

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9374 HOUSE RESOURCES

- (3) the number of days in the preceding twelve months that the person engaged in taking fish or game in the subsistence use area or spent processing that fish or game, with a mandatory minimum of 30 days;
- (4) the number of months in the preceding twelve months in which the applicant engaged in taking fish or game in the subsistence use area, with a mandatory minimum of four months;
- (5) the number of weeks, in the preceding twelve months, during which the taking or processing of fish and game was the applicant's principal work effort, to a maximum of 26 weeks;
- (6) the number of households, other than the person's household, with which the person shared or received fish and game in the preceding twelve months, with a maximum of 10 households; and
- (7) whether the person's taking of fish and game occurred solely in the subsistence use area for which they are qualifying.

As indicated above, in group 3 communities a person must fill out an application and score sufficient points to demonstrate his or her eligibility; in group 2 communities, signature of a statement affirming the person's qualification creates a rebuttable presumption that the person is qualified; and in group 1 areas, no paper work is required and the presumption is that all persons who hunt or fish meet the minimum standards.

#### Where would people be able to go for subsistence hunting and fishing?

People would normally qualify for the subsistence use area in which they live, but could qualify for another area by application. Subsistence use would be on fish stocks and animal populations that have customarily and traditionally used for subsistence. This would allow qualified subsistence users to hunt and fish as they have in the past. Group 3 areas would be closed to subsistence hunting and fishing, but urban residents who qualify as subsistence users would be able to subsistence hunt and fish in portions of the subsistence use area in which they live that are not classified in group 3 and thus closed to subsistence taking.

#### What are the advantages of this approach?

It protects the resource. It does not divide villages. It protects residents of regional centers from growing out of subsistence, and it allows the small minority of urban residents who are subsistence users to participate. It complies with our constitution. Most importantly, because this legislation has been worked out with the help of all sides, it will protect subsistence and subsistence users while reducing the division and political instability that has plagued this issue.

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 21, 1992

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to subsistence.

Among the fifty states, only Alaska has a significant portion of its population who, in large part, live off the land. Subsistence is unique and special to Alaska. Because of the importance of subsistence to Alaska, both the United States Congress and past Alaska legislatures, have passed laws giving a preference to subsistence over other consumptive uses of the same resources.

Despite the general agreement that subsistence should have a preference, there has been monumental disagreement on how that preference should be implemented. For too many years, Alaskans on different sides of the subsistence issue have talked about each other, but never to each other. The effect of conflicting court opinions, federal Alaska National Interest Lands Conservation Act mandates, and legislative gridlock have produced a crisis in the management of our fish and game. We have a current situation where everyone loses.

For the past year, an outstanding group of citizens has been meeting steadily to try to resolve this problem. There are nine members of the Governor's Subsistence Advisory Council and all of Alaska owes a debt to them. The members are:

The Honorable Jay S. Hammond, Port Alsworth  
Mr. Dick Bishop, Fairbanks  
Mr. John James Burns, Fairbanks  
Mr. Mitch Demientieff, Nenana  
Mr. Eric Forrer, Juneau  
Mr. Matthew Iya, Nome  
Mr. Byron Mallott, Juneau  
Mr. Theo Matthews, Kenai  
Mr. Gene Peltola, Bethel

These nine members represent all sides of the subsistence issue. While some members were nominated by specific groups, I asked each member to participate as an individual.

The Honorable Ben Grussendorf  
February 21, 1992  
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The group had a goal that is simple to define, but very difficult to achieve: it was to find the best possible subsistence solution for Alaska. Many observers thought that was an impossible dream, that the members could never agree. There were times during meetings, when that appeared to be true, but the council members did not give up. Today I am introducing subsistence legislation that the council drafted. Every part of this legislation is the result of consensus among the members.

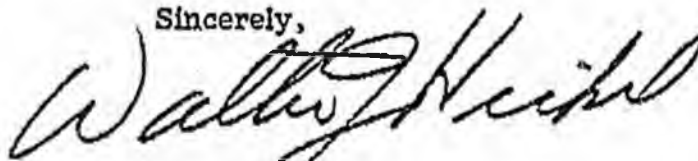
The legislation is not what any one member, any one group, nor I, by myself, would have drafted. It is legislation that protects the resource, the interests of every group, and can pass. In designing this statute, great emphasis has been placed on how it will actually work. Extensive time has been spent with the Alaska Departments of Fish and Game (ADF&G) and Law.

The legislation is designed for species protection, to function with a minimum of disruption for users, for ease of administration by the Board of Fisheries and the Board of Game, for management by the ADF&G, enforceability by the Department of Public Safety, and defensibility in court. The legislation will reduce the constant barrage of subsistence court cases by making the state's actions more defensible, but, much more importantly, by laying out clear guidelines for the boards and reducing the problems which caused people to sue.

A packet of material describing and explaining the bill will be provided to the Senate Secretary and Chief Clerk.

I realize the legislature has a constitutional responsibility to consider and, if necessary, amend bills to make them the best possible legislation. Neither I nor the council make any claim that this legislation is perfect, but every word in it has been the subject of hours or days of debate. The two things I ask of the legislature, are to maintain the goal of the advisory council by passing the best possible piece of subsistence legislation, and to act swiftly to solve the subsistence crisis and help heal Alaska.

Sincerely,



Walter J. Hickel  
Governor

7-GS2002.A

SENATE BILL NO: 443

IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

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

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

4 \* Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

5 (1) there are Alaskans, both Native and non-Native, who have a traditional, social, or  
6 cultural relationship to and dependence upon the wild renewable resources produced by Alaska's land  
7 and water; the harvest and use of fish and game for personal and group consumption is an integral part  
8 of those relationships;

9 (2) although customs, traditions, and beliefs vary, these Alaskans share ideals of respect  
10 for nature, the importance of using resources wisely, and the value and dignity of a way of life in which  
11 they use Alaska's fish and game for a substantial portion of their sustenance; this way of life is  
12 recognized as "subsistence";

13 (3) customary and traditional uses of Alaska's fish and game originated with Alaska  
14 Natives, and have been adopted and supplemented by many non-Native Alaskans as well; these uses,

1 among others, are culturally, socially, spiritually, and nutritionally important and provide a sense of  
2 identity for many subsistence users;

3 (4) while Alaska's fish and game are generally still plentiful, these resources are not  
4 unlimited and cannot provide for every desired use, now or in the future; competition for and the level  
5 of effort on these resources have required the legislature and the Board of Fisheries and Board of Game  
6 to establish a preference for subsistence among the various beneficial uses of fish and game in Alaska;

7 (5) in most areas of the state, a preference for subsistence can be provided without an  
8 overly burdensome intrusion upon other consumptive uses of fish and game;

9 (6) among persons who take fish and game, a large majority of those living in areas  
10 described in AS 16.05.268(f)(1); a majority of those living in areas described in AS 16.05.268(f)(2); and  
11 a small minority of those living in areas described in AS 16.05.268(f)(3), depend upon the subsistence  
12 taking of fish and game;

13 (7) in determining dependence upon the subsistence taking of fish and game, the  
14 application of different levels of presumptions based on categories is logical; does not deny any person  
15 the opportunity to demonstrate dependence on subsistence use; focuses on persons who depend on  
16 subsistence use; is administratively efficient; and is compatible with existing management measures  
17 without needlessly interfering with other uses of fish and game resources; and

18 (8) the application of presumptions, based on areas of domicile, to facilitate  
19 determinations of a person's qualifications as a subsistence user will maximize the state's management  
20 efforts.

21 (b) It is the purpose of this Act

22 (1) to develop and maintain healthy fish stocks and game populations through  
23 management on the sustained yield principle;

24 (2) to provide for a preference for subsistence use over other consumptive uses of fish  
25 and game resources;

26 (3) to provide for the participation in the subsistence taking of fish and game by those  
27 Alaskans who actually and substantially depend upon that subsistence taking;

28 (4) to maximize the state's management efforts by applying presumptions based on  
29 subsistence characteristics of areas to reduce the need for case-by-case individual determinations of  
30 dependence on subsistence in those areas of the state which have a high proportion of subsistence users  
31 who meet the qualifications of this Act.

1 (c) It is the intent of the legislature

2 (1) that subsistence uses of Alaska's fish and game resources are given the highest  
3 preference, in order to accommodate and perpetuate those uses;

4 (2) to clarify the statutory protection for actual, substantial dependence on fish and game  
5 for subsistence; and

6 (3) that this Act not result in significant reallocations of fish and game in Alaska.

7 \* Sec. 2. AS 16.05 is amended by adding a new section to read:

8 Sec. 16.05.268. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME. (a)

9 The Board of Fisheries and the Board of Game shall identify the fish stocks and game  
10 populations, or portions of stocks or populations, that are customarily and traditionally used for  
11 subsistence in the areas of the state identified by the boards under (f)(1) and (f)(2) of this section.

12 The commissioner shall provide recommendations to the boards on the identifications. The  
13 boards shall make identifications required under this subsection after receipt of the  
14 commissioner's recommendations.

15 (b) The appropriate board shall determine whether a portion of a stock or population  
16 identified under (a) of this section can be harvested consistent with sustained yield, and

17 (1) if the harvestable portion of the stock or population is sufficient to provide  
18 for all consumptive uses, the appropriate board

19 (A) shall adopt regulations that provide a reasonable opportunity to  
20 participate in the subsistence uses of those stocks or populations;

21 (B) shall adopt regulations that provide for other consumptive uses of  
22 those stocks or populations, subject to preferences among beneficial uses; and

23 (C) may adopt regulations to differentiate among consumptive uses;

24 (2) if the harvestable portion of the stock or population is sufficient to provide  
25 for subsistence uses and some, but not all, other consumptive uses, the appropriate board

26 (A) shall adopt regulations that provide a reasonable opportunity to  
27 participate in the subsistence uses of those stocks or populations;

28 (B) may adopt regulations that provide for other consumptive use of those  
29 stocks or populations; and

30 (C) shall adopt regulations to differentiate among consumptive uses and  
31 provide for a preference for the subsistence uses, if regulations are adopted under (B) of

1           this paragraph;

2                   (3) if the harvestable portion of the stock or population is sufficient to provide  
3 for subsistence uses, but no other consumptive uses, the appropriate board shall adopt regulations  
4 that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence  
5 uses; and

6                   (4) if the harvestable portion of the stock or population is not sufficient to provide  
7 for all subsistence uses, the appropriate board

8                           (A) shall adopt regulations eliminating all consumptive uses, other than  
9 subsistence uses;

10                           (B) shall distinguish among subsistence users, through limitations based  
11 on

12                                   (i) the customary and direct dependence on the fish stock or game  
13 population by the subsistence user for human consumption as a mainstay of life;

14                                   (ii) the proximity of the domicile of the subsistence user to the  
15 stock or population; and

16                                   (iii) the ability of the subsistence user to obtain food if subsistence  
17 use is restricted or eliminated.

18           (c) If the harvestable portion of a stock or population is insufficient to provide for both  
19 subsistence and other consumptive uses, the department shall analyze and prepare a plan to  
20 facilitate the recovery of that stock or population to allow for increased consumptive uses as soon  
21 as possible. The department shall provide recommendations to the appropriate board for  
22 necessary regulatory changes. If subsistence use of a stock or population has been eliminated  
23 to achieve sustained yield, the appropriate board shall adopt regulations to allow subsistence uses  
24 when that board determines that the stock or population has recovered sufficiently to allow the  
25 taking for any consumptive use, consistent with sustained yield.

26           (d) The subsistence use area for a stock or population is the subunit of a game  
27 management unit in which fish or game may be taken under subsistence regulations adopted  
28 under (b) of this section, together with contiguous game management subunits, unless the  
29 appropriate board identifies and delineates a subsistence use area with different boundaries for  
30 a particular fish stock or game population under (e) of this section.

31           (e) Each board shall consider subsistence use area boundaries described in (d) of this

1 section. Each board shall delineate a different boundary for a particular stock or population if  
2 the appropriate board determines that the boundary of a subsistence use area is inconsistent with  
3 established patterns of taking and use of that fish stock or game population for subsistence, or  
4 is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the  
5 customary and traditional taking and use of fish and game for subsistence.

6 (f) The boards shall, by regulation, for the state, jointly identify and delineate areas, using  
7 game management units, portions of game management units, or communities, into the following  
8 categories:

9 (1) category 1, an area where the human population of each community in the  
10 area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is  
11 a principal characteristic of the economy, culture, and way of life of the area;

12 (2) category 2, an area that consists of a single community that has a human  
13 population of 2,500 to 6,999, is not part of an urban area, and where dependence upon  
14 subsistence is a principal characteristic of the economy, culture, and way of life of the  
15 community;

16 (3) category 3, an area that

17 (A) is an urban area or a single community where the human population  
18 is 7,000 or greater; or

19 (B) is an area or community where dependence upon subsistence is not  
20 a principal characteristic of the economy, culture, and way of life of the area or  
21 community.

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

26 (1) the social and economic structure;

27 (2) the stability of the economy;

28 (3) the extent and the kinds of employment for wages, including full-time, part-  
29 time, temporary, and seasonal employment;

30 (4) the amount and distribution of cash income among those domiciled in the  
31 area;

- 1 (5) the cost and availability of goods and services to those domiciled in the area;
- 2 (6) the variety of fish and wildlife species used by those domiciled in the area;
- 3 (7) the seasonal cycle of economic activity;
- 4 (8) the percentage of those domiciled in the area participating in hunting and
- 5 fishing activities or using wild fish and game;
- 6 (9) the harvest levels of fish and game by those domiciled in the area;
- 7 (10) the cultural, social, and economic values associated with the taking and use
- 8 of fish and game;
- 9 (11) the geographic locations where those domiciled in the area hunt and fish;
- 10 (12) the extent of sharing and exchange of fish and game by those domiciled in
- 11 the area;
- 12 (13) additional similar factors the boards establish in regulation to be relevant to
- 13 their determinations under this subsection.

14 (h) Participation in a subsistence harvest in a subsistence use area is limited to persons  
15 who meet the requirements for qualification under (i) of this section for that subsistence use area,  
16 with the following presumptions and requirements:

17 (1) a person who is domiciled in the subsistence use area in an area identified  
18 under (f)(1) of this section, and who intends to take fish or game for subsistence purposes is  
19 presumed to meet the requirements for qualification under (i) of this section for that subsistence  
20 use area; this presumption may be rebutted only by clear and convincing evidence, and the boards  
21 may not require a permit or filing of a statement affirming that the person meets the requirements  
22 for qualification under (i) of this section;

23 (2) a person who is domiciled in the subsistence use area in an area identified  
24 under (f)(2) of this section, and who intends to take fish or game for subsistence purposes is  
25 rebuttably presumed to meet the requirements for qualification under (i) of this section for that  
26 subsistence use area upon that person's signing a statement, on a form provided by the  
27 department, affirming that the person meets those requirements; the department may rebut this  
28 presumption by a preponderance of the evidence that the person does not meet those qualification  
29 requirements;

30 (3) a person domiciled in an area identified under (f)(3) of this section or who  
31 is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery

1 or hunt in that subsistence use area only upon certification by the commissioner that the person  
2 meets the requirements for qualification under (i) of this section.

3 (i) The boards shall jointly, by regulation, adopt procedures by which the commissioner  
4 shall determine the qualification of a person to subsistence fish or hunt in a specific subsistence  
5 use area. The commissioner shall provide recommendations to the boards on qualification  
6 procedures. The boards shall jointly adopt the regulations required by this subsection after the  
7 receipt of the commissioner's recommendations. The boards shall adopt, by regulation, a  
8 weighted point system to determine a person's eligibility. The boards shall structure the point  
9 system so that the minimum points required for qualification exceed the total points received for  
10 meeting the mandatory minimum requirements in (1) - (4) of this subsection. The point system  
11 shall be based on the following criteria and restrictions:

12 (1) the quantity of fish and game consumed by the person in the preceding 12  
13 months, with a mandatory minimum of 125 pounds consumed in that period;

14 (2) the number of species and groups of species of fish and game from the  
15 subsistence area consumed by the person in the preceding 12 months, with a mandatory minimum  
16 number of species, or groups of species, as determined jointly by the boards by regulation; the  
17 mandatory minimum number, and any grouping of species, may vary by geographical region of  
18 the state, based on the diversity of species in a region;

19 (3) the number of days in the preceding 12 months that the person engaged in the  
20 taking of fish or game in the subsistence use area, or the processing of that fish or game, with  
21 a mandatory minimum of 30 days in that period;

22 (4) the number of months in the preceding 12 months in which the person  
23 engaged in the taking of fish or game in the subsistence use area, with a mandatory minimum  
24 of four months in that period;

25 (5) the number of weeks in the preceding 12 months during which the taking or  
26 processing of fish or game was the person's principal work effort, with no additional  
27 consideration given beyond a maximum of 26 weeks;

28 (6) the number of households, other than the person's household, with which the  
29 person shared or from which the person received fish and game in the preceding 12 months, with  
30 no additional consideration given beyond a maximum of 10 households; and

31 (7) whether the person's taking of fish and game occurred solely in the

1 subsistence use area.

2 (j) A person who does not meet the mandatory minimum requirements of each of (i) (1) -  
3 (4) of this section does not meet the requirements for qualification under (i) of this section.

4 (k) For the purposes of (h) and (l) of this section, the taking or processing of the fish and  
5 game must have been legal, noncommercial, and characterized by efficiency and economy of  
6 effort, cost, and transportation. For the purposes of (i)(1), (2), and (6) of this section, the fish  
7 and game may not have been purchased for money. The boards shall jointly adopt regulations  
8 allowing a person who has been unable to meet the criteria of (h) or (i) of this section because  
9 of hospitalization, or military service or full-term attendance at an educational institution outside  
10 the relevant subsistence use area to base responses on the 12 months immediately preceding the  
11 commencement of the circumstance.

12 (l) The commissioner shall provide, by regulation, for an expedited review procedure for  
13 a person who is determined by the department not to meet the qualifications as a subsistence  
14 user.

15 (m) Fish stocks and game populations, or portions of fish stocks and game populations  
16 not identified under (a) of this section may be taken only under nonsubsistence regulations.

17 (n) Taking and use of fish and game authorized under this section are subject to  
18 regulations regarding open and closed areas, seasons, methods and means, marking and  
19 identifications requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations.  
20 Takings and uses of resources authorized under this section are subject to AS 16.05.831 and  
21 AS 16.30.010.

22 (o) For purposes of

23 (1) subsection (b) of this section, "reasonable opportunity" is an opportunity, as  
24 determined by the appropriate board,

25 (A) allowing a subsistence user to participate in a subsistence hunt or  
26 fishery that provides a normally diligent participant with a reasonable expectation of  
27 success of taking of fish or game, but does not guarantee the taking of fish or game; the  
28 conditions of the hunt or fishery; or the taking of all the fish and game that the participant  
29 wants or needs; and

30 (B) based on the findings of the appropriate board on each of the  
31 following factors:

- 1 (i) resource population and management objectives;  
 2 (ii) estimated harvest per unit of effort by participants in the  
 3 fishery or hunt;  
 4 (iii) patterns and levels of customary and traditional taking and use  
 5 of the fish or game;  
 6 (iv) migratory patterns and availability of fish or game;  
 7 (v) competition for the fish or game from other subsistence and  
 8 nonsubsistence uses; and  
 9 (vi) other factors that the appropriate board considers relevant.

10 (2) subsection (i) of this section, "preceding 12 months" means

11 (A) for a person described in (h)(1) of this section, the 12 months  
 12 preceding the taking of the fish or game resource;

13 (B) for a person described in (h)(2) of this section, the 12 months  
 14 preceding the date of signing of the required statement;

15 (C) for a person described in (h)(3) of this section, the 12 months  
 16 preceding the date of signing the application to the commissioner.

17 \* Sec. 3. AS 16.05.940(29) is amended to read:

18 (29) "subsistence fishing" means the taking [OF, FISHING FOR,] or possession,  
 19 by a qualified resident, of fish, shellfish, or other fisheries resources [BY A RESIDENT  
 20 DOMICILED] in a subsistence use [RURAL] area of the state, in accordance with regulations  
 21 adopted under AS 16.05.268, for subsistence uses with gill net, seine, fish wheel, long line, or  
 22 other means defined by the Board of Fisheries, except for rod and reel;

23 \* Sec. 4. AS 16.05.940(30) is amended to read:

24 (30) "subsistence hunting" means the taking [OF, HUNTING FOR,] or possession,  
 25 by a qualified resident, of game [BY A RESIDENT DOMICILED] in a subsistence use  
 26 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for  
 27 subsistence uses by means defined by the Board of Game;

28 \* Sec. 5. AS 16.05.940(31) is amended to read:

29 (31) "subsistence [USES]" means the noncommercial, customary and traditional  
 30 taking and uses of fish and game [WILD, RENEWABLE RESOURCES] by a resident  
 31 [DOMICILED] in a subsistence use [RURAL] area of the state for direct personal or family

1 consumption as food[, SHELTER, FUEL], clothing, [TOOLS,] or transportation, for the making  
2 and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken  
3 for personal or family consumption, for sharing, and for barter and [THE] customary trade of  
4 a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for  
5 personal or family consumption; in this paragraph, "family" means persons related by blood,  
6 marriage, or adoption, and a person living in the same household on a permanent basis;

7 \* Sec. 6. AS 16.05.940 is amended by adding new paragraphs to read:

8 (36) "customary and traditional" means the noncommercial, long term, consistent,  
9 and ongoing dependence on the taking and use of fish or game in a specific area and the use  
10 patterns and harvest levels of that fish or game that have been established over at least one  
11 preceding generation of users;

12 (37) "customary trade" means the limited, noncommercial exchange, for minimal  
13 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested  
14 primarily for personal or family consumption; "customary trade" does not include sales in  
15 commercial channels; the terms of this paragraph do not apply to money sales of furs or  
16 furbearers;

17 (38) "game management unit" means a management area of the state established  
18 by the Board of Game under AS 16.05.255;

19 (39) "sustained yield" means the management principle of utilization,  
20 development, and maintenance, applied to naturally occurring fish and game resources, that  
21 provides beneficial consumptive uses in perpetuity, subject to preferences among such uses, and  
22 seeks to provide for desired population increases and prevent undesired declines, for the purpose  
23 of maintaining healthy, self-perpetuating stocks or populations.

24 \* Sec. 7. AS 16.05.258 and AS 16.05.940(26) are repealed.

25 \* Sec. 8. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,  
26 Board of Game, and Department of Fish and Game may adopt regulations necessary to implement the  
27 provisions of this Act.

28 \* Sec. 9. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the  
29 Board of Game expeditiously adopt regulations necessary to implement this Act.

30 (b) Any regulations adopted by the Board of Fisheries, Board of Game, or Department of Fish  
31 and Game after June 1, 1992, may not be inconsistent with the provisions of this Act.

1 (c) Regulations or without regulations adopted under the authority of AS 10.10.070(c), 10.10.070,  
2 or 16.05.258 and in effect on June 1, 1992 are inconsistent with the provisions of this Act, they may  
3 continue to be implemented and enforced until the effective date of this Act.

4 \* Sec. 10. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a  
5 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature  
6 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the  
7 governor no later than June 1, 1994.

8 (b) This review period is intended to allow for further research and to gain experience in  
9 implementing the Act and regulations adopted under it. It is the intent of the legislature that the  
10 governor convene a representative group to provide recommendations to the governor before the end of  
11 the review period. It is the intent of the legislature that representatives of the legislature and persons  
12 with a history in the formulation of subsistence legislation in this state participate in the group.

13 (c) It is the intent of the legislature that the review under this section occur with public input  
14 and participation.

15 (d) No later than September 1, 1994, the governor shall provide a report to the legislature on  
16 the results of the review and any proposed recommendation\* for statutory amendments.

17 \* Sec. 11. Sections 8 and 9 of this Act take effect immediately under AS 01.10.070(c).

18 \* Sec. 12. Sections 1 - 7 and 10 of this Act take effect on the effective date of regulations first  
19 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.



## Alaska Outdoor Council

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### Public Testimony: CS FOR SENATE CONCURRENT Resolution NO. 2(RES)

The need for passage of Senate Concurrent Resolution (SCR2) has been made painfully clear to AOC members since (SB77) became law, effective July 11, 1994. The 18 th Legislature enacted into statute, A.S. 1605.255(e)- (g) a powerful mandate regarding natural resource management, embodied in Article VIII of the Alaska Constitution.

Legislatively designed responsibility for Alaska's replenishable wildlife resources has not been implemented adequately by the Commissioner of Fish & Game since the Knowles administration took office in Nov. 1994. Although, in fact, \$900,000.00 was allocated, by the Legislature in 1995 for projects to enhance abundance of certain game populations. The funding met with minimal results. When Commissioner Frank Rue was questioned as to why the Dept. of Fish & Game was unable to implement management for abundance his written reply was

" this administration will not authorize expenditure of funds for predator control (which is the main management alterable component of environmental resistance to abundant wildlife) unless the program is:

- 1) Scientifically Sound
- 2) Cost Effective
- 3) Broadly Acceptable of Alaska's Public

In response to (#1 priority), *Scientifically Sound*.

The intensive management program for GMU 20 calling for predator reduction was reviewed by its peers and won the 1993 Wildlife Monograph of the year by the Wildlife Society. *The Role of Predation in Limiting Moose at Low Densities in Alaska and Yukon and Implications for Conservation* .

In response to (#2 priority), *Cost Effective*.

Hunters and trappers through license and excise taxes are paying. The total is over 175 million dollars to the Alaska Fish & Game Fund as of 1992. In GMU 20 alone had intensive management been implemented an increased

yield of over 1 million pounds of meat would have been available according to Dr. Samuel Harbo, Jr., 1993.

In response to (#3 priority) Broadly Acceptable of Alaska's Public

The intent of the framers of the Alaska State Constitution regarding, Article VIII Sec 4 " subject to preferences among beneficial uses" needs statutory definitions to require the Commissioner of F&G to manage wildlife for abundance. Clearly, specific terms found in Article VIII Sections 1 through 4 of Alaska's Constitution such as:

1) Utilization, Development of all Natural Resources,

*Sec 2- General Authority*

2) Maximum Benefit of its People, *Sec 2*

3) Common Use, *Sec 3 Common Use*

4) Maintained on the sustained yield principle, *Sec 4 Sustained Yield*

mandate resource agencies to strive for wildlife abundance.


The Bottom Line is,

"Conserving the world's natural resources and biodiversity and protecting the overall biosphere, while at the same time substantially increasing their productive yield is one of civilization's greatest challenges ". the mission statement from *Agenda 21, 1992 UN. Conferences on the Environment*

The Framers of Alaska's Constitution were Visionaries. Passage of Resolution, SCR 2, will help preserve the scope of their vision.

Thank You.

Rod Arno, president



Alaska Outdoor Council

Cross Comparison Between Constitutional Amendments Proposed by Task Force and Proposal in HJR 46

SUBSISTENCE TASK FORCE PROPOSAL	HJR 46 (GOVERNOR'S BILL)
<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19. Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>NOTE:</b> There is a linkage between this constitutional amendment and changes to ANILCA and state statutes. Amendments to ANILCA and amendments to Alaska's fish and game statutes will be passed prior to voting on this constitutional amendment, but will not become effective unless the constitutional amendment passes.</p> <p><b>Sec. 3.</b> The amendment proposed by this resolution shall be effective immediately upon certification that it has passed.</p>	<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19. Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>Sec. 3.</b> If adopted by the voters at the next general election, the amendment proposed by this resolution takes effect immediately upon certification of the election returns by the lieutenant governor.</p>

SEP 25 1997

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**PLAN FOR A SUBSISTENCE PRIORITY  
AND RETURNING FISH AND WILDLIFE  
MANAGEMENT TO THE STATE**

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Report of the

**Governor's Task Force on Subsistence**

Governor Tony Knowles  
Lt. Governor Fran Ulmer  
Senate President Mike Miller  
House Speaker Gail Phillips  
Governor Jay Hammond  
Charlie Cole  
Byron Mallott

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*September 1997*



# Final Task Force Plan for a Subsistence Priority and Returning Fish and Game Management to the State

Updated: 9/23/97

## THE BASIC PACKAGE AND LINKAGE

There are two primary goals:

- To ensure effective state authority over fish and game management on all lands and waters of Alaska;
- To recognize the paramount importance of the subsistence way of life to Alaskans.

Alaskans may be reluctant to amend the Alaska Constitution without knowing what changes will be made in the Alaska National Interest Lands Conservation Act (ANILCA) and the state fish and game statutes. The solution is a linked package of amendments to ANILCA, the Alaska Constitution, and the Alaska statutes.

The effective date of the ANILCA amendments and the state statutory amendments will be the passage of the constitutional amendment. Voters will know exactly what is in the ANILCA amendments and the state statutory amendments when they vote on the constitutional amendment. The package will include a congressional determination that the state, upon passage of the constitutional amendment and implementation of the revised statutes, is in compliance with ANILCA and may resume fish and game management statewide.

The constitutional amendment cannot be voted on until the November 1998 general election.

## THE STATE CONSTITUTIONAL AMENDMENT

The Alaska Constitution will be amended to permit, but not to require, the Alaska Legislature to grant a subsistence priority based on place of residence. Simultaneously, state statutes will be amended to create a rural subsistence priority and those statutes, and the ANILCA amendments, will become effective only if the constitutional amendment is passed.

## THE STATE STATUTORY AMENDMENTS

The Alaska fish and game statutes will be amended to grant a subsistence priority to rural residents. Communities outside the current non-subsistence areas will be classified as rural on the day the state regains management. The Boards of Fisheries and Game acting jointly through regulation will have the power to change community classifications (add or delete) in the future as communities change.

The state statutes will also be amended to:

- a. improve the proxy hunting and fishing provisions;
- b. provide for educational hunting and fishing permits;
- c. clarify the definitions of "rural," "customary trade," and "customary and traditional;"
- d. make clear that the subsistence priority is a reasonable opportunity to take, not a guarantee of taking; and
- e. refine the subsistence management system, including adding a state Regional Subsistence Council system.

## ANILCA AMENDMENTS

The amendments fall roughly into four categories.

- a. **Definitions** - The priority created by ANILCA is keyed to rural residency, but "rural" is not defined. ANILCA leaves the determination of what is rural to the administrative process subject to court review. In this subsistence package, a rural community or area has been carefully defined as "a community or area substantially dependent on fish and game for nutritional and other subsistence uses." In addition, "customary trade" will be defined so that subsistence taking of fish and game cannot become a commercial enterprise. "Customary and traditional," an operative but undefined term in ANILCA, will also be defined. Finally, the concept of "reasonable opportunity" will be defined to make clear that the priority is a reasonable opportunity to take, not a guarantee of taking, and that the boards must consider customary and traditional uses.
- b. **Court Oversight** - Section 807 will be amended to state the standard of review for actions of the fish and game boards ("arbitrary, capricious, or abuse of discretion") and to require the federal courts to give board decisions the same deference that would be given a federal agency decision. Adding these standards is not believed to be a change in current federal law, but the standards are not explicit in Title VIII.
- c. **State Management** - Title VIII will be amended to make it clear that the state manages subsistence on all lands and waters, whether federal, state, or private.
  - i. Section 814 will be amended so that the Secretary of the Interior cannot interfere with state regulations.
  - ii. The definition of "federal public lands" will be clarified to ensure that it excludes all private and state lands.

The collective purpose of these amendments is to make clear the state has full management authority while the state is in compliance with ANILCA.

- d. **Congressional Seal of Approval, Noncompliance, and Neutrality on Indian Country** - Section 805 will be amended (1) to declare the state in compliance with Section 805(d) when it passes the constitutional amendment and statutory amendments (see above) and (2) to make future noncompliance a court determination.

A new section will be added to declare that these ANILCA changes do not affect and cannot be used to argue Indian country and sovereignty issues.

*This proposal was written by the Governor's Task Force on Subsistence. The members of the Task Force were: Governor Tony Knowles, Lieutenant Governor Fran Ulmer, Governor Jay Hammond, Senate President Mike Miller, House Speaker Gail Phillips, Alaska Permanent Fund Corporation Executive Director Byron Mallott, and Former Attorney General Charlie Cole.*

*The complete proposal from the Governor's Task Force on Subsistence is available on the Internet at [www.gov.state.ak.us/lsgov/subsist/subprop.htm](http://www.gov.state.ak.us/lsgov/subsist/subprop.htm) or by calling your local Legislative Information Office or the Governor's Office at (907) 269-7450.*

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CONSTITUTIONAL AMENDMENT

HOUSE JOINT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SPECIAL SESSION

BY

Introduced:

Referred:

A RESOLUTION

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of renewable natural resources by rural residents.

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

\*Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 19. Subsistence. The legislature (may), consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.

\*Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

**NOTE:** There is a linkage between this constitutional amendment and changes to ANILCA and state statutes. Amendments to ANILCA and amendments to Alaska's fish and game statutes will be passed prior to voting on this constitutional amendment, but will not become effective unless the constitutional amendment passes.

\*Sec. 3. The amendment proposed by this resolution shall be effective immediately upon certification that it has passed.

# ANILCA (TITLE VIII) AMENDMENTS

PUBLIC LAW 96-487—DEC. 2, 1980

## TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

### FINDINGS

16 USC 3111.

Sec. 301. The Congress finds and declares that—

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

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

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

43 USC 1601  
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

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

POLICY

16 USC 3112

Sec. 302. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

Ante. p. 2377

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

POLICY

16 USC 3112.

Sec. 302. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

ANILCA p. 2377

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

**This section shall be amended by adding the following definitions:**

**(3) "customary and traditional" means the noncommercial, long-term, and consistent taking of, use of, or reliance upon fish or wildlife in a specific area and the patterns of taking or use of that fish or wildlife that have been established over a reasonable period of time, taking into consideration the availability of the fish or wildlife.**

**(4) "customary trade" means the limited noncommercial exchange for cash of fish or wildlife or their parts in minimal quantities. The terms of this paragraph do not restrict money sales of furs and furbearers.**

**(5) a "rural Alaska resident" is a resident of a rural community or area. A "rural community or area" is a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses.**

PREFERENCE FOR SUBSISTENCE USES

Sec. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

16 USC 3114

Priority criteria.

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

**A new paragraph shall be added:**

**The priority granted by this section is for a reasonable opportunity to take fish and wildlife. "Reasonable opportunity" means an opportunity, consistent with customary and traditional use, to participate in a subsistence hunt or fishery with a reasonable expectation of success. Reasonable opportunity shall not guarantee the taking of fish or wildlife.**

**NOTE:** These definitions apply to Title VIII but are in Title I (16 U.S.C. § 3102). They are reprinted here for convenience.

## ANILCA LAND DEFINITIONS

### § 3102. Definitions

As used in this Act (except that in titles IX and XIV the following terms shall have the same meaning as they have in the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.], and the Alaska Statehood Act)—

- (1) The term "land" means lands, waters, and interests therein.
- (2) ~~The term "Federal land" means lands the title to which is in the United States after December 2, 1980.~~

**Proposed amendment to 16 USC 3102(2),**

**The term "federal land" means lands the title to which is in the United States after December 2, 1980. "Federal land" does not include lands the title to which is in the State after December 2, 1980, Native lands, other private lands, or Native Corporation and State land selections defined in subsection (3)(A) and (B) below.**

(3) The term "public lands" means land situated in Alaska which, after December 2, 1980, are Federal lands, except—

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1613(b)].

(4) The term "conservation system unit" means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.

(5) The term "Alaska Native Claims Settlement Act" means "An Act to provide for the settlement of certain land claims of Alaska Natives, and for other purposes", approved December 13, 1971 (85 Stat. 633), as amended [43 U.S.C.A. § 1601 et seq.].

(6) The term "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Native Group.

(7) The term "Regional Corporation" has the same meaning as such term has under section 3(z) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1602(z)].

(8) The term "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1602(j)].

(9) The term "Urban Corporation" means those Native entities which have incorporated pursuant to section 14(h) (3) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1613(h) (3)].

(10) The term "Native Group" has the same meaning as such term has under sections 3(d) and 14(h) (2) of the Alaska Native Claims Settlement Act [43 U.S.C.A. §§ 1602(d) and 1613(h) (2)].

(11) The term "Native land" means land owned by a Native Corporation or any Native Group and includes land which, as of December 2, 1980, had been selected under the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] by a Native Corporation or Native Group and had not been conveyed by the Secretary (except to the extent such selection is determined to be invalid or has been relinquished) and land referred to in section 19(b) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1618(b)].

(12) The term "Secretary" means the Secretary of the Interior, except that when such term is used with respect to any unit of the National Forest System, such term means the Secretary of Agriculture.

(13) The terms "wilderness" and "National Wilderness Preservation System" have the same meaning as when used in the Wilderness Act (78 Stat. 890) [16 U.S.C.A. § 1131 et seq.].

(14) The term "Alaska Statehood Act" means the Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (72 Stat. 339), as amended.

(15) The term "State" means the State of Alaska.

(16) The term "Alaska Native" or "Native" has the same meaning as the term "Native" has in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1602(b)).

(17) The term "fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(18) The term "take" or "taking" as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(Pub.L. 96-487, Title I, § 102, Dec. 2, 1980, 94 Stat. 2375.)

NOTE: The state management system is discussed at pages 35-40.

**SECTION 805 OF TITLE VIII WITH AMENDMENT  
TO MAKE THE SECTION CONSISTENT WITH  
THE STATE STATUTORY AMENDMENTS**

**LOCAL AND REGIONAL PARTICIPATION**

1  
2 SEC. 805. (a)(1) Except as otherwise provided in subsection (d) of this section, ~~one-year~~  
3 ~~after the date of enactment of this Act,~~ the Secretary in consultation with the State shall  
4 establish—

5 ~~(1)(A)~~ at least six Alaska subsistence resource regions which, ~~taken~~ together,  
6 include all public lands. The number and boundaries of the regions shall be sufficient  
7 to assure that regional differences in subsistence uses are adequately accommodated;

8 ~~(2)(B)~~ such local advisory committees within each region as he finds necessary  
9 at such time as he may determine, after notice and hearing, that the ~~existing~~ State  
10 fish and game advisory committees do not adequately perform the functions of the  
11 local committee system set forth in a paragraph (3)(D)(iv) of this subsection; and

12 ~~(3)(C)~~ a regional advisory council in each subsistence resource region.

13 ~~(2) The members of each regional advisory council shall be appointed by the~~  
14 ~~Governor of Alaska. Each council shall have ten members, four of whom shall be selected~~  
15 ~~from nominees who reside in the region submitted by tribal councils in the region, and six~~  
16 ~~of whom shall be selected from nominees submitted by local governments and local advisory~~  
17 ~~committees. Three of these six shall be subsistence users who reside in the region and three~~  
18 ~~shall be sport or commercial users. Sport and commercial representatives may be residents~~  
19 ~~of any subsistence resource region. The regulations shall provide for staggered terms of~~

1 council members. The maximum term shall be three years, with no limit on the number of  
2 terms served. A quorum shall be a majority of the members of a council. Each regional  
3 advisory council ~~shall be composed of residents of the region and~~ shall have the following  
4 authority:

5 (A) the review and evaluation of proposals for regulations, policies,  
6 management plans, and other matters relating to subsistence uses of fish and wildlife  
7 within the region;

8 (B) the provision of a forum for the expression of opinions and  
9 recommendations by persons interested in any matter related to the subsistence uses  
10 of fish and wildlife within the region;

11 (C) the encouragement of local and regional participation pursuant to the  
12 provisions of this title in the decision making process affecting the taking of fish and  
13 wildlife on the public lands within the region for subsistence uses;

14 (D) the preparation of an annual report to the Secretary which shall contain —

15 (i) an identification of current and anticipated subsistence uses of fish  
16 and wildlife populations within the region;

17 (ii) an evaluation of current and anticipated subsistence needs for fish  
18 and wildlife populations within the region;

19 (iii) a recommended strategy for the management of fish and wildlife  
20 populations within the region to accommodate such subsistence uses and  
21 needs; and

1 (iv) recommendations concerning policies, standards, guidelines, and  
2 regulations to implement the strategy. The State fish and game advisory  
3 committees or such local advisory committees as the Secretary may establish  
4 pursuant to paragraph (2) of this subsection may provide advice to, and assist,  
5 the regional advisory councils in carrying out the functions set forth in this  
6 paragraph.

7 (b) The Secretary shall assign adequate qualified staff to the regional advisory  
8 councils and make timely distribution of all available relevant technical and scientific support  
9 data to the regional advisory councils and the State fish and game advisory committees or  
10 such local advisory committees as the Secretary may establish pursuant to paragraph (2) of  
11 subsection (a).

12 (c) The Secretary, in performing his monitoring responsibility pursuant to section 806  
13 and in the exercise of his closure and other administrative authority over the public lands,  
14 shall consider the report and recommendations of the regional advisory councils concerning  
15 the taking of fish and wildlife on the public lands within their respective regions for  
16 subsistence uses. The Secretary may choose not to follow any recommendation which he  
17 determines is not supported by substantial evidence, violates recognized principles of fish  
18 and wildlife conservation, or would be detrimental to the satisfaction of, subsistence needs.  
19 If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and  
20 the reasons for his decision.

21 (d) The Secretary shall not implement subsections (a), (b), and (c) of this section if  
22 ~~within one year from the date of enactment of this Act, an amendment to Alaska's~~

1 Constitution has been adopted which allows for the preference specified in section 804, and  
2 the State enacts and implements laws of general applicability which are consistent with, and  
3 which provide for the definition, preference, and participation specified in section 803, 804,  
4 and 805, ~~such~~. Such laws, unless and until repealed, shall supersede such sections insofar  
5 as such sections govern State responsibility pursuant to this title for the taking of fish and  
6 wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory  
7 committees and regional advisory councils consistent with section 805 shall provide that the  
8 State rulemaking authority shall consider the advice and recommendations of the regional  
9 councils concerning the taking of fish and wildlife populations on public lands within their  
10 respective regions for subsistence uses. The regional councils may present  
11 recommendations, and the evidence upon which such recommendations are based, to the  
12 State rulemaking authority during the course of the administrative proceedings of such  
13 authority. The State rulemaking authority may choose not to follow any recommendation  
14 which it determines is not supported by substantial evidence presented during the course of  
15 its administrative proceedings, violates recognized principles of fish and wildlife conservation  
16 or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation  
17 is not adopted by the State rulemaking authority, such authority shall set forth the factual  
18 basis and the reasons for its decision.

19 (e)(1) The Secretary shall reimburse the State, from funds appropriated to the  
20 Department of the Interior for such purposes, for reasonable costs relating to the  
21 establishment and operation of the regional advisory councils established by the State in  
22 accordance with subsection (d) and the operation of the State fish and game advisory

1 committees so long as such committees are not superseded by the Secretary pursuant to  
2 paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such  
3 costs in any fiscal year. Such costs shall be verified in a statement which the Secretary  
4 determines to be adequate and accurate. Sums paid under this subsection shall be in  
5 addition to any grants, payments, or other sums to which the State is entitled from  
6 appropriations to the Department of the Interior.

7 (2) Total payments to the State under this subsection shall not exceed the sum of  
8 \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in  
9 every five years as to whether or not the maximum payments specified in this subsection are  
10 adequate to ensure the effectiveness of the program established by the State to provide the  
11 preference for subsistence uses of fish and wildlife set forth in section 804.

For reference, unamended section 805 is reproduced in its entirety.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3113

Sec. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council authority.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

Implementation.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

Reimbursement to States.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

Report to Congress.

(a)

FEDERAL MONITORING

Sec. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

Report to con-  
gressional com-  
mittees.  
16 USC 3116

Existing Section 806 shall become Section 806 (a) and a new subsection shall be added:

(b) At such time as the State of Alaska enacts into law and implements the [Subsistence Act of 1997 is the working title] and the people of Alaska approve the amendment to the Alaska Constitution which is incorporated into that Act by reference and which empowers the Alaska legislature to enact the Act, the State shall be deemed to have complied with section 805(d) and the State may immediately assume fish and game management as provided in section 805(d). Sections (a), (b), and (c) of section 805 shall not be implemented by the Secretary unless and until the Act or the constitutional amendment is repealed or a court of competent jurisdiction determines that the State has substantially failed to implement their provisions and that the State has failed or refused to cure that failure within a reasonable period following the court's determination.

JUDICIAL ENFORCEMENT

Civil actions  
16 USC 3117.

SEC. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Hearing.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

**Two new sentences shall be inserted in Section 807:**

**Agency actions may be declared invalid by the court only if they are arbitrary, capricious, or an abuse of discretion. When reviewing any action of a State agency, the District Court shall give the decision of the State agency the same deference it would give the same decision of a comparable federal agency.**

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

Subsistence  
hunting pro-  
gram.

Sec. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

Program and  
recommendation  
implementation.

COOPERATIVE AGREEMENTS

Sec. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title. 16 USC 3119

SUBSISTENCE AND LAND USE DECISIONS

Sec. 310. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Notice and hearings.

42 USC 4332.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

48 USC note prec. 21.

43 USC 1601 note.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

ACCESS

16 USC 3121.

Sec. 511. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

RESEARCH

16 USC 3122

Sec. 312. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submission to  
Speaker of  
House and Presi-  
dent of Senate.  
16 USC 3123

Sec. 313. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

- (1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;
- (2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;
- (3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;
- (4) the role of subsistence uses in the economy and culture of rural Alaska;
- (5) comments on the Secretary's report by the State, the local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;
- (6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and
- (7) such other recommendations the Secretary deems appropriate.

A notice of the report shall be published in the Federal Register and the report shall be made available to the public.

Publication in  
Federal Regis-  
ter.

or the State at any time the State has complied with section 805(d)

REGULATIONS

SEC. 314. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

**A new sentence shall be added:**

**During any time that the State has complied with Section 805(d), the Secretary shall not make or enforce regulations implementing sections 805(a), (b), or (c).**

**NOTE: This change is necessary to clarify the "Secretary shall not implement" language in Section 805(d).**

LIMITATIONS, SAVINGS CLAUSES

Sec. 815. Nothing in this title shall be construed as—

16 USC 1125

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-ij), the National Park Service Organic Act (39 Stat. 535; 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777K), or any amendments to any one or more of such Acts.

16 USC 1151  
NOTE

16 USC  
665-665d

Pub. p. 3100

16 USC 3126

Sec. 316. (a) All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence uses and sport fishing shall be authorized in such areas by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

Publication in  
Federal Register.

**A new paragraph shall be added:**

**(c) No provision of this Act (the Alaska National Interest Lands Conservation Act Amendments of 1997), exercise of authority pursuant to this Act, or change made by, or pursuant to, this Act shall be construed to validate or invalidate or in any way affect --**

**(1) any assertion that a Native organization (including a federally recognized tribe, traditional Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 1987), as amended) [section 461 et seq. of Title 25, Indians] has or does not have governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or persons within the boundaries of the State of Alaska, or**

**(2) any assertion that Indian country (as defined by 18 U.S.C. § 1151 [section 1151 of Title 18, Crimes and Criminal Procedure] or any other authority) exists or does not exist within the boundaries of the State of Alaska, or**

**(3) any assertion that the Alaska National Interest Lands Conservation Act is or is not Indian Law.**

1 **Draft Revised Fish & Game Statutes (AS 16.05)**  
2 **Subsistence Act of 1997**

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6  
7 **Sec. 16.05.258. Subsistence use and allocation of fish and [GAME] wildlife.**

8 (a) [EXCEPT IN NONSUBSISTENCE AREAS.] In areas and communities classified as rural,

9 the Board of Fisheries and the Board of Game shall identify the fish stocks and [GAME] wildlife

10 populations, or portions of stocks or populations, that are customarily and traditionally taken or

11 used for subsistence. The commissioner [SHALL] may<sup>1</sup> provide recommendations to the boards

12 concerning the stock and population identifications. [THE BOARDS SHALL MAKE

13 IDENTIFICATIONS REQUIRED UNDER THIS SUBSECTION AFTER RECEIPT OF THE

14 COMMISSIONER'S RECOMMENDATIONS.]

15 (b) The appropriate board shall determine whether a portion of a fish stock or

16 [GAME] wildlife population identified under (a) of this section can be harvested consistent with

17 sustained yield. If a portion of a fish stock or wildlife population can be harvested consistent with

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<sup>1</sup>This change was suggested by ADF&G in 1996 to reflect actual practice.

1 sustained yield, the board shall determine the amount of the harvestable portion that is reasonably  
2 necessary for subsistence uses and

3 (1) if the harvestable portion of the fish stock or wildlife population is sufficient  
4 to provide for all consumptive uses, the appropriate board

5 (A) shall adopt regulations that provide a reasonable opportunity for subsistence  
6 uses of those fish stocks or wildlife populations;

7 (B) shall adopt regulations that provide for other uses of those fish stocks or  
8 wildlife populations, subject to preferences among beneficial uses; and

9 (C) may adopt regulations to differentiate among uses;

10 (2) if the harvestable portion of the fish stock or wildlife population is sufficient  
11 to provide for subsistence uses and some, but not all, other consumptive uses, the appropriate  
12 board

13 (A) shall adopt regulations that provide a reasonable opportunity for subsistence  
14 uses of those fish stocks or wildlife populations;

1 (B) may adopt regulations that provide for other consumptive uses of those fish  
2 stocks or wildlife populations; and

3 (C) shall adopt regulations to differentiate among consumptive uses that provide  
4 for a [PREFERENCE] priority for [THE] subsistence uses, if regulations are adopted under (B)  
5 of this paragraph;

6 (3) if the harvestable portion of the fish stock or wildlife population is sufficient  
7 to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

8 (A) determine the portion of the fish stocks or wildlife populations that can be  
9 harvested consistent with sustained yield; and

10 (B) adopt regulations that eliminate other consumptive uses in order to provide a  
11 reasonable opportunity for subsistence uses; and

12 (4) if the harvestable portion of the fish stock or wildlife population is not sufficient  
13 to provide a reasonable opportunity for human consumptive subsistence uses, the appropriate  
14 board shall

1 (A) adopt regulations eliminating consumptive uses[,] other than human  
2 consumptive subsistence uses;

3 (B) distinguish among subsistence users, through limitations based on

4 (I) the customary and direct dependence of the fish stock or [GAME] wildlife  
5 population by the subsistence user for human consumption as a mainstay of livelihood;

6 (ii) the proximity of the domicile of the subsistence user to the fish stock or wildlife  
7 population; and

8 (iii) the ability of the subsistence user to obtain food if subsistence use is restricted  
9 or eliminated.

10 [(c) THE BOARDS MAY NOT PERMIT SUBSISTENCE HUNTING OR  
11 FISHING IN A NONSUBSISTENCE AREA. THE BOARDS, ACTING JOINTLY, SHALL  
12 IDENTIFY BY REGULATION THE BOUNDARIES OF NONSUBSISTENCE AREAS. A  
13 NONSUBSISTENCE AREA IS AN AREA OR COMMUNITY WHERE DEPENDENCE UPON  
14 SUBSISTENCE IS NOT A PRINCIPAL CHARACTERISTIC OF THE ECONOMY,  
15 CULTURE, AND WAY OF LIFE OF THE AREA OR COMMUNITY. IN DETERMINING

1 WHETHER DEPENDENCE UPON SUBSISTENCE IS A PRINCIPAL CHARACTERISTIC OF  
2 THE ECONOMY, CULTURE, AND WAY OF LIFE OF AN AREA OR COMMUNITY  
3 UNDER THIS SUBSECTION, THE BOARDS SHALL JOINTLY CONSIDER THE RELATIVE  
4 IMPORTANCE OF SUBSISTENCE IN THE CONTEXT OF THE TOTALITY OF THE  
5 FOLLOWING SOCIO-ECONOMIC CHARACTERISTICS OF THE AREA OR COMMUNITY:]

6 (c) On the effective date of this Act, all communities and areas outside the  
7 nonsubsistence areas established by regulations adopted by the Board of Fisheries and Board  
8 of Game and effective on May 15, 1993, shall be classified as rural for purposes of this Act.  
9 The Board of Fisheries and the Board of Game, acting jointly, shall determine by regulation  
10 whether additional communities or areas should be classified as rural and whether  
11 communities or areas classified as rural should no longer be classified as rural.

12 (d) The boards may permit subsistence hunting or fishing only in areas or  
13 communities classified as rural. Fish stocks and [GAME] wildlife populations, or portions of  
14 fish stocks and [GAME] wildlife populations not identified under (a) of this section may be taken  
15 only under nonsubsistence regulations.

1 (e) Takings and uses of fish and [GAME] wildlife authorized under this section are  
2 subject to regulations regarding open and closed areas, seasons, methods and means, marking and  
3 identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations.  
4 Takings and uses of resources authorized under this section are subject to AS 16.05.831 and  
5 AS 16.30.<sup>2</sup>

6 (f) For purposes of this section, "reasonable opportunity" means an opportunity,  
7 [AS DETERMINED BY THE APPROPRIATE BOARD, THAT ALLOWS A SUBSISTENCE  
8 USER] consistent with customary and traditional uses, to participate in a subsistence hunt or  
9 fishery [THAT PROVIDES A NORMALLY DILIGENT PARTICIPANT] with a reasonable  
10 expectation of success. [OF TAKING OF FISH OR GAME] Reasonable opportunity shall not  
11 guarantee the taking of fish or wildlife.

12 (g) No provision of this section requires the Board of Fisheries to close  
13 non-retention fishing if the board has made a finding that the mortality caused by

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<sup>2</sup>These two statutes prohibit waste of salmon and wanton waste of game, respectively.

1 non-retention fishing does not jeopardize subsistence uses or the conservation of healthy  
2 stocks.

3           **Sec. 16.05.259. No subsistence defense.** In a prosecution for the taking of fish  
4 or [GAME] wildlife in violation of a statute or regulation, it is not a defense that the taking was  
5 done for subsistence uses.

6           **Sec. 16.05.260. Advisory committees.** (a) The Board of Fisheries and the Board  
7 of Game may adopt regulations they consider advisable in accordance with AS 44.62  
8 (Administrative Procedure Act) establishing, at places in the state designated by the individual  
9 boards, advisory committees to be composed of persons who collectively represent user groups  
10 in the area and who are well informed on the fish or [GAME] wildlife resource of the locality.

11 The boards shall set the number and terms of each of the members of the advisory committees.  
12 shall delegate one member of each committee as chairman, and shall give the chairman authority  
13 to hold public hearings on fish or [GAME] wildlife matters.  
14

1           **(b) Recommendations from the advisory committees on uses other than**  
2           **subsistence** shall be forwarded to the appropriate board for their consideration but if the Board  
3           of Fisheries or the Board of Game chooses not to follow the recommendations of the local  
4           advisory committee the appropriate board shall inform the appropriate advisory committee of this  
5           action and state the reasons for not following the recommendations.

6           **(c) Recommendations from the advisory committees on subsistence uses shall**  
7           **be sent to regional subsistence councils. If the regional subsistence council does not adopt**  
8           **the recommendation of the advisory committee, the council shall inform the advisory**  
9           **committee, state the reasons, and forward the advisory committee recommendation to the**  
10          **board.**

11           **Sec. 16.05.261. Alaskan Regional Subsistence Councils. (a) The Board of**  
12           **Fisheries and the Board of Game shall adopt regulations establishing at least six subsistence**  
13           **resource regions which, taken together, cover the entire state. The number and boundaries**  
14           **of the regions shall be sufficient to assure that regional differences in subsistence uses are**  
15           **adequately accommodated.**

1           **(b) Each subsistence resource region shall be represented by a regional**  
2           **subsistence council with members appointed by the Governor. Each regional subsistence**  
3           **council shall have ten members, four of whom shall be selected from nominees who reside**  
4           **in the region submitted by tribal councils in the region, and six of whom shall be selected**  
5           **from nominees submitted by local governments and local advisory committees. Three of**  
6           **these six shall be subsistence users who reside in the region and three shall be sport or**  
7           **commercial users. Sport and commercial representatives may be residents of any subsistence**  
8           **resource region. The regulations shall provide for staggered terms of council members. The**  
9           **maximum term shall be three years, with no limit on the number of terms served. A**  
10          **quorum shall be a majority of the members of a council.**

11           **(c) Regional subsistence councils shall strive for consensus, but**  
12          **recommendations shall be decided by majority vote.**

13           **(d) Each regional subsistence council shall have the authority to**

14          **(1) elect officers and adopt rules of procedure;**

1                   (2) hold public meetings on fish and wildlife matters and solicit proposals from  
2                   the public on subsistence use:

3                   (3) in consultation with the local fish and game advisory committees in its  
4                   region and with the department, review, evaluate, and make a recommendation to a board  
5                   on any existing or proposed regulation, policy, or management plan, or any other matter  
6                   directly relating to the subsistence use of fish and wildlife within its region:

7                   (4) comment on sport, personal use, and commercial proposals:

8                   (5) make recommendations concerning permits provided in AS 16.05.330(d)  
9                   and .405(g):

10                  (6) submit to the boards, the department, and the Secretaries of Interior and  
11                  Agriculture of the United States, by November 15 of each year, an annual report,  
12                  containing:

13                  (A) an identification of current and anticipated subsistence uses of fish and  
14                  wildlife populations within the region, and other fish and wildlife uses that the council  
15                  identifies:

1                   (B) an evaluation of current and anticipated subsistence needs for use of fish  
2                   and wildlife populations within the region, and of other fish and wildlife needs that the  
3                   council identifies;

4                   (C) a recommended strategy for the management of fish and wildlife  
5                   populations within the region to accommodate the identified fish and wildlife uses and needs;  
6                   and

7                   (D) recommendations concerning policies, standards, guidelines, and  
8                   regulations to implement the strategy; and

9                   (7) perform other duties specified by a board.

10                  (e) Each council shall provide a forum for, and assist its local fish and game  
11                  advisory committees in, obtaining the opinions and proposals of people interested in fish and  
12                  wildlife matters so as to achieve the greatest possible local participation in the  
13                  decision-making process.

1                   (f) Proposals relating primarily to subsistence issues initiated by the public or  
2                   by local fish and game advisory committees must be reviewed by the appropriate regional  
3                   subsistence council before the board takes action on the proposal.

4                   (g) Regional subsistence councils may meet to develop recommendations on  
5                   inter-regional proposals and issues.

6                   (h) The appropriate board shall consider the reports and recommendations of  
7                   the regional subsistence councils and shall give deference to their subsistence  
8                   recommendations. If the council recommendation is unanimous, there is a presumption in  
9                   favor of adoption by the board. However, the board may decide not to adopt any  
10                  recommendation which it determines violates the sustained yield principle, is not supported  
11                  by substantial evidence, is detrimental to subsistence uses, involves an unresolved statewide  
12                  or inter-regional subsistence management issue, or is contrary to an overriding statewide fish  
13                  or wildlife management interest. If a recommendation is not adopted by the board, the  
14                  board shall provide a written statement of the factual basis and reasons for its decision and

1 shall remand the recommendation to the regional subsistence council for further  
2 consideration.

3 (l) A regional subsistence council shall give deference to proposals from local  
4 governments, tribal councils, and local advisory committees, which identify local subsistence  
5 needs and uses, and the methods, means, seasons, and other issues related to local  
6 subsistence management.

7 (i) Regional subsistence councils may adopt a mediation process.

8 (k) When implementing the provisions of this section, the boards, the regional  
9 subsistence councils, and the department shall seek data from, consult with, and make use  
10 of the special knowledge of subsistence users. The department may, when appropriate to  
11 implement the provisions of this section, contract for services with subsistence users and local  
12 groups in order to utilize their special knowledge of resources in the region.

13 (k) The regional subsistence councils shall be adequately funded.

1                   **Sec. 16.05.330. Licenses, tags, and subsistence permits.** (a) Except as otherwise  
2 permitted in this chapter, without having the appropriate license or tag in actual possession a  
3 person may not engage in

4                   (1) sport fishing, including the taking of razor clams;

5                   (2) hunting, trapping, or fur dealing;

6                   (3) the farming of fish, fur, or [GAME] wildlife; or

7                   (4) taxidermy.

8                   (b) When obtaining the appropriate license or tag in (a) of this section, an applicant  
9 who asserts residency in the state shall provide the license vendor with the proof of residence that  
10 the department requires by regulation.

11                   (c) The Board of Fisheries and the Board of Game may adopt regulations providing  
12 for the issuance and expiration of subsistence permits for areas, villages, communities, groups,  
13 or individuals as needed for authorizing, regulating, and monitoring the subsistence harvest of fish  
14 and [GAME] wildlife. [THE BOARDS SHALL ADOPT THESE REGULATIONS WHEN THE  
15 SUBSISTENCE PREFERENCE REQUIRES A REDUCTION IN THE HARVEST OF A FISH

1 STOCK OR GAME POPULATION BY NONSUBSISTENCE USERS.]<sup>1</sup> To be eligible to take  
2 fish or wildlife in a rural community or area, a person must be a resident domiciled in that  
3 community or area.

4 (d) The Board of Fisheries and the Board of Game shall adopt regulations  
5 allowing the commissioner to issue permits for the taking of fish and wildlife in order to  
6 teach and preserve historic or traditional uses and harvest practices. The permits under this  
7 paragraph shall not entitle successful applicants to the subsistence priority in AS 16.05.258.

8  
9 **Sec. 16.05.405. Taking fish and [GAME] wildlife by proxy.** (a) Subject to  
10 regulations adopted by the Board of Fisheries or the Board of Game to implement this section,  
11 including regulations relating to or restricting seasons, areas, methods and means, and species,  
12 a resident may take fish or [GAME] wildlife harvested primarily for food on behalf of another  
13 person under this section.

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<sup>1</sup>This sentence is deleted because it applies only in the context of the current "all Alaskans" system, which would be eliminated.

1 (b) Notwithstanding AS 16.05.420(c), a resident holding a valid resident hunting  
2 license may take [GAME] wildlife on behalf of a person who is blind, a person with physical  
3 disabilities, or a person who is 65 years of age or older if the resident possesses on the resident's  
4 person

5 (1) a document signed by the person on whose behalf the [GAME] wildlife is taken,  
6 stating that the resident possesses the person's hunting license or permanent identification card in  
7 order to take [GAME] wildlife on behalf of that person; and

8 (2) the person's

9 (A) resident hunting license issued under AS 16.05.403 or permanent identification  
10 card issued under AS 16.05.400(b); and

11 (B) harvest ticket, tag, stamp, or other document required by law as a condition of  
12 taking the [GAME] wildlife being hunted.

13 (c) Notwithstanding AS 16 05.420(c), a resident holding a valid noncommercial  
14 fishing license may take fish on behalf of a person who is blind, a person with physical

1 disabilities, or a person who is 65 years of age or older if the resident possesses on the resident's  
2 person

3 (1) a document signed by the person on whose behalf the fish is taken, stating that  
4 the resident possesses the person's sport fishing license, subsistence fishing permit, personal use  
5 fishing permit, or permanent identification card in order to take fish on behalf of that person; and

6 (2) the person's

7 (A) resident sport fishing license issued under AS 16.05.403 or permanent  
8 identification card issued under AS 16.05.400(b);

9 (B) resident subsistence fishing permit issued under AS 16.05.403; or

10 (C) resident personal use fishing permit issued under AS 16.05.403.

11 (d) A resident who takes fish or [GAME] wildlife on behalf of another person  
12 under this section may, subject to applicable regulations of the Board of Fisheries or the Board  
13 of Game, take the fish or [GAME] wildlife only under those conditions that would apply to the  
14 other person if the other person took the fish or [GAME] wildlife personally.

1 (e) A resident who takes, or attempts to take, fish or [GAME] wildlife on behalf  
2 of a person under this section may also simultaneously engage in fishing or hunting for the  
3 resident's use; however, the resident may not take or attempt to take fish or [GAME] wildlife by  
4 proxy for more than one person at a time. For the purposes of this subsection, a resident is  
5 engaged in taking, or attempting to take, fish or [GAME] wildlife by proxy while the resident has  
6 possession of

7 (1) another person's license, permit, or identification card and the other person's  
8 signed document under (b)(1) or (c)(1) of this section; or

9 (2) fish or [GAME] wildlife taken on behalf of another person.

10 (f) A resident who takes fish or [GAME] wildlife on behalf of another person under  
11 this section shall

12 (1) complete reports relating to the taking of the fish or [GAME] wildlife as  
13 required by the commissioner of fish and [GAME] wildlife under AS 16.05.370;

1 (2) deliver all parts of fish and [GAME] wildlife removed from the field to the  
2 person on whose behalf the fish or [GAME] wildlife was taken within a reasonable time after the  
3 fish or [GAME] wildlife is taken;

4 (3) retain the license or permit and the signed document required under (b)(1) or  
5 (c)(1) of this section of the person on whose behalf the fish or [GAME] wildlife is taken until the  
6 fish or [GAME] wildlife is delivered to that person.

7 (g) In addition to the proxy hunting and fishing opportunities authorized by  
8 AS 16.05.405(a)-(f), the Board of Fisheries and the Board of Game shall adopt regulations  
9 to permit a resident who is a member of the family of a resident of a community or area  
10 classified as rural or any person who is a resident of a rural community or area to  
11 participate in subsistence harvest activities as a proxy for a resident eligible for the  
12 subsistence priority under AS 16.05.258, regardless of the eligible resident's age or physical  
13 ability to hunt or fish. A proxy hunter or fisher who is not part of the eligible resident's  
14 family must be a resident of the area in which the eligible resident lives. For purposes of this  
15 paragraph, "family" has the same meaning as in AS 16.05.940(32). The amount of fish or

1 wildlife permitted to be taken for subsistence uses in an area or community shall not be  
2 increased because of proxy hunting or fishing. Any fish or wildlife taken by a proxy  
3 pursuant to this section shall belong to the person on whose behalf it was taken and the  
4 majority of the fish and wildlife taken by a proxy shall remain in the community or area in  
5 which it was taken. No person may give or receive cash remuneration in connection with  
6 any proxy harvest. A person who gives a proxy pursuant to this section may not participate  
7 in the hunt or fishery for which the proxy was given. The proxy hunting and fishing  
8 authorized by this section shall be further subject to the limitations and reporting  
9 requirements of AS 16.05.405(d), (e), and (f).

10  
11           Sec. 16.05.940. Definitions. In AS 16.05 - AS 16.40

12           ...

13           (2) "barter" means the exchange or trade of fish or [GAME] wildlife, or their

14 parts, taken for subsistence uses

15           (A) for other fish or [GAME] wildlife or their parts; or

1 (B) for other food or for nonedible items, other than money if the exchange is of a  
2 limited and noncommercial nature;

3 . . .

4 (7) "customary and traditional" means the noncommercial, long-term, and  
5 consistent taking of, use of, or reliance upon fish or [GAME] wildlife in a specific area and the  
6 [USE] patterns of taking or use of that fish or [GAME] wildlife that have been established over  
7 a reasonable period of time, taking into consideration the availability of the fish or [GAME]  
8 wildlife;

9 (8) "customary trade" means the limited noncommercial exchange for cash of fish  
10 or wildlife or their parts in minimal quantities, [FOR MINIMAL AMOUNTS OF CASH,] as  
11 restricted by the appropriate board, [OF FISH OR GAME RESOURCES;] The terms of this  
12 paragraph do not restrict money sales of furs and furbearers;

13 . . .

14 (11) "domicile" means the true and permanent home of a person from which the  
15 person has no present intention of moving and to which the person intends to return whenever the

1 person is away; [DOMICILE MAY BE PROVED BY PRESENTING EVIDENCE  
2 ACCEPTABLE TO THE BOARDS OF FISHERIES AND GAME;]

3 (12) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any  
4 stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic  
5 finfish, invertebrate, or amphibian;

6 . . .

7 (14) "fishery" means a specific administrative area in which a specific fishery  
8 resource is taken with a specific type of gear; however, the Board of Fisheries may designate a  
9 fishery to include more than one specific administrative area, type of gear, or fishery resource;  
10 in this paragraph

11 (A) "gear" means the specific apparatus used in the harvest of a fishery resource;

12 and

13 (B) "type of gear" means an identifiable classification of gear and may include

1 (I) classifications for which separate regulations are adopted by the Board of  
2 Fisheries or for which separate gear licenses were required by former AS 16.05.550 - 16.05.630;  
3 and

4 (ii) distinct subclassifications of gear such as "power" troll gear and "hand" troll  
5 gear or sport gear and guided sport gear;

6 ...

7 (16) "fish stock" means a species, subspecies, geographic grouping or other  
8 category of fish manageable as a unit;

9 ...

10 (18) ["GAME"] "Wildlife" means any species of bird, reptile, and mammal,  
11 including a feral domestic animal, found or introduced in the state, except domestic birds and  
12 mammals; and [GAME] wildlife may be classified by regulation as big game, small game, fur  
13 bearers or other categories considered essential for carrying out the intention and purposes of  
14 AS 16.05 - AS 16.40;

1                   (33) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner  
2                   disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner  
3                   capture or kill fish or [GAME] wildlife;

4                   .....

5                   Sec. \_\_\_\_. This Act takes effect on the effective date of [describe the  
6                   constitutional amendment authorizing a rural priority].

1 THE STATE] for subsistence uses with gill net, seine, fish wheel, long line, or other means  
2 defined by the Board of Fisheries;

3 (31) "subsistence hunting" means the taking of, hunting for, or possession of  
4 wildlife [GAME BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for  
5 subsistence uses by means defined by the Board of Game;

6 (32) "subsistence uses" means the noncommercial, customary and traditional uses  
7 of wild, renewable resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE  
8 STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or  
9 transportation, for the making and selling of handicraft articles out of nonedible by-products of  
10 fish and wildlife resources taken for personal or family consumption, and for the customary trade,  
11 barter, or sharing for personal or family consumption; in this paragraph, "family" means persons  
12 related by blood, marriage, or adoption, and a person living in the household on a permanent  
13 basis;

20 • Sec. 3. AS 16.05.940(25) is amended to read:

21 (25) "resident" means

22 (A) a person who for the [PRECEDING] 12 consecutive months  
23 immediately preceding the time when the assertion of residence is made  
24 has maintained the person's domicile (A PERMANENT PLACE OF ABODE)  
25 in the state and who is neither claiming residency in another state, territory,  
26 or country nor obtaining benefits under a claim of residency in another  
27 state, territory, or country;

28 (B) [HAS CONTINUALLY MAINTAINED A VOTING  
29 RESIDENCE IN THE STATE; AND IN THE CASE OF] a partnership,  
30 association, joint stock company, trust, or corporation [, "RESIDENT" MEANS  
31 ONE] that has its main office or headquarters in the state; a natural person  
1 who does not otherwise qualify as a resident under this paragraph may not  
2 qualify as a resident by virtue of an interest in a partnership, association,  
3 joint stock company, trust, or corporation;

4 (C) [HOWEVER,] a member of the military service, or United  
5 States Coast Guard, who has been stationed in the state for the  
6 [PRECEDING] 12 consecutive months immediately preceding the time when  
7 the assertion of residence is made;

8 (D) a person who is (A RESIDENT FOR THE PURPOSES OF  
9 THIS PARAGRAPH, AND] the dependent of a resident member of the military  
10 service, or the United States Coast Guard, and who has lived [BEEN  
11 LIVING] in the state for the 12 consecutive months immediately preceding  
12 the time when the assertion of residence is made; or

13 (E) [PRECEDING YEAR IS A RESIDENT FOR THE  
14 PURPOSES OF THIS PARAGRAPH; AND A PERSON WHO IS] an alien  
15 [BUT] who for the 12 consecutive months immediately preceding the time  
16 when the assertion of residence is made (ONE YEAR) has maintained the  
17 person's domicile (A PERMANENT PLACE OF ABODE) in the state and  
18 who is neither claiming residency in another state, territory, or country  
19 nor obtaining benefits under a claim of residency in another state,  
20 territory, or country (IS A RESIDENT FOR THE PURPOSES OF THIS  
21 PARAGRAPH);

22 • Sec. 4. This Act takes effect January 1, 1998.

1

2 **NOTE:** The sunset provision in Section 12, Chapter 1, SSSLA 1992 must be repealed  
3 as part of the package.

4  
5 **NOTE:** Should boards be given authority to adopt implementing regulations before  
6 the effective date of the statute?  
7

8 **NOTE:** Appropriate legislative findings should be added to the Act.  
9

10 **NOTE:** There is some housekeeping to do after basic structure is in place (*e.g.*,  
11 consistent use of community or area, capitalization, use of domicile and  
12 resident).  
13

14 **NOTE:** The term "wildlife" has been used in place of "game" in the draft statutes.  
15 Other statutes governing fish and game/wildlife use the term "game."  
16 Conforming amendments will be necessary in the rest of AS 16.05 and the  
17 regulations to standardize the use of these terms.

## Cross Comparison Between Constitutional Amendments Proposed by Task Force and Proposal in HJR 46

SUBSISTENCE TASK FORCE PROPOSAL	HJR 46 (GOVERNOR'S BILL)
<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19. Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>NOTE:</b> There is a linkage between this constitutional amendment and changes to ANILCA and state statutes. Amendments to ANILCA and amendments to Alaska's fish and game statutes will be passed prior to voting on this constitutional amendment, but will not become effective unless the constitutional amendment passes.</p> <p><b>Sec. 3.</b> The amendment proposed by this resolution shall be effective immediately upon certification that it has passed.</p>	<p><b>Section 1.</b> Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:</p> <p><b>Section 19. Subsistence.</b> The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.</p> <p><b>Sec. 2.</b> The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII sec. 1, Constitution of the State of Alaska, and the election laws of this state.</p> <p><b>Sec. 3.</b> If adopted by the voters at the next general election, the amendment proposed by this resolution takes effect immediately upon certification of the election returns by the lieutenant governor.</p>

A Cross Comparison of Existing Statutory Provisions in AS 16 with the Subsistence Task Force Proposal and HB 320 Submitted by the Governor

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 320 (GOVERNOR'S BILL, 1/14/98)
<p><b>Sec. 16.05.258 (a): Subsistence use and allocation of fish and wildlife.</b>                      Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence.</p>	<p><b>(a) Amended:</b> In areas and communities classified as rural, the Board of Fisheries and the Board of Game shall identify the fish stocks and wildlife populations....</p>	<p>The same as Task Force Proposal.</p>
<p><b>Sec. 16.05.258 (b)(4): Subsistence use and allocation of fish and wildlife.</b>                      If the harvestable portion of the fish stock or wildlife population is not sufficient to provide a reasonable opportunity for subsistence uses....</p>	<p>If the harvestable portion of the fish stock or wildlife population is not sufficient to provide a reasonable opportunity for "human consumptive" subsistence uses....</p>	<p>The same as Task Force Proposal.</p>
<p><b>Sec. 16.05.258 (c): Subsistence use and allocation of fish and wildlife.</b>                      The Boards may not permit subsistence hunting or fishing in a nonsubsistence area. The Boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining....</p>	<p><b>Replace with new Sec. (c):</b> On the effective date of this Act, all communities and areas outside the nonsubsistence areas established by regulations adopted by the Board of Fisheries and Board of Game and effective on May 15, 1993 shall be classified as rural for purposes of this Act. The Board of Fisheries and Board of Game, acting jointly, shall determine by regulation whether additional communities or areas should be classified as rural and whether communities or areas classified as rural should no longer be classified as rural.</p>	<p><b>Added as Section 28.</b> All communities and areas outside the nonsubsistence areas established by regulations adopted by the Board of Fisheries and the Board of Game and effective on May 15, 1993, are classified as rural for the purpose of this Act. The classifications made under this section are subject to the provisions of AS 16.05.258 (c) as repealed and reenacted by Sec. 3 of this Act.</p>
<p><b>Sec. 16.05.258 (d): Subsistence use and allocation of fish and wildlife.</b>                      Fish stocks and game populations, or portions of fish stocks and game populations not identified under (a) of this section may be taken only under nonsubsistence regulations.</p>	<p><b>Amended:</b> The boards may permit subsistence hunting or fishing only in areas or communities classified as rural. Fish stocks and wildlife populations....</p>	<p><b>Amended:</b> The boards may permit subsistence hunting or fishing under the priority in this section in areas or communities classified as rural. Fish stocks and wildlife populations....</p>
<p><b>Sec. 16.05.258 (f): Reasonable Opportunity.</b>                      Reasonable opportunity means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery with a reasonable expectation of success of taking fish or game;</p>	<p>Means an opportunity, consistent with customary and traditional uses, to participate in a subsistence hunt or fishery with a reasonable expectation of success. Reasonable opportunity shall not guarantee the taking of fish or wildlife.</p>	<p>Essentially the same as Subsistence Task Force Proposal.</p>
<p><b>Sec. 16.05.258 (g): Subsistence use and allocation of fish and wildlife.</b>                      Section (g) does not exist.</p>	<p><b>Add new Sec. (g):</b> No provision of this section requires the Board of Fisheries to close non-retention fishing if the board has made a finding that the mortality caused by non-retention fishing does not jeopardize subsistence uses or the conservation of healthy stocks.</p>	<p><b>Add new Sec. (g):</b> Essentially the same as Task Force Proposal.</p>

<u>STATE STATUTORY PROVISIONS AS 16:</u>	<b>SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)</b>	<b>HB NO. 320 (GOVERNOR'S BILL, 1/14/98)</b>
<p><b>Sec. 16.05.260 (c). Advisory Committees.</b> Section (c) does not exist.</p>	<p><b>Add new Sec. (c):</b> Recommendations from the advisory committees on subsistence uses shall be sent to regional subsistence councils. If the regional subsistence council does not adopt the recommendation of the advisory committee, the council shall inform the advisory committee, state the reasons, and forward the advisory committee recommendation to the board.</p>	<p><b>Add new Sec. (c):</b> Essentially the same as Task Force proposal.</p>
<p><b>Sec. 16.05.262. Regional Subsistence Councils.</b> Section 16.05.262 does not exist.</p>	<p><b>Add new Sec.:</b> Creation of Regional Subsistence Councils.</p> <ul style="list-style-type: none"> <li>(a) Joint Boards of Fisheries and Game meeting jointly adopt regulations including the establishment of six subsistence resource regions.</li> <li>(b) Each regional subsistence council must have 10 members, four of whom shall be selected from nominees who reside in that region of the state submitted by tribal councils in the region and six of whom shall be selected from nominees submitted by local governments and local advisory committees. Three of these six must be subsistence users who reside in the region and three must be sport or commercial users. Sport or commercial representatives may be residents of any subsistence resource region.</li> <li>(c) Councils shall strive for consensus but may decide by majority vote.</li> <li>(d) Each councils has the authority to make recommendations to Boards on regulations, policies, or any matter related to subsistence uses; comment on nonsubsistence proposals; make recommendations on permits; submit annual reports to state and federal agencies concerning subsistence identification, needs, strategies, policies, standards, guidelines and regulations.</li> <li>(e) Assist local fish and game advisory committees in achieving local participation.</li> <li>(f) Requires regulatory proposals relating to subsistence be reviewed by appropriate regional council before the board takes action.</li> <li>(g) Provides for councils to meet on inter-regional proposals.</li> <li>(h) The appropriate board shall consider the reports and recommendations of the regional subsistence councils and shall</li> </ul>	<p><b>Add new Sec.:</b> Essentially the same as Task Force proposal.</p>

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 320 (GOVERNOR'S BILL, 1/14/98)
	<p>give deference to their subsistence recommendations. If the council recommendation is unanimous, there is a presumption in favor of adoption. The board may decide not to adopt a recommendation that violates the sustained yield principle, is not supported by substantial evidence, is detrimental to subsistence uses, involves an unresolved statewide or inter-regional subsistence management issue, or is contrary to an overriding statewide fish or wildlife management interest. A written statement shall be provided for all rejected recommendations.</p> <ul style="list-style-type: none"><li>(i) Regional councils shall give deference to proposals from local governments, tribal councils and local advisory committees related to subsistence.</li><li>(j) Authorizes use of mediation process.</li><li>(k) Requires use of knowledge of subsistence users. Authorizes the department to contract with subsistence users and local groups for utilization of local special knowledge.</li><li>(l) Requires adequate funding for councils.</li></ul>	

<u>STATE STATUTORY PROVISIONS AS 16:</u>	SUBSISTENCE TASK FORCE PROPOSAL (SEPTEMBER 1997)	HB NO. 32 <sup>r</sup> (GOVERNOR'S BILL, 1/14/98)
<p><b>Sec. 16.05.330 (e) &amp; (e): Licenses, tags and Subsistence Permits</b>  <b>Section (e):</b> The Board of Fisheries and the Board of Game may adopt regulations providing for the issuance and expiration of subsistence permits for areas, villages, communities, groups, or individuals as needed for authorizing, regulating, and monitoring the subsistence harvest of fish and game.            Section (e) does not exist.</p>	<p><b>Adds to existing Sec. (e):</b> To be eligible to take fish or wildlife in a rural community or area using the subsistence priority in AS 16.05.258, a person must be a resident domiciled in that community or area.  <b>Add new Sec. (e):</b> Provides authority for Commissioner to issue permits for taking fish and wildlife in order to teach and preserve historic or traditional uses and harvest practices. Does not have a priority.</p>	<p><b>Add to existing Sec. (e):</b> Same as Task Force Proposal.  <b>Add new Sec. (e):</b> Essentially the same as Task Force proposal.</p>
<p><b>Sec. 16.05.405: Taking fish and wildlife by proxy.</b>            (a) - (f): Authorizes a resident to take fish and wildlife harvested primarily for food on behalf of another person who is blind, has physical disabilities or is 65 years or older.            Section (g) does not exist.</p>	<p><b>Add new Sec. (g):</b> Authorizes a permit for a resident who is member of the family of a resident of a rural community or area or any person who is a resident of a rural community or area to participate in subsistence harvest activities as a proxy, regardless of the eligible resident's age or physical ability to hunt or fish. Fish or wildlife taken by proxy under this section shall belong to the person on whose behalf it was taken and the majority of the fish and wildlife taken by proxy shall remain in the community or area. No person may give or receive cash remuneration in connection with any proxy harvest.</p>	<p><b>Add new Sec. (g):</b> Same as Task Force Proposal.</p>