terms of settlement agreement. School district appealed. The Supreme Court, Burke, J., held that settlement provision prohibiting disclosure of terms of settlement was unenforceable as violating public records disclosure statutes.

Affirmed and remanded with instructions.

1. Records ¶ 54

Public records disclosure statutes apply to records maintained by municipalities. AS 09.25.110, 09.25.120.

2. Records ¶ 64

Question of whether municipality must disclose particular document under public records disclosure statutes is resolved by balancing fundamental public interest in disclosure against municipal interest in confidentiality, and trial court may also consider interest of third party in preventing disclosure. AS 09.25.110, 09.25.120.

3. Records ¶ 65

In recognition of fundamental nature of public right to know, municipality seeking to prevent disclosure of records has burden of proving that records should not be disclosed.

4. Records ¶ 53

Exceptions to statutory public record disclosure requirements are narrowly con-

strued and doubtful cases are resolved by permitting public inspection. AS 09.25.110, 09.25.120.

5. Records ¶ 53

Public agency may not circumvent statutory public record disclosure requirements by agreeing to keep terms of settlement agreement confidential. AS 09.25.110, 09.25.120.

6. Records ¶ 53

Settlement provision prohibiting disclosure of terms of settlement involving school district was unenforceable as violating public records disclosure statutes. AS 09.25.110.

7. Courts ¶ 493(2)

Superior court had jurisdiction over newspaper's action against school district for injunctive and declaratory relief granting access to settlement documents, even though federal court had entered a protective order; newspaper was not a party to federal litigation, and federal court had not addressed confidentiality issue when superior court entered its judgment.

Kermit E. Barker, Jr., Lane, Powell & Barker, Anchorage, for appellant.

D. John McKay, Middleton, Timme & McKay, Anchorage, for appellee.

Before MATTHEWS, C.J., and
RAPINOWITZ, BURKE, COMPTON,
and MOORE, JJ.

OPINION

BURKE, Justice.

This appeal presents two questions. The first is whether Alaska's public records disclosure statutes, AS 09.25.110-09.25.120, require a municipal school district to produce for public inspection documents settling a school district lawsuit, despite the district's agreement to keep the settlement terms confidential. The second question is whether the plaintiff below may obtain the relief it seeks while there remains outstanding a United States District Court order prohibiting disclosure of the settlement