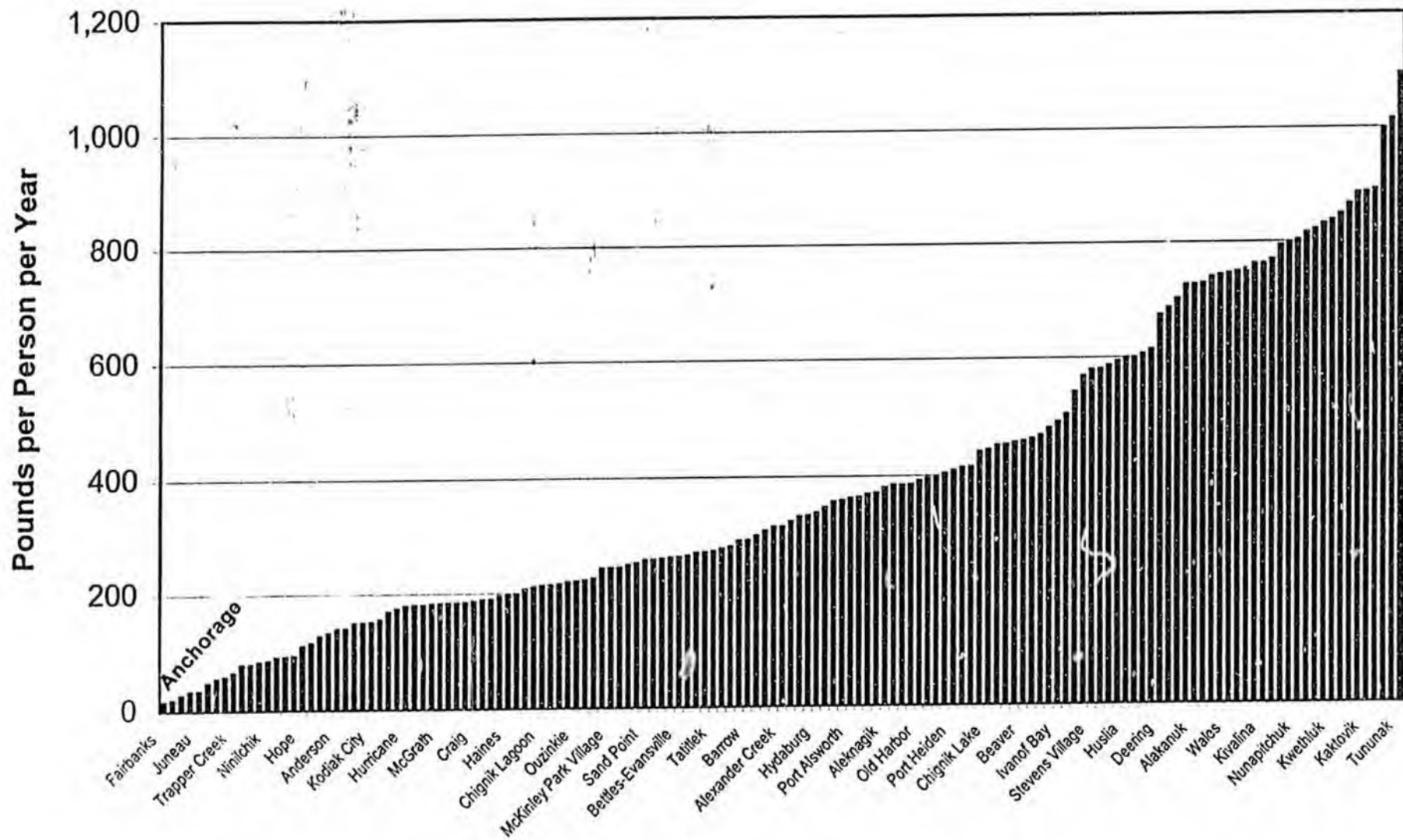


ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9408 HOUSE RESOURCES

44

Annual Wild Food Harvests by Alaska Community



“The conference committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.”

**Conference Committee Report on
ANCSA (1971)**

“The legislature . . . determines that it is in the public interest to clearly establish subsistence use as a priority of Alaska’s fish and game resources and to recognize the needs, customs and traditions of Alaskan residents.”

1978 Session Laws

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT (1980)

Policy

Sec. 802(1). It is hereby declared to be the policy of Congress that-- 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 . . . the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.

Definitions

Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural residents of wild renewable resources for direct personal or family consumption. . . .

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. . . .

Local and Regional Participation

Sec. 805(d). The Secretary shall not implement . . . this section if . . . the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in [the Act].

“We therefore conclude that the requirement contained in the 1986 subsistence statute, that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates sections 3, 15 and 17 of article VIII of the Alaska Constitution.

“The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing. We do not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons. We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional.

McDowell v. State of Alaska (1989)

“Just as eligibility to participate in all subsistence hunting and fishing cannot be made dependent on whether one lives in an urban or rural area, eligibility to participate in Tier II subsistence hunting and fishing cannot be based on how close one lives to a given fish or game population.”

“Inconvenience is in no sense the equivalent of a bar to eligibility for participation in subsistence hunting and fishing and does not suffice to trigger an analysis under the equal access clauses.”

State v. Kenatize Indian Tribe (1995)

“By virtue of its reserved water rights, the United States has interests in some navigable waters. Consequently, public lands subject to subsistence management under ANILCA include certain navigable waters. . . .

“We also hold that the federal agencies that administer the subsistence priority are responsible for identifying those waters.”

Katie John v. U.S. (9th Cir. 1995)

“Because the Submerged Lands Act of 1953 specifically gives state authority over fish and animals in navigable waters and precludes the navigational servitude or reserved water rights from being used to erode that authority,” because the navigational servitude and reserved waters rights are not interests to which title can be held, because of the clear statement doctrine, because the navigational servitude and reserved water rights are limited interests which do not give the federal government power over navigable or reserved waters unrelated to those interests, and for the other reasons discussed above, we hold that navigable waters are generally not “public lands” under ANILCA. Therefore, ANILCA does not curtail the State’s authority to regulate hunting and fishing in navigable waters, and the State has criminal jurisdiction over Totemoff.”

Totemoff v. State (1995)

Principles of the Bipartisan 1997 Task Force on Subsistence

- 1. To establish effective state authority, and eliminate federal authority, over fish and game management on all lands and waters of Alaska.**
- 2. To recognize the paramount importance of the subsistence way of life to rural Alaskans and to those Alaskans who demonstrate a customary and traditional use or a direct dependence on fish and game resources.**
- 3. To maintain neutrality on the issue of tribal sovereignty over lands within Alaska.**
- 4. To make only those changes to the Alaska Constitution, ANILCA and state law that are absolutely necessary to accomplish those ends.**

THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

U.S. Const., Art. VI, cl. 2

The Property Clause of the U.S. Constitution

**Congress shall have power to dispose of
and make all needful rules and
regulations respecting the territory or
other property belonging to the United
States.**

U.S. Const., Art. IV, sec 3, cl.2.

"And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that the power over the public land thus entrusted to Congress is without limitations."

**Kleppe v. New Mexico 426 U.S. 529, 539
(1976)**

" In our view, the 'complete power' that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there."

Kleppe v. New Mexico 426 U.S. 529 (1976)

“With this guidance, we must decide the question left open in *Kleppe* -- the scope of Congress’ property clause power as applied to activity occurring off federal land. Without defining the limits of the power, the Court in *Kleppe*, relying on its decision in *Camfield v. United States* . . . acknowledged that ‘it is clear the regulations under the Property Clause may have some effect on private lands not otherwise under federal control.’ . . .

“Under this authority to protect public land, Congress’ power must extend to regulation of conduct on or off the public land that would threaten the designated purpose of federal lands. Congress clearly has the power to dedicate federal land for particular purposes. As a necessary incident of that power, Congress must have the ability to insure

that these lands be protected against interference with their intended purposes.”

**State of Minnesota by Alexander v. Block.
660 F.2d 1240 (1981)**

**Joint Department of the Interior and the
Department of Agriculture Budget
Proposal for the Federal Subsistence
Fishing Program in Alaska:**

***"Implementation of the Court's decision
will result in the unprecedented
expansion of Federal management of
Alaska's fisheries in many areas of the
State."***

***"For several areas, Federal managers may
be called on to intervene in the
management of commercial harvests to
assure upstream delivery of salmon to
subsistence users."***

LOCAL AND REGIONAL PARTICIPATION

SEC. 805(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....

JUDICIAL ENFORCEMENT

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 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.

JUDICIAL ENFORCEMENT

SEC. 807 (b) State agency actions may be declared invalid by the court only if they are arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with law. When reviewing any action within the specialized knowledge of a State agency, the court shall give the decision of the State agency the same deference it would give the same decision of a comparable Federal agency.

REGULATIONS

SEC. 814 The secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

**SELECTED 1997 AMENDMENTS
TO ANILCA**

Public Law 105-83

TITLE VIII-SUBSISTENCE MANAGEMENT AND USE

SEC. 801.

FINDINGS

(b) The Congress finds and declares further that-

(1) subsequent to the enactment of this Act in 1980, the subsistence law of the State of Alaska (AS 16.05) accomplished the goals of Congress and requirements of this Act in providing subsistence use opportunities for rural residents of Alaska, both Native and non-Native;

*(2) the Alaska subsistence law was challenged in Alaska courts, and the rural preference requirement in the law was found in 1989 by the Alaska Supreme Court in *McDowell v. State of Alaska* (785 P.2d 1, 1989) to violate the Alaska Constitution;*

(3) since that time, repeated attempts to restore the validity of the State law through an amendment to the Alaska Constitution have failed, and the people of Alaska have not been given the opportunity to vote on such an amendment;

(4) in accordance with Title VIII of this Act, the Secretary of the Interior is required to manage fish and wildlife for subsistence uses on all public lands in Alaska because of the failure of State law to provide a rural preference;

*(5) the Ninth Circuit Court of Appeals determined in 1995 in *State of Alaska v. Babbitt* (73 F.3d 698) that the subsistence priority required on public lands under section 804 of this Act applies to navigable waters in which the United States has reserved water rights as identified by the Secretary of the Interior;*

(6) management of fish and wildlife resources by State governments has proven successful in all 50 states, including Alaska, and the State of Alaska should have the opportunity to continue to manage such resources on all lands, including public lands, in Alaska in accordance with this Act, as amended; and

(7) it is necessary to amend portions of this Act to restore the original intent of Congress to protect and provide for the continued opportunity for subsistence uses on public lands for Native and non-Native rural residents through the management of the State of Alaska.

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

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(7) it is necessary to amend portions of this Act to restore the original intent of Congress to protect and provide for the continued opportunity for subsistence uses on public lands for Native and non-Native rural residents through the management of the State of Alaska.

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;

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

(4) *"customary trade" means, except for money sales of furs and furbearers, the limited, noncommercial exchange for money of fish and wildlife or their parts in minimal quantities; and*

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

PREFERENCE FOR SUBSISTENCE USES

SEC. 804.

(b) The priority granted by this section is for a reasonable opportunity to take fish and wildlife. For the purposes of this subsection, the term "reasonable opportunity" means an opportunity, consistent with customary and traditional uses (as defined in section 803(3)), to participate in a subsistence hunt or fishery with a reasonable expectation of success, and does not mean a guarantee that fish and wildlife will be taken.

Essential Elements of a Subsistence Bill

Protects subsistence uses; provides opportunity for sport, commercial, personal use

			TASK FORCE APPROACH
			Designed to secure state management of hunting and fishing on all lands and waters; recognizes rural dependence on subsistence; makes minimal changes to current state statute
Who	<u>Eligibility</u>	⇒ Define a mechanism for determining who can participate in subsistence hunting and fishing.	<ul style="list-style-type: none"> Residents of areas determined by the boards to be rural are eligible. All Alaskans have opportunity to hunt and fish as long as there is a reasonable opportunity for subsistence General hunting/sport fishing, commercial, personal use fishing, proxy subsistence permits and cultural/educational permits provide for urban residents' opportunity.
Where	<u>Location</u>	⇒ Identify portions of the state where hunting and fishing may occur under subsistence regulations.	<ul style="list-style-type: none"> Rural areas are "places found by boards to be dependent on fish and wildlife for nutritional and other subsistence uses." All other places are non-rural (non-subsistence) areas.
How	<u>Process</u>	⇒ Identify the mechanism for developing subsistence regulations that implement the subsistence priority.	<ul style="list-style-type: none"> State boards implement steps to provide subsistence priority: (1) joint boards identify rural areas; (2) fish or game board identifies c&t use of stock or population, amount needed for reasonable subsistence use opportunity. In times of shortage subsistence uses are last to be eliminated. Regional Councils provide subsistence advice; boards give deference
What	<u>Definitions</u>	⇒ Clarify what use is being afforded a preference, and key terms used in statute to direct actions of the boards.	<ul style="list-style-type: none"> Subsistence; reasonable opportunity; rural area; customary trade; customary and traditional use

Legislative Research Report 98.075

May 22, 1998

Subsistence Hearings Sponsored by the Legislature or the Governor, 1990-1998

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared for Senator Tim Kelly
Prepared by Maria Gladziszewski, Manager



*Legislative Research Services
130 Seward Street, Room 218
Juneau, AK 99801
907-465-3991
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www.legis.state.ak.us/legres/legres.htm*

SUMMARY

You asked about public hearings aimed at resolving the impact of the Alaska Supreme Court's December 1989 decision in *McDowell v. State*. In that decision, the Court held that the state's 1986 subsistence law violated the state constitution because it excluded urban residents from subsistence activities.

In attempts to resolve the issue since then, the legislature has met twice in special session (June 1990 and June 1992), and two governors have convened task forces (Governor Hickel's Subsistence Advisory Council in 1991-92 and Governor Knowles' Subsistence Task Force in 1997-98). Also, since the *McDowell* decision, the Legislature has held over 100 hearings on the issue, taking testimony from approximately 240 state and federal officials, and over 1,000 members of the public. Table 1 summarizes the statistics on legislative hearings; Tables 2 and 3 present more detail, including bill number and subject, committee, and hearing dates.

Table 1: Legislative Hearings on Subsistence, 1990-1998

LEGISLATURE	HEARINGS	TESTIMONY FROM PUBLIC OFFICIALS	TESTIMONY FROM MEMBERS OF THE PUBLIC (including interest group representatives)
16 TH Legislature	25	78	152
17 TH Legislature	30	79	235
18 TH Legislature	0	0	0
19 TH Legislature	11	10	259
20 TH Legislature	37	72	482
TOTAL	103	239	1,128

NOTE: These numbers do NOT represent numbers of different individuals who testified; rather, they are the sum of the total number testifying at each hearing (i.e., many public officials and interest group representatives testified numerous times).

Governor Hickel's Subsistence Advisory Council, charged with proposing a statutory fix that did not include constitutional amendments, convened first in February 1991 but was reorganized in the fall. According to Advisory Council member Byron Mallott, the group met five or six times between November 1991 and February 1992, primarily in the governor's conference room in the Frontier Building in Anchorage. Mr. Mallott reports that while the meetings were open to the public and the press, and several individuals and representatives from stakeholder groups attended the meetings to express opinions, the meetings were informal and Advisory Council members did not open them to formal testimony.

Likewise, according to Tim Tawarek in the Governors' office, Governor Knowles' Subsistence Task Force also did not take formal public testimony. Mr. Tawarek reports that the public had ample opportunity for input as the Task Force met six times between June 1 and September 17, 1997, faxed a summary of a July 9 draft plan to approximately 1,000 individuals, mailed 200 copies of the entire draft, and considered the 60 written comments submitted. In addition, stakeholder groups were invited to make presentations to the Task Force on September 13. The Alaska Federation of Natives, Alaska Inter-tribal Council, RuralCAP, United Fishermen of Alaska, and various sportfishing groups participated (the Alaska Outdoor Council and hunting guide groups said they were unable to send representatives).

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

TABLE 2

Legislative Hearings on Subsistence, 1990-1998 (by Bill)

Committee	Date	Heard Testimony From:
16th Legislature (1989-1990)		
HJR 74, 88, 90 -- Constitutional Amendments on Subsistence		
House Resources	March 7, 1990	5 state officials, 1 member of the public
House Resources	March 10, 1990	2 state officials, 51 members of the public
House Resources	March 21, 1990	1 state official, 28 members of the public
House Resources	April 5, 1990	2 state officials, 10 members of the public
House Resources	April 20, 1990	3 state officials, 5 members of the public
House Resources	April 21, 1990	2 state officials
House Judiciary	April 27, 1990	4 officials (3 state, 1 federal), 4 members of the public
House Judiciary	April 30, 1990	3 state officials, 3 members of the public
House Judiciary	May 1, 1990	3 state officials
House Judiciary	May 4, 1990	5 state officials
SJR 78, SB 305 -- Subsistence Uses of Fish and Wildlife		
Senate Resources	May 3, 1990	4 state officials
SJR 78 -- Subsistence Uses of Fish and Wildlife		
Senate Resources	May 4, 1990	4 state officials, 2 members of the public
Senate Resources	May 6, 1990	3 state officials
Senate Resources	May 7, 1990	1 state official, 6 members of the public
16th Legislature, First Special Session, 1990 (June 25-July 8)		
HB 599, HB 600, HB 601, HCR 68, HJR 97, SB 553, SJR 86, SJR 88 -- Various, on Subsistence		
SB 555 -- Commission on Subsistence Use of Fish & Game (became law -- Chapter 1 FSSLA 90)		
House Work Session	June 20, 1990	In Anchorage -- 2 state officials, 10 members of the public
House Resources	June 25, 1990	7 officials (incl. Cowper, Murkowski, Stevens, Young), 10 public
House Resources	June 26, 1990	4 state officials
House Resources	June 27, 1990	1 state official
House Resources	June 29, 1990	5 state officials
House Resources	June 29, 1990	5 state officials
SB 553, SCR 61, SJR 86, SJR 88 -- Various, on Subsistence		
SB 555 -- Commission on Subsistence Use of Fish & Game (became law -- Chapter 1 FSSLA 90)		
Senate Resources	June 26, 1990	17 members of the public
SCR 62 -- Subsistence Legal Challenge		
Senate Resources	June 27, 1990	5 state officials, 1 member of the public
Senate Finance	June 28, 1990	3 state officials, 1 member of the public
Senate Rules	June 29, 1990	No testimony; committee discussion only
HJR 99 -- Constitutional Amendment: Subsistence Preference		
House Rules	July 7, 1990	6 state officials, 3 members of the public
THE FOLLOWING BILLS RECEIVED NO HEARINGS:		
HB 602-Subsistence Hunting and Fishing		SB 556-Subsistence Hunting and Fishing
HB 603-Subsistence Uses of Fish/Game		SCR 39-Joint Commission on Subsistence
HCR 70-Subsistence Regulations		SJR 87-Constitutional Amendment: Subsistence
HJR 98-Constitutional Amendment		SJR 89-Constitutional Amendment: Subsistence
HJR 100-Constitutional Amendment: Subsistence/Personal Use		
HR 16 -- Requesting Alaska Supreme Court to Extend Stay (became Legislative Resolve 10)		

TABLE 2
Legislative Hearings on Subsistence 1991-1992 by Bill

Committee	Date	Heard Testimony From:
17th Legislature (1991-1992)		
HB 552 -- Subsistence Use of Fish and Game		
House Resources	April 1, 1992	2 state officials (including Governor Hickel)
House Resources	May 11, 1992	1 state official, 3 members of the public
HB 592 -- Subsistence Uses		
House Resources	May 11, 1992	4 members of the public
SCR 8 -- Fish and Wildlife Management		
Senate Resources	April 5, 1991	1 state official
House Resources	May 5, 1992	1 state official, 1 member of the public
SB 443 -- Taking of Fish and Game for Subsistence		
Senate Resources	March 5, 1992	4 state officials (including Governor Hickel)
Senate Resources	March 6, 1992	1 state official
Senate Resources	March 7, 1992	33 members of the public
Senate Resources	March 10, 1992	1 state official, 1 member of the public
Senate Resources	March 23, 1992	3 state officials
Senate Resources	March 25, 1992	2 state officials, 1 member of the public
Senate Resources	March 27, 1992	1 state official
Senate Judiciary	April 7, 1992	4 state officials, 2 members of the public
Senate Judiciary	April 9, 1992	2 state officials
THE FOLLOWING BILLS RECEIVED NO HEARINGS:		
HJR 77/SJR 49; HJR 78/SJR 50; HJR 79 -- Constitutional Amendments: Subsistence Preference		
17th Legislature, Second Special Session, 1992 (June 15-June 22)		
HJR 86 -- Constitutional Amendment: Subsistence Preference		
H State Affairs/Judiciary	June 16, 1992	3 state officials, 5 members of the public
H State Affairs/Judiciary	June 17, 1992	2 state officials, 6 members of the public
SB 484, SB 485 -- Subsistence Taking of Fish and Game/Subsistence Uses		
Senate Finance	June 19, 1992	4 state officials
S Comm of the Whole	June 15, 1992	2 state officials, 8 members of the public
S Comm of the Whole	June 16, 1992	4 state officials, 17 members of the public
S Comm of the Whole	June 17, 1992	6 officials (4 state, 2 federal), 7 members of the public
S Comm of the Whole	June 18, 1992	7 state officials, 4 members of the public
General Hearing on Subsistence		
House Judiciary	June 10, 1992	3 state officials, 44 members of the public
General Briefings on Subsistence		
House Resources	June 15, 1992	3 state officials
House Resources	June 16, 1992	1 former state official
HB 599, HB 600, HB 601 -- Subsistence Taking of Fish and Game		
H Resources/Judiciary	June 16, 1992	4 state officials, 67 members of the public
House Resources	June 17, 1992	22 members of the public
H Resources/Judiciary	June 17, 1992	1 state official, 7 members of the public
HB 601 -- Subsistence Uses (became law -- Chapter 1, SSSLA 92)		
House Judiciary	June 19, 1992	3 state officials
S Comm of the Whole	June 19, 1992	5 state officials, 3 members of the public
Conference Committee	6/21-22/92	6 state officials, 1 member of the public

TABLE 2
Legislative Hearings on Subsistence, 1993-1998, by Bill

Committee	Date	Heard Testimony From:
18th Legislature (1993-1994)		
THE FOLLOWING BILLS RECEIVED NO HEARINGS:		
HJR 23 / SJR 42 -- Constitutional Amendment: Subsistence Preference		
SJR 12 -- Constitutional Amendment on Subsistence Preference		
19th Legislature (1995-1996)		
HB 312 -- Extend Current Subsistence Law		
House Resources	April 25, 1995	3 state officials, 1 member of the public
House Resources	April 27, 1995	1 state official, 4 members of the public
HJR 33 -- Amendments to ANILCA		
House Judiciary	March 17, 1995	24 members of the public
House Judiciary	March 22, 1995	2 state officials, 80 members of the public
SCR 6 -- State v Babbitt Lawsuit Continuation (became Legislative Resolve 1)		
House Rules	January 27, 1995	No testimony; committee discussion only
SB 171 -- Extend Current Subsistence Law (became law -- Chapter 68 SLA 95)		
Senate Resources	April 28, 1995	1 state official, 3 members of the public
SJR 19 -- Ask Congress to Amend ANILCA (became Legislative Resolve 26)		
Senate Resources	March 29, 1995	In Fairbanks -- 1 state official, 69 members of the public
Senate Resources	April 8, 1995	In Soldotna -- 33 members of the public
Senate Resources	April 10, 1995	1 state official, 29 members of the public
Senate Rules	April 11, 1995	No testimony; committee discussion only
House Judiciary	May 1, 1995	1 state official, 16 members of the public
THE FOLLOWING BILLS RECEIVED NO HEARINGS:		
HCR 7 -- State v Babbitt Lawsuit Continuation		
HJR 14/SJR 2 -- Constitutional Amendment: Subsistence Preference		
20th Legislature 1997-1998		
HJR 21 -- Requesting that Congress Amend Title VIII of ANILCA		
House Resources	March 13, 1997	19 members of the public
House Resources	March 20, 1997	1 state official, 14 members of the public
House Resources	March 27, 1997	No testimony; committee discussion, then bill moved out
House State Affairs	April 10, 1997	1 state official, 15 members of the public
House State Affairs	April 15, 1997	23 members of the public
House State Affairs	May 3, 1997	No testimony; committee discussion, then bill moved out
HB 243 -- Extend Current Subsistence Law (became law -- Chapter 109 SLA 97)		
House Resources	May 1, 1997	2 state officials, 1 member of the public
Senate Resources	May 8, 1997	1 state official
HB 255 -- Subsistence Hunting & Fishing		
House Resources	May 1, 1997	2 state officials, 7 members of the public

TABLE 2

Public Hearings on Subsistence, 1990-1998, by Bill

Committee	Date	Heard Testimony From:
Public Subsistence Hearings (no specific bill)		
House Resources	September 10, 1997	In Bethel -- 3 state officials, 52 members of the public
House Resources	September 12, 1997	In Ketchikan -- 2 state officials, 47 members of the public
Senate Resources	September 24, 1997	In Fairbanks -- 4 state officials, 28 members of the public
Senate Resources	September 25, 1997	In Wasilla -- 1 state official, 19 members of the public
Senate Resources	September 26, 1997	In Soldotna -- 1 state official, 28 members of the public
Senate Resources	September 27, 1997	In Anchorage -- 3 officials, 23 members of the public
Senate Resources	October 17, 1997	In Galena -- 45 members of the public
HB 406 -- Subsistence Uses of Fish & Game (Passed, awaiting transmittal to Governor)		
House Resources	February 17, 1998	2 state officials
House Resources	February 21, 1998	2 state officials
House Resources	February 28, 1998	1 state official, 52 members of the public
House Resources	March 3, 1998	1 state official
House Resources	March 5, 1998	5 state officials, 28 members of the public
House Judiciary	March 9, 1998	2 state officials
House Judiciary	March 11, 1998	4 state officials, 23 members of the public
House Judiciary	March 18, 1998	2 state officials, 10 members of the public
House Judiciary	March 20, 1998	3 members of the public
House Judiciary	March 25, 1998	No testimony; committee discussion only
House Judiciary	March 27, 1998	3 state officials, 1 member of the public
House Judiciary	March 28, 1998	6 members of the public
House Judiciary	March 30, 1998	1 state official, 22 members of the public
House Judiciary	April 3, 1998	2 state officials
House Judiciary	April 6, 1998	3 state officials, 1 members of the public
House Finance	April 9, 1998	4 state officials
Senate Judiciary	April 25, 1998	9 members of the public
Senate Judiciary	May 1, 1998	1 member of the public
Senate Judiciary	May 5, 1998	1 state official, 4 members of the public
Senate Judiciary	May 6, 1998	No testimony or discussion, moved bill out
THE FOLLOWING BILLS RECEIVED NO HEARINGS:		
HB 295	Enforcement of Subsistence Laws	
HJR 10/SJR 6	Constitutional Amendment: Subsistence	
HJR 66	Constitutional Amendments: Subsistence Priority	
HB 320/SB 239	Subsistence Uses of Fish & Wildlife	
HJR 46/SJR 31	Constitutional Amendment: Priority for Subsistence Uses	
HJR 3/SJR 2	Constitutional Amendment: Subsistence Preference	

NOTE:
 We compiled this information by first selecting major subsistence bills listed by subject in the *Final Status of Bills and Resolutions*, then searching through BASIS and FOLIO Views databases for meeting minutes. Because BASIS information is no longer available for the 16th and 17th Legislature, we also looked through committee records maintained in the Legislative Library.

SOURCES:
Final Status of Bills and Resolutions for each Legislature (published by the Legislative Affairs Agency); BASIS for the 18th, 19th, 20th Legislatures; FOLIO Views (committee minutes database); Committee records in the Legislative Library.

TABLE 3

Legislative Hearings on Subsistence, 1990-1998, by Date

Committee	Date	Heard Testimony From:
16th Legislature (1989-1990)		
House Resources	March 7, 1990	5 state officials, 1 member of the public
House Resources	March 10, 1990	2 state officials, 51 members of the public
House Resources	March 21, 1990	1 state official, 28 members of the public
House Resources	April 5, 1990	2 state officials, 10 members of the public
House Resources	April 20, 1990	3 state officials, 5 members of the public
House Resources	April 21, 1990	2 state officials
House Judiciary	April 27, 1990	4 officials (3 state, 1 federal), 4 members of the public
House Judiciary	April 30, 1990	3 state officials, 3 members of the public
House Judiciary	May 1, 1990	3 state officials
Senate Resources	May 3, 1990	4 state officials
House Judiciary	May 4, 1990	5 state officials
Senate Resources	May 4, 1990	4 state officials, 2 members of the public
Senate Resources	May 6, 1990	3 state officials
Senate Resources	May 7, 1990	1 state official, 6 members of the public
House Work Session	June 20, 1990	In Anchorage -- 2 state officials, 10 members of the public
House Resources	June 25, 1990	7 officials (incl. Cowper, Murkowski, Stevens, Young), 10 public
House Resources	June 26, 1990	4 state officials
Senate Resources	June 26, 1990	17 members of the public
House Resources	June 27, 1990	1 state official
Senate Resources	June 27, 1990	5 state officials, 1 member of the public
Senate Finance	June 28, 1990	3 state officials, 1 member of the public
House Resources	June 29, 1990	5 state officials
House Resources	June 29, 1990	5 state officials
Senate Rules	June 29, 1990	No testimony; committee discussion only
House Rules	July 7, 1990	6 state officials, 3 members of the public
17th Legislature (1991-1992)		
Senate Resources	April 5, 1991	1 state official
Senate Resources	March 5, 1992	4 state officials (including Governor Hickel)
Senate Resources	March 6, 1992	1 state official
Senate Resources	March 7, 1992	33 members of the public
Senate Resources	March 10, 1992	1 state official, 1 member of the public
Senate Resources	March 23, 1992	3 state officials
Senate Resources	March 27, 1992	1 state official
House Resources	April 1, 1992	2 state officials (including Governor Hickel)
Senate Judiciary	April 7, 1992	4 state officials, 2 members of the public
Senate Judiciary	April 9, 1992	2 state officials
House Resources	May 5, 1992	1 state official, 1 member of the public
House Resources	May 11, 1992	1 state official, 3 members of the public
House Resources	May 11, 1992	4 members of the public
Conference Committee	May 21-22, 1992	6 state officials, 1 member of the public
House Judiciary	June 10, 1992	3 state officials, 44 members of the public
S Comm of the Whole	June 15, 1992	2 state officials, 8 members of the public
House Resources	June 15, 1992	3 state officials
H State Affairs/Judiciary	June 16, 1992	3 state officials, 5 members of the public
S Comm of the Whole	June 16, 1992	4 state officials, 17 members of the public
House Resources	June 16, 1992	1 former state official

TABLE 3

Legislative Hearings on Subsistence, 1990-1998, by Date

Committee	Date	Heard Testimony From:
H Resources/Judiciary	June 16, 1992	4 state officials, 67 members of the public
H State Affairs/Judiciary	June 17, 1992	2 state officials, 6 members of the public
S Comm of the Whole	June 17, 1992	6 officials (4 state, 2 federal), 7 members of the public
House Resources	June 17, 1992	22 members of the public
H Resources/Judiciary	June 17, 1992	1 state official, 7 members of the public
S Comm of the Whole	June 18, 1992	7 state officials, 4 members of the public
Senate Finance	June 19, 1992	4 state officials
House Judiciary	June 19, 1992	3 state officials
S Comm of the Whole	June 19, 1992	5 state officials, 3 members of the public
18th Legislature (1993-1994)		
No hearings on major subsistence legislation		
19th Legislature (1995-1996)		
House Rules	January 27, 1995	No testimony; committee discussion only
House Judiciary	March 17, 1995	24 members of the public
House Judiciary	March 22, 1995	2 state officials, 80 members of the public
Senate Resources	March 29, 1995	In Fairbanks -- 1 state official, 69 members of the public
Senate Resources	April 8, 1995	In Soldotna -- 33 members of the public
Senate Resources	April 10, 1995	1 state official, 29 members of the public
Senate Rules	April 11, 1995	No testimony; committee discussion only
House Resources	April 25, 1995	3 state officials, 1 member of the public
House Resources	April 27, 1995	1 state official, 4 members of the public
Senate Resources	April 28, 1995	1 state official, 3 members of the public
House Judiciary	May 1, 1995	1 state official, 16 members of the public
20th Legislature 1997-1998		
House Resources	March 13, 1997	19 members of the public
House Resources	March 20, 1997	1 state official, 14 members of the public
House Resources	March 27, 1997	No testimony; committee discussion, then bill moved out
House State Affairs	April 10, 1997	1 state official, 15 members of the public
House State Affairs	April 15, 1997	23 members of the public
House Resources	May 1, 1997	2 state officials, 1 member of the public
House Resources	May 1, 1997	2 state officials, 7 members of the public
House State Affairs	May 3, 1997	No testimony; committee discussion, then bill moved out
Senate Resources	May 8, 1997	1 state official
House Resources	September 10, 1997	In Belhel -- 3 state officials, 52 members of the public
House Resources	September 12, 1997	In Ketchikan -- 2 state officials, 47 members of the public
Senate Resources	September 24, 1997	In Fairbanks -- 4 state officials, 28 members of the public
Senate Resources	September 25, 1997	In Wasilla -- 1 state official, 19 members of the public
Senate Resources	September 26, 1997	In Soldotna -- 1 state official, 28 members of the public
Senate Resources	September 27, 1997	In Anchorage -- 3 officials, 23 members of the public
Senate Resources	October 17, 1997	In Galena -- 45 members of the public
House Resources	February 17, 1998	2 state officials
House Resources	February 21, 1998	2 state officials
House Resources	February 28, 1998	1 state official, 52 members of the public
House Resources	March 3, 1998	1 state official
House Resources	March 5, 1998	5 state officials, 28 members of the public

TABLE 6
Hearings on Subsistence, 1998-1999 by Date

Committee	Date	Heard Testimony From:
House Judiciary	March 9, 1998	2 state officials
House Judiciary	March 11, 1998	4 state officials, 23 members of the public
House Judiciary	March 18, 1998	2 state officials, 10 members of the public
House Judiciary	March 20, 1998	3 members of the public
Senate Resources	March 25, 1998	2 state officials, 1 member of the public
House Judiciary	March 25, 1998	No testimony; committee discussion only
House Judiciary	March 27, 1998	3 state officials, 1 member of the public
House Judiciary	March 28, 1998	6 members of the public
House Judiciary	March 30, 1998	1 state official, 22 members of the public
House Judiciary	April 3, 1998	2 state officials
House Judiciary	April 6, 1998	3 state officials, 1 members of the public
House Finance	April 9, 1998	4 state officials
Senate Judiciary	April 25, 1998	9 members of the public
Senate Judiciary	May 1, 1998	1 member of the public
Senate Judiciary	May 5, 1998	1 state official, 4 members of the public
Senate Judiciary	May 6, 1998	No testimony or discussion, moved bill out

NOTE:

We compiled this information by first selecting major subsistence bills listed by subject in the *Final Status of Bills and Resolutions*, then searching through BASIS and FOLIO Views databases for meeting minutes. Because BASIS information is no longer available for the 16th and 17th Legislature, we also looked through committee records maintained in the Legislative Library.

SOURCES:

Final Status of Bills and Resolutions for each Legislature (published by the Legislative Affairs Agency); BASIS for the 18th, 19th, 20th Legislatures; FOLIO Views (committee minutes database); Committee records in the Legislative Library.

Subsistence In Alaska: 1998 Update

Division of Subsistence, Alaska Department of Fish and Game
Box 25526, Juneau, Alaska, 99802 (907) 465-4147
March 1, 1998

Introduction

Subsistence fishing and hunting are important for the economies and cultures of many families and communities in Alaska. Subsistence exists alongside other important uses of fish and game in Alaska, including commercial fishing, sport fishing, personal use fishing, and general hunting. This report provides an update on subsistence in Alaska, including its interaction with other types of fishing and hunting.

What is Subsistence?

State and federal law define subsistence as the "customary and traditional uses" of wild resources for food, clothing, fuel, transportation, construction, art, crafts, sharing, and customary trade. Subsistence uses are central to the customs and traditions of many cultural groups in Alaska, including Aleut, Athabaskan, Alutiiq, Euroamerican, Haida, Inupiat, Tlingit, Tsimshian, and Yup'ik. Subsistence fishing and hunting are important sources of employment and nutrition in almost all rural communities.

Commercial fishing differs from subsistence fishing, as it is fishing for sale on commercial markets. Subsistence fish

and game cannot be commercially sold. Personal use fishing is similar to subsistence fishing, except that it is fishing with nets for food in areas generally closed to subsistence, particularly by residents of urbanized areas. Sport fishing and hunting differ from subsistence in that, although food is one product, they are conducted primarily for recreational values, following principles of "fair chase". While subsistence is productive economic activity which is part of a normal routine of work in rural areas, sport fishing and hunting usually are scheduled as recreational breaks from a normal work routine.

Who Qualifies for Subsistence?

Federal and state laws currently differ in who qualifies for subsistence. Rural Alaska residents qualify for subsistence under federal law. About 20% of Alaska's population (124,367 people in 270 communities) lived in rural areas in 1995 (see Fig. 1). Of the rural population, 61,320 (49.3%) were Alaska Native and 63,047 (50.7%) were not Alaska Native. Of Alaska's urban population (491,533 people), about 33,782 (6.9%) were Alaska Native and 457,751 (93.1%) were not Alaska Native. Under state law, rural residents qualified for subsistence from 1978-1989. Since 1989, all state residents have qualified under state law.

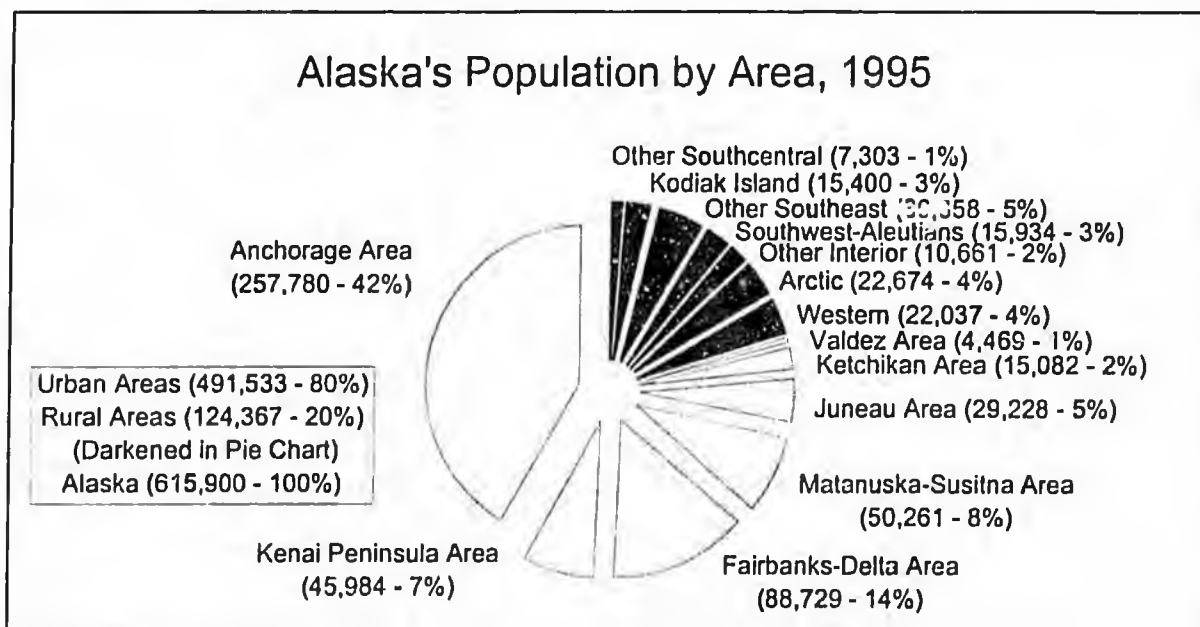


Figure 1

Percent of Households Participating in Subsistence Activities in Rural Areas

Area	Harvesting Game	Using Game	Harvesting Fish	Using Fish
Arctic	63%	92%	78%	96%
Interior	69%	88%	75%	92%
Southcentral	55%	79%	80%	94%
Southeast	48%	79%	80%	95%
Southwest	65%	90%	86%	94%
Western	70%	90%	98%	100%
Total Rural	60%	86%	83%	95%

Figure 2

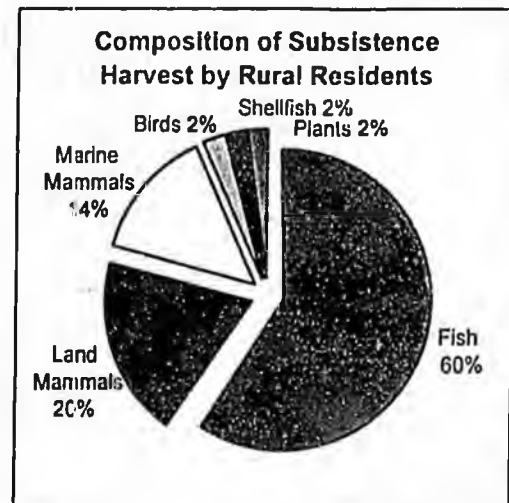


Figure 3

Who Participates in Subsistence?

Most rural families in Alaska depend on subsistence fishing and hunting. A substantial proportion of rural households harvest and use wild foods (see Fig. 2). For surveyed communities in different rural areas, from 92%-100% of sampled households used fish, 79%-92% used wildlife, 75%-98% harvested fish, and 48%-70% harvested wildlife. Because subsistence foods are widely shared, most residents of rural communities make use of subsistence foods during the course of the year.

What is the Rural Food Harvest?

Most of the wild food harvested by rural families is composed of fish (about 60% by weight), along with land mammals (20%), marine mammals (14%), birds (2%), shellfish (2%), and plants (2%) (see Fig. 3). Fish varieties include salmon, halibut, herring, and whitefish. Seals, sea lion, walrus, beluga, and bowhead whale comprise the marine mammal harvest. Moose, caribou, deer, bear, Dall

sheep, mountain goat, and beaver are commonly used land mammals, depending on the community and area.

How Large is the Subsistence Harvest?

The subsistence food harvest in rural areas represents about 2% of the fish and game harvested annually in Alaska (see Fig. 4). Commercial fisheries harvest about 97% of the statewide harvest (about 2.0 billion lbs annually), while sport fishing and hunting take about 1% (18.0 million lbs).

Though relatively small in the statewide picture, subsistence fishing and hunting provide a major part of the food supply of rural Alaska (see Figs. 5 and 6). Our best estimate is about 43.7 million lbs (usable weight) of wild foods are harvested annually by residents of rural areas of the state, and 9.8 million lbs by urban residents (see Fig. 6). On a per person basis, the annual wild food harvest is about 375 lbs per person per year for residents of rural areas (about a pound a day per person), and 22 lbs per person per year for urban areas (see Fig. 5).



Figure 4

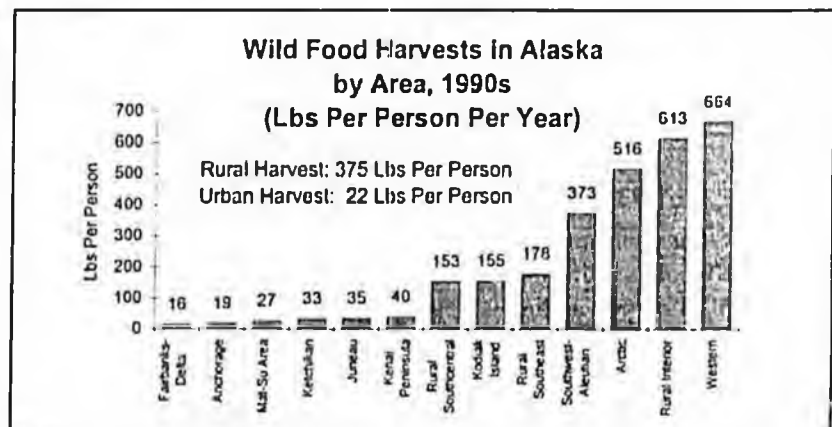


Figure 5

Nutritional Value of Subsistence

The subsistence food harvest provides a major part of the nutritional requirements of Alaska's population. The annual rural harvest of 375 lbs per person contains 242% of the protein requirements of the rural population (that is, it contains about 118 grams of protein per person per day; about 49 grams is the mean daily requirement) (see Fig. 6). The subsistence harvest contains 35% of the caloric requirements of the rural population (that is, it contains about 840 Kcal daily, assuming a 2,400 Kcal/day mean daily requirement). The urban wild food harvests contain 15% of the protein requirements and 2% of the caloric requirements of the urban population (see Fig. 6).

	Annual Wild Food Harvest (Lbs Per Person)	Annual Wild Food Harvest (Total Lbs)	Percent of Population's Required		Estimated Wild Food Replacement Value @ \$3/lb	Estimated Wild Food Replacement Value @ \$5/lb
			Protein (49 g/day)	Calories (2400 C/day)		
Rural Areas						
Southcentral	153	1,688,467	99%	14%	\$5,065,401	\$8,442,335
Kodiak Island	155	2,061,607	100%	14%	\$6,184,821	\$10,308,035
Southeast	178	5,084,509	115%	17%	\$15,193,527	\$25,322,545
Southwest-Aleutian	373	5,114,522	241%	35%	\$15,343,566	\$25,572,610
Interior	613	8,359,597	396%	57%	\$19,078,791	\$31,797,985
Arctic	516	10,507,255	333%	48%	\$31,521,765	\$52,536,275
Western	664	12,918,649	429%	62%	\$38,755,947	\$64,593,245
Total Rural	375	43,714,606	242%	35%	\$131,143,816	\$218,573,030
Urban Areas						
Ketchikan Area	33	461,855	22%	3%	\$1,385,566	\$2,309,276
Juneau Area	35	922,910	22%	3%	\$2,768,729	\$4,614,548
Matsu Area	27	1,056,322	17%	2%	\$3,168,966	\$5,281,610
Fairbanks-Delta	16	1,307,648	10%	1%	\$3,922,944	\$6,530,240
Kona Peninsula	40	1,600,320	26%	4%	\$4,800,960	\$8,001,600
Anchorage Area	19	4,390,957	13%	2%	\$13,172,872	\$21,954,786
Total Urban	23	9,740,012	15%	2%	\$29,220,036	\$48,700,060
Alaska Total	100	53,454,618	65%	8%	\$160,363,854	\$267,273,090

Figure 6

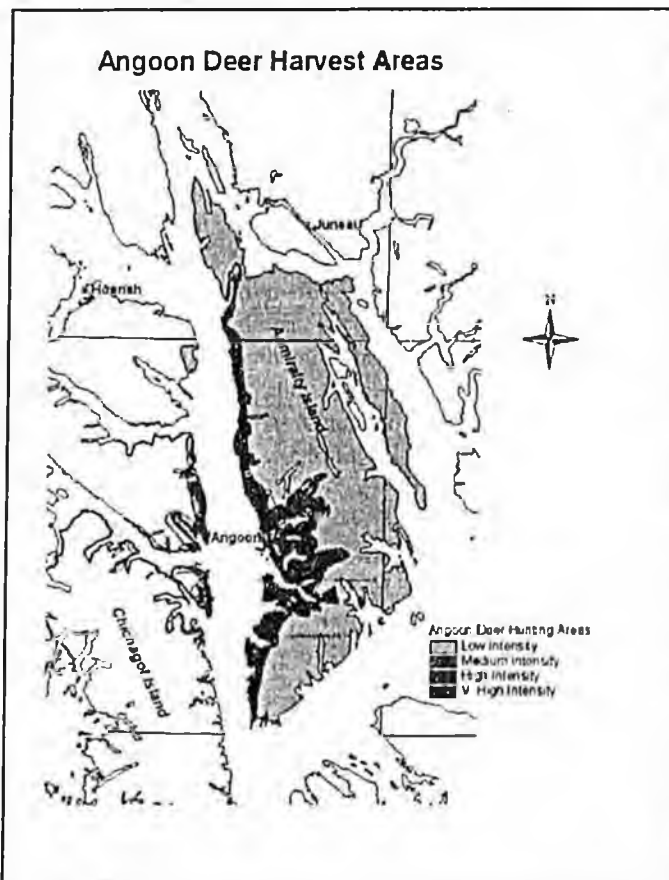


Figure 7

Traditional Harvest Areas

Studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. Subsistence harvest areas are accessible from the community, although seasonal camps are used to access some species. Subsistence harvest areas for communities are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (see Fig. 7).

The Monetary Value of Subsistence Harvests

Subsistence fishing and hunting are important to the rural economy. Attaching a dollar value to wild food harvests is difficult, as subsistence products do not circulate in markets. However, if families did not have subsistence foods, substitutes would have to be purchased. If one assumes a replacement expense of \$3 - \$5 per pound, the simple "replacement value" of the wild food harvests in rural Alaska may be estimated at \$131.1 - \$218.6 million dollars annually (see Fig. 6).

Subsistence and Money

Subsistence is part of a rural economic system, called a "mixed, subsistence-market" economy. Families invest

money into small-scale, efficient technologies to harvest wild foods, such as fishwheels, gill nets, motorized skiffs, and snowmachines. Subsistence food production is directed toward meeting the self-limited needs of families and small communities, not market sale or accumulated profit as in commercial market production. Families follow a prudent economic strategy of using a portion of the household monetary earnings to capitalize in subsistence technologies for producing food. This combination of money from paid employment and subsistence food production is what characterizes the mixed, subsistence-market economies of rural areas. Successful families in rural areas combine jobs with subsistence activities and share wild food harvests with cash-poor households who cannot fish or hunt, such as elders, the disabled, and single mothers with small children.

Subsistence and Sport

Subsistence harvests in rural areas commonly occur alongside recreational fishing and hunting from urban neighbors. Most urban residents hunt and fish under general hunting and sport fishing regulations. In 1995, Anchorage had 22,148 licensed hunters (9% of Anchorage residents); Matanuska-Susitna area, 8,820 (18%); Fairbanks, 11,489 (13%); Kenai Peninsula, 8,670 (19%); Ketchikan, 2,569 (17%); and Juneau, 3,672 (13%). For sport fishing, Anchorage had 70,885 licensed anglers (27% of Anchorage residents); Matanuska-Susitna area, 15,985 (32%); Fairbanks, 22,581 (25%); Kenai Peninsula, 18,657 (41%); Ketchikan, 5,626 (37%); and Juneau, 9,743 (33%).

Urban residents primarily hunt in areas surrounding their home communities (see Fig. 8). About 80% of the wild

meat harvested by urban hunters came from locally-accessible Game Management Units (1.6 million lbs of 2.0 million lbs annually). Many recreational hunters also hunt in more distant locations, so that hunting by urban residents touches all areas of Alaska. Recreational fishing by anglers follows a similar geographic pattern.

The Subsistence Priority

Subsistence uses are given a priority over commercial fishing and recreational fishing and hunting in state and federal law. By and large, urban fishers and hunters have not experienced major changes in harvest opportunity due to the subsistence priority. Personal use net fisheries provide for established food fisheries of urban residents in areas closed to subsistence fishing. General hunting and sport fishing regulations continue to provide opportunities for residents and non-residents.

For example, during the eleven-year period when the rural priority was being implemented under state management (1978-1989), general resident hunting seasons for caribou increased by 36% (from 5,505 days to 7,500 days), moose hunting days decreased by 10% (from 2,961 days to 2,671 days), and Dall sheep hunting days increased by 2% (from 1,855 days to 1,900 days) – comparing the 1978-79 resident season with the 1989-90 resident season. That is, during this period, hunting days by urban hunters for caribou, moose, and sheep were not significantly changed by the rural subsistence priority.

The greatest effect of state and federal subsistence laws has been to legally recognize customary and traditional harvest practices and uses in rural areas. Because of the law, the

Boards of Fisheries and Game have created subsistence regulations designed to provide opportunity for the continued harvest of the rural food supply. While impacts on urban residents have been relatively small, the impacts on rural areas have been great. Rural residents now have a legally protected opportunity to fish and hunt to feed families following long-term customs and traditions.

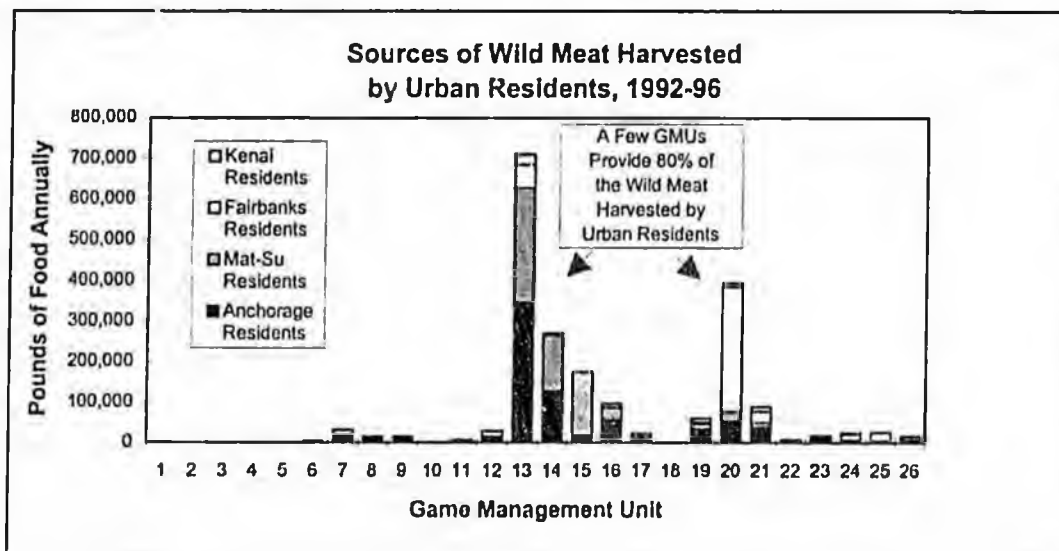


Figure 8

HJR

102

CS FOR HOUSE JOINT RESOLUTION NO. (107L)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SPECIAL SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to a
2 preference for subsistence uses of fish and wildlife; and providing for an effective
3 date and repeal of the subsistence amendments.

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

5 * Section 1. Article VIII, sec. 4, Constitution of the State of Alaska, is amended to read:

6 Section 4. Sustained Yield. (a) Fish, forests, wildlife, grasslands, and all
7 other replenishable resources belonging to the State shall be utilized, developed, and
8 maintained on the sustained yield principle, subject to preferences among beneficial
9 uses.

10 * Sec. 2. Article VIII, sec. 4, Constitution of the State of Alaska, is amended by adding
11 new subsections to read:

12 (b) The legislature shall establish, consistent with the sustained yield principle,
13 a preference for subsistence uses of fish and wildlife that takes effect when a fish or
14 wildlife resource is not sufficient to accommodate all beneficial uses of the resource.

1 Notwithstanding any other section of this constitution, the State may, in times of
 2 shortage of a particular fish or wildlife resource, grant a preference for subsistence
 3 uses of that fish or wildlife resource. The preference shall be available to any
 4 individual resident who resides within the area that is determined to be customarily and
 5 traditionally dependent on the particular fish or wildlife resource or who has
 6 demonstrated customary and traditional dependence on that particular fish or wildlife
 7 resource. Residents who do not reside within the area that is determined to be
 8 customarily and traditionally dependent on the particular fish or wildlife resource are
 9 rebuttably presumed not to qualify for the preference. The presumption shall be fully
 10 rebuttable so that a resident may qualify for the preference if customary and traditional
 11 dependence on the particular fish or wildlife resource is demonstrated.

12 (c) Except as provided in (b) of this section, the State may not grant a
 13 preference for subsistence uses of a fish or wildlife resource based exclusively or
 14 partly on a resident's place of residence.

15 (d) A preference established under (b) of this section shall not diminish the
 16 utilization of forests, grasslands, or other replenishable resources or mineral, water, or
 17 other natural resources of the State.

18 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
 19 section to read:

20 **Section 29. Effective Date and Repeal of Subsistence Amendment.** (a)
 21 Subsections 4(b), 4(c), and 4(d) of Article VIII, regarding a preference for subsistence
 22 uses of fish and wildlife, take effect on the day following the date that the governor
 23 certifies that federal law governing subsistence uses of fish and wildlife on federal
 24 public lands in the State

25 (1) defines the term "public lands" to expressly exclude State and
 26 private lands and waters, including navigable waters;

27 (2) waives federal jurisdiction over State and private lands and waters
 28 in the State;

29 (3) repeals the jurisdiction of the federal courts under Title VIII, Alaska
 30 National Interest Lands Conservation Act (P.L. 96-487), as amended, to hear cases
 31 arising from State management of fish and wildlife on State and private lands and

1 waters, including navigable waters, in the State; and

2 (4) is consistent with Subsections 4(b), 4(c), and 4(d) of Article VIII.

3 (b) Subsections 4(b), 4(c), and 4(d) of Article VIII, regarding a preference for
4 subsistence uses of fish and wildlife, are repealed if a federal court in Alaska
5 Legislative Council v. Babbitt, Civil No. 1:98CV0069(JR), United States District Court
6 for the District of Columbia issues a final decision that the Congress of the United
7 States exceeded the scope of its constitutional authority by enacting as part of Title
8 VIII, Alaska National Interest Lands Conservation Act (P.L. 96-487), either

9 (1) a rural resident preference for subsistence uses of fish and wildlife;

10 or

11 (2) a preemption of State authority over the management of fish and
12 wildlife on federal public lands in the State.

13 (c) For the purposes of (b) of this section, Subsections 4(b), 4(c), and 4(d) of
14 Article VIII are repealed on the day after the date of the final decision. The date of
15 the final decision is

16 (1) the date the time for appellate review of the decision expires
17 without request for appellate review; or

18 (2) for a final decision by the Supreme Court of the United States, the
19 date of the decision itself.

20 * Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
21 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
22 State of Alaska, and the election laws of the state.

5-28

AMENDMENT # *W*

Page 2 Line 22 delete "governor" and insert "legislature, by concurrent resolution,"

Page 2 Line 24 insert "substantially complies with the following:"

HOUSE RESOURCES STANDING COMMITTEE

Passes

DATE: 5-28

ISSUE: _____

	YEA	NAY	PRESENT
Representative Barnes	✓		
Representative Dyson		✓	
Representative Green	✓		
Representative Joule			
Representative Masek	✓		
Representative Nicholia			
Representative Williams		✓	
Co-Chairman Hudson		✓	
Co-Chairman Ogan	✓		
TOTALS:			

HOUSE RESOURCES STANDING COMMITTEE

DATE: 5-28

ISSUE: Move HJR 102

	YEA	NAY	PRESENT
7 Representative Barnes	✓		
1 Representative Dyson	✓		
2 Representative Green	✓		
3 Representative Joule		✓	
4 Representative Masek	✓		
5 Representative Nicholia		✓	
6 Representative Williams			
8 Co-Chairman Hudson	✓		
9 Co-Chairman Ogan	✓		
TOTALS:			

SB

7

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THE POOR QUALITY OF THE ORIGINAL**

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: C. 87(RLS)am

Revision Date: 3/21/97 Dept Affected: Public Safety
 Title: An Act relating to the amendment of hunting and sport fishing license and tag fees BRU: Fish and Wildlife Protection
 Component: Detachments
 Sponsor: Senator Donley
 Requestor: H FSH COMPONENT SERIAL NO. 0490

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

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This Bill is consistent with the Division's program objectives, and will not adversely impact the budget

Prepared By: Captain Joel L. Hard Phone: 269-5409
 Division: Fish and Wildlife Protection Date: March 21, 1997
 Approved by Commissioner: Ronald L. Otte Date: 3/21/97
 Agency: Ronald L. Otte, Department of Public Safety

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ANALYSIS CONTINUED:

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: C5SB 7(RLS)

Revision Date: 3/4/97 Dept. Affected: Public Safety
 Title: An Act relating to the amendment of hunting and sport fishing license and tag fees BRU: Fish and Wildlife Protection
 Component: Detachments
 Sponsor: Senator Donley
 Requestor: S. Rules COMPONENT SERIAL NO. 0490

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This Bill is consistent with the Division's program objectives, and will not adversely impact the budget.

Prepared By: Captain Joel L. Hard Phone: 269-5409
 Division: Fish and Wildlife Protection Date: March 4, 1997

Approved by Commissioner: *Dee Smith* Date: 3/4/97
 Agency: Ronald L. Otte, Department of Public Safety

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ANALYSIS CONTINUED:

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 7(RLS)

Revision Date: 2/27/97 Dept Affected: Fish and Game
 Title: Hunting, Sport Fish, Trapping Fees/Licenses BRU: Wildlife Conservation
 Component: Wildlife Conservation
 Sponsor: Senator Donley
 Requester: Senate Rules COMPONENT SERIAL NO. 473

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1024)	(31.5)	(31.5)	(31.5)	(31.5)	(31.5)	(31.5)
----------------------------------	---------------	---------------	---------------	---------------	---------------	---------------

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1007 GF Mental Health						
Other -- F&G Fund (1024)	(31.5)	(31.5)	(31.5)	(31.5)	(31.5)	(31.5)
TOTAL	(31.5)	(31.5)	(31.5)	(31.5)	(31.5)	(31.5)

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Assumptions: (1) total sales of resident licenses will remain constant; (2) inflation will not increase in the future; (3) approximately 5% of these revenue losses would be borne by license vendors.

Estimated losses are "real" losses based on the decreased cost of licenses. The possibility exists that some losses could be offset by savings in vendor payments. The "savings" are estimated in the following scenario: all persons who purchase individual trapping licenses would purchase combination hunt/trap licenses; all persons who purchase hunting licenses would purchase hunt/fish licenses; all persons who purchase hunt/trap licenses would purchase hunt/trap/fish licenses. Under this scenario, savings in vendor payments of \$30.5 would be offset by fee reductions of \$31.5 in current combination licenses sold plus fee reductions (over individual licenses sold) of \$19.6 for increased sales of combination licenses for a net annual loss to the Fish and Game Fund of \$20.5.

Prepared by: Phil Koehl, Wildlife Biologist *PK*
 Division: Wildlife Conservation
 Approved by Commissioner: Debra Buehler
 Agency: Alaska Department of Fish and Game

Phone: 465-4190
 Date: 2/27/97
 Date: 2/27/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 7(RLS)

Revision Date	<u>2/28/97</u>	Dept. Affected	<u>Fish and Game</u>
Title	<u>Hunting Sport Fish Trapping Fees Licenses</u>	BRU	<u>Sport Fish</u>
		Component:	<u>Sport Fish</u>
Sponsor	<u>Senator Donley</u>	COMPONENT SERIAL NO. <u>464</u>	
Requester	<u>Senate Rules</u>		

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 100	FY 101	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES (1024)	1,024.4	4,179.4	4,262.9	4,348.2	4,435.2	4,523.9
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1037 GF/Mental Health						
1024 Fish and Game Fund	1,024.4	4,179.4	4,262.9	4,348.2	4,435.2	4,523.9
TOTAL	1,024.4	4,179.4	4,262.9	4,348.2	4,435.2	4,523.9

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Adoption of SB 7 as written, would result in a larger annual contribution to the Fish and Game Fund due to the changes in structure and price of non-resident sport fishing licenses and king salmon tags proposed in this legislation. The department's confidence in the models used to prepare this fiscal note is not high. Our ability to project market reaction to substantial changes in license structures and fees is limited.

See attached page for assumptions.

Prepared by: Kevin Delaney
 Division: Sport Fish
 Approved by Commissioner: Frank Rue
 Agency: Fish and Game

Phone: 465-4180
 Date: 2/28/97
 Date: 3-3-97

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Bill Number: CSSB 7(RLS)

Title: Hunting Sport Fish Trapping Fees/Licenses

Assumptions used for license revenue calculation: (Bill becomes effective 1/1/98)

- Revenue calculations are based on Fiscal Year 1996 license sales statistics
- Approximately 25% of sport fish licenses are sold in the first half of a given calendar year (based on 3 year average 1992-1995). With this in mind, FY98 revenues are only 25% of calculated total for fiscal year
- Annual license sales growth is estimated at 2% for revenue projections
- The table below reflects Fiscal Year 1998 revenue projections with and without the enactment of this bill
- Residents will purchase combination licenses out of convenience rather than for cost savings, therefore, same number of combination licenses will be purchased in the future
- Nonresidents who currently purchase an annual license (other than \$850 who would qualify for the annual nonresident license as outlined in SB 7) will be forced to purchase a series of 14-day licenses. 50% will purchase two while the remaining 50% will purchase one 14-day license
- Of those nonresidents who currently purchase a 14-day license, 75% will continue to do so, while 25% will now purchase a 7-day license.
- Of those nonresidents who currently purchase a 3-day license, 60% will purchase a 7-day license, 20% will purchase two 1-day licenses and 20% will purchase a single 1-day license
- Those nonresidents who purchased a 1-day license will continue to do so
- Of those nonresident hunters who currently purchase an annual sport fish license, 50% will now purchase two 14-day licenses and 50% will purchase one 14-day license
- Of those nonresident hunters who currently purchase a 14-day license, 50% will now purchase a 14-day license and the remaining 50% will purchase a single 7-day license
- Nonresidents who currently purchase an annual king salmon tag will be forced to purchase a series of 14-day tags. 50% will purchase two 14-day tags, while the remaining 25% will now purchase a single 14-day tag, and 25% will purchase a 7-day tag
- Of those nonresidents who currently purchase a 3-day king salmon tag, 60% will purchase a 7-day tag, 20% will purchase two 1-day tags and the remaining 20% will purchase a single 1-day tag
- Those nonresidents who purchased a 1-day king salmon tag will continue to do so

Description	*Without SB7		*With SB7		
	# SOLD FY98	Revenue FY98	# SOLD FY98	Revenue FY98	Revenue Net (+/-)
* Sport Fish Revenue Portion only.					
Resident Sport Fishing	130,246	\$1,953.7	130,247	\$1,953.7	(\$0.0)
Resident Sport Fish & Hunt* (37.5%)	37,456	\$561.8	37,456	\$547.8	(\$14.0)
Resident SF Hunt & Trap* (27.3%)	5,186	\$77.9	5,186	\$75.0	(\$2.9)
Resident King Salmon Stamp	88,934	\$889.3	88,934	\$889.3	\$0.0
Nonresident Sport Fish	24,334	\$1,216.7	850	\$127.5	(\$1,089.2)
Nonresident 14-day Sport Fish	87,184	\$2,615.5	103,314	\$5,165.7	\$2,550.2
Nonresident 7-day Sport Fish	NA	\$0.0	60,664	\$1,819.9	\$1,819.9
Nonresident 3-day Sport Fish	63,193	\$947.9	NA	\$0.0	(\$947.9)
Nonresident 1-day Sport Fish	68,003	\$680.0	105,973	\$1,059.7	\$379.7
Nonresident Military Sport Fish	5,600	\$84.0	5,600	\$84.0	\$0.0
Nonresident Hunt & Sport Fish* (37%)	1,165	\$58.2	NA	\$0.0	(\$58.2)
Nonresident Hunt & 14-day SF (26.1%)	1,905	\$57.2	NA	\$0.0	(\$57.2)
Nonresident Military SF & Small Game (37.5%)	301	\$4.5	301	\$4.5	(\$0.0)
Military King Salmon Stamp	2,322	\$46.4	2,322	\$46.4	\$0.0
Nonresident King Salmon Stamp	35,683	\$1,248.9	NA	\$0.0	(\$1,248.9)
Nonresident 14-day King Salmon Stamp	NA	\$0.0	44,604	\$2,230.2	\$2,230.2
Nonresident 7-day King Salmon Stamp	NA	\$0.0	26,842	\$805.3	\$805.3
Nonresident 3-day King Salmon Stamp	29,952	\$449.3	NA	\$0.0	(\$449.3)
Nonresident 1-day King Salmon Stamp	35,028	\$350.3	52,999	\$530.0	\$179.7
Duplicate KS Stamp	1,168	\$5.8	1,168	\$5.8	\$0.0
TOTALS		\$11,247.5		\$15,344.9	\$4,097.4



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

SPONSOR STATEMENT - HCS SB 7(FSH)
**Reducing Fees for Resident Combination Licenses and Increasing Fees for
Non-Resident Sport Fishing Licenses and Tags**

Senate Bill 7 was introduced in response to escalating misuse of Alaska's sport fish resources by non-residents who commercially harvest, process and sell sport caught fish. Some non-residents use proceeds from the sale of sport caught fish to pay for annual vacations in Alaska.

SB 7 raises non-resident sport fishing license and tag fees and creates a tool for enforcement officers to more easily trace those non-residents who abuse our sport fish resources.

SB 7 increases the 3 day non-resident sport fishing license fee from \$15 to \$20, creates a seven day non-resident license for \$30 and increases the non-resident 14 day license fee from \$30 to \$50.

SB 7 increases the annual non-resident sport fishing license fee from \$50 to \$150 and adds a provision restricting purchase to non-residents who work as sport fish guides. Proof of a current Alaska Business license or employment by a licensed sport fish guide and proof of either a current air taxi or commercial "6 pack" boat operator license is required to purchase the annual non-resident license. **Non-residents who do not work as guides will not be able to purchase an annual license therefore the Department will be able to more easily trace non-resident abusers of our sport fish resources who will be forced to continually purchase 14 day licenses throughout the season.** The House Fisheries committee, with my support added language to allow non-resident limited entry permit holders and licensed crewmembers to purchase annual sport fishing licenses.

SB 7 increases the 3 day non-resident anadromous king salmon tag fee from \$15 to \$20, creates a seven day non-resident king salmon tag for \$30 and increases the non-resident 14 day tag fee from \$35 to \$50.

In addition, SB 7 reduces the cost of the three types of resident combination licenses. **Currently, the cost for combination licenses for residents are exactly the same, whether each license is purchased individually, or as a combination.** SB 7 reduces the hunting and trapping, and the hunting and sport fishing licenses by \$1, and reduces the hunting, trapping and sport fishing license by \$2, creating an incentive for residents to purchase combination licenses. Purchasing combination licenses will save the State approximately \$1-2 in fees per combination license sold, thereby mitigating any loss of revenue, and will result in less paperwork for the Department to process.

If you have further questions, please contact Karen Brand of my staff at (907) 465-3892.

DD/kb 4/1/97

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee
• Senate Community & Regional Affairs Committee

Produced in House

Fish sting

9/12/96
ADN

Good folks, bad deeds

Just how many folks are ripping off Alaska's sportfish and selling them Outside? Nobody knows despite the recent busts on the Kenai Peninsula, yet the evidence suggests visiting fishermen are canning salmon up and down the Kenai.

The fishermen involved hardly fit the profile of criminals. "They're your average tourist coming to Alaska," says Fish and Wildlife Protection Sgt. Jim Cockrell. But they are out to pay for their vacation with canning ventures.

The fact that the perpetrators look more like Uncle Bud than Baby Face Nelson doesn't diminish the insult to Alaska's salmon fishery. Canning sportfish and selling them is against the law. It's criminal behavior. And no amount of whining "I only wanted to pay for my Alaska summer" changes that. How would the people of Arizona, where canned Kenai sportfish are sold, respond if they knew Alaskans were stealing their resources to pay for winter vacations?

Solutions are not readily at hand. Sportfishing and commercial fishing alike depend in large measure on the integrity of the fishermen. The state can't put a Fish and Wildlife Protection officer in every campground. Sting operations are costly and time-consuming. Changing the possession limits affects the honest and dishonest alike and is bound to provoke controversy.

But clearly it's time for the Legislature and the Fish Board to pay attention to the everyday folks stealing fish. Lawmakers and board members can gather information, ask questions, and explore the best way to protect the fishery. Then they can determine who should take the appropriate action.

Alaska welcomes visitors who want to explore its streams and land some salmon for dinner. But it doesn't welcome folks who come here with thievery on their minds.

8/28/96 ADN

Vacationers' fish seized

Undercover officers say salmon financed trips

The Associated Press

KENAI — Law enforcement officers have confiscated six freezers of fish and 30 cases of canned salmon as part of a undercover investigation of illegal fish-selling operations.

Officers of the Fish and Wildlife Protection Division have long suspected that some retirees and other Alaska visitors have been canning and freezing sport-caught fish on the Kenai Peninsula to help pay for their vacations. Now Fish and Wildlife Protection troopers are cracking down.

"One of our goals was to show that we have a second, unregulated commercial fishery going on down here," said Sgt. Bruce Lester of the Fish and Wildlife Protection Division's commercial crimes division.

An investigation this summer led to the seizure of the freezers and cases of canned salmon, according to Sgt. James Cockrell of the Fish and Wildlife Protection Division in Soldotna.

Lester said most, if not all, of the fish seized were caught by sportfishing methods, though limits may have been exceeded. It doesn't take a ge-

nus to catch a limit, change clothes and catch another limit, Lester said.

"One individual stated that just the fish his wife caught paid for the trip," Lester said.

Cockrell said three separate groups were targeted in the recent seizures. Charges have not yet been filed, so he would not reveal their identities.

The three groups of suspects, from Washington, Oregon and Alaska, are all retired and travel extensively, Lester said. The couple claiming Alaska residency have a son who lives on the Kenai Peninsula.

That son, Lester said, also will be charged with running an unlicensed charter operation and growing marijuana.

Sale of sport-caught fish is a misdemeanor. Violators can be sentenced to a year in jail and fined up to \$5,000.

"I think this is pretty prevalent, based on the information we're getting from the Lower 48," Cockrell said. "Once the reds hit the (Kenai) river, they fish them solid. They all plan on showing up here around the 10th of July."

STING: Sales of sportfish targeted

Continued from Page B-1

This year the operations were so blatant, fish were being sold in the campgrounds right on the Kenai Peninsula, Cockrell said.

"Some of those operations have really sophisticated gear and they work long,

hard hours. Those canners and smokers are going all night," Lester said.

"One operator even had a commercial outlet to sell his fish down south," he said.

An undercover officer was stationed in a peninsula campground this summer after a retired officer bought

some canned Alaska salmon at a flea market in Arizona, Lester said.

Veteran violators return year after year, Cockrell said.

"They teach the new people — give them tips on how to pay for their trips to Alaska," he said.

ADN 9/11/96

Illegal fishing

They broke the law; law broke them

Alaska welcomes visitors with open arms, but there are some guests Alaskans would prefer never to see again. Recently, officers of the Fish and Wildlife Protection Division fingered a bunch of them — folks, some in league with their Alaska hosts, who had been canning and freezing sportfish they caught on the Kenai Peninsula and selling it Outside to finance their summer vacations.

This kind of illegal salmon fishing apparently can be found in just about every campground on the Kenai Peninsula. It's so prevalent, in fact, that Sgt. Bruce Lester of fish and wildlife protection says, "We have a second, unregulated commercial fishery going on down here."

Make no mistake. The violators knew exactly what they were doing. Several of them showed an undercover officer how to put together a salmon-canning operation — and reminded him to keep mum about canning sports fish because it is illegal.

People who abuse Alaska's fish in this fashion don't fit our everyday image of criminals. They're typically middle-class folks who would stand out in a police lineup. But they are bandits nonetheless. They stole fish that didn't belong to them — and their thievery was as real and as destructive as true nasty guys' behavior. That's why the sale of sport-caught fish is a misdemeanor that can lead violators to a year in jail and a fine of up to \$5,000.

A successful fisherman needs a mixture of talent, patience, timing and the right equipment. And once successful, a fisherman needs a conscience. The law simply cannot be on every bank of every stream enforcing honorable behavior.

These folks did not have a conscience, and now they're going to pay for it. Perhaps their example will awaken the conscience of other abusers; if it doesn't, Alaska's fish and wildlife protection officers will have to show them just how harsh the law can be.

Salmon sellers targeted

Undercover agent roams campgrounds

By TOM KIZZIA
Daily News reporter

He looked like just another "snowbird" from the Lower 48. He'd fish for a few days, learning from other campers how to smoke and can his salmon. Then he'd move the pickup truck and trailer to another campground on the Kenai Peninsula.

Everywhere he camped this summer, from Nunilchik to the Russian River, the man with Montana plates found tourists smoking and canning fish to sell when they got back home, according to investigators with the Alaska State Troopers Fish and Wildlife Protection division.

The man from Montana was an undercover agent.

"Every campground he was in, there were people commercializing the salmon, even showing other people how to do it," said Fish and Wildlife Protection Sgt. Jim Cockrell.

Fish and Wildlife Protection officials said they sent the agent out in a trailer this year not to bust violators, but to check out widespread reports they'd been hearing of illegal salmon sales in the Lower 48 and in Europe, especially Germany.

"We wanted to see if it was a real problem," said Cockrell. "I think we verified everything we were being told."

In late August, troopers busted three "mom-and-pop" operations in Kenai River campgrounds, seizing about 400 pounds of frozen or canned salmon. But troopers say the problem of selling sport-caught fish appears much larger — and in most cases, there's little the state

FISH: Undercover investigation finds tourists are smoking and selling salmon

can do about it.

The three busted operations all sold fish to the undercover agent in Alaska, according to the state. Three people have pled no contest and paid \$1,500 fines, while two others say they're not guilty and want a trial.

But the long arm of Alaska law does not reach to Arizona or Florida, where the tourists reportedly planned to sell most of their salmon. Had the tourists waited until they left Alaska, they couldn't have been charged by the state with selling sport-caught fish.

Troopers say they need to determine how widespread the practice is before proposing legal solutions. Among the possibilities: appeal to the U.S. Fish and Wildlife Service for help in chasing violators across state lines, or pass a law limiting how many fish a non-resident angler can keep.

"We could lower the possession or processed-possession limits," said Mitch Doerr, an investigator with Fish and Wildlife Protection's commercial crimes bureau. "But that becomes a political deal. Are you going to start losing tourism?"

"I don't know if the problem is great enough to warrant limits on out-of-state fish," said Ben Ellis, executive director of the Kenai River Sportfishing Association. "I'd prefer to see them deal with it with sting operations like this one. How many fish are we talking about? A few hundred or 10,000?"

Anglers have caught an average of 170,000 red salmon each year for the past decade along the Kenai River.

This year, with a big run and the daily bag limit raised from three fish to six, canners and smokers were busy.

Much of the activity is legitimate, troopers say. Beyond the daily take, there's no limit to how many fish a non-resident angler can take home to eat or give away.

The commercial canning operations broken up in August had processed fairly small volumes of fish.

"For the most part, the person isn't trying to get rich off it, but they're trying to pay for their vacation to Alaska," Cockrell said.

Melvin and Barbara Gibb were canning fish in jars in their motor home parked all summer at River Quest campground outside Soldotna. Troopers said they targeted the Gibbs because a retired trooper stumbled on them in Arizona last winter selling canned Alaska salmon at a flea market.

Doerr said the Gibbs had 200 to 300 pounds of frozen salmon when troopers seized their equipment Aug. 23, along with 12 cases of canned fish. He said they expected to receive \$4 a pint for the salmon.

"They were real nice retired people," said Sean Cude, manager of the River Quest campground who said he was surprised by the bust.

Anchorage
Daily
News
9/11/96

"They probably had about enough fish to make money for gas in their big chug-a-lug motor home," said Cude.

"But it's against the law and they're stealing fish from you and me and our kids. If everybody does it, we're going to be like Oregon and Washington, with all our rivers fished out."

Barbara Gibb, reached on her mobile phone in Soldotna earlier this week, refused to answer questions about selling fish in the Lower 48. She admitted she and her husband sold several silver salmon to the man from Montana, however.

"The man begged us," she said. "He said he was heading back to Montana but he hadn't caught any silvers yet. He came knocking on our door."

Also fined was Richard Willet, a Florida man who troopers said had sold smoked fish from Alaska in the past and planned to expand his market. Willet told the undercover agent he expected to leave with 800 pounds of vacuum-sealed salmon, which he could sell for \$10 a pound. But he only had 100 pounds of salmon when the bust occurred, said Doerr.

Willet sold a 35-pound king salmon and two smoked fillets to the undercover agent at River Quest, Doerr said.

Robert and Edith Miller, who camped at Riverbend Campground, were charged with selling halibut from their son's sportfishing charter. They have pleaded not guilty. Charges against their son, Robert J. Miller, are pending, troopers said.

Advisory board backs off fish limit for nonresidents

By JON LITTLE

Daily News Peninsula Bureau

SOLDOTNA — A Kenai-Soldotna panel that helps shape state fisheries policy has decided to take a wait-and-see approach on the issue of capping the number of fish caught by Alaska tourists.

The state Board of Fisheries wants some kind of limit to battle a perceived rise in a kind of cottage industry: Some anglers have been nabbed red-handed along Kenai Peninsula rivers canning their catch to sell for profit.

One idea is to create a statewide nonresident punch card with a summer's limit of 18 salmon, with no more than four being kings. Currently there is no statewide limit on the number of red salmon anglers can catch in a season.

"I just want people to think before they harvest," said Brent Johnson, a Peninsula setnetter who sits on the Kenai-Soldotna Fish and Game Advisory Committee. Johnson made the 18-salmon proposal. "I don't think it would be that big of an impact on anybody," he said.

Rather than dive in with that or any other idea, the committee on Wednesday voted to table the issue. A majority of board members didn't want to be locked into just one approach, said Dave Horne of Kasilof, a commercial drift gillnetter.

Anyone in the state can file a proposal before the Fish Board's April 10 deadline, and the local committee can review those ideas when it meets again later this spring or next fall, Horne said.

The Board of Fisheries isn't expected to take up the issue until next winter.

The Kenai-Soldotna panel is one of dozens statewide

"I just want people to think before they harvest. I don't think it would be that big of an impact on anybody."

— setnetter Brent Johnson

that gather proposals on how state fisheries should be run. Those ideas generally are funneled to the Fish Board, which sets policy. But in this case, the board has turned the process around, specifically asking the statewide councils to come up with a cap for nonresident fishermen.

Most anglers, Alaskans and Outsiders, rarely catch more than 15 red salmon a summer in the Kenai and Russian rivers, according to Fish and Game statistics. About one in 10 caught more than that in 1995.

Horne said those figures made a good argument for the punch card, because it would target just the people who overfish. "We're not even going to affect 90 percent of the people who are here now fishing," he said.

Few on the panel felt that a punch card would stop illegal fishing, but some said it could provide a tool for law enforcement.

But why limit just Alaska tourists, asked Jeff King, a Kenai River guide. "Greed and abuse isn't exclusive to our nonresidents."

Committee members said it was tough making a decision when there was very little information on actual abuses. Regulating based on perceptions would be a risky business, some said.

"I hate speculative law," said Rhon Lyons of Sterling.

King warned that a punch

card with 18 fish could be misinterpreted by a tourist as a right, rather than a bag limit. People tend to see their limits as goals, he said.

Others at the meeting saw the nonresident fishing limit as an end run to secure more salmon for Alaskans. "These fish belong to everybody in the United States. You've got to get this into your heads," said Dale Bondurant of Funny River. He said it was unfair to impose restrictions on people just because they don't live in the state.

Maybe, but it is legal, according to the state attorney general's office. State and federal courts have ruled that rights guaranteed by the U.S. Constitution don't extend to bag limits, said Steven Daugherty, assistant attorney general.

Already, a bag limit of four king salmon has been imposed on tourists fishing in Southeast waters.

Fish and Game biologists view the cap as an allocation decision, even if it has its basis in illegal overfishing, said Dave Nelson, state sportfish biologist. "You're deciding who is going to catch the harvestable surplus, the resident or the nonresident, and that's allocative," he said.

Nelson also raised the issue of cost. The price of creating and distributing punch cards would come out of Fish and Game budgets that otherwise fund scientific studies, he said.



Senator David Donley
Alaska State Capitol
Juneau, AK 99801
via fax

Re: Senate Bill No. 7 - Modifying Sport Fishing License Fees

Dear Senator Donley:

Thank you for forwarding us a copy of the subject bill. The bill, when signed into law, would accomplish many positive things for the resident sport angler:

- It would reduce aggregate fees should he or she purchase multiple licenses (fishing, hunting, trapping).
- It would bring the level of non-resident fees more closely in line with other states and provinces. It would show the visitors that we Alaskans value our fisheries as much as they do theirs. Based on comments I have heard from our visitors, there is no doubt in my mind that the visitors will gladly pay this small increase to participate in Alaska's incredible fisheries.
- The elimination of the non-resident annual fishing license will provide ADF&G with data that could enumerate who is staying for an extended period and might be a lead sheet for investigations into the illegal sale of sport caught fish. Most residents abhor the illegal sale of sport caught fish by non-residents and want this illegal activity eliminated.

The Alaska Sportfishing Association supports this bill and urges its passage.

Phil Cutler, President

SB 7 proposed amendments before the House Resources Committee

Amendment # _____ by Rep. Masek

Page 2, lines 16 - 28: Delete

Rationale:

The existing language in HCS CSSB 7 would only provide those nonresidents commercially involved in the state's fisheries to purchase an annual fishing license. The reasoning behind the inclusion of this provision stems from a desire to do something about sport caught fish being commercially sold.

The value of sport caught fish is such that if they were being caught for sale, the individuals involved would undoubtedly be willing to pay the additional amount necessary to keep fishing.

Director of Sport Fish Division, Kevin Delaney, in a phone conversation stated the Department supports having an annual license.

Director John Glass of Fish and Wildlife Protection in a phone conversation stated that requiring nonresidents to buy multiple licenses would not assist his division in catching people selling fish caught on a sport license.

By leaving HCS CSSB 7 as it is now written, a nonresident deckhand for a commercial fisherman could have an annual license, but someone's out of state relatives who were up on an extended vacation would have to continually buy a license to go fishing. This may not seem like much of a problem to some people; however, when the range of fishing opportunities within Alaska is taken into account, it seems somewhat burdensome. There are many kinds of fisheries in Alaska and some visitors would like to have the opportunity to experience more than just salmon fishing in just one location of the state, especially if it is with family members.

AMENDMENT

Offered in the House
To: HCS SB 7 (FSH)

By: _____

Page 1
Line 6

Insert:

" * Section 1. It is the Intent of the Legislature that the fee increases for non-resident sport fishing licenses in this legislation help discourage current abuses by non-residents harvesting sport-caught fish for the purpose of selling them. The legislature requests the Board of Fish also address this problem and adopt a quota system to limit non-residents catch of sport fish."

Renumber following sections accordingly

DD/kb

APR 2 1997

March 24, 1997

Representative Scott Ogan
Co-Chair, House Resources Committee
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Ogan,

I would like to ask you as Co-Chair and the members of the House Resources Committee to amend SB-7. This bill needs to be amended to add a season non-resident fishing license. In Cooper Landing, and I am sure in other parts of Alaska, several retirees and their families own summer homes, pay taxes and spend 3 to 5 months in Alaska each year. While they maintain their legal residence elsewhere, they are a valuable part of our economy and their needs should be addressed.

While I do not feel that this bill will improve enforcement, I do not oppose the proposed fees or the season license for non-resident guides. I only ask that the bill be amended so that non-residents will still be able to purchase a season sport fishing license.

Enclosed is a list of state-by-state fees for non-resident licenses, tags and stamps. PLEASE NOTE, all states have a season license for non-resident anglers.

Thank you and all members of the House Resources Committee for listening to my concerns.

Sincerely,



Bill Stockwell
P.O. Box 721
Cooper Landing, AK 99572-0721

Phone: Cooper Landing (907) 595-1540
Anchorage (907) 274-1288

STATE/PHONE	SINGLE-/MULTI-DAY	SEASON	STAMPS/TAGS ADDITIONAL
ALABAMA (334) 242-3471	7 day-\$11.00 ¹	\$31.00	None
ALASKA (907) 465-2376	1 day-10.00 3 day-15.00 14 day-30.00	50.00	King salmon: 1 day-10.00 3 day-15.00 14 day or season-35.00
ARIZONA (502) 942-3000	1 day-8.00 5 day-18.50 4 month (non-consec)-22.00	38.00	Trout, included except for annual-10.00
ARKANSAS (501) 223-6300	3 day-10.00 7 day-15.00 14 day-20.00	30.00	Trout-7.50
CALIFORNIA (916) 227-2244	1 day-9.20 10 day-25.70	69.55	Varies depending on location/species
COLORADO (303) 291-7533	1 day-5.25 5 day-18.25	40.25 ²	None
CONNECTICUT (860) 424-3105	3 day-8.00	25.00	None
DELAWARE (302) 739-4431	7 day-5.20	15.00	Trout-6.20 (anglers 12 years and over)
FLORIDA (904) 488-4676	7 day-15.00	30.00	None
GEORGIA (770) 414-3333	1 day-3.50 7 day-7.00	24.00	Trout-13.00
HAWAII (808) 587-0100	30 day-3.75	7.50	None
IDaho (208) 334-3700	1 day-7.50, each additional day-3.00	51.50	Steelhead-5.50
ILLINOIS (217) 782-2965	10 day-13.00	24.50	Trout-6.50 Lake Michigan daily tag-5.50
INDIANA (317) 232-4080	1 day-4.75 3 day-6.75 7 day-8.75	15.75	Trout-5.75
IOWA (515) 286-3168	7 day-8.50	22.50	Trout-10.00
KANSAS (913) 273-6740	1 day-3.50 5 day-13.50	30.50	Trout-8.00
KENTUCKY (502) 564-4336	3 day-12.50 15 day-20.00	30.00	Trout-5.00
LOUISIANA (504) 765-2800	2 day-23.00 7 day-26.00 (combination, fresh salt) special 3-day, fresh only-10.00	31.00	None
MAINE (207) 287-5261	1 day-10.00 3 day-22.00 7 day-35.00 15 day-39.00	51.00	None
MARYLAND (410) 974-3211	5 day-7.00	20.00	Trout-5.00
MASSACHUSETTS (617) 727-3151	7 day-16.50	22.50	None
MICHIGAN (517) 373-1204	1 day-5.85 (includes trout season)	20.85	Trout/salmon-10.35 (season license only)
MINNESOTA (612) 296-4506	3 day-17.00 7 day-20.00 14 day-28.50 ¹	28.50 (ind) 38.50 (family)	Trout-5.00
MISSISSIPPI (601) 364-2123	3 day-6.00	25.00	None
MISSOURI (573) 751-4115	1 day-3.00	30.00	Trout-6.00

1-Miss. residents, \$15. Fla. and Tenn. residents, \$16. La. residents, \$26
2-Second rod, \$4
3-Married couple may also fish 14 days for \$28.50

NONRESIDENT LICENSE ROUNDUP

STATE/PHONE	SINGLE-/MULTI-DAY	SEASON	STAMPS/TAGS ADDITIONAL
MONTANA (406) 444-2535	2 day-\$15.00 (10.00 for every two days thereafter)	\$50.00	Paddlefish-7.50, Madison and Yellowstone only
NEBRASKA (402) 471-0641	3 day-10.75	35.00	Trout-5.50
NEVADA (702) 688-1500	1 day-12.00 (each additional day-4.00)	51.00	Trout-5.00
NEW HAMPSHIRE (603) 271-2743	3 day-18.50 7 day-23.50 15 day-27.50	35.50	None
NEW JERSEY (609) 292-2965	7 day-16.50	25.25	Trout-5.50
NEW MEXICO (505) 841-8881	1 day-9.00 5 day-17.00	40.00	None
NEW YORK (518) 457-3521	1 day-11.00 5 day-20.00	35.00	None
NORTH CAROLINA (919) 662-4370	1 day-10.00 (with trout, 15.00) 3 day-15.00 (with trout, 25.00)	30.00 (with trout, 40.00)	Comprehensive licenses
NORTH DAKOTA (701) 328-6335	3 day-10.00 7 day-15.00	25.00	None
OHIO (614) 265-6300	3 day-15.00	25.00	None
OKLAHOMA (405) 521-3851	5 day-10.00 14 day-20.00	28.50	Trout-7.75
OREGON (503) 378-6925	1 day-6.75 2 day-12.50 3 day-18.25 7 day-30.50	40.50	Salmon/steelhead-10.50 Sturgeon-6.00 (seasonal only)
PENNSYLVANIA (717) 657-4534	3 day-14.25 7 day-29.25	34.25	Trout-5.50 Lake Erie permit-3.50
RHODE ISLAND (401) 277-3576	3 day-16.00	31.00	Trout-5.50
SOUTH CAROLINA (803) 734-3833	7 day-11.00	35.00	None
SOUTH DAKOTA (605) 773-3393	1 day-9.00 5 day-29.00	49.00	None
TENNESSEE (615) 781-6585	3 day-10.50 (all species, 20.50) 10 day-15.50 (all species, 30.50)	26.00 (all species, 51.00)	Comprehensive licenses
TEXAS (512) 389-4505	5 day-20.00	30.00	Trout-7.00
UTAH (801) 538-4700	1 day-5.00 7 day-15.00	40.00	5.00 Wildlife Permit w/ 7-day and season licenses
VERMONT (802) 241-3700	1 day-7.00 3 day-18.00 5 day-20.00 7 day-25.00	35.00	None
VIRGINIA (804) 367-9369	5 day-6.50	30.50	Trout-30.50
WASHINGTON (360) 902-2200	1 day-7.00 3 day-17.00	48.00 (adult) 20.00 (under 15 yrs)	Steelhead-18.00 (adult) 6.00 (under 15 yrs)
WEST VIRGINIA (304) 558-2771	3 day-10.00	30.00	Trout-7.50
WISCONSIN (608) 273-5955	4 day-13.00 15 day-18.00 15 day (family)-28.00	28.00	Trout-7.25
WYOMING (307) 777-4600	1 day-6.00	65.00	Trout-5.00

SB

19

FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____

Version: SB 19

(S) Publish Date: 2/6/97

Revision Date: _____

Dept. Affected: Public Safety

Title: An Act relating to the Commissioner of Fish
Game

BRU: Fish and Wildlife Protection

Component: Detachments

Sponsor: Senator Sharp

Requestor: S RES

COMPONENT SERIAL NO. 0490

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
This Bill will not impact this Department's programs or budget.

Prepared By: Lt. Joel L. Hard

Phone: 269-5409

Division: Fish and Wildlife Protection

Date: January 31, 1997

Approved by Commissioner: Dee Smith

Date: 1/31/97

Agency: Ronald L. Otte, Department of Public Safety

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BERT SHARP
DISTRICT P
CO-CHAIRMAN
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MEMBER
RESOURCE COMMITTEE




Senate

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MEMORANDUM

TO: Representative Scott Ogan, Co-chair
House Resources Committee

FROM: Senator Bert Sharp, Co-Chair
Senate Finance Committee 

SUBJ: Request for Hearing on SB 19

DATE: March 24, 1997

I am making a second request for a hearing on SB 19, "An Act relating to enforcement of federal laws relating to fish and game: and repealing the power and duty of the Commissioner of Fish and Game to assist in the enforcement of federal laws relating to fish and game." Senate Bill 19 was a section in SB 77 which was passed by both bodies last year and vetoed by Governor Knowles. Please schedule as soon as it is conveniently possible.

Thank you.



REPRESENTING
GOLDEN HEART
OF ALASKA

Alaska State Legislature

SENATOR
BERT SHARP
DISTRICT P
CO-CHAIRMAN
SENATE FINANCE COMMITTEE
MEMBER
RESOURCE COMMITTEE



Senate

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SPONSOR STATEMENT

SB 19 - Senator Bert Sharp Fish & Game Com'n'r Not To Enforce Federal Law

Senate Bill 19 repeals the present statutory mandate <AS 16.05.050.(1)> that the State of Alaska will assist the federal government agencies in the enforcement of federal laws and regulations as they apply to fish and game resources in Alaska.

In light of aggressive federal actions to assume management of fish and game over large areas of our state in violation of our statehood compact, I believe repeal of this statute is prudent and in the best interests of the citizens of Alaska. I urge your expeditious and favorable approval of SB 19.



REPRESENTING
GOLDEN HEART
OF ALASKA

0-LS0173\E
Utermohle
4/15/97

Adopted

HOUSE CS FOR SENATE BILL NO. 19(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS SHARP, Taylor, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to enforcement of federal laws relating to fish and game; and
2 repealing the power and duty of the commissioner of fish and game to assist
3 in the enforcement of federal laws relating to fish and game."

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

5 *Section 1. AS 16.05.050(1) is repealed.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

April 8, 1997

LA
Maniche
File with SB19

The Honorable Bert Sharp
Alaska State Senate
Alaska Capitol, Room 516
Juneau, AK 99801-1182

Dear Senator Sharp:

I am very concerned about the impact of Senate Bill 19 on the ability of the Division of Fish & Wildlife Protection (FWP) to cooperate and work with federal agencies in protecting Alaska's fish and game resources. During a phone conversation with Deputy Commissioner Smith earlier this session you indicated the legislation was not intended to effect FWP in their enforcement activities. However, it appears from the bill's current language that it may well have an effect on FWP officers in the performance of their enforcement duties.

I have enclosed a letter from the Attorney General which sets out the legal issues the Department of Law feels will be issues if the legislation becomes law. While I cannot comment with any degree of authority on the legal issues, I do see operational problems for FWP personnel.

Currently FWP troopers are "cross designated" and can enforce federal wildlife laws. It appears that under the current wording of the proposed legislation they may be precluded from taking any enforcement action on federal violations. Even if their involvement was limited to the gathering of evidence the defendants would most certainly make an effort to prevent the introduction of the evidence based on the language in SB 19 if it becomes law.

Additionally, "cross designation" works both ways and federal officers are not likely to provide assistance to the state officers since the state officers do not provide reciprocal assistance to them.

I see the above examples as potentially detrimental to the fish and games resources of the State of Alaska. Therefore, I urge you to craft language that will not tie the hands of the FWP troopers who work daily to ensure that Alaskans can enjoy and utilize the fish and wildlife bounty of this great state.

Sincerely,



Ronald L. Otte
Commissioner

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800
FAX: (907) 465-2075

April 8, 1997

Representative Bill Hudson, Co-Chair
Representative Scott Ogan, Co-Chair
and members
House Resources Committee
Alaska State Legislature, State Capitol

Dear Representatives Hudson, Ogan,
and members of the House Resources Committee:

The present version of Senate Bill 19 prohibits a state employee from assisting with the enforcement of federal fish and game laws that are "in conflict with" Alaska fish and game laws. The Department of Law has the following concerns about implementing that bill if it becomes law.

I believe the principal purpose of the bill is to prevent the state from assisting with implementation of the federal subsistence law, Title VIII of ANILCA. That law, following the *McDowell* decision, differs from the present state law, AS 16.05.258, regarding who is eligible for the subsistence priority.

The term "in conflict with," however, could be applied outside of the subsistence context. That is because the term is inherently vague. Courts have given it various meanings.

A common interpretation is that there is "conflict" between two laws when one law allows an activity that the other law prohibits, and vice versa. *Cozart v. Carran*, 11 N.E.2d 245 (Ohio 1937); *Otto v. Wearty*, 27 N.E. 2d 190, 192 (Ohio App. 8 Dist., 1940); *City of Columbus v. Glascock*, 189 N.E.2d 889, 891 (Ohio App. 1962); *Village of Struthers v. Sokol*, 140 N.E. 519, 521 (Ohio 1923); *City of Portland v. Jackson*, 826 P.2d 37, 43 (Or.App. 1992). Thus, laws that are different but are "compatible as a whole" are not in conflict. *Id.* Similarly, "in conflict with" does not necessarily mean different from. *In re Robertson*, 20 F.Supp. 270, 273 (N.D.Tex. 1936). For two laws to be "in conflict", it is not necessary that they are directly opposite, but rather that they are incompatible such that both could not apply in a given situation. *Spencer v. State*, 520 N.E.2d 106, 109 (Ind.App. 1 Dist. 1988).¹

¹ Ironically, under that interpretation, the federal and state subsistence laws may not be "in conflict." Since ANILCA applies only to "public lands" and AS 16.05.258 applies elsewhere, there is no instance where they would legally overlap, that is, "apply in a given situation."

The courts themselves are in conflict over the meaning of the term. In one opinion, laws that punished the same act were "in conflict." *People v. Zook*, 197 P.2d 851, 852 (Cal. App. 1948). In another opinion, laws that identically defined and prohibited an act, and even imposed different penalties, were not "in conflict." *Cincinnati v. Thompson*, 643 N.E.2d 1157, 1172 (Ohio App. 1994).

Besides legal ambiguity, there are practical situations where the bill's impact is unclear. Presently, state fish and wildlife protection officers are "cross deputized" to enforce federal wildlife laws. The present bill would likely prevent a state officer from arresting, reporting, or even collecting evidence of violations of federal subsistence laws. In that event, the officer may have to formally revoke any oath he or she has taken to uphold and enforce federal law. If a state official were inadvertently or indirectly involved in gathering any particular evidence, the defendant could ask the court to prohibit that evidence from being introduced at trial. It could handicap the entire prosecution of the crime. See *Wallace v. State*, Op. No. 1514 (Alaska App., Feb. 23, 1997).

In addition to the federal subsistence law, Alaska fish and wildlife protection officers are called on to assist the enforcement and prosecution of other federal wildlife laws, such as the Marine Mammal Protection Act ("MMPA"), the Endangered Species Act ("ESA"), the Magnuson Act ("MFCMA"), and the Migratory Bird Treaty Act. Except for the ESA (See AS 16.20.180-.210), there are no Alaska equivalents to those laws, and therefore, no direct conflict between federal and state enactments. There are, however, disagreements about how the federal laws are being implemented. For example, Alaska has objected to proposed listings under the ESA and to federal management actions inside state waters under the MFCMA.

There are also instances where the courts have concluded that federal laws have preempted state laws in certain areas. For example, Alaska laws regulating certain activities on the Walrus Island State Game Sanctuary are preempted by the MMPA. *State v. Amariak*, 893 P.2d 1273 (Alaska 1995). The only effective way for state managers of the Sanctuary to protect the walrus population is through that federal law. It is uncertain whether those situations -- where the state differs with certain steps taken to implement federal law or where the federal law has displaced state law - would be interpreted as "conflicts" under this bill.

Cross deputization works both ways. If the state stops assisting with the enforcement of federal wildlife laws, officers of the National Marine Fisheries Service (NMFS), the Fish and Wildlife Service, and the Bureau of Land Management would have little incentive to enforce Alaska wildlife laws.

It is important to realize that combined enforcement actions have been very successful. For example, in 1992 an effort involving U.S. Coast Guard vessels and aircraft, NMFS agents, and state officers documented illegal bottom trawling in state waters. Joint teams boarded and inspected approximately fifty vessels, and in the end, thirteen vessels were convicted. The state recovered more than six million dollars in criminal and civil fines. Illegal trawling has not been

Rep. Bill Hudson, Co-Chair
Rep. Scott Ogan, Co-Chair

April 8, 1997
Page 3

detected since.

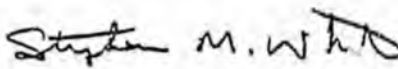
If federal cooperation is withdrawn in response to this bill, the Department of Public Safety does not have resources to fill the gap. As a result, fewer overall violations of Alaska fish and game law would be detected and prosecuted.

It is not clear whether the bill governs more than law enforcement. Presently, state officials exchange information with federal subsistence counterparts, and they comment on proposals to the Federal Subsistence Board. They also desire to participate in a joint committee that reviews technical information in proposals to the Federal Subsistence Board. If those activities are prohibited, Alaska may miss opportunities to positively affect federal subsistence decisions.

I offer these comments hoping that the intent for Senate Bill 19 will be clarified as the bill is being considered by the House Resources Committee.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Stephen M. White
Assistant Attorney General

cc: Senator Bert Sharp
Commissioner Ron Otte
Colonel John Glass
Pat Pourchot
Deborah Behr
Chrystal Smith

SMW:lt