

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998

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Introduction

This report examines the implementation of Alaska's 1992 subsistence law. It provides background for the Nineteenth Alaska State Legislature as it considers whether to reauthorize the 1992 law before key provisions sunset in October 1996, or to make other changes concerning the subsistence statute. This report updates and extends the analysis that ADF&G prepared for the legislature in January 1995 (Report on Implementation of the 1992 Subsistence Law, Alaska Department of Fish and Game, Division of Subsistence, January 1995).

The legislature amended the subsistence law in 1992 to address perceived problems with the 1986 law, including lawsuits that had arisen during its implementation. This report has two major objectives. The first objective is to describe the key differences between the 1992 law and the 1986 law. These involve four primary areas -- who qualifies for subsistence uses, where subsistence uses occur, providing for subsistence uses with regulations, and operation of the subsistence preference. The second objective is to examine how the 1992 law is being interpreted and implemented. This report does not address the problems created by dual state-federal management, and does not make recommendations for changes to the 1992 law.

Before proceeding, it is important to consider the purpose of the subsistence law. Alaskans from all walks of life make widely differing uses of fish and wildlife. For more than twenty years the state has wrestled with the question of how to protect the subsistence taking, uses, and practices of the people in the communities with the greatest dependence and historic reliance upon fish and wildlife for domestic consumption. Throughout this debate there has been widespread agreement that there is a need for some sort of protections for

subsistence, but considerable disagreement about who should benefit and how to accomplish it.

One aspect of fish and wildlife management during this century has been the uneasy relationship between the fish and wildlife harvest patterns that people follow in small communities in Alaska and the laws and regulations created by government to regulate them.

- Subsistence patterns are developed by custom in small Alaska communities, and passed down through oral traditions and practice. They are "customary and traditional" uses that follow local rules within small communities.
- Subsistence uses of fish commonly include harvesting fish with efficient gear (such as nets, fishwheels, and hook-and-line); preserving fish for use (such as through freezing, drying, smoking, and salting); distributing fish through sharing and small-scale barter and trade; and consuming fish products.
- Subsistence uses of wildlife commonly include efficient hunting and trapping for big game (including moose, caribou, deer, sheep, goats, black bear, and brown bear), small game-fur bearers (including beaver, hare, fox, and wolf), and birds (including geese, ducks, and ptarmigan); preserving meat and furs; distributing meat and furs through sharing and small-scale barter and trade; and using meat and fur products as food and crafts.
- Subsistence patterns are common practices of families in small communities; they serve as a base for the economy, culture, and way of life in many Alaska communities.

By contrast, the written laws and regulations of the government pertaining to fishing and hunting have been developed primarily by legislatures, boards, and courts which to a great extent are distant from the small villages geographically, culturally, and politically. Families dependent upon subsistence in small communities have frequently found that their customary ways of taking and using wild foods are at odds with written laws and regulations regarding wild resource use.

This uneasy relationship of traditional practice and government regulation is at the heart of the subsistence issue, and is the main subsistence issue that must be addressed from the point of view of families dependent upon subsistence.

- Subsistence fishers and hunters don't want to be criminals in order to continue to feed their families;
- They wish that their customary and traditional patterns of resource use could be recognized and accommodated by the laws and regulations of government.

In situations where fish and wildlife use are such important parts of people's lives, there has to be mutual trust and cooperation between the people doing the regulating and those that are regulated if fish and wildlife populations and their uses are to be maintained.

The state subsistence law and federal subsistence laws were steps toward addressing these issues. The federal subsistence law and the pre-1992 state subsistence law recognized the importance of the customary and traditional patterns of subsistence hunting and fishing that occurred in "rural" Alaska, and predominately in small villages. This is explicit in the legislative history of both the state and federal laws, as well as implicit in policy and legislation. As early as 1973 the Boards of Fisheries

and Game had adopted a policy giving subsistence the "highest priority among beneficial uses." In 1975 the state legislature adopted legislation permitting the establishment of subsistence hunting zones to reduce competition between local residents and urban hunters, although none were ever established. The 1978, 1986, and 1992 subsistence legislation each acknowledged the importance of subsistence uses of fish and wildlife.

While the precise boundaries of the class of people intended to be protected by the state and federal laws are fuzzy, there is considerable agreement about the core of this class. Most commentators seem to agree that the subsistence law should protect uses of fish and wildlife by people living in small communities where a high proportion of residents have historically relied upon fish and wildlife for a large part of their livelihood, and with cultural and social ties based upon those uses. The Alaska Supreme Court concisely summarized these characteristics as including:

... economies which rely on hunting, fishing and gathering activities, strong kinship bonds, isolation from those parts of Alaska that approximate mainstream America, different seasonal activity patterns, concepts of time and scheduling, which in accordance with other cultural divergences, may be quite different from those of mainstream America, and finally, very limited participation in the cash economy. (Alvarado v. State, 486 P.2nd 891, 894 Alaska 1971).

The 1986 State Subsistence Law

In passing the first state subsistence law in 1978 the Alaska legislature found that "it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs, and traditions of Alaskan residents" (Sec. 1 ch. 151 SLA 1978). The 1978 law did four major things to accomplish this. (1) It defined subsistence uses. (2) It required the Alaska Boards of Fisheries and Game to adopt regulations permitting subsistence uses to occur when a harvestable surplus of a resource was available. (3) It established that in times of resource shortage, subsistence uses be given a preference over other uses, such as commercial, sport, or personal use. This meant that subsistence hunting and fishing were to be restricted last whenever it became necessary to restrict harvest opportunities for conservation purposes. (4) It created the Division of Subsistence within the Department of Fish and Game to provide information about subsistence and to assist the boards in carrying out the law.

In 1980 Congress passed Title VIII of ANILCA, which incorporated the basic ideas and language of the state law. The federal law, however, limits the subsistence preference to "rural Alaska residents" (P.L. 96-487, December 2, 1980 [94 Stat. 2371]). The federal law applies to federal public lands, but offers the state the option of continuing to manage subsistence on all lands in the state, if the Alaska legislature enacts "laws of general applicability which are consistent with and provide for the definition, preference, and participation specified [in the federal law]." The state initially attempted to comply with ANILCA by adopting a rural preference in regulation. After this was overturned by the Alaska Supreme Court in Madison, the legislature revised the subsistence

statute in 1986, amending the definition of "subsistence uses" to read:

the noncommercial, customary and traditional uses [IN ALASKA] of wild, renewable resources by a resident domiciled in a rural area of the state 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 by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption (AS 16.05.940(23)).

The legislature also defined "rural area" as:

a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area (AS 16.05.940(32)).

The 1986 law also more explicitly defined steps to be taken by the boards in providing for subsistence. It required that the boards first identify the rural areas of the state, and then identify the fish stocks and game populations that are customarily and traditionally used for subsistence in those areas. For the stocks and populations identified as having customary and traditional uses, the board must then determine the harvestable surplus, and the portion of that surplus needed to provide a reasonable opportunity to satisfy subsistence uses. Finally, the board must adopt subsistence regulations necessary to provide for that opportunity.

The Department of the Interior quickly certified the 1986 law as consistent with ANILCA. Beginning that year the boards engaged in an ambitious effort to identify rural areas, customary and traditional uses, and fishing and hunting regulations that provided for subsistence uses. This process was nominally completed for most of the major subsistence hunts and fisheries in the state by 1990. Due to time constraints and conflicts, the Board of Game simply renamed existing general hunting regulations as subsistence regulations in many cases. Both boards noted that they would continue to accept specific proposals from the public for additional changes to subsistence regulations, and to apply the state law on a case by case basis.

The 1986 state subsistence law set up a procedure for state boards to identify subsistence uses by rural residents and provide for them in regulation.

- Areas and people participating in customary and traditional uses were supposed to be identified; and,
- Customary and traditional uses of fish and game were supposed to be identified and provided for in

regulation, consistent with sustained yield management.

In addition, two protections for subsistence patterns were provided in the pre-1992 state subsistence law and the federal subsistence law:

- Subsistence practices in rural areas should not be unreasonably restricted by fishing and hunting regulations. That is, regulations must "provide" for established subsistence uses.
- When there are not enough wild fish or game to meet all consumptive uses, subsistence practices should be restricted only after sport fishing, general hunting, and commercial fishing. That is, subsistence has a "preference" over other types of fishing and hunting.

The state's pre-1992 subsistence law was still in the process of being implemented in regulation by the state Boards of Fisheries and Game when state law fell out of compliance with federal law in 1990. There were therefore still many unresolved inconsistencies between established subsistence practices in small villages and what was legal in regulation.

The 1992 State Subsistence Law

The legal foundation for state subsistence management changed abruptly in December of 1989 when the Alaska Supreme Court ruled that the rural provisions of the state's subsistence law violated the Alaska constitution (*McDowell v. State* 785 P. 2d 1 Alaska 1989). The court prohibited the state from using rural residency as the basis for subsistence eligibility. On remand to the superior court, the rural provisions were severed from the 1986 subsistence law, leaving the rest of the law intact.

This legal decision rendered the state law inconsistent with ANILCA Title VIII, the federal subsistence law, which defined subsistence as a use by rural people. Subsequently, in July of 1990, the federal government took over management of subsistence hunting on federal public lands in Alaska to provide for subsistence uses by rural Alaska residents on federal public lands. The state continued to manage for subsistence hunting and fishing in Alaska under the 1986 state law, but without the rural provisions. This resulted in state subsistence hunts and fisheries open to all Alaska residents (the so-called "all Alaskans" approach), and federal subsistence hunts on federal public lands open to qualified rural residents.

In the spring of 1990 the Alaska legislature considered placing a constitutional amendment before voters that would enable the state to meet ANILCA standards. That effort failed, as did a subsequent effort during a special legislative session in June of 1990.

Governor Hickel convened a Subsistence Advisory Council in 1991, shortly after taking office. He then brought its ideas concerning the subsistence issue to the 1992 legislative session. When the legislature adjourned in May of 1992 without taking any action

on subsistence, the governor called a special legislative session in the summer of 1992. A range of subsistence management options were considered by the legislature. The subsistence law that eventually resulted from the 1992 special session made several changes in the state subsistence law. These did not bring the state's program into compliance with ANILCA.

The most substantive change, which was made to comply with the Supreme Court's ruling in *McDowell*, is that the 1992 law removes any reference to rural residents as the people whose uses of fish and wildlife are protected by the law. Another major difference is that the 1992 law explicitly prohibits the Boards of Fisheries and Game from permitting subsistence hunting or fishing in areas identified by the boards as "nonsubsistence areas". The 1992 law also defines some key terms that had been used in implementing the 1986 law but had not been defined in statute, and sets out specific procedures for the boards to follow in implementing the 1992 law. In summary the 1992 law:

- Allows any Alaskan to participate in subsistence hunts and fisheries if they use the fish or game harvested for subsistence purposes (such as personal or family consumption, sharing, and crafts).
- Directs the boards to identify "nonsubsistence areas" and to prohibit subsistence fishing and hunting in them.
- Establishes explicit procedures for implementing the subsistence preference.

- Defines "reasonable opportunity", "customary trade", and "customary and traditional".
- Includes a "sunset" provision calling for a review of the operation of the

law by the governor and the legislature and a return to the 1986 law if no action is taken by the legislature.

Effects of Changes in the Subsistence Law

This section examines key differences between the 1986 and 1992 laws, and how they have been implemented. It is organized in terms of the four areas of major difference between the laws -- who qualifies for

subsistence, where subsistence uses can occur, providing for subsistence uses in regulation, and the operation of the subsistence preference. Each section discusses the differences between the laws and their implementation.

Who Qualifies for Subsistence

"Rural Provisions" Severed from the 1986 Statute

Subsistence Users Can No Longer Be Clearly Identified by the Boards.

- **Pre-1990.** Rural residency was a tool used by the joint board to clearly identify the relatively small proportion of Alaska residents who rely on customary and traditional subsistence fisheries and hunts. The joint board identified about 20% of state residents as rural residents, who are potential subsistence users; the other 80% of state residents were identified as non-rural residents who could hunt under general hunting regulations or fish under sport or personal use regulations.
- **Post-1992.** Without rural residency as a board management tool, large numbers of urban-based sport hunters or personal use fishers now pass as subsistence users. Without the concept of subsistence as a rural use, it is unclear who a subsistence user is and what it is based on. The "new" urban subsistence users potentially overwhelm accessible customary and traditional subsistence fisheries and hunts, to the detriment of subsistence-dependent rural villages and other established uses (commercial fisheries, sport fisheries, non-resident sport hunts, guided hunts). The boards have dealt with this by restricting subsistence hunting regulations, creating Tier II hunts, and creating nonsubsistence areas (described below).

Where Subsistence Uses Occur

"Nonsubsistence Area" Provisions

Subsistence Use Areas Potentially Expand to Include All Urban Areas.

- **Pre-1990.** The rural provision of the pre-1990 law was a tool used by the boards to clearly identify areas where customary and traditional subsistence uses occurred -- subsistence occurred in areas "reasonably accessible" to rural communities, which in effect means subsistence use areas were rural areas.
- **Post-1992.** Without the rural provision as a management tool, the boards have been faced with the prospect of having to create subsistence hunts or subsistence fisheries wherever urban-based sport hunters or personal use fishers go, such as in urbanized areas like the Anchorage Bowl, Mat-Su Valley, Fairbanks North Star Borough, or the roaded Kenai Peninsula. The 1992 law attempted to address this effect with the "nonsubsistence area" concept, described below.

Nonsubsistence Area Provisions Were Used to Create Five Nonsubsistence Areas.

- **Pre-1990.** Because subsistence was a rural use near rural communities, the boards recognized only a few subsistence fisheries or hunts around urbanized areas (for instance, the Tyonek subsistence salmon fishery across Cook Inlet from Anchorage). In urbanized areas, most hunting was managed under general hunting regulations and most fishing was managed under sport, personal use, and/or commercial regulations.
- **Post-1992.** The joint board used the nonsubsistence area provisions in the 1992 law to create five nonsubsistence areas around urbanized population. At present, the nonsubsistence areas adopted by the joint board are similar to the nonrural areas identified before 1989 under the previous law. It is uncertain whether other areas might be identified as nonsubsistence areas by future joint board action. The statute provides no guidance on the number, relative size, or precise boundaries of nonsubsistence areas, leaving these matters up to the joint board. This lack of guidance raises several concerns. As evidenced by public proposals and board discussion, the nonsubsistence area provisions hold the potential for eliminating subsistence use patterns of rural villages, if they are applied in certain ways. Subsistence use areas of villages commonly overlap harvest areas used by urban-based residents. In the overlap area, subsistence uses can be eliminated if the urban-based users become a simple majority in the area. The nonsubsistence area provisions also allow for a "Swiss cheese" approach, where many small drainages or seemingly remote harvesting areas are designated nonsubsistence areas because the only written records of their use is by fly-in sport users. Implemented this way, village subsistence use areas can have small holes drilled in them, which are managed as exclusive use domains of sport users.

Providing for Subsistence Uses With Regulations

Effects on Hunting Regulations

Rural Subsistence Hunting Seasons and Bags Were Restricted.

- **Pre-1990.** Prior to 1990, the Board of Game was gradually implementing the subsistence statute, by identifying customary and traditional hunting practices of rural villages with the input from regional councils, and by gradually providing appropriate seasons, bags limits, and means-methods regulations. These local subsistence hunts were distinct from general hunting regulations of urban-based hunters. Residency was a tool used by the board to clearly identify local rural customary and traditional subsistence use patterns for rural residents (subsistence hunts) distinct from sport hunting patterns for urban-based residents (general hunts), and providing for them through appropriate seasons, bags, or means-methods. This was possible because rural hunts or fisheries were open to only a limited number of rural users.
- **Post-1992.** Without residency as a board management tool, the distinction between subsistence hunts and general sport hunts has been lost. The Board of Game has had to craft hunting regulations primarily with the urban-based majority hunters in mind. Most of the regulatory gains made by rural subsistence hunters were lost when subsistence hunts and general hunts were collapsed into a single category by the board in 1990. This resulted in more restrictive subsistence hunting seasons and bags which are open to all urban-based hunters (see Reductions in Subsistence Hunting Seasons and Bag Limits Following McDowell v Alaska, Division of Subsistence, Alaska Department of Fish and Game, October 1990). These restricted hunting regulations were readopted by the Board of Game in 1992 as providing "reasonable opportunity" to subsistence users (see next section). The hunt patterns which are appropriate for the majority urban-based hunters are typically inappropriate for the customary and traditional uses of rural families dependent on subsistence, which is one of the central problems the state subsistence statute was originally intended to solve.

Reasonable Opportunity

An Ambiguous Standard is Inserted in the Law.

- **Pre-1990.** The 1986 law required that the boards to adopt subsistence regulations that "provide a reasonable opportunity to satisfy the subsistence uses" (16.05.258(c)). There was a question about how to provide for customary and traditional uses with regulations. Did this include providing for a customary and traditional pattern of taking, such as customary and traditional seasons, means-methods, harvest levels, and reporting conventions? The boards were advised that regulations did not have to guarantee a take, but provide an "opportunity" for a subsistence use which was reasonable. The reasonableness of a regulation had to be demonstrated by some evidence concerning the customary and traditional pattern of use. The federal district court in Bobby supported this interpretation. In Morry the state court distinguished between "customary and traditional uses", which it held the state law required be provided for, and "methods of harvesting", which may be provided for in the discretion of the boards.

by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking fish or game" [emphasis added] (16.05.258(f)). This definition may narrow what regulations must provide for -- a reasonable expectation of a take -- and omits the other characteristics of a customary and traditional pattern of taking and use. The definition contains an ambiguous "normalcy standard" for determining reasonable opportunity for taking for subsistence uses. Normalcy implies a normal curve drawn from a set of observations. But which set of hunters are used as the basis for determining normalcy -- rural-resident hunters or urban-resident hunters? Without a clear normalcy standard, the Board of Game has picked among widely differing types of averages. For instance, in deciding season length, the board has reasoned that because the "average hunter" (including urban hunters) spends a certain number of days afield, a season length somewhat longer than the average provides a reasonable opportunity for moose hunters; or, that because the "average" success rates for hunters (including urban hunters) is a certain percent, a set of seasons and area restrictions that provide for that success rate is reasonable.
- **Post-1992.** The 1992 law requires that the boards "shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks and populations" (16.05.258(b)(1)(A)). The 1992 law provides a definition of reasonable opportunity: "for purposes of this section, 'reasonable opportunity' means an opportunity, as determined

Customary and Traditional

"Customary and Traditional" is Given Some Additional Definition in Statute.

- **Pre-1990.** The pre-1990 law used the terms "customary and traditional" to define a subsistence use of fish and game. The terms were not defined in statute. The boards used eight criteria, which were adopted in regulation, to identify customary and traditional patterns of use (5AAC 99.010).
- **Post-1992.** The 1992 law provides a definition of "customary and traditional" -- "the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of fish or game" (AS 16.05.940(7)). The definition draws upon the first and fourth criteria in regulation (5AAC 99.010). It leaves the interpretation of terms like "long-term", "consistent", and "reliance" to the individual board, considering the facts pertaining to the specific stock, population, and area under consideration.

Customary Trade

"Customary Trade" is Distinguished from "Commercial Trade".

- **Pre-1990.** The pre-1990 law's definition of "subsistence uses" included "sharing" "barter," and "customary trade". This provision recognizes the common customary practice of harvesters supplying relatives and friends with subsistence food products through non-commercial channels. Customary trade was not defined in statute. The individual boards had authority to regulate sharing, barter, and customary trade, but with a few exceptions, they had not addressed the customary trade issue. This left the issue open to court interpretation.
- **Post-1992.** The 1992 law provides a definition of "customary trade" -- "the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph do not restrict money sales of furs and furbearers" ((AS 16.05.940(8)). This definition better allows for distinguishing between customary trade and commercial trade of wild resources. The definition is worded so as to allow the sale of furs taken under subsistence regulations. The Board of Fisheries has used the definition to regulate the customary trade of limited amounts of herring roe on kelp in southeast Alaska, under the terms of a subsistence fishing permit.

Rural Public Involvement in Management

Participation by Rural Residents in the Regulatory Process Declines.

- **Pre-1990.** Before 1990, the state operated a system of regional advisory councils, made up of representatives of local fish and game advisory councils. The regional councils met requirements in ANILCA Section 805 for regional advisory councils in each subsistence region of Alaska. The councils provided a regional forum for discussing fish and game management issues, developing regional consensus on issues, and resolving disputes. Subsistence proposals from the regional councils were given special consideration in the regulatory system; the boards had to adopt proposals unless not supported by evidence or if contrary to conservation principles. There were substantial numbers of subsistence proposals each year from the rural public and the regional council and advisory committee system.
- **Post-1992.** The state's regional council system was disbanded in 1991. There has been declining participation in the state's regulatory process by rural residents dependent on subsistence, with very few subsistence proposals before the board each year. The decline results from a combination of factors -- no regional councils, the growing frustration by rural residents in the board's inability to craft area-specific subsistence hunting regulations, and the growing opportunity to participate in the federal subsistence system. The declining participation by rural subsistence users in the state's system reduces the state's ability to bring together different interests and to develop mutually acceptable solutions to fish and game issues.

Comanagement Initiatives

Development of Comanagement Arrangements Continues.

- **Pre-1990.** A number of comanagement arrangements were initiated between the state, federal, and subsistence groups to address subsistence issues related to specific stocks or populations. Examples include the Yukon-Kuskokwim Delta Goose Management Plan, the Kilbuck Caribou Cooperative Management Plan, the Kuskokwim River Salmon Management Group, and the Alaska and Inuvialuit Beluga Whale Committee. Solutions to fish and game management problems were developed through collaborative arrangements like these.
- **Post-1992.** Comanagement arrangements continue to be developed. Examples include the ones listed above and the Round Island subsistence walrus hunt co-management plan and the western arctic caribou initiative. Dual state and federal subsistence management, and declining participation by rural residents in the state's board process, complicate resource management, and may make these types of comanagement arrangements more necessary. Collaborative arrangements can provide effective additions to the existing fish and game advisory committee process.

Operation of the Subsistence Preference

Procedural Language

Explicit Steps for Implementing the Subsistence Preference are Put into Statute.

- **Pre-1990.** The 1986 law contained general steps about how the subsistence preference was to be applied (AS 16.05.258(c): "If the harvestable portion is not sufficient to accommodate all consumptive uses of the stock or population, but is sufficient to accommodate subsistence uses of the stock or population, then nonwasteful subsistence uses shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the boards may provide for other consumptive uses of the remainder of the harvestable portion. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited, and the boards shall distinguish among subsistence users, by applying the following criteria: (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood; (2) local residency; and (3) availability of alternative resources."
- **Post-1992.** The 1992 law provides more specific procedures for applying the subsistence preference (AS 16.05.258(b). Four steps are identified, which make more explicit the process in the 1986 law. The 1992 statute also modifies the three Tier II criteria: "(1) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood; (2) the proximity of the domicile of the subsistence user to the stock or population; (3) the ability of the subsistence user to obtain food if the subsistence use is restricted or eliminated."

Tier II Provisions

A Clear and Verifiable Tier II Subsistence Eligibility Criterion is Lost.

- **Pre-1990.** Residency was a tool which could be used by the boards to help identify the most dependent subsistence users at the Tier II level (when there is not enough fish or game to provide for all subsistence users) -- "local residency" was one of the three Tier II criteria, and served as the basis of verifiable Tier II questions.
- **Post-1992.** Residency was lost as a tool which could be used by the boards to help identify the most dependent subsistence users at the Tier II level. "Proximity of a subsistence user to the Tier II population" was one of the three Tier II criteria, but was ruled "unconstitutional" by the state supreme court in Kenaitze. The boards lost one of the few easily verifiable Tier II factors.

Popular General and Nonresident Hunts Were Eliminated, and Tier II Hunts Created.

- **Pre-1990.** Just prior to 1990, there were no Tier II subsistence hunts authorized by the board. Popular hunts like the Nelchina caribou hunt were managed with a subsistence hunt (open to certain rural residents) and a general (sport) hunt (open to residents and non-residents through a random draw), with an allocation of animals to each hunt.
- **Post-1992.** Because large numbers of urban-based hunters are now classified as subsistence users, certain subsistence hunts were oversubscribed. As stated above, this was dealt with in many hunts by reducing hunter efficiency through more restrictions on subsistence seasons and bags. But the Board of Game authorized 15 new Tier II hunts in 1990, including the Nelchina caribou hunt which previously was managed for multiple uses. The Tier II system, when applied to all Alaska residents, has created many special problems, including elimination of non-resident hunters, difficulties in verifying applicant responses, and declining public confidence in the Tier II process.

Conclusions

This report compares the implementation of the 1986 and 1992 subsistence laws in four major areas. It examines continuity and change in who qualifies for subsistence, where subsistence is allowed, what subsistence regulations are supposed to provide for, and how the subsistence preference operates.

- The greatest differences between implementation of the 1986 and 1992 laws result from the absence of the rural provisions in the 1992 law. Without the ability to narrow the pool of people who qualify for subsistence, the boards lack a major tool for managing and allocating fish and wildlife. The lack of the rural provision is at the root of several other problems with the law, which was originally designed around the rural provision.
- The boards have established "nonsubsistence" areas that are similar to the "nonrural" areas identified before 1990. However, public proposals and board discussions indicate that there is potential for the nonsubsistence provisions to be interpreted to allow for gerrymandering that could adversely impact small communities dependent on subsistence.
- The Board of Game substantially reduced subsistence hunting seasons and bag limits in many areas in 1990-91 in response to the McDowell decision. This addressed the over-harvest problems created by all urban hunters qualifying for subsistence hunts, but reduced rural residents' opportunities to take game legally for subsistence uses. After the 1992 law was passed, the board readopted most of these regulations with little substantive review. The boards have been reluctant to take up proposals that would require using the procedures set out in the 1992 law for identifying and providing for subsistence uses. Under the 1992 law, the distinction between subsistence hunts and general sport hunts has been lost.
- Reductions in subsistence hunting seasons and bag limits have been justified by the Board of Game under the ambiguous definition of "reasonable opportunity" in the 1992 law.
- After 1992 a number of popular general and nonresident hunts were replaced by highly unpopular Tier II subsistence hunts, because of the "all-Alaskan" policy. The Tier II system is widely viewed as unfair and unenforceable when applied to all Alaskans. The Tier II system is designed to provide hunting advantages for those most reliant upon subsistence when subsistence users exceed resource availability. But the effectiveness of the Tier II system to correctly identify those who are most reliant is being eroded by court decisions which prohibit the use of verifiable Tier II criteria linked to residency, proximity, or geography.
- Rural residents are participating less in the state's subsistence regulatory regime. This is due to the combined effects of cutbacks in state funding for the advisory committee system, the elimination of the state's regional council system, and the perception that the federal subsistence system is more responsive than the state system.

In conclusion, there appear to be two major types of problems with the 1992 subsistence law -- those created primarily by the absence of the rural provisions, and those due to the lack of a clear standard for what the law is supposed to protect.

Because of these problems with the law, the Board of Game is not able to craft rules that allow rural people, who are most dependent upon subsistence, to legally pursue customary harvest methods and practices. While the 1992 law poses similar problems for the Board of Fisheries, it is not to the same extent because the Board of Fisheries are still able to distinguish subsistence uses and users based on gear types in most cases.

Current implementation of the law emphasizes providing some level of opportunity for successful taking. It downplays the need to provide

regulations that are appropriate to the context within which harvest occurs, such as the seasonal pattern of game availability, seasonal needs for particular types of food, and community patterns of harvest and sharing. This leads to problems for both users and managers. Villagers do not want to be treated as criminals for feeding their families and following customary ways of life. And fish and wildlife management can only be successful in rural Alaska if people respect it and play a significant role in the system.

On balance, implementation of the 1992 law has had the effect of limiting subsistence hunting for rural residents compared with the way the 1986 law was being implemented prior to McDowell. The law in its present form does not allow the Board of Game to create regulations that protect the subsistence patterns which are such a valued part of the state's diverse cultures, economies, and ways of life.

Appendix A. Subsistence Management Chronology

1925: Alaska Game Law. Believed to provide for most subsistence hunting during territorial days, the law stated that "...any Indian or Eskimo, prospector, or traveler (can) take animals, birds, or game fishes during the closed season when he is in the need of food."

1960: Statehood. The federal government transferred authority for management of fish and game in Alaska to the new state government. Both the federal and the state government recognized subsistence fisheries.

1971: ANCSA. The Alaska Native Claims Settlement Act (ANCSA) extinguished aboriginal hunting and fishing rights. No law was enacted that protected subsistence, but the conference report stated Native subsistence and subsistence lands would be protected by the State of Alaska and the Department of Interior.

1978: State's First Subsistence Law. The state passes its first subsistence law which, once sustained yield has been ensured, requires that subsistence uses be allowed, with a priority if necessary (Ch. 151 SLA 1978). The law defines subsistence as "customary and traditional uses" of fish and game for specific purposes such as food.

1980: ANILCA Passed. Congress passes the Alaska National Interest Lands Conservation Act, creating 104 million acres of new national parks, preserves, and wildlife refuges (P.L. 96-487, December 2, 1980 [94 Stat. 2371]). Title VIII of that act mandates that the state maintain a subsistence hunting and fishing preference for rural residents, or forfeit management of these subsistence uses on public lands. If the state fails to protect subsistence as described in ANILCA, the act stipulates that the federal government will take over management of fish and wildlife on the two-thirds of the state that is federal land.

1982: State Law's Consistency With ANILCA is Established. The joint Boards of Fisheries and Game adopt a regulation specifying that customary and traditional uses are rural uses (5 AAC 99.010), and the Department of Interior certifies the state's consistency with ANILCA.

1982: Repeal Initiative. A statewide effort to repeal the subsistence initiative fails by a large margin at the polls (58.4% of Alaskan voters in favor).

1983: Subsistence Suit. Several Alaskans file suit against the state subsistence law. In McDowell v. State, they argue that the law denies subsistence privileges to some urban residents who have long depended on fish and wildlife resources, while granting those privileges to some rural residents who do not need it, and for that reason the law is unconstitutional.

1985: Madison Decision. The Alaska Supreme Court, in the Madison decision, rules that state regulations limiting subsistence to rural residents (enacted by the Joint Boards in 1982) are not consistent with the state's 1978 subsistence law. The Interior Department notifies the state that the Madison decision violates the provisions of ANILCA and threatens takeover of fish and wildlife on public lands unless the state comes up with a new subsistence law, incorporating the rural limitation.

1986: New Subsistence Law. The Alaska legislature enacts a new law limiting subsistence to rural residents (Ch. 52 SLA 1986; AS 16.05.90). Rural is defined as an area where the "...noncommercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy..." In state superior court, the McDowell suit is amended to challenge the new subsistence law. The Kenaitze Indian tribe also files a suit in federal court under ANILCA to protest the classification by the Boards of the Kenai Peninsula as an urban area (Kenaitze Indian Tribe vs. State of Alaska, No. A86-367).

1987: Kenaitze Initially Denied. A federal court judge rules against the Kenaitze Tribe, saying the state's subsistence law's definition of rural agrees with use of the word "rural" in federal subsistence law.

1987: McDowell Initially Denied. The state superior court holds that the 1986 subsistence law is constitutional.

1988: Kenaitze Decision Reversed. The ninth U.S. circuit court of appeals in San Francisco reverses the Kenaitze decision and holds that the state definition of rural is not consistent with ANILCA (Kenaitze Indian Tribe vs. State of Alaska, 860 F. 2nd 312, [9th Cir. 1988]). The court suggests that a definition of rural hinges on demographic characteristics. The U.S. Supreme court ultimately denies review.

1989: Kenaitze Negotiations. Under direction of the federal district court in a preliminary injunction, the state and the Kenaitze tribe agree to a one-year educational fishery, for plaintiffs in that case only, until a permanent subsistence solution can be found. The state initially believes that a simple amendment to ANILCA, which changes the federal definition of rural to match the state definition, is the best solution. However, that effort failed, and negotiations begin toward reaching a consensus position.

1989: McDowell Decision. On December 22, 1989, ruling in McDowell v. State, the Alaska Supreme Court found that the 1986 state subsistence law was unconstitutional because it excluded urban residents from subsistence activities. On January 5, 1990, the Alaska Supreme Court granted the state a stay in the McDowell decision until July 1, 1990.

April, 1990: Federal Government Moves to Assume Subsistence Management. On April 13, 1990, a Notice of Intent to propose regulations was published in the federal register. Temporary regulations establish a federal program that minimizes change to the state program, consistent with the federal government's ANILCA responsibilities. Temporary regulation were published on June 8, 1990.

May 1990: Legislature Debates Subsistence Options. Among options discussed by the legislature was a draft constitutional amendment submitted by Governor Cowper. After lengthy hearings in the final days of the session, the House amended the Governor's proposed amendment, then rejected it by a vote of 20-20 (27 votes needed). The amendment was never voted on by the Senate.

June 8, 1990: Governor Calls Special Session. Negotiations with several interest groups prior to the opening of the session failed to reach an agreement on a solution. On the opening day of the session, the Governor introduced a constitutional amendment that would have required, if approved by the voters at the next general election, a vote on the issue four years later. The amendment would have prevented federal management from occurring on July 1, and would have given groups time to either sue on the constitutionality of ANILCA Title VIII, or amend ANILCA. The governor's proposal was further amended by the Senate to require a vote in two years, and together with legislation creating a Subsistence Review Commission, passed the Senate in early July. However, on July 8, the House failed by one vote (26 in favor, 14 opposed) to obtain a 2/3 majority for a constitutional amendment.

June 1990: Cutler Decision on Severability. The Supreme Court remanded McDowell to the lower court for implementation of their order, and in an opinion dated June 20, with two subsequent clarifications, Judge Cutler found the unconstitutional portion of the state subsistence law to be severable from the rest of the law. This left the state with a subsistence priority law on the books, with its application to rural residents severed.

July 1, 1990: Federal Management Begins. The federal land management agencies initiated a program that assumed management of subsistence uses on federal public lands. This included creation of a five-member federal subsistence board, representing the BLM, NPS, BIA, USFS, and USFWS.

July 1990: New Subsistence Hunts. The Board of Game held an emergency meeting to promulgate hunting regulations for the 1990 fall hunts. Nonresidents were excluded from many hunts, and others were put on a Tier II, individual subsistence application basis.

October 1990: All Alaskans Eligible. At a joint Boards of Fisheries and Game, on October 26, 1990, the Department of Law reported to the Boards that, after the McDowell decision, all Alaskans must be considered potential subsistence users of the fish and game under state jurisdiction. The boards subsequently issued a policy statement that it was impossible, under the legal decisions, to identify subsistence users.

November 1990: New Subsistence Fisheries. The Board of Fisheries met and established new subsistence fisheries in both upper and lower Cook Inlet. A subsequent policy stated that subsistence fishing proposals, throughout the state, would be addressed only if subsistence needs were not being met, or if there was a conservation concern that was addressed by the proposal.

February 1991: Governor's Subsistence Advisory Council is Formed. Governor Hickel appointed an initial subsistence advisory group early in 1991 and reorganized it in November to add public members and remove the state commissioners; in all, the groups met for over a year. The ten-member group was charged with drafting a new subsistence statute that would comply with the state constitution.

Federal Subsistence Program Develops: 1991-92. Publication in the Spring of 1992 of an EIS on the Federal Subsistence Program in Alaska clarified the federal government's intent with regard to managing subsistence on federal lands (mandated by ANILCA). The federal subsistence board established a staff and regular meeting schedule and began accepting public proposals. Other elements of the program included federal regional subsistence advisory councils, and a process for identifying rural areas and customary and traditional uses. The program applied to wildlife and to fishing in non-navigable federal waters.

February 1992: Governor Introduces New Subsistence Legislation. Governor Hickel introduced a bill to the legislature that would establish a new subsistence statute. A key feature of the bill, which was based on the work of the subsistence advisory council, was a presumption that residents of small communities would automatically meet specified subsistence criteria, in mid-sized communities that presumption was "rebuttable", and urban residents must apply for subsistence qualification on an individual basis. Also, nonsubsistence areas were authorized, and implementation would require amending ANILCA. The legislature failed to take action on the bill. Other bills also were considered during the session, but not passed, including an AFN- sponsored bill that provided a rural preference and also a second-level preference for urban residents who could demonstrate community or individual dependence.

June 15-22 1992: Governor Convenes Special Session on Subsistence: 1992 Subsistence Law is Enacted. Governor Hickel presented the legislature with a version of the bill that had been introduced in the previous session. Other bills also are introduced, as are motions to place a constitutional amendment on the ballot. The legislature ultimately passed a subsistence bill that provided eligibility for all Alaskans, included a definition of "customary trade" and allowed the Boards to establish "nonsubsistence areas" in places where subsistence "is not part of the economy, culture, or way of life" of an area.

November 1992: Joint Boards of Fisheries and Game Establish Four Nonsubsistence Areas. Meeting jointly, the boards established nonsubsistence areas around Fairbanks, Anchorage-Matsu-Kenai, Juneau, and Ketchikan. These were areas where subsistence regulations would not be established. Subsistence regulations within these areas were repealed. They issued a call for proposals for other areas also. At a subsequent meeting the following March (1993), an area around Valdez also was designated as a nonsubsistence area. Eventual public proposals for additional areas included GMU 13, all roaded areas, and an area on the Upper Holitna Drainage.

Fall 1993: State Superior Court Finds Nonsubsistence Areas to be Unconstitutional. Judge Fabe, in State Superior Court, found in Kenaitze v. State that the nonsubsistence areas authorized by the 1992 state law were unconstitutional because they "effectively re-establish the rural/urban residency requirement struck down in McDowell" (Kenaitze Indian Tribe v. State of Alaska, 3AN-91-4560 Civil, Order, October 26, 1993). After the Alaska Supreme Court's subsequent denial of the state's motion for a stay, the Boards met in Spring 1994 and authorized the department to enact emergency regulations that would re-establish the previous subsistence regulations for the former nonsubsistence areas. The state also appealed the ruling to the State Supreme Court.

March 1994: U.S. District Court Validates Federal Subsistence Board Authority, Extends Federal Subsistence Management to Include Navigable Waters. Following preliminary rulings in Katy John, in late 1993, Judge Holland issued a final ruling that interpreted ANILCA as giving the federal government broad authority to manage subsistence on federal public lands, and extended jurisdiction to include navigable waters on federal lands. A parallel ruling in the case of State v. Babbitt found that creation of the federal subsistence regulatory board did not exceed the authority granted by ANILCA. These rulings were immediately appealed to the Ninth Circuit Court of Appeals by both the state and federal governments.

May 1994: Secretary of Interior Declares Intent to Manage Subsistence Fisheries Throughout the State. In a letter to the Governor that urged the state to act to come into compliance with ANILCA, Secretary Babbitt stated his intention to begin management of subsistence fisheries, "pursuant to the direction of the federal courts," if the state doesn't pass a constitutional amendment. The federal subsistence board was told to prepare a subsistence fisheries management plan.

January 1995: State Drops Babbitt Lawsuit. Governor Knowles directed the Attorney General to drop the state's appeal of the Babbitt case.

April 1995: U.S. Ninth Circuit Court of Appeals Decides Katy John Case. The court of appeals held that ANILCA's subsistence priority applies to waters in which the United States has reserved water rights. The court further held that the federal agencies that administer the subsistence priority are responsible for identifying those waters. Federal agencies continued development of a fisheries plan and began a process for identifying waters where the plan would apply.

May 1995: Alaska Supreme Court Decides Nonsubsistence Areas Are Constitutional and the Tier II Proximity Criteria is Not. The Alaska Supreme Court, in the case of Kenaitze v. State, determined that "...the Tier II proximity of the domicile factor violates the Alaska Constitution because it bars Alaska residents from participating in certain subsistence activities based on where they live." Also, the court decided that the nonsubsistence area provision in the 1992 state subsistence law is constitutional because "...it bars no Alaskan from participating in any fish or game user class." With this ruling, the previously designated nonsubsistence areas were automatically reinstated. The Kenaitze's challenge to the findings of the Joint Boards that resulted in the establishment of the Anchorage-MatSu-Kenai Peninsula nonsubsistence area was remanded back to the Superior Court. Briefing on remaining issues should be completed by late April, 1996.

August 1995: Alaska Supreme Court Disagrees with Federal Court on the Scope of the Federal Subsistence Law.

In the case of Totemoff v. State the Alaska Supreme Court made three significant findings: the federal subsistence law does not preempt nonconflicting state law; interpreted ANILCA as not protecting customary and traditional means and methods; and directly disagreed with the Ninth Circuit Court of Appeal's finding in State v. Babbitt (the Katie John case) that public lands include certain navigable waters. Because of the direct conflict with the federal court interpretation, the state filed a petition for review by the U.S. Supreme Court on December 5, 1995.

Appendix B. Text of the 1992 Subsistence Law

AN ACT

1 Relating to the taking of fish and game; and providing for an effective date.

2

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

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

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

12 (3) customary and traditional uses of Alaska's fish and game originated with
13 Alaska Natives, and have been adopted and supplemented by many non-Native Alaskans as
14 well; these uses, among others, are culturally, socially, spiritually, and nutritionally important
15 and provide a sense of identity for many subsistence users;

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

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

8 (b) It is the purpose of this Act

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

11 (2) to provide for a preference for subsistence uses over other consumptive
12 uses of fish and game resources.

13 (c) It is the intent of the legislature that

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

16 (2) this Act not result in significant reallocations of fish and game in Alaska.

17 * Sec. 2. AS 16.05.258 is repealed and reenacted to read:

18 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND
19 GAME. (a) Except in nonsubsistence areas, the Board of Fisheries and the Board
20 of Game shall identify the fish stocks and game populations, or portions of stocks or
21 populations, that are customarily and traditionally taken or used for subsistence. The
22 commissioner shall provide recommendations to the boards concerning the stock and
23 population identifications. The boards shall make identifications required under this
24 subsection after receipt of the commissioner's recommendations.

25 (b) The appropriate board shall determine whether a portion of a fish stock
26 or game population identified under (a) of this section can be harvested consistent
27 with sustained yield. If a portion of a stock or population can be harvested consistent
28 with sustained yield, the board shall determine the amount of the harvestable portion
29 that is reasonably necessary for subsistence uses and

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

CORRECTION

THE FOLLOWING DOCUMENT(S)
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AN ACT

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7 consumption is an integral part of those relationships;

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

12 (3) customary and traditional uses of Alaska's fish and game originated with
13 Alaska Natives, and have been adopted and supplemented by many non-Native Alaskans as
14 well; these uses, among others, are culturally, socially, spiritually, and nutritionally important
15 and provide a sense of identity for many subsistence users;

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

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20 of Game shall identify the fish stocks and game populations, or portions of stocks or
21 populations, that are customarily and traditionally taken or used for subsistence. The
22 commissioner shall provide recommendations to the boards concerning the stock and
23 population identifications. The boards shall make identifications required under this
24 subsection after receipt of the commissioner's recommendations.

25 (b) The appropriate board shall determine whether a portion of a fish stock
26 or game population identified under (a) of this section can be harvested consistent
27 with sustained yield. If a portion of a stock or population can be harvested consistent
28 with sustained yield, the board shall determine the amount of the harvestable portion
29 that is reasonably necessary for subsistence uses and

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

1 (A) shall adopt regulations that provide a reasonable
2 opportunity for subsistence uses of those stocks or populations;
3 (B) shall adopt regulations that provide for other uses of those
4 stocks or populations, subject to preferences among beneficial uses; and
5 (C) may adopt regulations to differentiate among uses:
6 (2) if the harvestable portion of the stock or population is sufficient
7 to provide for subsistence uses and some, but not all, other consumptive uses, the
8 appropriate board
9 (A) shall adopt regulations that provide a reasonable
10 opportunity for subsistence uses of those stocks or populations;
11 (B) may adopt regulations that provide for other consumptive
12 uses of those stocks or populations; and
13 (C) shall adopt regulations to differentiate among consumptive
14 uses that provide for a preference for the subsistence uses, if regulations are
15 adopted under (B) of this paragraph;
16 (3) if the harvestable portion of the stock or population is sufficient
17 to provide for subsistence uses, but no other consumptive uses, the appropriate board
18 shall
19 (A) determine the portion of the stocks or populations that can
20 be harvested consistent with sustained yield; and
21 (B) adopt regulations that eliminate other consumptive uses in
22 order to provide a reasonable opportunity for subsistence uses; and
23 (4) if the harvestable portion of the stock or population is not
24 sufficient to provide a reasonable opportunity for subsistence uses, the appropriate
25 board shall
26 (A) adopt regulations eliminating consumptive uses, other than
27 subsistence uses;
28 (B) distinguish among subsistence users, through limitations
29 based on
30 (i) the customary and direct dependence on the fish
31 stock or game population by the subsistence user for human

1 consumption as a mainstay of livelihood;

2 (ii) the proximity of the domicile of the subsistence

3 user to the stock or population; and

4 (iii) the ability of the subsistence user to obtain food if

5 subsistence use is restricted or eliminated.

6 (c) The boards may not permit subsistence hunting or fishing in a

7 nonsubsistence area. The boards, acting jointly, shall identify by regulation the

8 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community

9 where dependence upon subsistence is not a principal characteristic of the economy,

10 culture, and way of life of the area or community. In determining whether

11 dependence upon subsistence is a principal characteristic of the economy, culture, and

12 way of life of an area or community under this subsection, the boards shall jointly

13 consider the relative importance of subsistence in the context of the totality of the

14 following socio-economic characteristics of the area or community:

15 (1) the social and economic structure;

16 (2) the stability of the economy;

17 (3) the extent and the kinds of employment for wages, including full-

18 time, part-time, temporary, and seasonal employment;

19 (4) the amount and distribution of cash income among those domiciled

20 in the area or community;

21 (5) the cost and availability of goods and services to those domiciled

22 in the area or community;

23 (6) the variety of fish and game species used by those domiciled in the

24 area or community;

25 (7) the seasonal cycle of economic activity;

26 (8) the percentage of those domiciled in the area or community

27 participating in hunting and fishing activities or using wild fish and game;

28 (9) the harvest levels of fish and game by those domiciled in the area

29 or community;

30 (10) the cultural, social, and economic values associated with the

31 taking and use of fish and game;

1 (11) the geographic locations where those domiciled in the area or
2 community hunt and fish;

3 (12) the extent of sharing and exchange of fish and game by those
4 domiciled in the area or community;

5 (13) additional similar factors the boards establish by regulation to be
6 relevant to their determinations under this subsection.

7 (d) Fish stocks and game populations, or portions of fish stocks and game
8 populations not identified under (a) of this section may be taken only under
9 nonsubsistence regulations.

10 (e) Takings and uses of fish and game authorized under this section are
11 subject to regulations regarding open and closed areas, seasons, methods and means,
12 marking and identification requirements, quotas, bag limits, harvest levels, and sex,
13 age, and size limitations. Takings and uses of resources authorized under this section
14 are subject to AS 16.05.831 and AS 16.30.

15 (f) For purposes of this section, "reasonable opportunity" means an
16 opportunity, as determined by the appropriate board, that allows a subsistence user to
17 participate in a subsistence hunt or fishery that provides a normally diligent participant
18 with a reasonable expectation of success of taking of fish or game.

19 * Sec. 3. AS 16.05.258 is repealed and reenacted to read:

20 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND
21 GAME. (a) The Board of Fisheries and the Board of Game shall identify the fish
22 stocks and game populations, or portions of stocks and populations, that are
23 customarily and traditionally used for subsistence in each rural area identified by the
24 boards.

25 (b) The boards shall determine

26 (1) what portion, if any, of the stocks and populations identified under
27 (a) of this section can be harvested consistent with sustained yield; and

28 (2) how much of the harvestable portion is needed to provide a
29 reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

30 (c) The boards shall adopt subsistence fishing and subsistence hunting
31 regulations for each stock and population for which a harvestable portion is

1 determined to exist under (b)(1) of this section. If the harvestable portion is not
2 sufficient to accommodate all consumptive uses of the stock or population, but is
3 sufficient to accommodate subsistence uses of the stock or population, then
4 nonwasteful subsistence uses shall be accorded a preference over other consumptive
5 uses, and the regulations shall provide a reasonable opportunity to satisfy the
6 subsistence uses. If the harvestable portion is sufficient to accommodate the
7 subsistence uses of the stock or population, then the boards may provide for other
8 consumptive uses of the remainder of the harvestable portion. If it is necessary to
9 restrict subsistence fishing or subsistence hunting in order to assure sustained yield
10 or continue subsistence uses, then the preference shall be limited, and the boards shall
11 distinguish among subsistence users, by applying the following criteria:

12 (1) customary and direct dependence on the fish stock or game
13 population as the mainstay of livelihood;

14 (2) local residency; and

15 (3) availability of alternative resources.

16 (d) The boards may adopt regulations consistent with this section that
17 authorize taking for nonsubsistence uses a stock or population identified under (a) of
18 this section.

19 (e) Fish stocks and game populations, including bison, or portions of fish
20 stocks and game populations, not identified under (a) of this section may be taken
21 only under nonsubsistence regulations.

22 (f) Takings authorized under this section are subject to reasonable regulation
23 of seasons, catch or bag limits, and methods and means. Takings and uses of
24 resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

25 * **Sec. 4.** AS 16.05.940 is amended by adding new paragraphs to read:

26 (36) "customary and traditional" means the noncommercial, long-term,
27 and consistent taking of, use of, and reliance upon fish or game in a specific area and
28 the use patterns of that fish or game that have been established over a reasonable
29 period of time taking into consideration the availability of the fish or game;

30 (37) "customary trade" means the limited noncommercial exchange,
31 for minimal amounts of cash, as restricted by the appropriate board, of fish or game

1 resources; the terms of this paragraph do not restrict money sales of furs and
2 furbearers.

3 * Sec. 5. AS 16.05.940(36) and 16.05.940(37) are repealed.

4 * Sec. 6. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, as in effect
5 on the day before the effective date of sec. 2 of this Act, the Board of Fisheries, Board of
6 Game, and Department of Fish and Game shall adopt regulations necessary to implement the
7 provisions of secs. 1, 2, and 4 of this Act.

8 * Sec. 7. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries
9 and the Board of Game expeditiously adopt regulations necessary to implement secs. 1, 2, and
10 4 of this Act.

11 (b) Regulations adopted by the Board of Fisheries, Board of Game, or Department
12 of Fish and Game after July 1, 1992, may not be inconsistent with the provisions of secs. 1,
13 2, and 4 of this Act.

14 (c) Regardless of whether regulations in effect on July 1, 1992, and adopted under
15 the authority of AS 16.05.251, 16.05.255, or 16.05.258, as that statute read on the day before
16 the effective date of sec. 2 of this Act, are inconsistent with the provisions of secs. 1, 2, or
17 4 of this Act, they may continue to be implemented and enforced until the effective date of
18 sec. 2 of this Act.

19 * Sec. 8. TRANSITION. After January 1, 1995, the Board of Fisheries, Board of Game,
20 and Department of Fish and Game may adopt regulations to implement AS 16.05.258, as
21 amended by sec. 3 of this Act. Regulations adopted under this section may not take effect
22 before the effective date of sec. 3 of this Act.

23 * Sec. 9. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals
24 with a subject of vital concern and that the subject merits review. Therefore, it is the intent
25 of the legislature that the operation of this Act and the regulations adopted under this Act be
26 fully reviewed by the governor no later than June 1, 1994.

27 (b) This review period is intended to allow for further research and to gain experience
28 in implementing this Act and regulations adopted under secs. 6 and 7 of this Act. It is the
29 intent of the legislature that the governor convene a representative group to provide
30 recommendations to the governor before the end of the review period. It is the intent of the
31 legislature that representatives of the legislature and persons with a history in the formulation

1 of subsistence legislation in this state participate in the group.

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

4 (d) No later than September 1, 1994, the governor shall provide a report to the
5 legislature on the results of the review and proposed recommendations for statutory
6 amendments.

7 * Sec. 10. Sections 6 - 8 of this Act take effect immediately under AS 01.10.070(c).

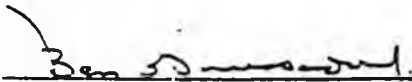
8 * Sec. 11. Sections 1, 2, 4, and 9 of this Act take effect on the effective date of
9 regulations first adopted under sec. 6 of this Act by the Board of Fisheries and the Board of
10 Game.

11 * Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1995.

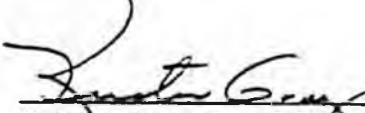
AUTHENTICATION

The following officers of the Legislature certify that the attached enrolled bill, CCS HB 601, consisting of 8 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

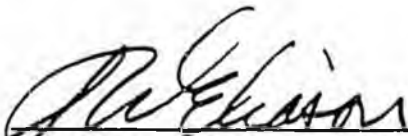
Passed by the House June 22, 1992


Ben Grussendorf, Speaker of the House

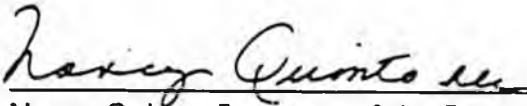
ATTEST:


Kristin Gray, Chief Clerk of the House

Passed by the Senate June 22, 1992


R. I. Eliason, President of the Senate

ATTEST:


Nancy Quinto, Secretary of the Senate

ACTION BY GOVERNOR

Approved by the Governor _____ 19____

Walter J. Hickel, Governor of Alaska

Subsistence in Alaska: A Summary

Division of Subsistence, Alaska Department of Fish and Game
Box 3-2000, Juneau Alaska, 99802 (907) 465-4147
February 26, 1990

Introduction

Subsistence is important to the economy and culture of many families and communities in Alaska. This report describes some characteristics of subsistence in Alaska, based on studies by the Division of Subsistence, Alaska Department of Fish and Game.

What is Subsistence?

Subsistence is part of the cultures, traditions, and economics of many families and communities in Alaska. In current state and federal law, subsistence is defined as customary and traditional, non-commercial uses of wild resources, for a variety of purposes. These uses include harvesting and processing wild resources for food, clothing, fuel, transportation, construction, arts, crafts, sharing, and customary trade.

Alaska has a subsistence law because subsistence continues to support a major part of state's rural economy and culture. Alaska is unique in this regard. Alaska is a pluralistic state. A sizable number of traditional cultures and economies exist side-by-side in the state. These traditional cultures and economies coexist with the industrial-capitalism of Alaska's urban centers.

The stated intent of the federal and state subsistence

statutes was to provide the opportunity for these traditional cultures and economies to continue to exist.

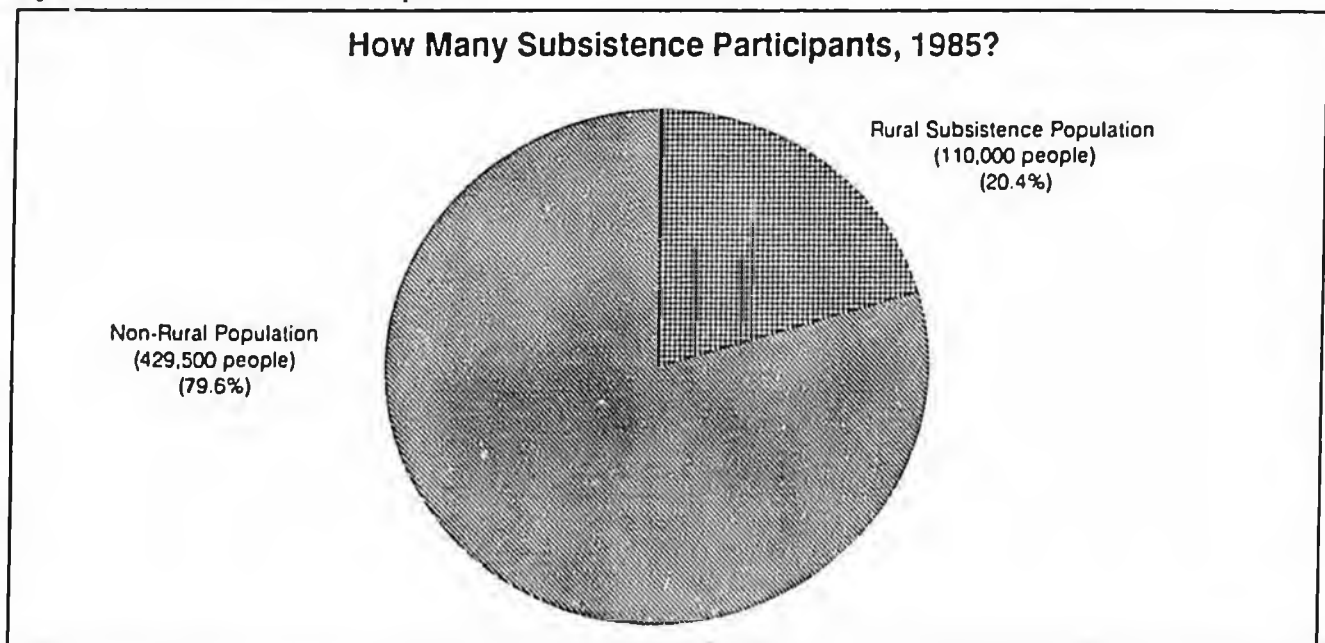
How Many People Participate in Subsistence?

During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

This represents the number of people living in rural areas having subsistence uses, as determined by the Boards of Fisheries and Game under the laws and regulations that existed during the 1980s. By comparison, there were about 429,500 non-rural residents, who could hunt and fish under sport, commercial, and personal use regulations, but not under subsistence regulations (Fig. 1).

Our studies indicate that not all 110,000 rural residents actually harvested wild resources for subsistence. In fact, harvesting fish and game was the responsibility of a minority of people in rural areas. However, subsistence foods are widely distributed through non-market networks in rural communities. Because of non-commercial sharing, most residents in rural communities make use of subsistence foods during the course of a year to some extent. Thus, the best estimate of the number of participants in subsistence is the size of the rural population.

Figure 1. Alaska Rural and Non-Rural Population



Composition of Statewide Subsistence Harvest

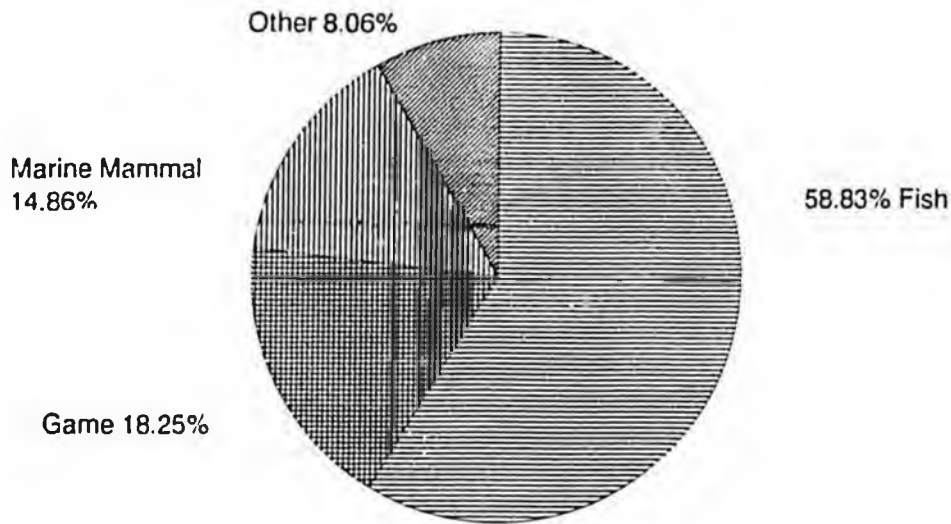


Figure 2. Statewide Subsistence Harvest Composition

How Large is the Subsistence Harvest?

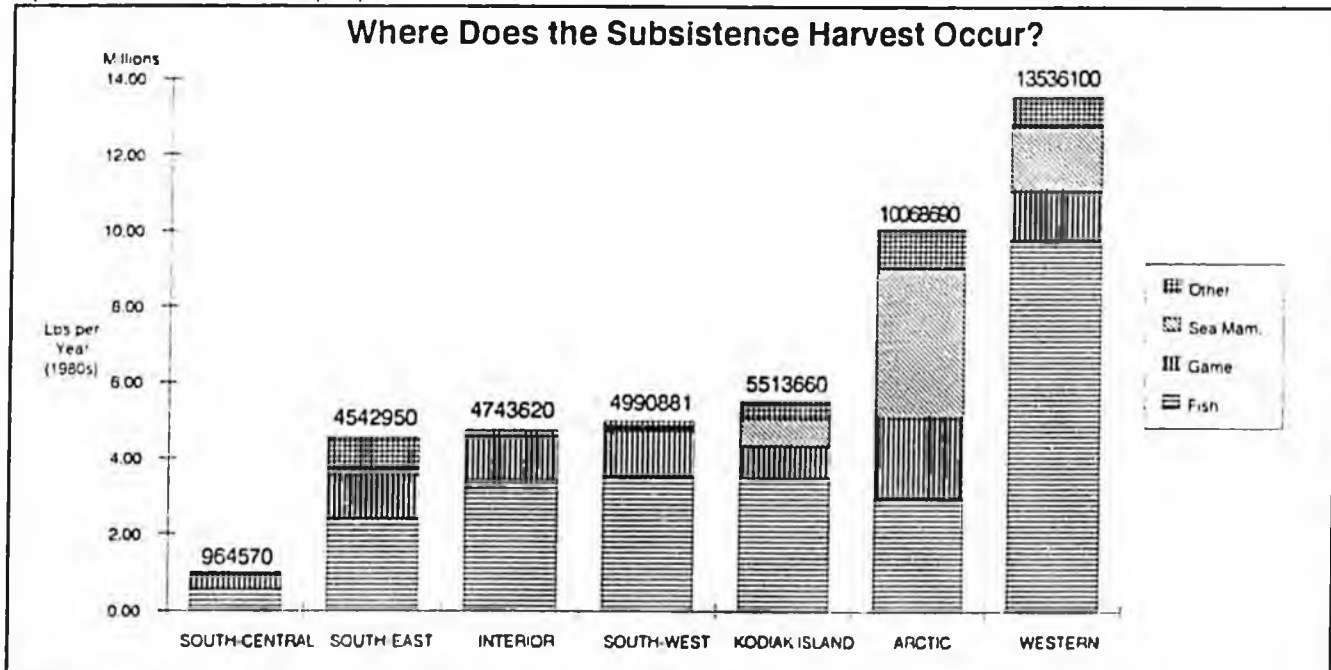
Statewide, non-commercial fishing and hunting provided an estimated 35-45 million pounds of food annually to rural areas during the 1980s. This comes to about 300-400 lbs per person a year, or about a pound of food per day.

Most of the subsistence harvest was fish (about 59 percent by weight), along with marine mammals (about 15 percent), land mammals (about 18 percent), and other wild resources (about 8 percent, including shellfish, birds, and wild plants) (Fig. 2).

Where Does the Subsistence Harvest Occur?

Subsistence uses occur in all regions of the state. The largest annual harvests occur in the Western Region (about 13.5 million lbs) and Arctic regions (about 10 million lbs). Other sizable non-commercial harvests occur on Kodiak Island (5.5 million lbs), Southwest Region (5.0 million lbs), the Interior Region (4.7 million lbs), and the Southeast Region (4.5 million lbs). The smallest harvest occurs in the Southcentral Region (.9 million lbs), primarily in the Copper River Basin, Tyonek, English Bay, and Port Graham (Fig. 3).

Figure 3. Subsistence Harvests by Region



How Does Subsistence Compare with Commercial and Sport Uses?

While subsistence is important, it represents a comparatively small portion of the wild resources harvested annually in Alaska. In Alaska's salmon fisheries, subsistence harvests generally represent less than 1 percent of the total salmon harvests. Considering all fish and game harvested in the state, about 4 percent by weight went to subsistence uses, 1 percent went to sport uses, and 95 percent went to commercial uses (Fig. 4).

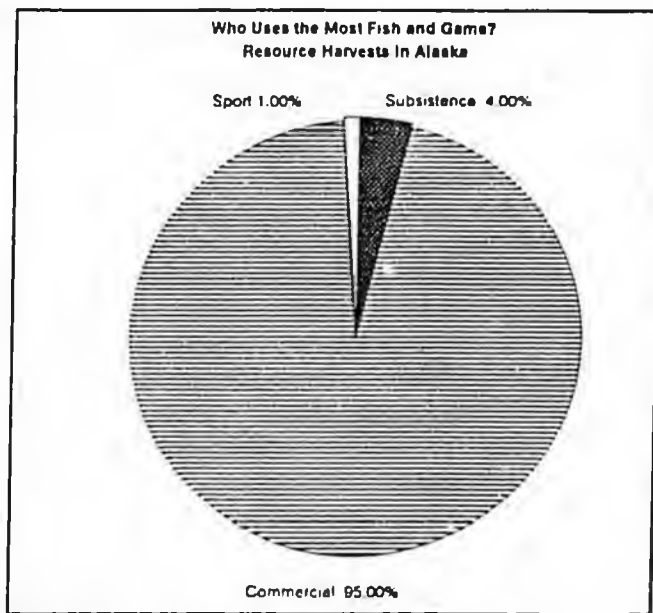


Figure 4. Fish and Game Harvests by Principal User Group

Subsistence and Cash

Our studies indicate that in many rural areas, subsistence is part of a traditional regional economy, termed a "mixed, subsistence-market economy". This type of economy occurs in the Canadian north as well. In mixed, subsistence-market economies, fishing and hunting are central activities conducted by extended family groups. The family invests in small-scale, efficient technologies, such as fishwheels, gill nets, motorized skiffs, and snowmachines, used for producing food. Subsistence production is not oriented toward market sale or accumulated profit, as is commercial market production. Rather, it is directed toward meeting the self-limiting needs of families and small communities.

A family's subsistence production is augmented and supported by cash employment by family members. Depending upon the region, employment commonly is in commercial fishing, commercial trapping, and public sector wage

employment. Typically, but not always, mean annual monetary incomes in the region are modest and intermittent. Families follow an economic strategy of using a portion of the annual monetary earnings to capitalize in subsistence technologies for producing food. This combination of subsistence and commercial-wage activities by extended family groups characterizes the mixed, subsistence-market economy.

This mixed, subsistence-market system underlies the economies of most rural areas of the state. The mixed economic system has existed in various forms since before the Russian period. It is very durable, which indicates its success in providing for rural families.

Traditional Harvest Areas

Our studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. This means that most subsistence harvest areas tend to be relatively accessible from the community, although seasonal camps are used for certain species.



Figure 5. Subsistence Fishing Areas, Hoonah, 1920-1985.

Consequently, subsistence harvest areas for particular groups of people are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (Fig. 5).

Subsistence Values

In addition to its nutritional value, subsistence provides important cultural and social values to rural communities. Our studies indicate that subsistence are central activities unifying extended families and small communities. The traditional wide-scale sharing of subsistence products between families help unify communities.

Subsistence activities bring meaning and purpose to life in many communities. This is especially true for Alaska Native groups. In many places, subsistence still expresses ancient spiritual linkages between humans, wild animals, and the land handed down by oral traditions.

The Importance of Subsistence

In summary, Alaska's rural regions tend to be different from Alaska's urban centers in terms of culture, traditional food use, and economic circumstance, reflecting the state's historic pluralism. Subsistence continues to be an essential part of the economy and culture of many rural areas. Subsistence fishing and hunting produces a substantial portion of the state's food supply in rural areas. Subsistence provides economic stability to many areas which have mixed, subsistence-market economic systems. And subsistence expresses a number of traditional values of importance to Alaska's diverse cultural groups.

Additional Reading

Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Series. This series is the primary source of information on contemporary subsistence uses in Alaska. Write Technical Report Librarian, Division of Subsistence, ADF&G, Box 2-3000, Juneau, AK 99802, for listings and reports.

Wolfe, Robert J. and Robert J. Walker (1987) Subsistence Economies in Alaska: Productivity, Geography, and Development Impacts. Arctic Anthropology 24(2):56-81. This paper describes subsistence harvests in Alaska for the 1980s by geographic region.

Primary authors: Robert J. Wolfe and Robert G. Bosworth

Subsistence Food Harvests in Rural Alaska, and Food Safety Issues

**Paper Presented to the Institute of Medicine, National Academy of Sciences
Committee on Environmental Justice, Spokane, Washington, August 13, 1996**

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Thank you for the invitation to present on subsistence food harvests in rural Alaska, and food safety issues.

Wild food contamination is an emerging concern in rural Alaska, especially for Alaska Natives who consume large amounts of wild food annually. This report provides background on subsistence food harvests in rural Alaska and the emerging food safety issue. I draw upon information collected by the Division of Subsistence, Alaska Department of Fish and Game on subsistence food harvests in Alaska, and on our experience with food contaminant issues following the *Exxon Valdez* oil spill in 1989.

Exhibit 1 shows that about 20% of Alaska's population lives in rural areas – about 124,367 people in 1990. The rural population resides in about 225 communities, most off the road network and numbering less than 500 people. About half the rural population is Alaska Native. Most small villages are predominately Alaska Native. The major cultural groups are Tlingit, Haida, Tsimshian, Athabaskan, Aleut, Alutiiq, Yup'ik, and Inupiat. Rural Alaskans support themselves through fishing, hunting, and gathering of wild foods combined with small-scale cash employment. This type of mixed subsistence-cash economy is common in the far north.

Nowhere in the United States is wild food consumption greater than in Alaska rural communities. Exhibit 2 shows estimates of the amounts of wild foods harvested by families annually in rural Alaska. About 43.7 million lbs of wild foods are harvested each year in rural Alaska. This comes to about 375 lbs (usable weight) per person annually (based on the state's population in 1990). By comparison, the average American uses about 222 lbs of store-bought meat, fish, and poultry each year (of a total of about 1,370 lbs of food). That is, the average rural Alaskan uses more wild meat, fish, and birds than the average American uses purchased meats, fish, and poultry. On average rural Alaskans use a little over one pound of wild food per person per day. In some regions, the average per capita harvest is over 600 lbs per person per year, close to two lbs of wild foods per person per day. Exhibits 3 and 4 provide additional detail on the rural harvest, such as its nutritional contribution and replacement value. As shown in Exhibit 3, the rural subsistence harvest contains about 240% of the protein requirements of the rural Alaska population and about 35% of the caloric requirements.

Exhibit 5 shows the composition of the wild food harvest. About 59% of the rural food harvest is fish, 20% is game, 14% is marine mammals, and 2% each are birds, shellfish, and plants. The mix of foods differs across communities, shown in Exhibit 6, because communities harvest from local areas where certain species are available. Major fish varieties in Alaska include salmon, halibut, herring, whitefish, sheefish, blackfish, and cod. Major game species include caribou, moose, deer, bear, and beaver. The major marine mammals eaten include four types of seal, sea lion, beluga, walrus, and bowhead whale. The following maps (Exhibits 7-12) illustrate geographic subsistence harvest patterns, shown as elevations – all wild foods, marine mammals, caribou, fish, moose, and birds.

Because of these high consumption levels, compared with most Americans rural Alaskans are especially subject to exposure to contaminants that may find their way into wild food chains. Alaska Natives are most at risk to exposure -- their consumption levels are highest, their diets include a broader range of species, and their traditional foods include more parts of the animal (such as organ meats and fats) in comparison with non-Natives.

Overall, subsistence users consider wild foods to be high quality foods. For people raised on them, traditional foods are considered superior to store-bought substitutes. The state's public health message generally supports this view. Subsistence foods are nutritious and healthful. Rural menus with traditional foods are commonly superior to those without.

Wild foods in Alaska are not tested for contaminants in any sort of systematic way. There is no program set up to do so. Probably there is no need to have one at present. When spot tests are done, Alaska's wild foods typically are shown to be relatively free of industrial contaminants.

Food contamination is a hot button issue for rural Alaskans. Subsistence users have been quick to react to contamination scares. Rural residents do not want to feed potentially contaminated foods to their families.

Exhibit 13 shows what happened to subsistence food harvests the year following the *Exxon Valdez* oil spill in 1989. Subsistence food harvests fell by 31% to 77% in Alaska Native communities near the spill (Exhibit 13). In the face of tremendous uncertainty about food safety, many families in the spill areas stopped hunting and fishing. Subsistence harvesters were not willing to risk the health of family members.

Government agencies scrambled to answer questions about food safety following the spill. Working collaboratively with subsistence user groups, wild foods in the impacted subsistence areas were sampled and tested for hydrocarbons. Test results were publicized in impacted communities through public meetings and newsletters, examples shown in Exhibits 14 and 15. The intent was to provide information to subsistence users, so they could make informed choices about harvesting and consuming wild foods. This response was a collaborative effort, combining resources of government and subsistence users. For instance, subsistence users were consulted in sampling designs, were employed to collect tissue samples, and were involved in interpretations of results.

More recently, government has been dealing with a radiation scare in northwest Alaska, the legacy of the cold-war-era Project Chariot. Radioisotopes buried near Cape Thompson as part of Project Chariot were dug up and removed last year. This winter there were observed caribou die-offs in northwest Alaska, some near the cleanup site. Subsistence caribou users at Point Hope and Kivalina were concerned about the linkage of the two events. Caribou tissue samples have been collected from carcasses and tested for radiation. The results were publicized this past week at Point Hope and Kivalina.

These types of reactive government programs to contamination events are inherently frustrating for everyone involved. Even the best response programs cannot resolve uncertainties created by contamination in wild food chains. Exhibit 16 shows that subsistence harvests are rebounding in communities impacted by the oil spill. However, for many subsistence families, this is as much due to necessity as to any information received from the tissue sampling program. People have to eat, despite unresolved uncertainties about wild food safety.

For northern peoples, trust in natural systems is grounded in indigenous knowledge, in the collective wisdom of oral tradition. Trust is not based on a laboratory test of a tissue sample by a government agency. The survival of northern peoples is linked with healthy natural ecosystems. Indigenous traditions commonly understand linkages between humans and animals to be more tightly webbed than do academic traditions. Natural ecosystems are infused with sentience. The animals are responsive to human abuse, in a kind of moral reciprocity. If people respectfully use wild animals, the animals will be available for harvest. The laboratory tests may show that the proximate cause of caribou dying at Cape Thompson was starvation. But what was the ultimate cause for those caribou dying at Cape Thompson this particular winter? And what problems may happen next to the animals in northwest Alaska due to human abuse? Laboratory tests are not equipped to address these important questions. Northern oral traditions do provide answers. In the experience of northern peoples, when humans abuse the ecosystem, problems follow, such as famine, sickness, failure. The guidance is clear -- do not abuse. This is why contamination is a hot button issue in rural Alaska.

The central lesson of *Exxon Valdez* and Project Chariot is prevention. It is immeasurably better to prevent contaminants from entering the food chain in the first place, than to try to cope with the aftermath.

As a case in point, Alaska rural communities have identified cleaning up formerly-used defense sites (FUDS) as a priority environmental justice issue for the federal government. There are thousands of 55-gallon barrels of uncataloged materials left at FUDS scattered throughout Alaska, as well as asbestos insulation and other cast-off materials. Most sites are near the subsistence harvest areas of rural villages. Rural groups want the barrels removed before they corrode and release their contents. This type of common-sense prevention program should be a top priority for government.

Another example of common-sense prevention are appropriate industrial discharge standards. We are lucky that Alaska has few polluting industries at present. Alaska's

standards for industrial discharges should be designed to protect the health of Alaska's subsistence consumers. Currently, Alaska's water quality standards for human health are based on average fish consumption rates in the continental states. One would expect that water quality standards for human health should be more stringent in those places in Alaska where fish consumption is ten to twenty times the national average. Figuring ways to factor in Alaska's actual subsistence fish consumption patterns into local water quality standards for human health should be another high priority for government.

In summary:

- Wild foods currently are a large and, we hope, a healthful source of nutrition for rural Alaskans, particularly Alaska Natives, and can continue to be so if food chains remain relatively free of contaminants.
- Government should work hard to keep wild food chains free of contaminants through programs that prevent industrial contaminants from entering the food chain.
- Where contamination is suspected, responses must directly involve subsistence communities in their design and implementation, but this is always a second-choice to prevention.

Thank you again for this opportunity to present on these wild food safety issues.

LIST OF EXHIBITS

- Exhibit 1. Alaska's Population by Area, 1995
- Exhibit 2. Wild Food Harvests in Alaska by Area, 1990s (Lbs Per Person Per Year)
- Exhibit 3. Wild Food Harvests in Alaska, Nutritional Contributions and Estimated Replacement Costs
- Exhibit 4. Wild Food Harvests in Alaska, Pounds Usable Weight by Area and Resource Type
- Exhibit 5. Composition of the Subsistence Harvest by Rural Alaska Residents, 1990s
- Exhibit 6. Wild Food Harvests in Alaska, Composition by Case Community
- Exhibit 7. Wild Food Harvests by Alaska Residents Shown as Elevations
- Exhibit 8. Marine Mammal Harvests by Alaska Residents
- Exhibit 9. Caribou Harvests by Alaska Residents
- Exhibit 10. Fish Harvests for Food by Alaska Residents
- Exhibit 11. Moose Harvests by Alaska Residents
- Exhibit 12. Bird Harvests by Alaska Residents
- Exhibit 13. Change in Subsistence Harvests Following the *Exxon Valdez* Oil Spill
- Exhibit 14. The Oil Spill Health Task Force, June 1990 Report (First Page)
- Exhibit 15. The Oil Spill Health Task Force, July-August 1990 Report (First Page)
- Exhibit 16. Subsistence Harvests Following the *Exxon Valdez* Oil Spill in 1989, Compared with Pre-Spill Averages

Alaska's Population by Area, 1995

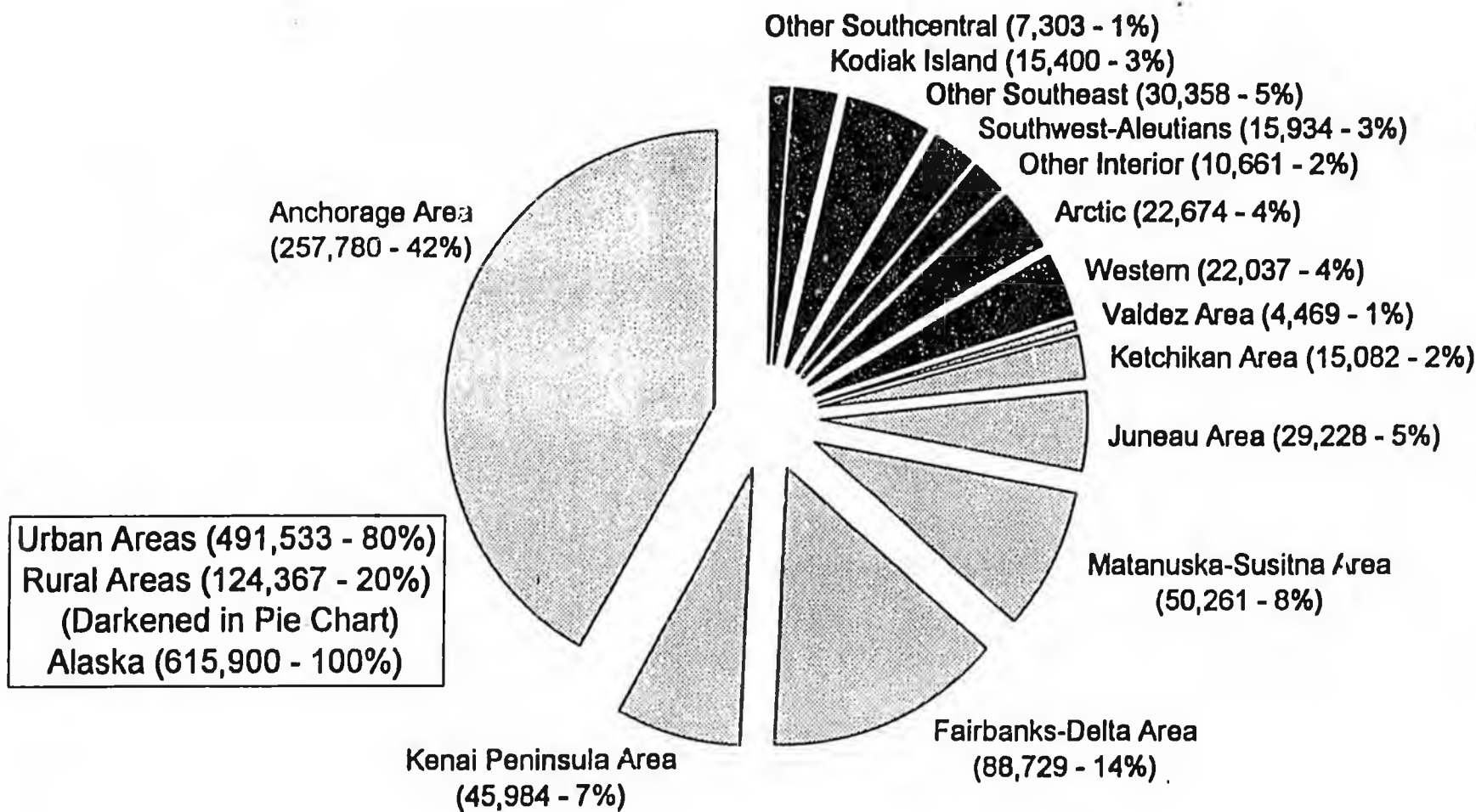


Exhibit 1

**Wild Food Harvests in Alaska
Nutritional Contributions and
Estimated Replacement Costs**

(Source: Robert J. Wolfe, Division of Subsistence, ADF&G)

Area and Community Size	1990 Population	Annual Wild Food Harvest (Pounds Per Person)	Annual Wild Food Harvest (Total Pounds)	Percent of Population's Protein*** Requirements (44 g/day)	Percent of Population's Calorie*** Requirements (2400 Kcal/day)	Estimated Wild Food Replacement Costs @ \$3/lb	Estimated Wild Food Replacement Costs @ \$6/lb
Small and Mid-Sized Communities*							
Southcentral-Prince William Sd	11,014	153	1,688,467	100%	14%	\$5,065,401	\$8,442,335
Kodiak Island	13,309	155	2,061,607	101%	14%	\$6,184,821	\$10,308,035
Southeast	28,410	178	5,064,509	116%	17%	\$15,193,527	\$25,322,545
Southwest-Aleutian	13,710	373	5,114,522	242%	35%	\$15,343,566	\$25,572,610
Interior	10,383	613	6,359,597	398%	57%	\$19,078,791	\$31,797,985
Arctic	20,380	516	10,507,255	335%	48%	\$31,521,765	\$52,536,275
Western	19,447	664	12,918,649	431%	62%	\$38,755,947	\$64,593,245
Total Rural	116,653	375	43,714,606	243%	35%	\$131,143,818	\$218,573,030
Large Urbanized Areas**							
Ketchikan Area	13,828	33	461,855	22%	3%	\$1,385,566	\$2,309,276
Juneau Area	26,751	35	922,910	22%	3%	\$2,768,729	\$4,614,548
Matsu Area	39,415	27	1,056,322	17%	2%	\$3,168,966	\$5,281,610
Fairbanks-Delta Area	81,728	16	1,307,648	10%	1%	\$3,922,944	\$6,538,240
Kenai Peninsula Area	40,008	40	1,600,320	26%	4%	\$4,800,960	\$8,001,600
Anchorage Area	226,338	19	4,390,957	13%	2%	\$13,172,872	\$21,954,786
Aleutian Military Stations	5,322	-	-	-	-	-	-
Total Urban	433,390	22	9,740,012	15%	2%	\$29,220,036	\$48,700,060
Alaska Total	550,043	97	53,454,618	63%	9%	\$160,363,854	\$267,273,090

* Annual wild food harvests (lbs usable weight) in small and mid-sized communities based on face-to-face household surveys in 153 communities by the Division of Subsistence, ADF&G, expanded to unsurveyed communities (year varies by community, representing the late 1980s-early 1990s).

** Annual wild food harvests (lbs usable weight) in large urbanized areas based on mailed fish and game permit returns, game harvest ticket returns, and mailed angler surveys by the Divisions of Wildlife Conservation, Commercial Fisheries Management and Development, and Sport Fish, ADF&G, representing the early 1990s.

*** Assumes on average, 422 lbs of wild foods contains 44 grams of protein, and 2.94 lbs of wild foods contains 2400 Kilocalories.

CORRECTION

THE FOLLOWING DOCUMENT(S)
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Alaska's Population by Area, 1995

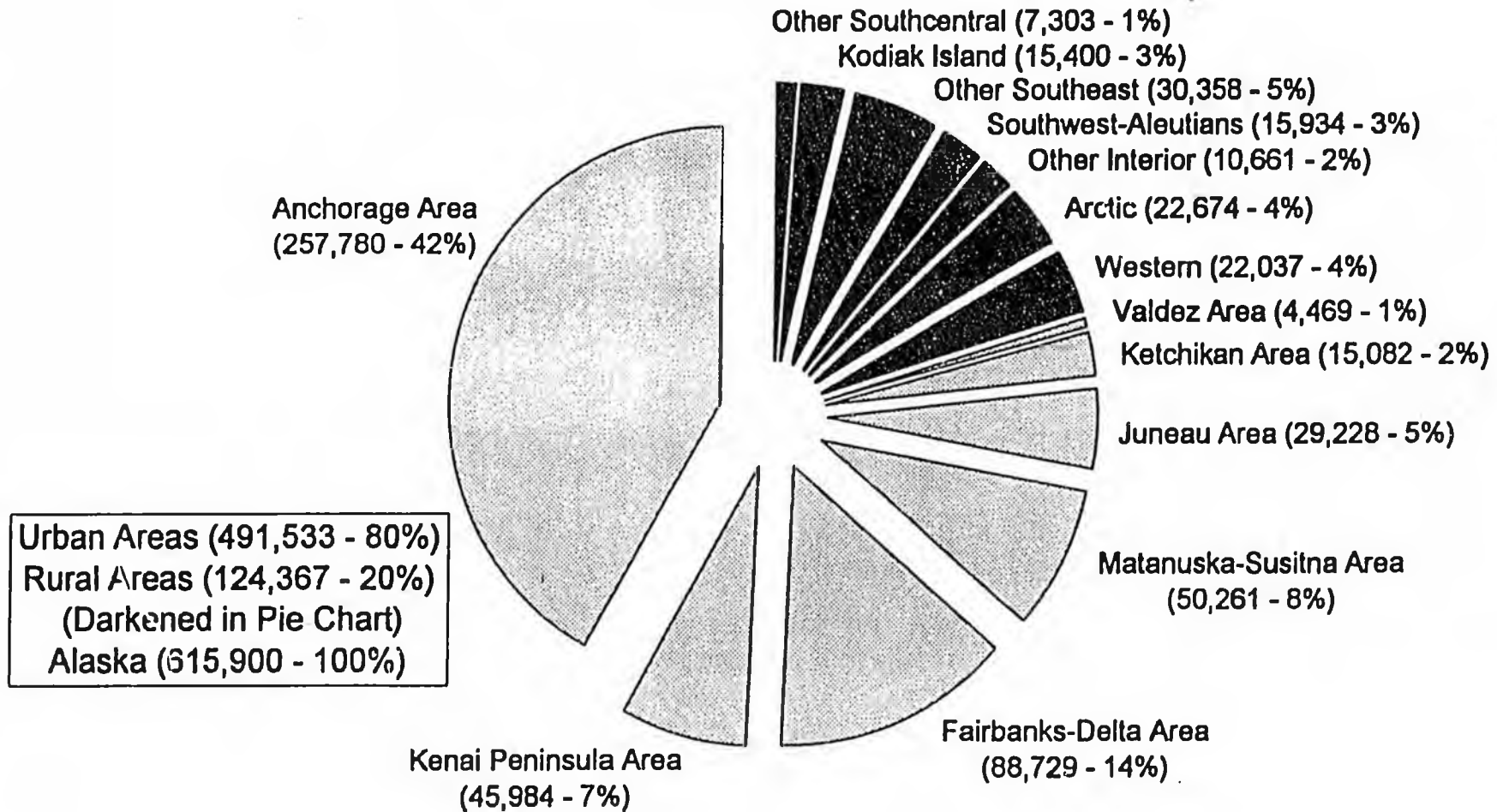
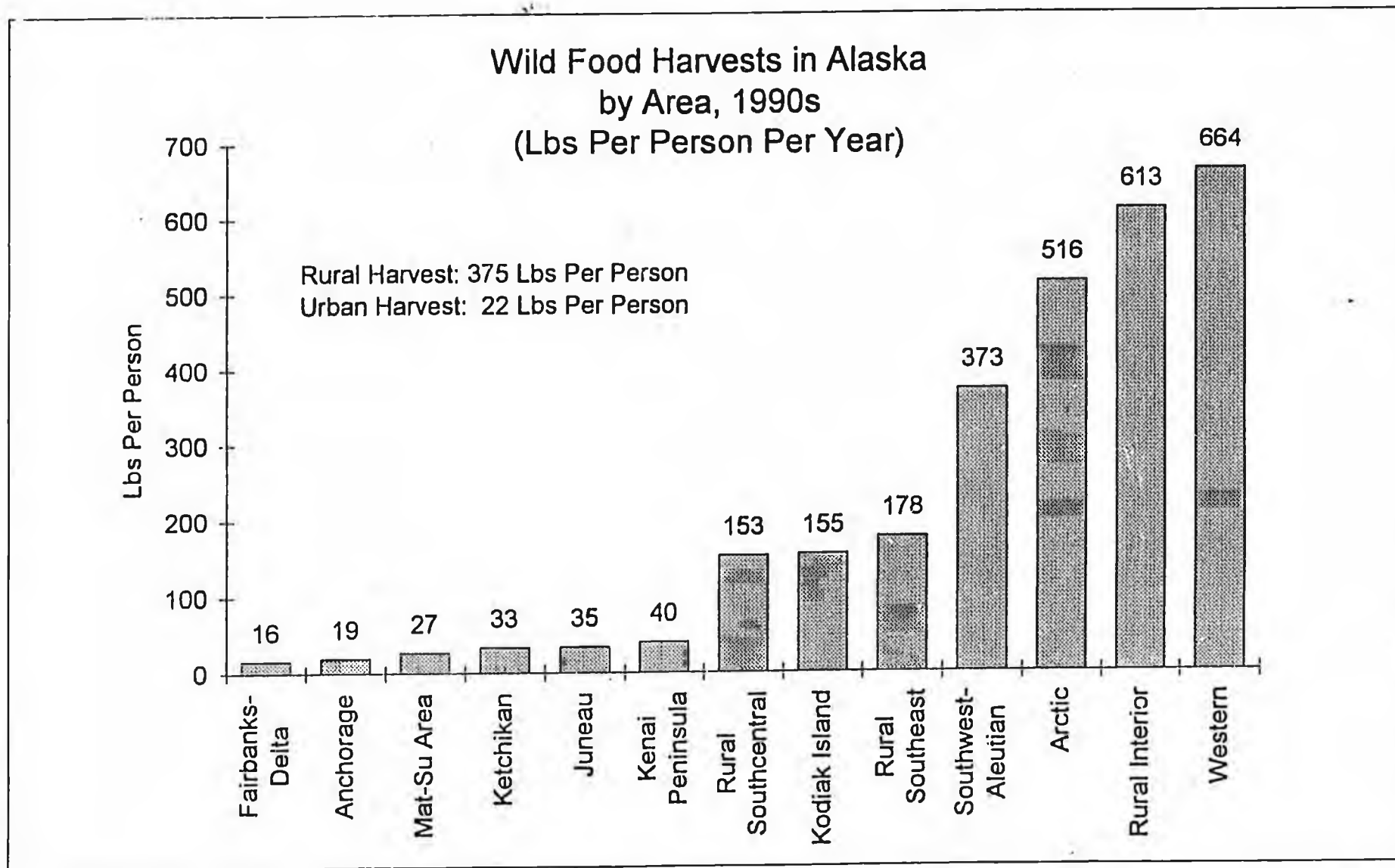


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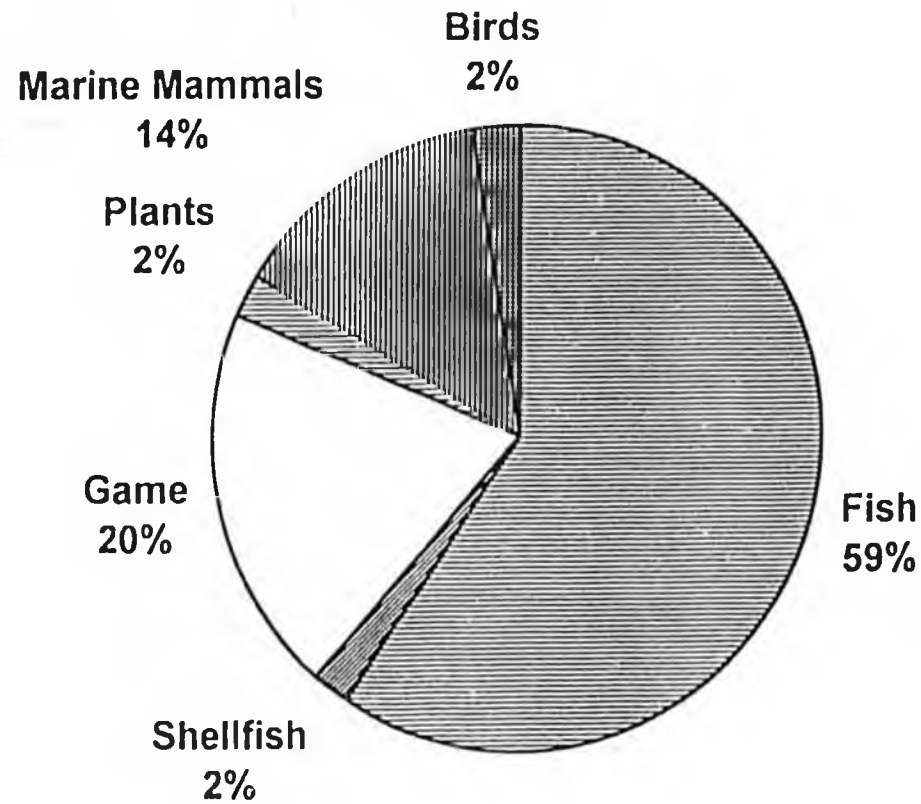
Wild Food Harvests in Alaska
Pounds Usable Weight
By Area and Resource Type
 (Source: Robert J. Wolfe, Division of Subsistence, ADF&G)

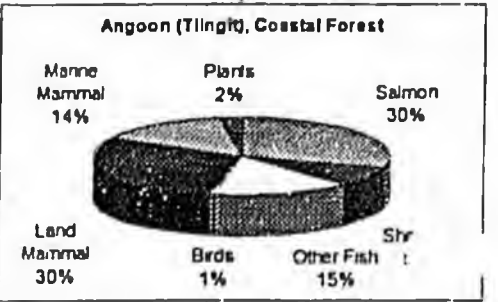
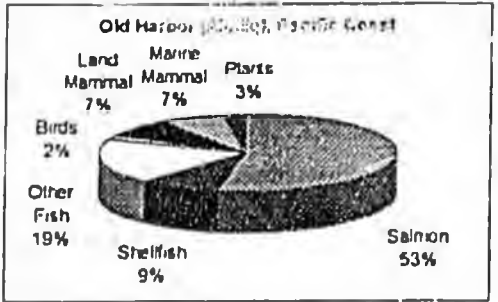
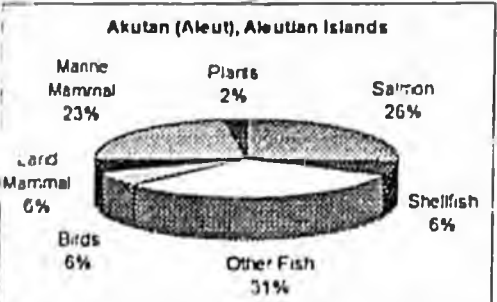
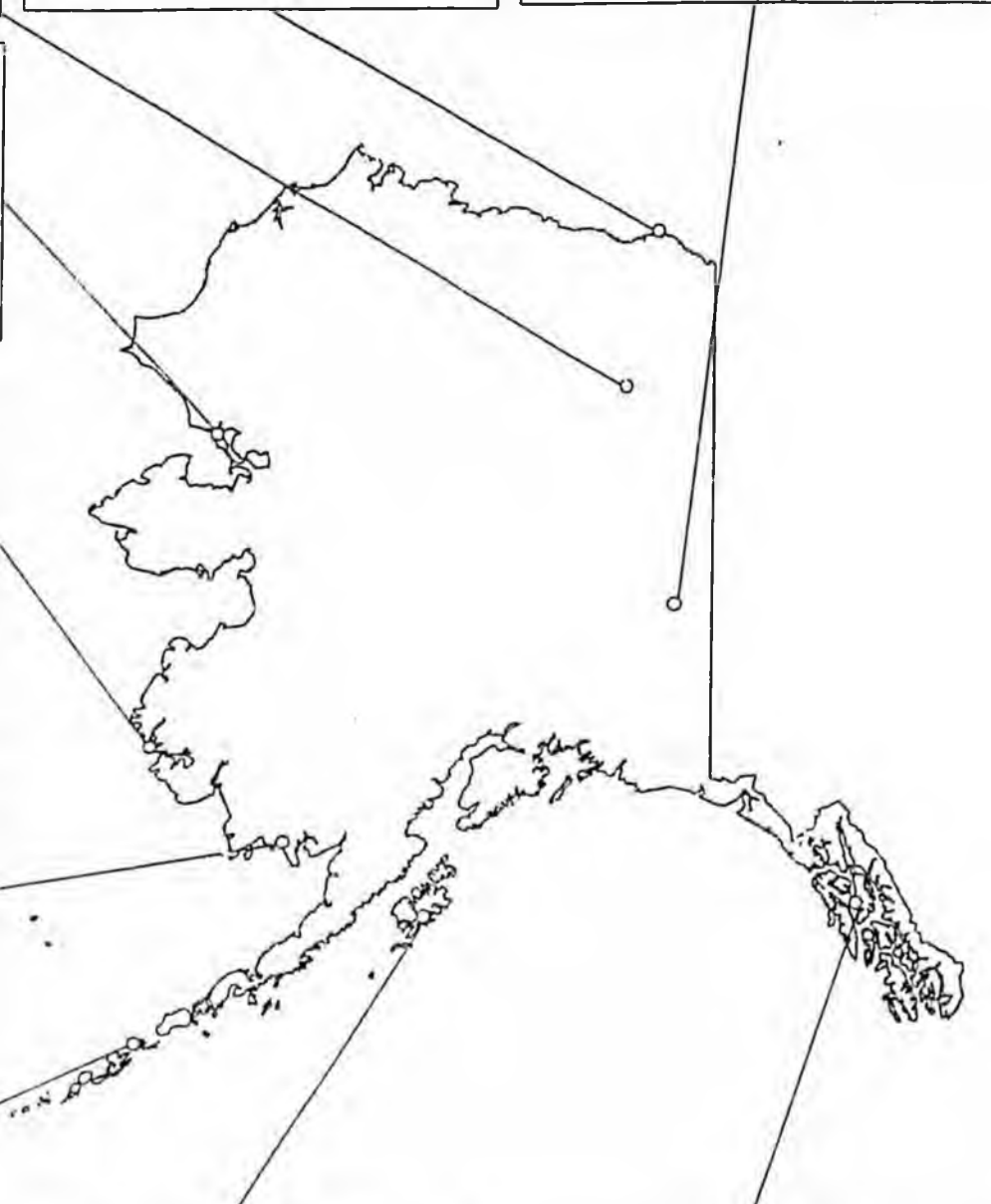
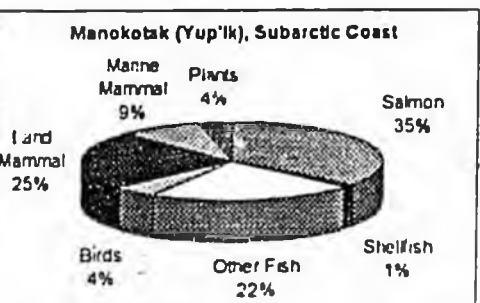
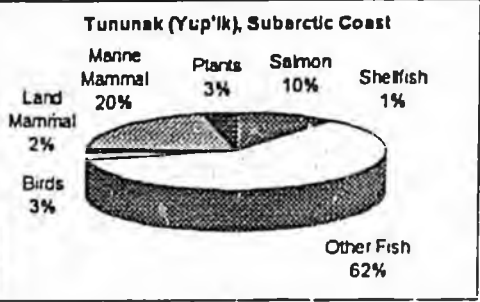
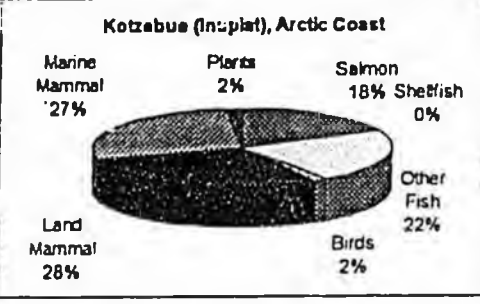
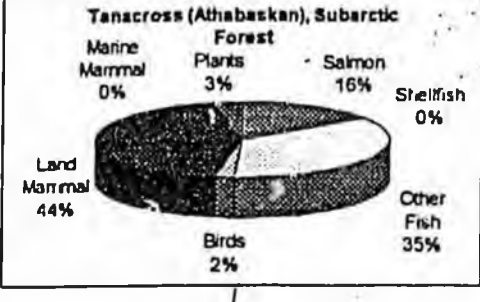
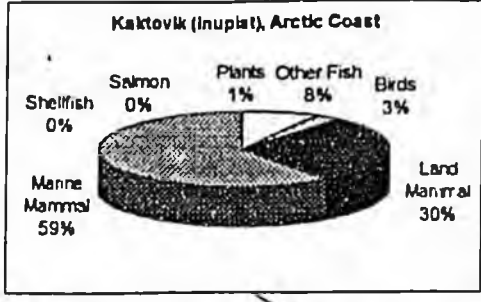
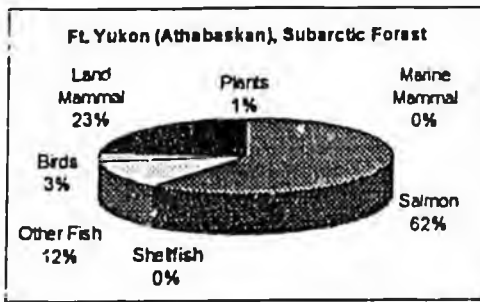
Area and Community Size	1990 Population	Annual Wild Food Harvest (Pounds Per Person)	Annual Wild Food Harvest (Total Pounds)	Per Capita Composition of the Wild Food Harvest					
				Pounds					
				Pounds Fish	Pounds Game	Marine Mammals	Pounds Birds	Pounds Shellfish	Pounds Plants
Small and Mid-Sized Communities*									
Southcentral-Prince William Sd	11,014	153	1,688,467	92	45	3	2	6	5
Kodiak Island	13,309	155	2,061,607	106	27	2	1	14	5
Southeast	28,410	178	5,064,509	96	44	6	2	26	5
Southwest-Aleutian	13,710	373	5,114,522	241	101	10	7	6	9
Interior	10,383	613	6,359,597	464	132	0	13	0	4
Arctic	20,380	516	10,507,255	156	125	215	12	1	8
Western	<u>19,447</u>	<u>664</u>	<u>12,918,649</u>	<u>487</u>	<u>69</u>	<u>71</u>	<u>27</u>	<u>0</u>	<u>10</u>
Total Rural	116,653	375	43,714,606	222	75	52	9	9	7
Large Urbanized Areas**									
Ketchikan Area	13,828	33	461,855	24	10				
Juneau Area	26,751	35	922,910	23	12				
Matsu Area	39,415	27	1,056,322	14	13				
Fairbanks-Delta Area	81,728	16	1,307,648	9	7				
Kenai Peninsula Area	40,008	40	1,600,320	30	10				
Anchorage Area	226,338	19	4,390,957	15	5				
Aleutian Military Stations	<u>5,322</u>	-	-	-	-				
Total Urban	433,390	22	9,740,012	16	7				
Alaska Total	550,043	97	53,454,618						

* Annual wild food harvests (lbs usable weight) in small and mid-sized communities based on face-to-face household surveys in 153 communities by the Division of Subsistence, ADF&G, expanded to unsurveyed communities (year varies by community, representing the late 1980s-early 1990s).

** Annual wild food harvests (lbs usable weight) in large urbanized areas based on mailed fish and game permit returns, game harvest ticket returns, and mailed angler surveys by the Divisions of Wildlife Conservation, Commercial Fisheries Management and Development, and Sport Fish, ADF&G, representing the early 1990s.

Composition of the Subsistence Harvest By Rural Alaska Residents, 1990s





Wild Food Harvests by Alaska Residents (Lbs per Person per Year) Shown as Elevations by Residency

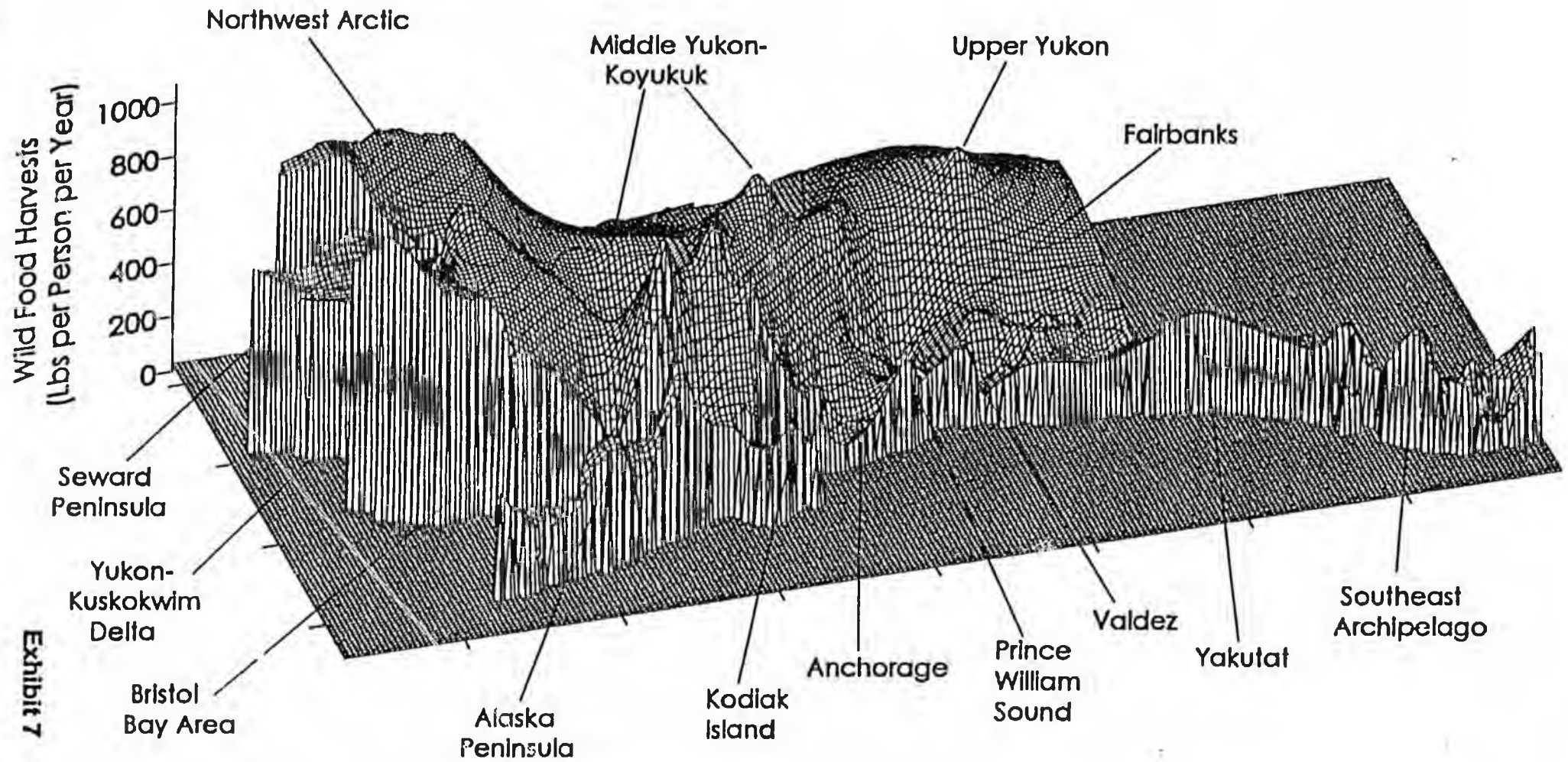
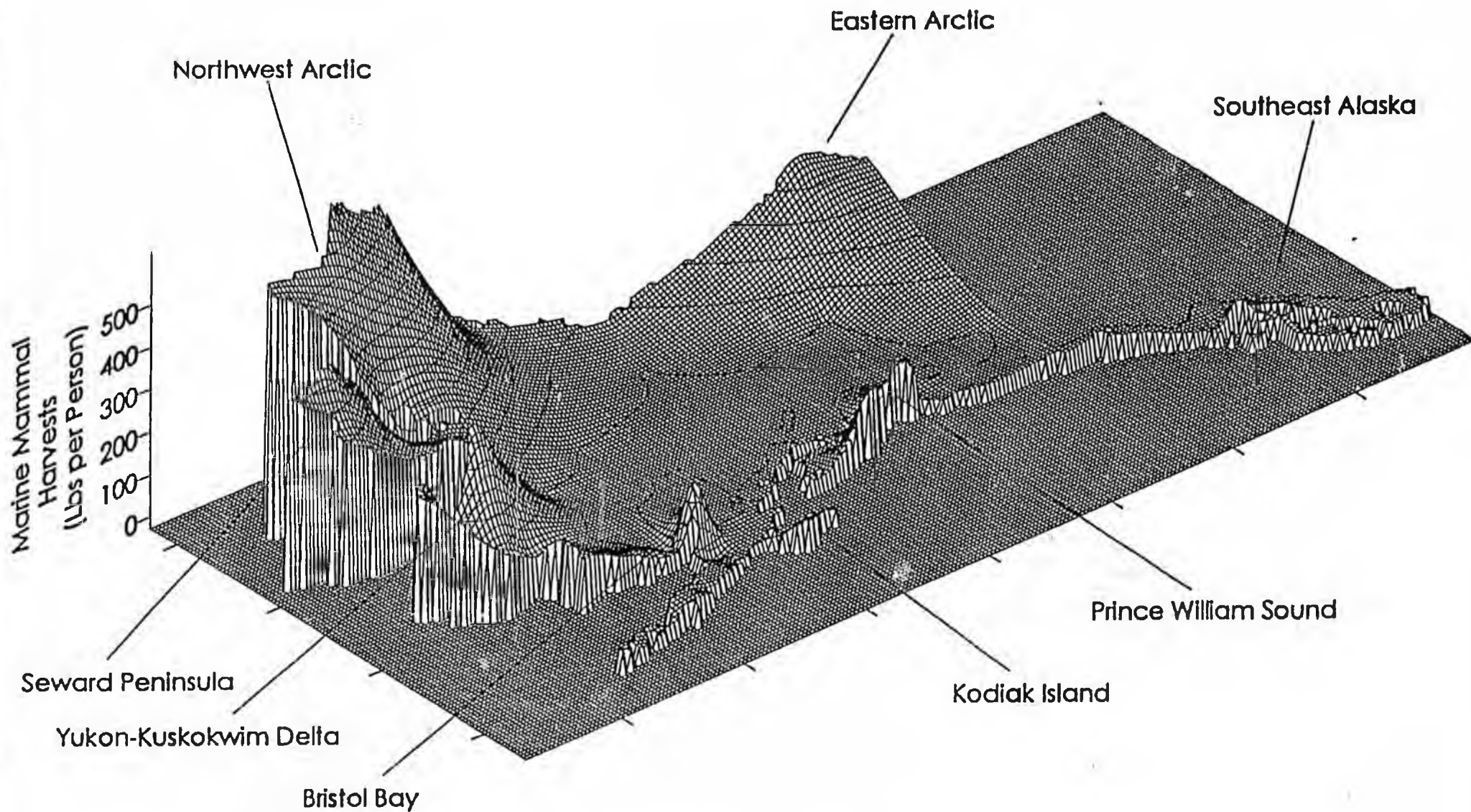


Exhibit 7

Source: Robert J. Wolfe, Division of Subsistence, Alaska Department of Fish and Game
Note: Aleutian, Nunivak, St. Lawrence, and Pribilof Islands not shown.

Marine Mammal Harvests by Alaska Residents (Lbs per Person per Year) Shown as Elevations by Residency



Caribou Harvests by Alaska Residents (Lbs per Person per Year) Shown as Elevations by Residency

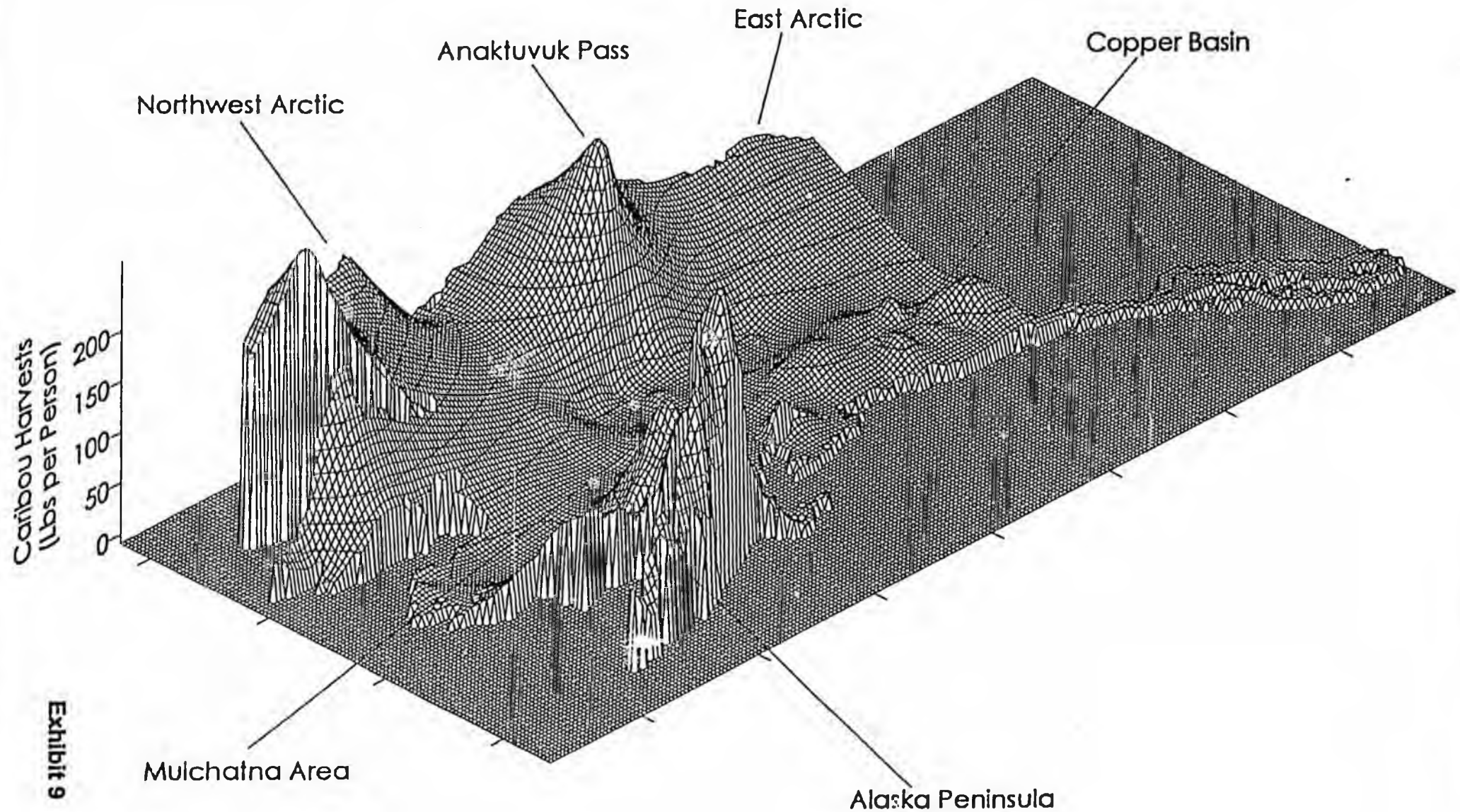
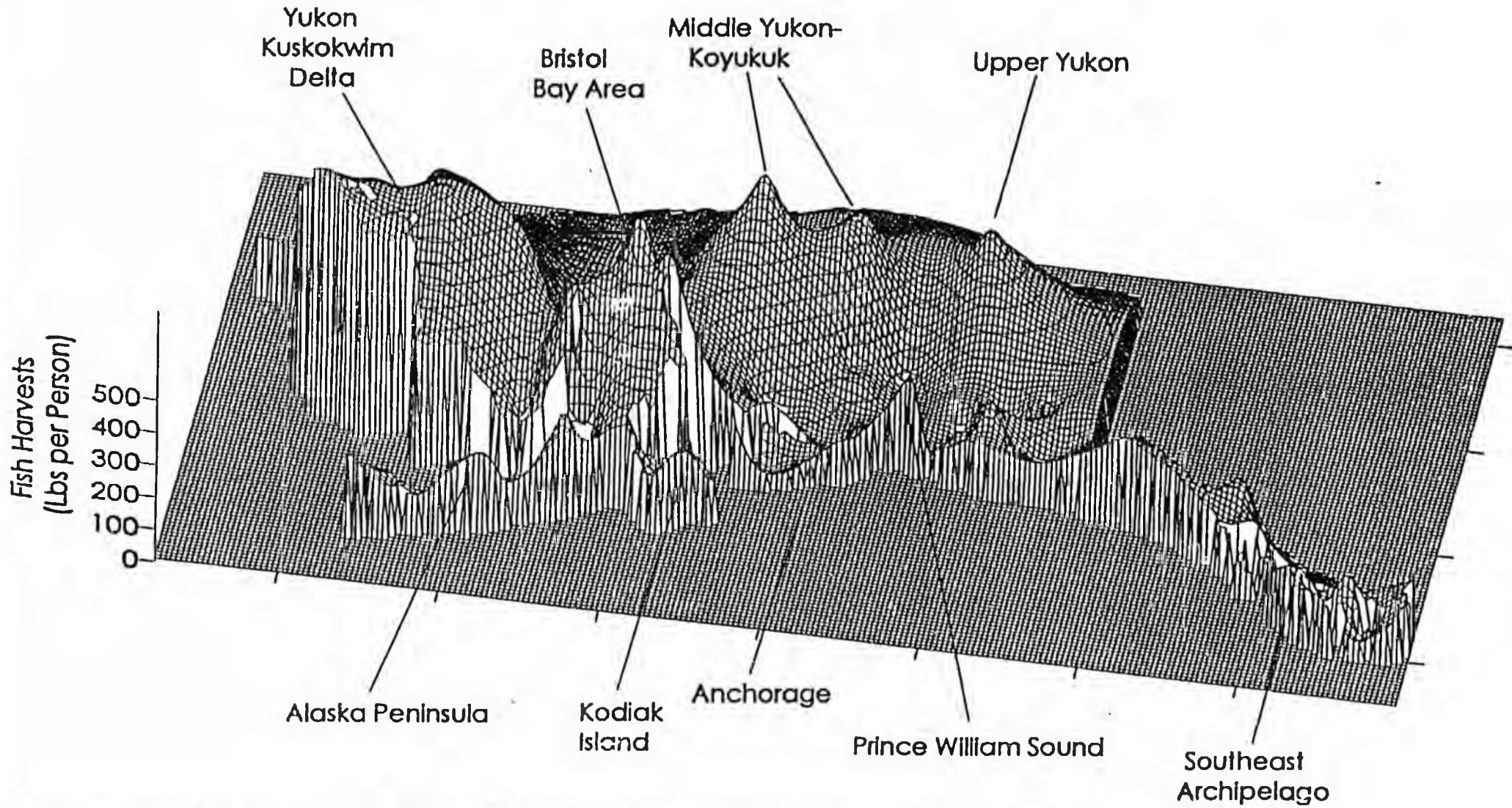


Exhibit 9

Fish Harvests for Food by Alaska Residents (Lbs per Person per Year) Shown as Elevations by Residency



Source: Robert J. Wolfe, Division of Subsistence, Alaska Department of Fish and Game, 1995

Moose Harvests by Alaska Residents
(Lbs per Person per Year)
Shown as Elevations by Residency

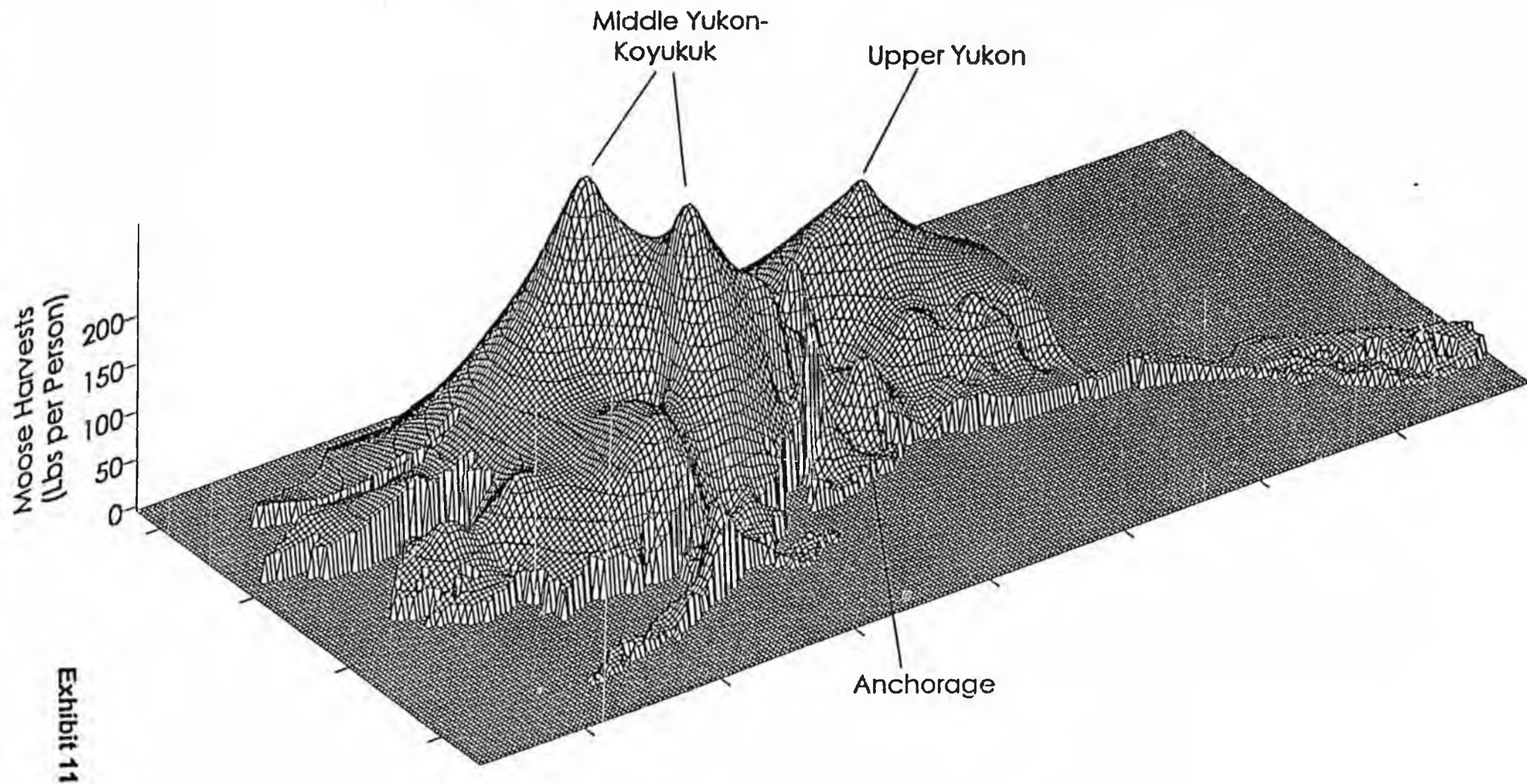


Exhibit 11

Bird Harvests by Alaska Residents
(Lbs per Person per Year)
Shown as Elevations by Residency

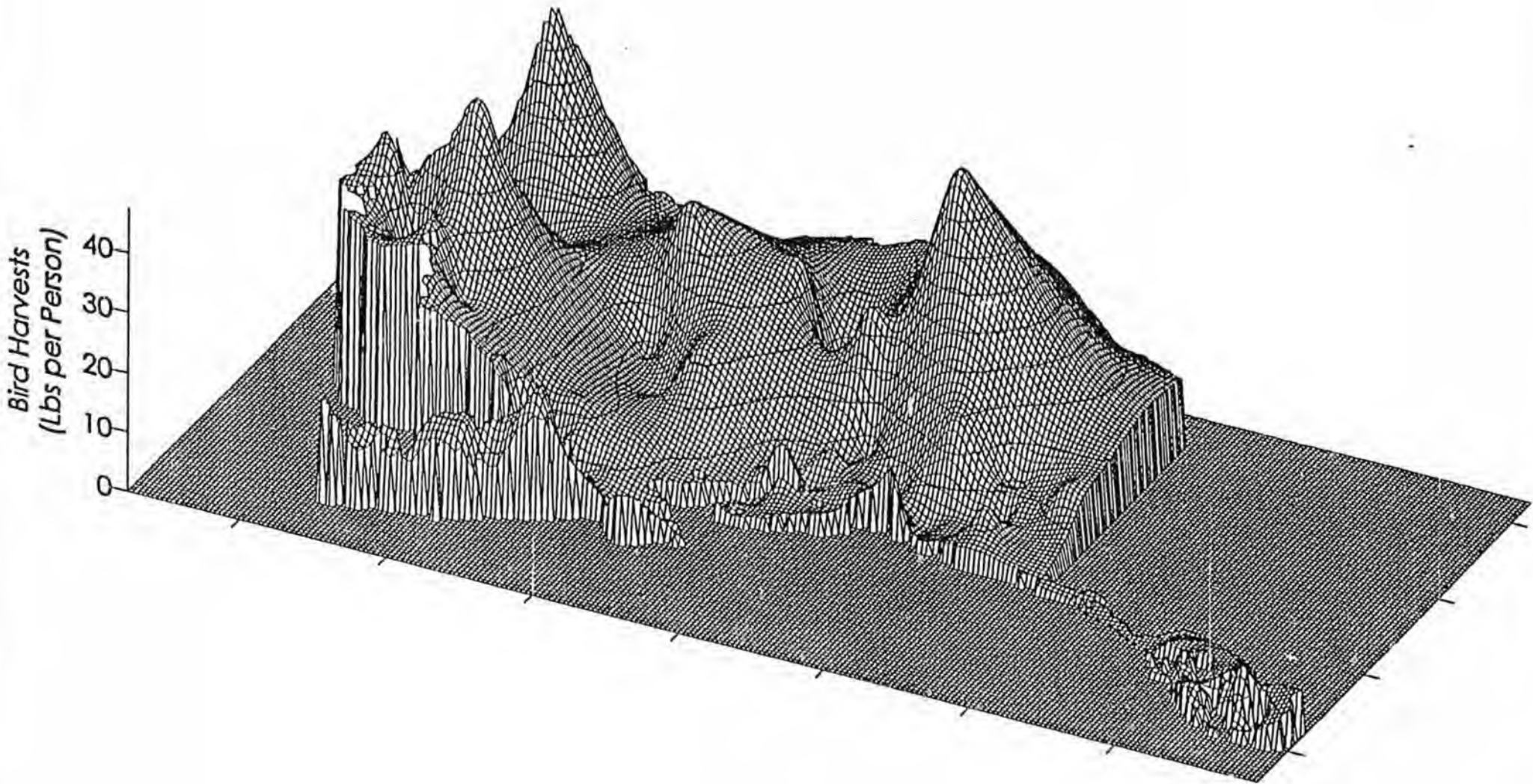
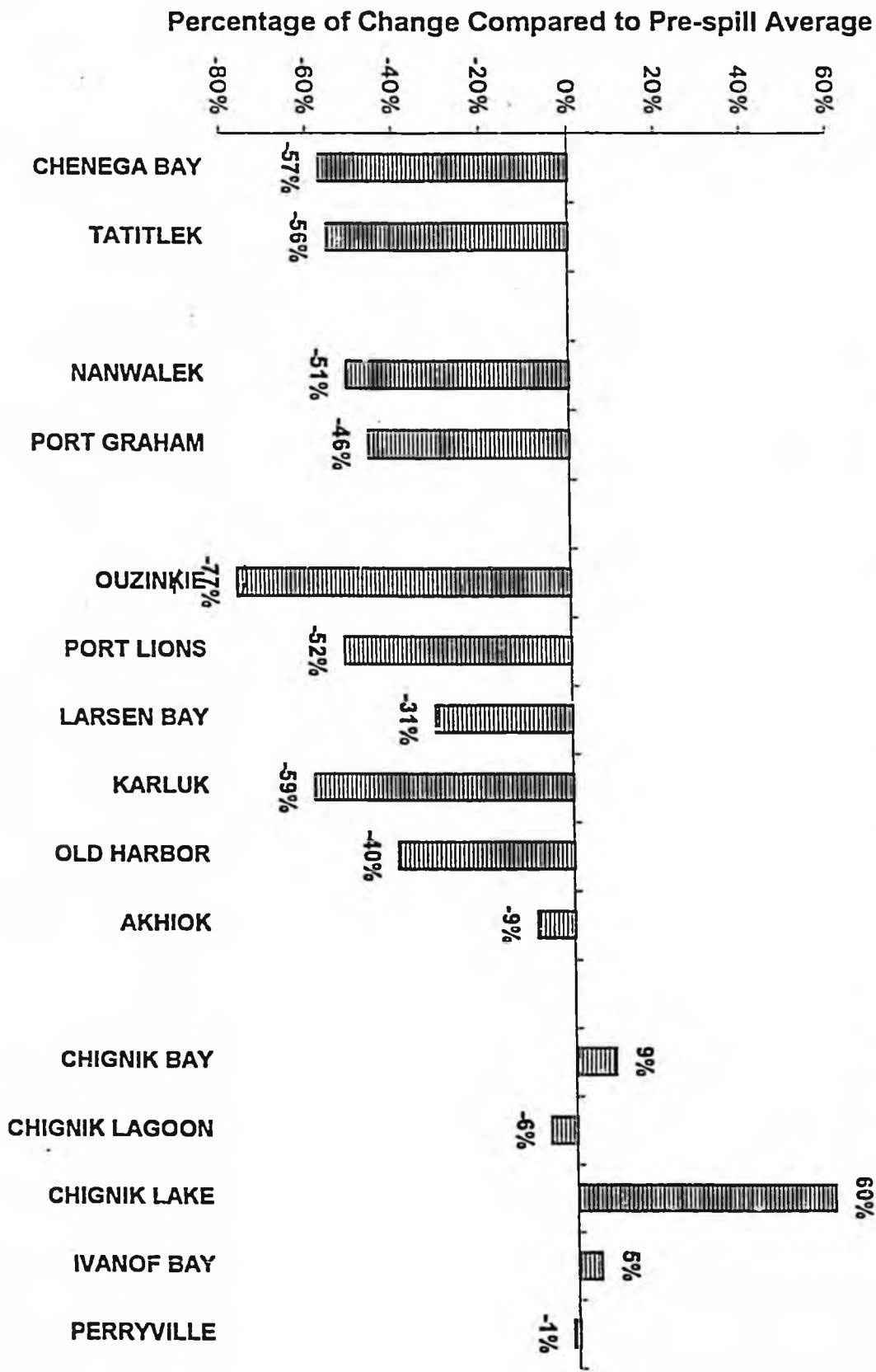


Figure 39. Changes in Subsistence Harvests after the Exxon Valdez Oil Spill, 15 Study Communities of the Oil Spill Area





The Oil Spill Health Task Force

June 1990 Report

No Contamination Found in Subsistence Seals, Sea Lions

Tests performed on seven seals and one sea lion collected during the spring of 1990 in Prince William Sound and the Gulf of Alaska found virtually no traces of oil contamination.

The seven seals were taken by local hunters near Tatitlek and Chenega Bay in Prince William Sound in March and April 1990 for the National Oceanic and Atmospheric Administration (NOAA). The sea lion was taken near English Bay in lower Cook Inlet.

Samples of muscle, liver, kidney, blubber, and bile were tested at NOAA's Environmental Conservation Division laboratory in Seattle. The results were similar to the very low readings for six seals and nine sea lions collected last summer by State Department of Fish and Game biologists. The laboratory is running a third set of tests on additional animals collected by the State researchers.

No tissue sample registered higher than 8 parts per billion for aromatic hydrocarbons, the toxic remains of oil spilled when the Exxon Valdez went aground in Prince William Sound on March 24, 1989. By way of contrast, some clams and mussels from heavily contaminated areas have been found with hydrocarbon levels of several thousand parts per billion.

Dr. Usha Varanasi, director of the Environmental Conservation Division, said the levels of hydrocarbons in the marine mammals were comparable to the lowest levels found in fish sampled in the subsistence studies.

continued on page 2

Chart Shows Test Results

	Muscle	Liver	Kidney	Blubber
NOAA STUDY				
Harbor Seals				
New Year's Island	3/0.3	1/nd	2/nd	5/0.2
Galena Bay	5/	0.3/nd	7/nd	4/0.4
Galena Bay	2/0.3	3/nd	3/nd	8/0.4
Little Green Island		3/0.1	3/0.08	5/0.3
Little Green Island		0.9/nd	4/0.1	5/0.3
Little Green Island		1/nd	2/nd	
Little Green Island			3/0.7	
Sea Lion				
Flat Island	2/0.2	1/nd	4/nd	4/0.4
FISH AND GAME STUDY				
Harbor Seals				
Afognak Island	nd	4/0.5	nd	4/nd
Afognak Island	0.4/nd	4/0.3	nd	nd
Barren Islands	nd	nd	nd	nd
Barren Islands	nd	nd	nd	1/2
Barren Islands	nd	3/2	nd	1/nd
Chugach Island	nd	5/0.9	nd	2/nd
Sea Lions				
Barren Islands	nd	2/0.9	nd	1/nd
Barren Islands	nd	nd	nd	nd/0.9
Barren Islands	nd	5/2	0.1/nd	nd/0.3
Prince William Sound	nd	1/1	nd	nd/0.6
Prince William Sound	0.3/nd	3/2	nd	nd
Prince William Sound	0.6/nd	nd/0.2	nd/0.3	1/nd
Prince William Sound	1/nd	1/0.3	nd	nd/0.2
Prince William Sound	0.9/nd	1/0.5	nd	nd/0.3
Chiswell Island	0.7/nd	nd	nd	nd/0.6

The chart shows the results of tests run on seal and sea lion samples collected for the National Oceanic and Atmospheric Administration and the Department of Fish and Game. The sums for two types of aromatic hydrocarbons are listed with light aromatics listed first and then heavy aromatics. Where "nd" is shown, the hydrocarbons were nondetectable. Where a blank space is shown, the sample was not received or the test was inconclusive.



The Oil Spill Health Task Force

July - August 1990 Report

Subsistence shellfish tests pinpoint contamination

Tests on about 170 samples of shellfish gathered last winter from areas affected by the Exxon Valdez oil spill showed significant oil contamination in samples from four sites.

However, possible sources of contamination other than the Exxon Valdez were identified at three of the locations.

Both the State of Alaska and Exxon are conducting ongoing studies to determine if subsistence resources were contaminated by the Exxon Valdez oil spill. The National Oceanic and Atmospheric Administration is participating in the studies. Tissue samples from fish and shellfish collected in the studies are tested at NOAA's National Marine Fisheries Service laboratory in Seattle. The laboratory also tests bile from fish.

The Division of Subsistence, Alaska Department of Fish and Game collected samples of shellfish from 25 sites in 13 areas. Exxon sampled 12 sites in four areas.

Results from the winter cycle of testing showed the level of aromatic hydrocarbons, which are toxic chemicals in the oil, at or near levels considered normal for the environment, in all but the tested sites in Windy Bay, Chenega Bay, Kodiak, and Old Harbor.

High levels of hydrocarbons—up to 5,000 parts per billion—were found in mussels from Windy Bay, a heavily oiled area near the tip of the Kenai Peninsula in the Gulf of Alaska.

Clams near the town of Kodiak tested higher than 2,000 parts per billion. Clams from Chenega Bay on the west side of Prince William Sound, had up to 1,000 parts per billion, and

mussels from Kodiak Island's Old Harbor had about 500 parts per billion.

Clams, mussels, chitons and other shellfish were also tested from sites in Prince William Sound, lower Cook Inlet, the Kodiak Island area and the Alaska Peninsula. The sites were identified as important for subsistence resources by residents of 17 communities in the area.

Hydrocarbon levels of about 50 parts per billion were found in some mussels from Port Lions and an octopus from Larsen Bay, both on Kodiak Island. Levels in the other samples ranged from nondetectable to less than 50 parts per billion.

The contamination found in Windy Bay is undoubtedly from the Exxon Valdez, but other sources may have contributed to the contamination found at Kodiak, Old Harbor, and Chenega Bay.

The clams from Kodiak were taken near the city boat harbor, in an area where boats and harbor activities may have caused contamination, said Craig Mishler, a subsistence resource specialist with the Division of Subsistence.

The Old Harbor site is also near the village's boat harbor and a culvert that empties into the water, he said. Samples collected there had many times more hydrocarbons than samples taken from a second site away from the boat harbor.

Pippa Coiley, oil spill coordinator for the Division of Subsistence, said the sampling site in Chenega Bay was near an old cannery dock that burned down many years ago. Both the Division of Subsistence and Exxon/NOAA collected samples from near the old cannery and from other sites around the village. In

both studies, samples collected near the old cannery site tested significantly higher than those from other sites in the bay.

Usha Varanasi, director of the Environmental Conservation Division in Seattle, which performed the subsistence food tests, said the types of hydrocarbons found in samples also differ between sites.

More hydrocarbons with a low molecular weight were found in samples from Kodiak and Old Harbor more hydrocarbons with a high molecular weight were found in the samples from Chenega Bay.

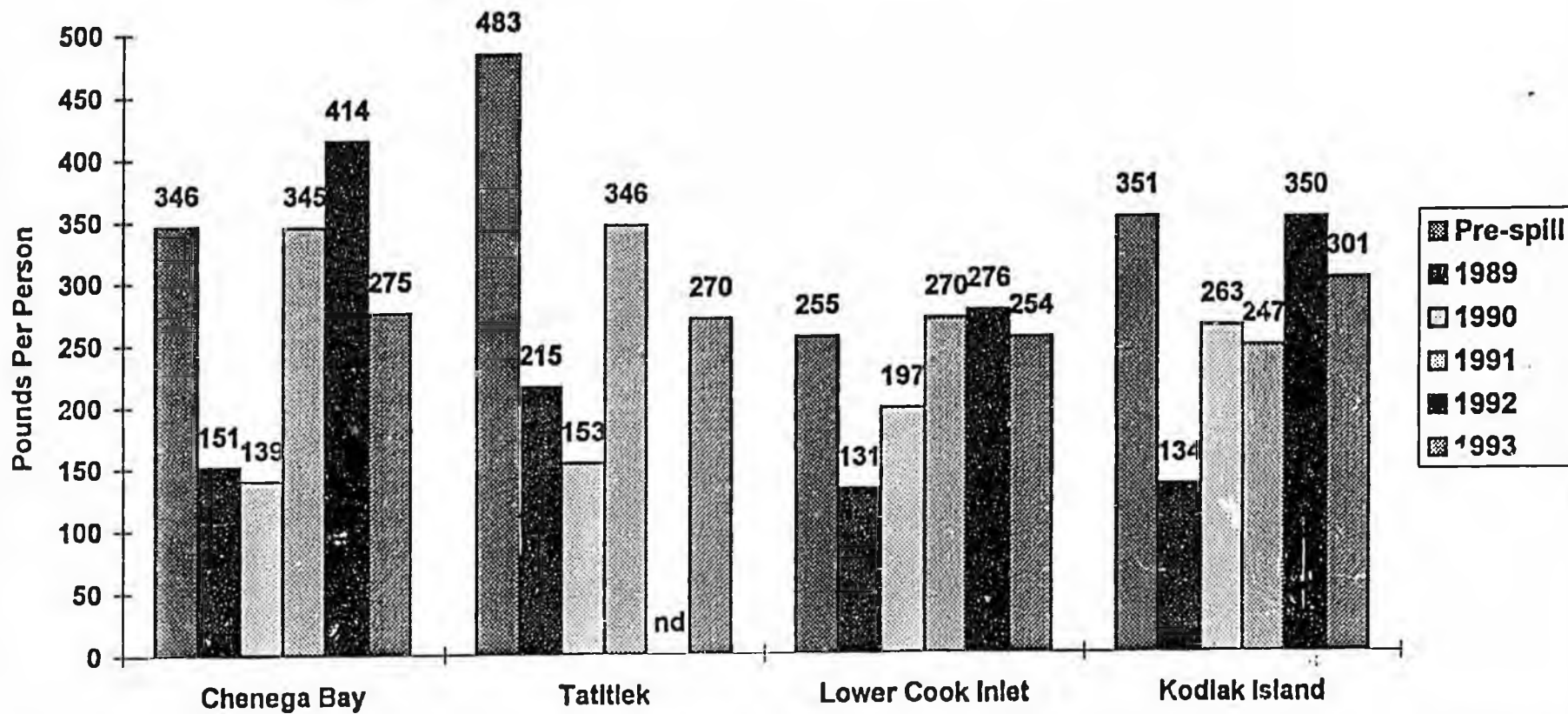
Dr. Varanasi said hydrocarbons with a low molecular weight tend to evaporate and disappear quickly from the oil. Higher-weight hydrocarbons do not evaporate or degrade easily and persist longer in the environment. This means the source of contamination was probably more recent in Kodiak and Old Harbor than in Chenega Bay, she said.

Judy Meidinger, a community liaison worker with Exxon, said tests are planned on soil samples from the three sites to determine the source of the contamination.

The pattern was somewhat different in Windy Bay, which was heavily contaminated by oil from the Exxon Valdez and where no other source of contamination is known to exist. Dr. Varanasi said the proportion of low-weight hydrocarbons to high-weight ones indicated the oil was more weathered than the oil at Kodiak and Old Harbor but less weathered than the oil at Chenega Bay.

continued on page 2

Subsistence Harvests
Following the Exxon Valdez Oil Spill in 1989,
Compared with Pre-Spill Averages



Source: es A. Fall, Alaska Department of Fish and Game, Division of Subsistence

REPORT OF THE ALASKA NATIVES COMMISSION
MAY, 1994

Executive Summary

Prepared by the Alaska
Federation of Natives



MEMBERS OF THE COMMISSION:

Perry Eaton, Co-Chairperson
Mary Jane Fate, Co-Chairperson
John Binkley
Edgar Paul Boyko
Father Norman H. V. Elliott
Beverly Masek
Martin B. Moore, Sr.
Frank Pagano
John W. Schaeffer, Jr.
Father James A. Sebesta
Walter A. Soboleff
Morris Thompson
Sam Towarak
Frances E. Hamilton (deceased)

Mike Irwin, Executive Director

Volume I

Prepared by Commission staff, providing overview and summary of (140 pp.) work product compiled through 22 months of hearings, research, deliberations. Central principles: Native Self-Reliance, Native Self-Determination, Integrity of Native Cultures. Historical causes of Native personal and cultural breakdown. Thirty-four main policy recommendations (plus 76 additional recommendations), directed to United States, State of Alaska, Native community and general public. Statistics on Native social/cultural, judicial/correctional, economic, educational, physical/behavioral health problems. Demographic and geographic data; biographical information on Commissioners; description of Commission's work procedures.

Volume II

Providing full narrative text, data and recommendations of five (204 pp.) separate studies of Native problems conducted by the Commission's task forces: Alaska Native Physical Health; Social/Cultural Issues and the Alcohol Crisis; Economic Issues and Rural Economic Development; Alaska Native Education; and Self-Governance & Self-Determination.

Volume III

Providing full narrative text, data and recommendations of two (91 pp.) separate studies of Native public policy issues conducted by the Commission: Alaska Native Subsistence; and Alaska Native Tribal Government.

HISTORICAL BACKGROUND

The idea of an Alaska Natives Commission dates from early 1989, when the Alaska Federation of Natives, in cooperation with the University of Alaska's Institute for Social and Economic Research, published its landmark "Report on the Status of Alaska Natives: A Call for Action."

Based on a wide range of socio-economic data, the AFN Report had concluded that, despite recent improvements in physical health, educational opportunities, standards of living, and access to government services, most Native villages are caught in a pervasive social and economic crisis — as revealed by abnormally high statistics of personal and community breakdown. The cultural changes of this century have been so rapid and so profound that many of Alaska's indigenous people have been overwhelmed, isolated and lost. Because opportunities for advancement in the mainstream culture are severely limited, most Natives remain poor by any American standard. And, on top of all the cultural and economic problems, a significant minority of Native people is being systematically destroyed by alcohol and other drugs — and by the violent behavior that chemical abuse unleashes within families.

The AFN Report quickly caught the attention of the Congress. When asked for follow-up recommendations by the Alaska Congressional Delegation and by Chairman Inouye of the Senate Committee on Indian Affairs, AFN pointed out that its Report had merely scratched the surface. No comprehensive study of Alaska Native status had been conducted by the United States for almost 20 years. What was needed was an in-depth policy analysis, with specific recommendations to the Congress, the President, the Alaska Legislature, the Governor and the Native community.

In July, 1989, Senator Murkowski and Congressman Young introduced a bill creating a public commission of 14 members — half to be designated by the President and half by the Governor — jointly funded by the state and federal governments. It passed both houses of Congress and was signed into law by President Bush on August 18, 1990. White House and gubernatorial nominations took another 18 months, and the Alaska Natives Commission sat down for its inaugural meeting in Washington, D.C. in February of 1992.

After two years of research, public hearings and task force deliberations, the Commission published its three-volume, 440-page Report in May, 1994. As required by the authorizing legislation, the Report has been formally conveyed to the Congress, the President of the United States, the Alaska Legislature and the Governor. This Executive Summary was produced by the Alaska Federation of Natives and is publicly available through its office: 1577 "C" Street, Suite 100, Anchorage, Alaska 99501 - (907) 274-3611.

CENTRAL THEMES

- "Whatever words are chosen to depict the situation of Alaska's Native people, there can be little doubt that an entire population is at risk...of being permanently imprisoned in America's underclass, mired in physical and spiritual poverty; of leading lives, generation to generation, characterized by violence, alcohol abuse and cycles of personal and social destruction; of losing, irretrievably, the cultural strengths essential for the building of a new and workable social and economic order; of permanently losing the capacity to self-govern, to make considered and appropriate decisions about how life in Native communities should be lived."
- "This lack of well-being, or 'dysfunction,'...was precipitated by a century-long policy of cultural, social and economic assimilation. Rampant unemployment and the virtual nonexistence of other economic opportunities,...together with the spiritually and psychologically debilitating intervention of governmental services...has created a culture of dependency. If one theme can be identified as having emerged during the course of the Commission's work, it is Alaska Natives' seeming inability to take responsibility for local economies, governments, schools and other social institutions."
- "...the impact of government on the villages during the past quarter-century, while often materially beneficial..., has been destructive in process. The federal government appears to have believed that 'development'...is something that can be done to one group of people by another....The result of this systematic assumption of responsibility and control by outsiders is that village people lost hold of their communities and their children's lives. That is a fundamental fact underlying the contemporary Native...crisis."
- "...There is no end of the downward social and economic spiral in sight. Natives are still the poorest of Alaska's citizens....There has been little, if any, return on the billions of dollars that governments have spent over the past 30 years on what has become, quite literally, a growth industry revolving around problems in the Native community."
- "The true nature of the sickness...throughout the Native villages is the state of dependency which has led to the loss of direction and self-esteem. Everything else is of a secondary nature - merely symptoms of the underlying disease. Programs which are aimed at relieving the symptoms but refuse to relate to the sickness are doomed to fail and may even make things worse."
- "...unhealthy dependence...on outside decision makers and service providers...serve[s] to displace the village councils, natural leaders and extended families. Rather than having to face, acknowledge and deal with problems, the community can turn those problems over to someone else."
- "It is time to accept that the past policy of assimilation has not worked. The federal government and the State of Alaska have repeatedly chosen to ignore this fact. But it is one clearly understood by Alaska Natives. Natives must...approach the future with the certain knowledge that their world views, their traditional methods of solving problems, their ways of thinking and doing...will be given respect and precedence."
- "The issues confronting Alaska Natives are compounded by their interrelationship:
 - Reversal of the cultural and social decay in which Natives are enmeshed seems impossible without improvement in their economic condition. Individuals who believe themselves doomed to an unending future of economic dependency are in such psychological despair that little energy is left for understanding and valuing their heritage.
 - Improvement in their economic condition seems unlikely without...an educational system that works...Children and young adults who are deprived of self-respect by a culturally alien school system and then sent into society without marketable skills cannot improve their economic status.

—An education system that works for Alaska Natives seems out of reach so long as public health problems, family dysfunction, and alcohol and sexual abuse are prevalent. Children suffering from chronic diseases brought on by exposure to raw sewage or Fetal Alcohol Syndrome, children from families in which one or both parents are absent or abusive, and children who must live in communities in which the society...has failed, are ill equipped to succeed in school, even if school is reformed to accommodate ways of learning particular to...Native cultures."

- "The answer...is not surrender to this multitude of problems, but greater efforts to address all concurrently. Progress in reversing cultural and social erosion will be rewarded by gains in other areas. The forward movement of an empowered Native community...will go far in promoting substantive advances..."
- "...there needs to be a comprehensive approach by the federal and state governments and Alaska Native people themselves...[A]ny piecemeal attempts at reform will fail...The success or failure of one initiative hinges on the success or failure of others. Such a multi-faceted approach...would be a positive...departure from present governmental policy making which is issue specific and political in approach."

OVERARCHING PRINCIPLES

Self-Reliance

"...using the rights they have...from the special relationship of Native Americans with the federal government and...as citizens of the United States and Alaska,...the acceptance of responsibility for individual and community actions...is the key to Alaska Natives' future well-being..."

Self-Determination

"...policies and programs must, to the largest extent possible, be conceived, developed and carried out by Alaska Natives."

Integrity of Native Cultures

"Policies and programs...must recognize, take advantage of, and maintain and enhance the traditional values of Alaska Native cultures."

RECOMMENDATIONS

Thirty-four proposals, organized in seven issue categories, are the principal policy recommendations of the Report (pages 25 to 78 of Volume I):

Social Needs and Services

1. Federal and state laws, regulations and procedures should give maximum local powers and jurisdiction to tribes and tribal courts in alcohol importation/control, community/domestic relations, and law enforcement.
2. Federal and state governments should stop developing new non-Native agency programs and research on Native social pathologies until Natives themselves can design effective approaches in their own communities.
3. Every Native village should design and implement a process of healing and recovery for its own people, and all external agency services should conform to and support that plan.
4. Federal and state appropriations for Native social service programs should be transferred out of public agencies and funded directly to those villages and village consortia locally addressing social pathologies.

Employment, Work and Income

1. Government service programs should be contracted to tribes and other Native organizations to enhance local employment opportunities, decision-making, management skills and culturally effective delivery.
2. Every federal agency operating a 638-eligible program should enforce a Native hire requirement like that of BIA and IHS; and hiring for all federal jobs in rural Alaska should give Native preference so that the work force at least reflects the Native composition of the local population.
3. Obstacles to Native employment in village capital construction projects should be removed.
4. Obstacles to Native employment in rural Alaskan extractive resource industries should be identified and removed.
5. Federal and state regulations should permit tribal design and management of income support programs (e.g., AFD, Food Stamps, State General Assistance, BIA General Assistance).
6. Tribal governments should be permitted to design and operate local "workfare" programs that: a) require able-bodied recipients to give productive community labor in return for transfer payments, and b) provide training, child care and support services.

Law Enforcement and Justice

1. Tribes should establish culturally appropriate institutions and procedures for local dispute resolution (including tribal courts); and federal and state governments should support same with training and technical assistance.
2. The state government should negotiate formal agreements with all tribal councils, delineating those offenses within the domain of tribal courts and those under state law and specifying that VPSO's will enforce tribal ordinances as well as state statutes.
3. In addition to advocating tribal status, jurisdiction and powers, Native organizations should identify ways in which existing governmental entities can address village problems and goals effectively.
4. State parole and probation programs should be reformed by implementing them in the offender's home village, fully involving local people and traditional values in monitoring, support, rehabilitation and healing.
5. The state should establish alternative corrections programs, supported by effective alcohol treatment services and operated by local Native organizations, for all but the most violent Native offenders.

Education

1. Local control of schools in Native areas should be strengthened by: a) changing village advisory boards to policy-making bodies, and b) delegating, within five years, operating authority from REAA's to tribal governments in partnership with the state Department of Education.
2. The state government and local school districts should significantly increase the number of their Native teachers and administrators through affirmative hiring, alternative certification and other means.
3. Federal and state governments should create an Alaska Native Heritage Trust, granting funds to tribes for programs of parental/community involvement and educational enhancement of Native languages/cultures.

Physical and Behavioral Health

1. Federal and state governments should fully fund rural water/sewer projects, as recommended by the Alaska Sanitation Task Force, involving local residents in all funding, construction, maintenance and repair.
2. The entire Native health care system, now concentrated on secondary and tertiary care, should be reformed to emphasize health education and primary prevention — stressing community involvement, changing attitudes, and encouraging healthy lifestyles.
3. Congress and IHS should establish and finance an improved, timely system of diagnosis/screening for serious disease and other disorders, providing adequate travel funds for village residents to obtain same.
4. Unorganized, ineffective data-gathering by federal/state/municipal governments should be reformed into a single, comprehensive, statewide system for assessing Native health needs and evaluating services.
5. Substance abuse programs for Natives should be reformed to emphasize community-based, family-oriented, culturally relevant strategies developed by villages; and public funds for such programs should be directly granted to councils and other Native organizations.

Subsistence

1. Congress should repeal its 1971 extinguishment of aboriginal hunting and fishing rights in Section 4 (b) of ANCSA.
2. Congress should maintain ANILCA's rural preference as the minimum acceptable level of subsistence protection in federal law, resisting all state and private pressures to remove or weaken it.
3. Congress should conduct oversight of Title VIII implementation by the state and by federal agencies and should draft alternative language that provides more adequate protection of subsistence by all Alaska Natives.
4. During dual management, federal jurisdiction should be maximized - to include, at least, all public lands (including all marine/navigable waters), all conveyed ANCSA lands, all selected/unconveyed state and ANCSA lands, and extraterritorial regulatory reach off public lands.
5. Administering federal agencies should fully implement regional advisory councils and options for co-management contracting with Native communities and organizations; and the state should regionalize its Fisheries and Game Boards for greater local control of subsistence.
6. The Alaska Legislature should adopt a constitutional amendment allowing state subsistence law to comply with federal law, using language that will conform to an improved federal preference; and it should adopt laws mandating co-management agreements, effective regional advisory councils, and thorough reform of its regulatory system.

Tribal Governance

1. Congress should adopt policies supporting and strengthening Alaska's tribal governments, starting with repeal of all legislative disclaimers disavowing its promotion of the federal relationship with these tribes.
2. The Secretary of the Interior should withdraw Solicitor's Opinion M-36,975 and clarify the federal position on the Indian Country jurisdictions of Alaskan tribes through participation in pending court cases.

3. Native communities should have the legal power to transfer freely the ownership of their ANCSA lands between corporations, tribes, individuals and other Native organizations - and to govern such lands for tribal and subsistence purposes, regardless of institutional ownership.

4. State and federal governments should strengthen tribal financial bases by such measures as federal tax credits for tribal taxes paid and state funding for tribal communities equal to those with municipalities.

5. By Executive Order or legislative enactment, the state government should recognize the existence of Alaska Native tribes.

76 additional recommendations (pages 85 to 100 of Volume I):

Economics

• Federal Native hire preference • Veterans' hire preference for Alaska National Guard Service • "Local prevailing wage" standard for Davis-Bacon in village projects • Village design, construction and hire on HUD housing projects • Contracting and Native hire for surveying rural land conveyances • Native job training programs for "Information Age" opportunities • Americorps/National Service Corps employment and education • State Office of Alaska Native Recruitment (Governor) • Creation of Alaska Native Economic Development Trust, and projects • Evaluation and restructuring of ANA economic development projects • Increased support of Native businesses by Alaska's ARDOR's • Increased public support (capital) for Native tourism projects • Expansion of CDQ program model to one other extractive industry • Creation of state Bulk Fuel Task Force, and facilities remediation • HUD creation and funding of Alaska Native Housing Authority • State task force on solutions to Native Limited Entry problems • NPFMC codification and expansion of CDQ pollock program • State and federal development of Native reindeer industry • Training programs in reindeerherding/husbandry/products/marketing • State/federal support of shellfish mariculture in Native villages • State/federal support of fin-fish farming, and Native demo project.

Judicial and Law Enforcement

• VPSO training, pay, powers, uniforms, weapons, advancement • VPSO enforcement of village ordinances and state laws • State power behind village council ordinances/enforcement/adjudication • State agreements with village adjudicators on respective domains • State task force identifying parameters of village court powers • Cultural evaluation/reform of state judicial system regarding Natives • Appropriate village dispute resolution, and governmental support • Revised state goals for punishment, rehabilitation and protection • Culturally effective, village-based punishment alternatives • Culturally effective transitional living/rehabilitation/treatment for Natives • Early, effective substance abuse counseling for Native inmates • State hire of capable Native corrections counselors • Detailed reform of state policies on Native parole/probation • Village monitoring and support roles in Native parole/probation • Aggressive state hire of Natives in law enforcement/courts/corrections.

Local Self-Determination

• State/federal recognition of all village governments (TC, IRA, city) • Evaluation and expansion of local government assistance programs • Identification of effective roles/powers for existing local governments • Evaluation of BIA programs and funding, and 103(a) reinstatement • BIA 103(a) training, and ANA tribal government training • Regional non-profit training and funding of village tribal governments • Cost-effective transfer of service programs from non-profit regions to villages • Evaluation of non-profit regional programs, limiting costs, shifting programs • 5-year \$50 million congressional funding to tribes for social problems • Reform of Fish and Game Boards, and strengthened regional councils • Regional council review and veto power over subsistence regulations • State task force on solutions to Native Limited Entry problems.

Education

- K-12 village schools, regional/distance enrichment, voc ed programs
- Local control of schools through policy making boards and Native hire
- Development of model Native curricula (K-12, post-2nd, traditional)
- Career development/training/certification/hire of Native educators
- Parent/community involvement in education, and Native Heritage Trust
- State steps to increase percent of Native teachers/school employees
- Tenure reforms and Native hire to stabilize village teaching work force
- Federal/state reforms of school funding and management in villages
- Creation/funding of Alaska Native Heritage Trust, and tribal grants.

Physical and Behavioral Health

- Alaska Sanitation Task Force; construction/maintenance/operation
- Data coordination (ANHA, CDC, VA, state, health corporations, etc.)
- Data reform (health needs, risks, wellness, delivery evaluation, etc.)
- Health Aide program funding, pay, work force stability, training
- Adequate patient travel funds, meeting IHCLIA authorization level
- ANHS immunization of all Native children by decade's end
- Continued BIA support and funding for ICWA tribal grants
- Unified, comprehensive data system on Native child abuse/neglect
- System re-orientation to primary prevention, families, communities
- Native-planned program of infectious disease prevention education
- Native health education curriculum (schools) for AIDS/HIV prevention
- General health education/promotion for all Native age groups
- Increased screening/diagnosis and preventive education for cancer
- More timely/effective diagnosis and disease intervention by IHS
- Community suicide prevention programs (e.g., state DH&SS model)
- Evaluation/reform of substance abuse prevention/treatment programs
- Creation of Alaska Native Family Development Center (e.g., Kakawis)
- Early risk-detection programs for child abuse/neglect, FAS, FAE
- Research/data on Native substance abuse and program effectiveness.

FINDINGS AND DATA

Social/Cultural Status

- Native annual birthrate is 36.5 per 1,000, creating large demand for village child development, education, health programs
- Effective Native public education is bi-cultural (skills and values)
- Native annual death rate is more than three times national average, much of it alcohol-related
- Native infant mortality and Fetal Alcohol Syndrome rates are more than twice national averages
- 1988, birth rate to Native girls 15-19 was 2-1/2 times national average
- 1988, one of every 11 Native children received child protection services
- 1992, 30% of DH&SS child abuse/neglect/injury reports involved Native children (94 per 1,000 Native children, 55 per 1,000 non-Native Alaskan children, 39 per 1,000 children nationwide)
- 1992, almost one of every eight Native males 14-17 spent time in juvenile detention
- April, 1993, over 27% of Native inmate population had sexually abused a child or other adult
- Nearly 1/2 all Natives currently incarcerated for sexual crimes victimized children.

Economics

- Village costs of living are exorbitant; with village economies precariously dependent on public expenditures
- 1990, over 20% of enumerated Native work force is unemployed, compared to 8.8% of total Alaskan work force (actual Native unemployment rates is much higher, due to uncounted work force dropouts)
- In 1/3 of villages, male unemployment is 32% (four times statewide average); in 1/8 of villages, male unemployment is more than 50%
- About 42% of 16,000 Native males in Alaska's employed civilian work force are in crafts, trades, service sectors
- Almost 1/3 of all employed Native women are secretaries or clerks; 1/4 are in service sector (mainly food preparation, custodial)
- Native women are about 60% more likely to work in managerial and professional fields than Native men
- 1992, 4.8% of State of Alaska executive branch work force was Native (e.g., Law, 3.8%; DNR, 2.1%; ADF&G, 1.6%)
- 21.5% of Native families are below official poverty income line, compared to 6.8% of all Alaskan families
- Native families and individuals are increasingly welfare dependent.

Justice and Corrections

- Non-Native belief that only "Western" justice is workable impedes culturally appropriate village alternatives for dispute resolution • April, 1993, Natives are 16% of Alaska's population, 13.5 % of its prison-age-eligible population, and 32% of its inmates • Natives are 59% of Alaska's violent-crime inmates and 38% of its sex-offense inmates • Most Native crime is alcohol-related; percentage of Native crime that is violent or sexual is far higher than state/national averages • 53% of all Native inmates are incarcerated for "most violent" crimes (assault, 14%; sexual assault, 14%; sexual abuse of minor, 13%; murder/manslaughter, 12%) • 1992, about 27% of all Native males 14-17 years old were referred to state juvenile intake system • Native murder rate is four times national average • Natives represent 43% of Alaska's misdemeanor inmates, 39% of its sex offenders, and 41% of its parolees/probationers • 1990, Natives made up 1/2 of Alaska's second-degree murder convictions, and only 8% of its drug offenders • "Charge bargaining" practices, coupled with Native cultural avoidance of confrontation (trials), may contribute to high conviction rates.

Education

- 1981-89, Native FAS rate was 5.1 per 1,000 live births (almost 2-1/2 times North American average) • 60% of Native students entering urban Alaska high schools do not graduate, compared to 12-15% Native attrition rate in rural high schools; but rural graduates have much lower average achievement levels • 1989, Native ACT scores were about 40% lower than non-Native scores • Rural schools enroll 14,000 Native students (7% Native instructors); urban schools enroll 9,500 Native students (less than 2% Native instructors) • One advantage of rural schools is low student-teacher ratios (better chances for instructional impacts) • 53% of all Alaska students (but 11% of Native students) took Algebra II; 48% of all Alaska students (but 8% of Native students) took chemistry • 3/4 of all Alaska students (but 2/3 of Native students) complete high school • In some districts, 30% of Native elementary students and 40% of Native secondary students are below grade level • Replacing boarding schools with village schools increased graduation rates, but with lower achievement scores than statewide • 1980, percentage of adult non-Native Alaskans with college degrees was five times that of adult Natives with degrees.

Physical/Behavioral Health

- Lack of adequate village sanitation/water systems is primary cause of many Native health problems (e.g., Alaska's highest incidence of Hepatitis B is in southwestern villages) • Despite \$1.3 billion public investment, many villages have only rudimentary water/sewage utilities • Heart disease accounted for 16% of all Native deaths in 1994 (5% in 1950) • Natives are more vulnerable to serious injury and infectious disease than non-Native Alaskans • Formerly low Native cancer rates are steadily increasing • 1985-89, Native diabetes rose from 15.7 to 18.2 per 1,000 • Formerly epidemic TB is no longer prevalent, but far from eradicated • Individual substance abuse and other health problems are closely related to dysfunctionality of whole communities (must be addressed together) • 39% of Natives smoke tobacco (compared to 26% of all Alaskan adults); some Native villages have 60% smoking rates • 1980-89, an average of one Native suicide occurred every 10 days, reaching 1989 annual rate of 69 per 100,000; preliminary 1990-93 data indicate continuing increase • Almost 1/2 of Native suicides are by 15-24 year olds, compared to 1/4 of non-Native suicides • 1964-1989, Native suicide rate increased 500% • 1980-89, 86% of all Native suicides were males • Late 1980's, suicide rate of Native males 20-24 years old was more than 30 times national suicide rate for all age groups • 61% of Natives live in rural Alaska, but more than 2/3 of 1980-89 Native suicides occurred there • 1980-89, 305 Natives (173 males, 132 females) were killed by direct effects of alcohol or other drugs (average of one every 12 days); this Native substance abuse mortality rate (4.1 per 10,000) is 3-1/2 times non-Native rate (1.2 per 1,000) • 1980-89, cumulative Native "Years of Potential Life Lost" (i.e., number of years individual dies before 65th birthday) attributable to alcohol were 6,607 years (almost five times non-Native rate) • Native rate of fatal injuries caused by alcohol is nearly three times non-Native rate • Native per capita deaths by fire are twice non-Native rate; about 1/2 attributable to alcohol • 79% of all Native suicides had detectable blood alcohol levels • Alcohol abuse and criminal acts correlate significantly, particularly in rural Alaska and among Natives throughout the state. □

"No Net Loss"
Policy

AFN Policy On Resolving the Subsistence Issues *

As of its March 4, 1996 meeting, the AFN Board of Directors adopted the following Policy Principles according to which the Native community will conduct any discussions with the State of Alaska on resolving the subsistence impasse.

- 1 The overall management principle contemplated by ANILCA is that regulation of subsistence uses by state or federal authorities must be carried out in a manner that causes the "least adverse impact" on customary and traditional taking and use patterns of Alaskan communities. Restrictions, such as individual bag limits and seasons, may not be imposed if they are inconsistent with customary and traditional use patterns. This includes both the quantity of game, the traditional seasons and places for hunting or fishing, and restrictions on methods and means of harvest. It is a significantly higher standard than the "reasonable opportunity" language in existing state law.
- 2 The Native community will insist that the following conditions be part of any resolution of the current federal-state impasse:
 - a) There must be no net loss from the current level of federal subsistence protections, including, but not limited to, the following points:
 - 1) The availability of one species of fish or game cannot be used as a basis for restricting opportunities to take another species in a customary and traditional manner.
 - 2) Regulations must provide opportunities to harvest each particular "stock" of fish and "population" of game that has been customarily and traditionally used.
 - 3) The Boards of Fish and Game cannot have unfettered discretion to place restrictions on harvest without a reasoned explanation of what "sustained yield" means and a reasoned determination of the number of fish or animals necessary to produce sustained yield.
 - 4) ANILCA's definition of "customary trade" includes sales for cash and does not require that fish or game used for customary trade be harvested only for personal or family consumption.

AFN Subsistence Policy, continued

- 5) The word "rural" has a plain meaning which includes at least part of the Kenai Peninsula and any attempt to curtail the subsistence laws application through the use of a restrictive definition of "rural" is inconsistent with the plain meaning of the Act.
 - 6) ANILCA recognizes that subsistence is a group activity and a group way of life, as opposed to being an individual activity and
 - 7) The subsistence priority applies to all times, not just when there is a resource shortage. The Boards are required to provide first for customary and traditional uses before any non-subsistence uses may be allowed.
- b) There must be basic reforms of state regulatory and management systems:
 - 1) Changes in board structure and processes, to ensure fair treatment of subsistence users
 - 2) Use of regional advisory councils, composed of subsistence users, whose proposals generate subsistence regulations, as in Federal Subsistence Board deliberations, and
 - 3) Use of co-management contracting to delegate functions and powers to Native communities and organizations
 - c) There must be no non-subsistence use areas in state law
3. Resolution of the impasse should also include a strengthening of the federal preference (e.g. by changing to a Native or "Native-plus" preference, or by defining "rural" so as to guarantee that Native communities that are historically surrounded by non-Native majorities will not be dropped from the preference).
 4. A subsistence amendment to the Alaska Constitution must be worded and placed so as to ensure that a state statute that complies with Title VIII cannot, on any grounds, be struck down by the Alaska Supreme Court. In addition, such an amendment should:
 - a) State that the subsistence preference may not violate the constitutional mandate for sustained yield;
 - b) Require, rather than permit, the Legislature to enact a statute complying with federal law (e.g., "...the Legislature shall..." rather than "...the Legislature may...");
 - c) State that subsistence is the priority use of fish and game in Alaska;
 - d) Include "culture" as a basis for differentiating among residents for application of the subsistence preference;
 - e) Be worded broadly enough to permit state law to comply with an improved federal preference in the future.



ALASKA OUTDOOR COUNCIL NEWS



April - June, 1997

Council/Fund
Boards of
Directors

Subsistence Resolution Moves in State House

by Dick Bishop

Hunter, trapper & fisher conservationists are asked to send messages to State Legislators in support of HJR 21, "Relating to amendment of Title VIII of ANILCA".

Title VIII of ANILCA is the section of federal law that demands "customary and traditional" uses of renewable resources by "rural" residents have priority over other consumptive uses on federal lands -- and potentially on state and private lands and waters as well.

HJR 21 sends a message from Alaskans to our Congressional delegation: the federal subsistence priority must be amended. HJR 21 addresses most of the fatal flaws in the federal subsistence law but does not demand repeal of the priority. The critical terms "rural" and "customary and traditional" would remain in federal law, but Alaskans, rather than Congress, would define the terms. The federal law gives priority to rural users -- based on ZIP code -- regardless of need or lifestyle. Alaska's Supreme Court ruled the rural priority unconstitutional in state law.

HJR 21, sponsored by Rep. Beverly Masek, cleared the House Resources Committee and is now in the House State Affairs Committee. Voting "do pass" were Masek and co-sponsor Rep. Scott Ogan. Voting "do not pass" were Reps. Reggie Joule and Irene Nicholia. Voting "no recommendation" were Reps. Joe Green, Fred Dyson and Bill Hudson.

"I realize this isn't by any means a perfect answer that will satisfy the parties involved on either side of this divisive issue," writes Masek in her sponsor statement, "however, I am hopeful Alaskans, given the chance, can sit down and come up with a workable definition."

(continued on page 4)

Halibut Subsistence Fishery Proposed

Proposed regulations to create a new halibut subsistence fishery in 1998 -- based on tribal membership or "rural" residency -- will be considered at 8 am on April 16 by the North Pacific Fishery Management Council (NPFMC).

The NPFMC meeting will be held at the Anchorage Hilton Hotel from April 15-19.

Conservationists are urged to mail comments to: NPFMC, 605 W. 4th Ave., #306, Anchorage, AK 99501-2252. Comments must be received by April 9 in order to be included in Council member packets. For detailed info and agenda call 271-2309.

Public testimony may be given on April 15 & 16.

The proposal was partly initiated in response to enforcement problems associated with retention of undersized halibut and use of illegal gear. However, proposed regulation options include retention of commercially undersized halibut for subsistence and allowing for the commercial sale of subsistence caught halibut.

(continued on page 4)

**Check your mailing label for expiration date
JOIN -- OR RENEW -- TODAY !**

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BITS & PIECES

Mat-Valley Dinner-Auction nets about \$4000: About 100 supporters of the Outdoor Council enjoyed themselves at festivities in Wasilla's Lake Lucille Inn Saturday, March 29. Enormous thank-you's go to Glenda Smith and Karoline Dhuyvetter for the time and effort they put into the event. Board members Eddie Grasser, Pete Probasco and Rod Arno also kept well-involved. They all say it will be bigger and better next year. See you then -- and THANKS!

Support your local gun club: "In 1995 we suffered major losses to our rights to keep and bear arms. Congress passed the Brady Bill and the Clinton Crime Bill outlawing many semiautomatic firearms and gun magazines holding more than 10 rounds.

"Congress has held the line since then and passed legislation to stop Clinton from destroying military surplus firearms which could be distributed to the public. At the state level legislation was passed to reduce the cost and the red tape to obtain a concealed firearms permit and to reduce the number of places where a concealed firearm could not be carried; however, Governor Knowles vetoed the Bill. Locally, the legislature appropriated \$2 million for a new shooting range for Fairbanks.

"The pendulum has continued to swing the other way. People like you have continued to oppose the anti-gun interests and supported your local gun club. Your membership and your support were largely responsible for these accomplishments; but please don't stop now. Renew your membership and continue the fight to regain our freedoms."

Bud Burris, Secretary TVS Rifle & Pistol Club; former President, AOC

Coming Events

State Boards Meet:

Fish Board: Nov. 4-11 in King Salmon
Dec. 2-12 in Fairbanks
Jan. 6-19, '98 in Anchorage

Game Board: Oct. 24-30 in Nome
Jan 17-21, '98 in Bethel
late Mar '98 in Fairbanks

Info: 465-4110 in Juneau
267-2354 in Anchorage
474-8634 in Fairbanks

Federal Subsistence Board Meets:

April 7-11 in Anchorage
Ramada Inn

Info: 1-800-478-1456

April 11-13: Fairbanks Outdoor Sport Show, Carlson Center

April 12-13: Univ. of Alaska Fairbanks--The Law of RS2477: Assertion and Management
Two day workshop
Contact: Dr. Harry Bader 474-6521

April 17: Chitina Dipnetters Annual Meeting
Fairbanks, Pioneer Hall
at Alaskaland 7:30 pm
Door prizes!!
contact: Byron Haley 456-4426

April 26: Friends of NRA Banquet, Juneau
contact: Dave Waarvik 789-0453

April 27-28: Fairbanks Gun Show
UAF, Patty Gym

May 2-3: Curing and Sausage Making
Cooperative Extension Workshop
Hutchinson Career Center, Fairbanks
Instructor: Ken Kreig
Contact: Roxie 452-1530

Anti-gun TV series: ABC has scheduled a series beginning soon entitled "Gun" starring a "pearl-handled, nickel-plated .45 Officer's Model". It is first scheduled to show in Fairbanks at 9 PM on April 19.

The producers include Robert Altman, of M*A*S*H* fame, who said he is "very active in gun-control issues and areas, and this in no way is going to promote anything other than the philosophy that the gun-control people advocate."

Another producer claimed the series would be "non-political."

...from "American Hunter", March 1997

Executive Director to retire: Dick Bishop, who has served as executive director for the Council and Fund since the fall of '94, will spend more time hunting, fishing and trapping after July 1. The Boards are actively investigating options for covering the responsibilities of administrator and/or spokesperson. Individuals who are interested in either or both are encouraged to contact any of the board members listed on page 1.

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Alert !!!

If you want to get "AOC Alerts" and you have a FAX or an e-mail address, please drop a note to the Membership Depart. (see box to the right)

AOC Help Needed !

1. FAX broadcasters needed

Can you help with your computer, FAX/modem, and FAX software? Call or e-mail the membership department (box at right) for more particulars. Or call the Fairbanks AOC office at 455-4262.

2. At home computer input, typing names and addresses. Call AOC office at 455-4262

Prince of Wales Island -- Subsistence Priority Strikes Again

Ketchikan residents recently got the federal subsistence priority "shock treatment" on deer hunting.

Federal proposal 7 by the Sumner Strait Advisory Committee proposed eliminating the doe season in Game Management Unit 2 due to probable decline in deer numbers. The federal Southeast Regional Advisory Council apparently decided Proposal 7 would harm subsistence users, so rather than support closure of the doe season, they recommended closing all deer hunting on federal lands by non-rural residents. Rural residents of GMU's 1A, 2 and 3 could continue doe and buck hunting.

In other words, Ketchikan hunters: **GO ELSEWHERE.**

Register your opinion about this with Senators Stevens and Murkowski, Congressman Young and Governor Knowles. Do it today! [See page 4]

For more info call the Federal Subsistence Office at 1-800-478-1456.

Rather than address the deer decline with the biologically correct doe closure, the Advisory Council chose to dump the burden on "non-subsistence" users. That means Ketchikan hunters plus a few others.

The bitter irony is that this is how the federal subsistence law operates. Under federal law, all other consumptive uses must be eliminated before "customary and traditional" subsistence use can be restricted.

The Federal Board is bound by law to accept the Regional Council recommendation unless it threatens resource conservation or continued subsistence uses. The Federal Board, in its short history, has regularly rubber-stamped Regional Council proposals rather than appear to question the merits of such proposals.

Add Prince of Wales Island to the growing list of places where "non-rural" people are being discriminated against by federal rules. Among the others are Kenai Peninsula for moose, the Arctic Village Dall sheep management area and north of Anaktuvuk Pass for fall caribou.

Dozens of proposals restricting harvests of many game species to local rural residents will be considered by the Federal Board in April. The reason given for many of the proposals is "more in line with customary and traditional practices." Translation: Keep others out.

If you think these rules and proposals are questionable, wait until the feds start managing fish -- which they will unless the federal law is changed. Contact Senators Stevens and Murkowski and Representative Young. Tell them to remove or substantially amend the discriminatory federal rural priority.

AOC Honors Activists

Once a year the Alaska Outdoor Council pays tribute to just a few of the many people who promote sound management, fair allocation and proper uses of Alaska's fish and wildlife.

This year's awards recognized truly outstanding efforts.

Senator Rick Halford has been an outstanding advocate of sound fish and wildlife management and a staunch supporter of fishers, hunters and trappers for decades. Senator Halford received the Outstanding Conservation Legislator award.

Kathleen "Mike" Dalton and Lisa Harbo were recognized as Outstanding Volunteers for their work on asserting RS2477 rights-of-way. The effort has drawn the attention and support of many groups, including praise from prominent Legislators and a resolution of support from the Fairbanks Chamber of Commerce.

Elaina Spraker of Soldotna combined the interest, drive and skills needed to pull the Kenai Peninsula Outdoor Coalition together in response to misguided federal subsistence hunting regulations and other crises. Elaina was recognized as Outstanding Conservation Leader for her extraordinary accomplishments.

Stan Bloom, Vice President of the Chitina Dipnetters, was recognized as Outstanding Fisherman's Advocate for his efforts to improve conservation and personal use allocation of Copper River salmon. His decades-long work has resulted in cooperative access arrangements with regional and village corporation landowners and an increased allocation for dipnetters.

Eowyn Ivey, a reporter for *"The Frontiersman"* in Palmer, has done an outstanding job of conveying the values of the hunting heritage to her readers. Born and raised in the Mat Valley, Eowyn and her family follow the hunting and trapping tradition with pride. Eowyn was recognized as Outstanding Hunter Heritage Advocate.

Tom Donek, Sport Fish Access Coordinator for ADF&G, and Dave Watsjold, Assistant Federal Aid Coordinator with the U.S. Fish & Wildlife Service, were recognized for their outstanding joint work to provide public access for sport fishing and boating. Their efforts have benefited Alaskans in many areas of the state through acquisition and construction of boating access.

Finally, the Council recognized the Territorial Sportsmen, Inc. of Juneau as its Outstanding Member Club of the Year. Territorial Sportsmen is one of the oldest conservation groups in the state, and one of the most progressive. Always advocates of sound conservation, the Sportsmen's salmon derby also supports significant scholarships for natural resource students.

*Let these elected officials
know your concerns --*

*Together
we can make a difference*

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Subsistence Resolution (continued)
HJR 21 requests Congress amend
Title VIII of ANILCA in these ways:

- Exclude state and private land from the definition of federal "public lands";
- Prohibit federal takeover of state fish and game management on state and private lands and waters, unless Congress specifically provides for it (which it did not do in ANILCA);
- Preclude federal management takeover based on "navigational servitude" or "reserved waters" federal doctrines;
- Repeal federal court oversight of state management of subsistence in the event the state conforms to the federal law;

- Authorize state definition of "rural" and "customary and traditional";
- Provide that the priority allows only a "reasonable opportunity" to harvest;
- Provide that ANILCA is neutral regarding Indian country and tribal sovereignty;
- Allow the state to decide whether it wants Regional Advisory Councils;
- Eliminate the commercial sale of fish and wildlife taken for subsistence uses.

The federal subsistence law is being used by the federal government as a strategy to capture state management and trample on the rights of the majority of Alaskans. HJR 21, while not perfect, offers Alaskans a way out of gridlock.

Halibut Fishery (continued)

Throughout most of coastal Alaska halibut for personal consumption has been taken under the recreational fishery regulations or as halibut retained during a commercial fishery. However, the recent establishment of halibut IFQ's (Individual Fishery Quotas) has resulted in less opportunity for those who do not have an IFQ to utilize commercial gear for personal harvest.

"From the perspective of the legislature, these proposed regulations are going to further polarize an already divided citizenry regarding special subsistence allocations or provisions," wrote Senate President Mike Miller and House Speaker Gail Phillips in a recent letter.

"It is clear that many aspects of the proposed halibut regulatory options were patterned after provisions in ANILCA, many of which have been identified as unacceptable and in need of change by both the legislature and the Lt. Governor," they continued.

Legislators have introduced House and Senate resolutions, SJR 26 and

HJR 34, promoting modification of existing NPFMC regulations as an alternative approach -- creating special areas, methods and means and bag limits to provide ample opportunity for Alaskans to harvest halibut for personal consumption. The resolutions do not favor the creation of a new fishery which violates the basic principles in Alaska's Constitution regarding common use and access to Alaska's resources. Particular concern is expressed over the possible creation of a new commercial fishery under the guise of subsistence harvesting.

Miller and Phillips have encouraged the NPFMC to "delay the creation of any special subsistence regulations until Congress and the State have crafted a long term and permanent solution to the existing crises "

Halibut harvest regulations are established by the NPFMC subject to the International Pacific Halibut Treaty and the Northern Pacific Halibut Act of 1982. Concurrence by the Secretary of Commerce is required.

The Alaska Outdoor Council thanks our SUSTAINING BUSINESS MEMBERS

Sustaining business members receive this recognition for one year in the *Alaska Outdoor Council News*. If you are a business owner and would like to provide additional support for the Council, please contact our membership department at (907) 895-4918 or mail the application elsewhere in this issue.

<p>Alaska Remote Guide Service Wayne Kubat PO Box 874867 Wasilla, AK 99687 376-9568 <i>Moose calling & hunting instructional videos, also "bull magnets" -- durable five function moose calling megaphones.</i></p>	<p>Phillip Locker DDS Denali Professional Center 3401 Denali St. Ste 201 Anchorage, AK 99503 561-8573</p>	<p>Coldfoot Services Troy Thacker PO Box 9041 Coldfoot, AK 99701-9041 678-5201</p>
<p>Alaska Sausage Co. PO Box 92157 Anchorage, AK 99509 562-3636</p>	<p>Palmer Machinery Co. Monte Goodrich PO Box 821 Palmer, AK 99645 745-3520 <i>Machine work, welding, steel & aluminum sales, industrial gases, welding supply/sales, heavy equipment repair.</i></p>	<p>Compeau's, Inc. Robert Compeau, Jr. 4122 Boat Street Fairbanks, AK 99709 479-2271</p>
<p>Alaska Trophy Adventures Dan Montgomery PO Box 874492 Wasilla, AK 99687 746-7591 <i>Guided hunts for Dall sheep, goat, brown bear & caribou - Chugach Range & Alaska Peninsula.</i></p>	<p>Summit Canopy Co. Phillip DuFault 549 W International Airport Rd. #6 Anchorage, AK 99518 561-6690 <i>Brahma truck tops made. Official sponsor of the Iditarod.</i></p>	<p>Denali West Lodge Jack & Sherri Hayden #12 Toklat Dr. 674-3112 Lake Minchumina, AK 99757 <i>Fly-in lodge with guided natural history wilderness adventures, and dog mushing expeditions. AOC member discounts.</i></p>
<p>B-J's Services Robert & James Jenki 952 South Colony Way Palmer, AK 99645 745-3050 <i>Complete automotive repair and diagnostics. Retail sales of firearms and ammunition.</i></p>	<p>Wilderness Nursery Jerry Kallam HC01 Box 6078-A Palmer, AK 99645 745-6205</p>	<p>F & E Taxidermy Frank Borba 3679 Hurst Road North Pole, AK 99705 488-2850</p>
<p>Barney's Sports Chalet Bob Hodson 906 W Northern Lights Blvd. Anchorage, AK 99503 561-5242 <i>Outdoor equipment: specializing in high-quality gear, tents, packs, sleeping bags, custom hunting packs & tents.</i></p>	<p>J. Paul Dittrich, MD 3340 Providence Drive #566 Anchorage, Alaska 99508 561-1436</p>	<p>Kuskokwim Guide Service Peter & Lois Shepherd 1012 Galena Street Fairbanks, AK 99709 474-9173 <i>Guided hunts for moose, caribou, grizzly and black bear in West Central Alaska GMU 19</i></p>
<p>Boondock Sporting Goods & Outfitters Don Hanks PO Box 621 Eagle River, AK 99577 694-2229 <i>Quality outdoor products, clothing, firearms, outfitting, tents, stoves, cots, food. Volume discounts available for guides.</i></p>	<p>Fishing Unlimited Lodge Lorane Owsichuk PO Box 190301 Anchorage, AK 99519 243-5899 <i>Superb fly-out fishing for five species from extremely comfortable lodge located on Lake Clark</i></p>	<p>Rothmeyer Optical Jim Rothmeyer 4001 Geist Rd Ste 7 Fairbanks, AK 99709 479-4700</p>
<p>Dale Conover State Farm Insurance 436 N Main St. Wasilla, AK 99654 376-2478</p>	<p>Robert Bundtzen, MD 4120 Laurel # 204 Anchorage, AK 99508 561-4362</p>	<p>Sanderson's Auto Body Chuck Sanderson 2057 Kaylee Lane Fairbanks, AK 99712 457-1071</p>
<p>H&H Construction Ron & Ed Hull HC 34 Box 2070 Wasilla, AK 99654 376-2344 <i>Building Quality Homes in the Mat-Su Valley Since 1970's. 5-Star Economically Designed. Affordably Priced.</i></p>	<p>Iliaska Lodge, Inc. Ted Gerken PO Box 228 Iliamna, AK 99606 337-9844</p>	<p>Mike's Electrical Maintenance Mike & Joyce Potter PO Box 80293 Fairbanks, AK 99709 479-3523 <i>Industrial and commercial electrical maintenance, specializing in industrial controls</i></p>
<p>Koval & Featherly Attorneys Walter Featherly 601 W 5th Ave. Ste 900 Anchorage, AK 99503 258-6600 <i>In providing legal services to Alaskan businesses, our goal is to win for every client.</i></p>	<p>Joe Trucano PO Box 20870 Juneau, AK 99802 586-2444</p>	<p>Brian Yamamoto, DDS 2136 Airport Way, Suite 2 Fairbanks, AK 99701 452-5547</p>

Membership Application Alaska Outdoor Council

This is a:

Renewal New membership

Name _____
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Address _____

Can we send you phone or FAX tree messages?

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Membership category:

- annual \$20
 3- year \$55
 5 year \$90
 life \$400
 sustaining business \$150
 club membership \$50

Donation \$ _____

Total enclosed \$ _____

To become a member, extend your membership or support our lobbying and legislative efforts please make your non-tax-deductible check payable to the **Alaska Outdoor Council**.

If you wish to make a tax-deductible donation for our education and legal defense work, please make the check payable to the **Alaska Fish & Wildlife Conservation Fund**.

mail to:

Council/Fund Membership Office
PO Box 606
Delta Junction, AK 99737-0606

Phone (907) 895-4918 FAX 895-4908
email: 73211.3325@compuserve.com

Alaska Outdoor Council Member Clubs

ALASKA 2nd Amendment Coalition	Fairbanks
Alaska Competitive Shooters Organization	Anchorage
Alaska Falconers Association	Juneau
* Alaska Frontier Trappers Association	Palmer
* Alaska Rifle Club	Eagle River
Alaska State PITA	Juneau
* Alaska State Snowmobile Association	Anchorage
* Alaskan Bowhunters Association, Inc.	Anchor Pt
Alaskan Marine Dealers Association	Anchorage
* Alaskan Waterfowl Association	Anchorage
Anchorage Snowmobile Club, Inc.	Anchorage
Blacksheep Bowmen	Elmendorf AFB
Chitina Dipnetters	Fairbanks
Clear Sky Sportsmen's Club	Clear
* Cleveland Peninsula Users Coalition	Ketchikan
Cook Inlet Archers	Anchorage
Delta Sportsman's Association	Delta Junction
* Fairbanks Practical Pistol Club	North Pole
Fairbanks Retriever Club	Fairbanks
* Fairbanks Snow Travelers Association	Fairbanks
* FNAWS/Alaska Chapter	Anchorage
Golden North Archery Assoc.	Fairbanks
Interior AK Gun Dog Association	Fairbanks
Interior Alaska Airboat Association	Fairbanks
* Interior Alaska Trail Riders Association	Fairbanks
Interior Alaska Wildlife Association	Fairbanks
Juneau Rifle & Pistol Club	Juneau
Ketchikan Sports & Wildlife Club	Ketchikan
Ketchikan Volunteer Rescue Squad	Ketchikan
Matanuska Valley Sportsmen's Association	Palmer
Ruffed Grouse Society/SC AK Chapter	Anchorage
Safari Club International/AK Chapter	Anchorage
Safari Club International/Kenai Chap	Soldotna
Sitka Sportsmen's Association	Sitka
Slana Alaskans Unite	Slana
South Peninsula Sportsmen's Association	Homer
Stikine Sportsmen's Association	Wrangell
* Tanana Valley Rifle & Pistol Club	Fairbanks
Tanana Valley Sportsmen's Association	Fairbanks
Territorial Sportsmen, Inc.	Juneau
Tok Shooter's Association	Tok
* Tongass Sportfishing Association	Ketchikan

* Club membership not current

Public Trust Doctrine in Alaska

Delegates to the Alaska Outdoor Council Annual Meeting unanimously adopted a resolution that concludes "... the Alaska Outdoor Council graciously requests the Governor, the Alaska Legislature, and the Alaska Congressional delegation to suffer no law which affects the rights of individuals to hunt or fish in Alaska, to be enacted or to remain in effect, unless it is consistent with the public trust and the public trust doctrine as originally embodied in the Alaska Constitution."

The Council, in adopting this resolution, expressed confidence in various references by the Alaska Supreme Court and other courts over the years to the existence of a trust relationship between the state as trustee, or guardian, of publicly owned resources, and state citizens as beneficiaries of that trust relationship.

The "Public Trust Doctrine" is a concept that has grown out of ancient laws which identified certain resources, such as the sea, as a resource available for the benefit of all citizens. A long history of court decisions established the Doctrine in common law.

Alaska's Constitution echoes this principle with respect to fish, wildlife and waters. Article VIII, Sec 3, states: "Common use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

The Alaska Supreme Court has made several landmark decisions favoring and interpreting the common use provision. The Court, in doing so, has referred to other courts' decisions and to the historical development of the public trust doctrine in relation to fish and game use. The gist of these

Anti Hunters = Big Spenders

info from "WLFA Update", March 1997

"A survey just completed by the Wildlife Legislative Fund of America (WLFA) indicates that the Humane Society of the United States (HSUS) contributed more than a half million dollars in cash, goods and services on behalf of anti-hunting ballot initiatives during the November, '96 elections."

The use of initiatives by anti-hunting groups is the latest fad. Although

decisions is that states "inherited" the responsibility and authority to protect each individual's right to take wild fish and game, subject to reasonable regulations, and free from the establishment of any specially privileged class of users. Most recently, in the so-called F.I.S.H. Initiative lawsuit, the Court was asked to rule on the issue of the public trust. The Court decided the case on other grounds. However, Chief Justice Compton in his concurring opinion said that the Public Trust Doctrine is embodied in the "common use" constitutional language and must be respected. The Outdoor Council agrees.

The Council believes that neither state nor federal government can abolish the state trustee responsibility. Therefore, any state or federal rule on fish and game use must be based on the non-discriminating Public Trust Doctrine. To settle for less is to deny an inalienable right of every citizen and to violate the state's common law.

[An informative 90-minute video of a lecture on this Doctrine by Professor Joseph Sax is available for \$20 from W.Olsen, 5961 Orth Circle, Anchorage, AK 99516; 907-346-4440]

there are legal requirements to get an initiative on the ballot, the Alaskan experience with the recent "wolf initiative", illustrates that there are no effective laws requiring truthfulness in advertising by initiative promoters.

It's much easier to produce sensationalized, emotional advertising proclaiming a calamity when you can ignore facts and honesty.

It's also profitable. The *WLFA Update* reports the following: The wealthiest of the anti-hunting groups, HSUS reported a 1995 budget of \$31,697,229--an increase of more than \$8.5 million over the previous year. The HSUS Chief Executive Officer made \$250,094 in 1995, while the HSUS president had to make do with only \$219,406.

Overall, the anti-hunting, animal rights, and environmental groups contributed over \$4.5 million to the 1996 anti-hunting campaigns.

Some organizations that claim they are not anti-hunting donated heavily, such as Defenders of Wildlife and some Audubon Society Chapters. Groups like Audubon, Sierra Club, Wilderness Society, National Parks & Conservation Assoc., etc. usually use more subtle means to oppose hunting, trapping and management while encouraging aspiring activists like the Alaska Wildlife Alliance (funded by the Alaska Conservation Foundation) to make the public waves.

WLFA's review of big spenders on Alaska's Ballot Measure 3 showed the following standouts: Joel Bennett (Audio Visual Production) @ \$1000 cash and \$11,300 in kind; Defenders of Wildlife @ \$26,890 cash and Friends of Animals @ \$6500 cash.

Alaskans can expect to see more initiatives to restrict or prohibit hunting, trapping and management.

ALASKA OUTDOOR COUNCIL NEWS

ALASKA OUTDOOR COUNCIL
ALASKA FISH & WILDLIFE CONSERVATION FUND
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Fairbanks, AK 99707-3902

Non-profit org.
US Postage
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ADDRESS CORRECTION REQUESTED

*Has your membership expired?
Send in your renewal -- today!*

4/97

RS2477 Rights-of-ways: headed the right way

The Outdoor Council effort to keep the RS2477 issue alive is finally attracting some attention. The Council's basic concern was loss of public access on huge areas of federal lands through neglect and government inaction.

On March 25 Attorney General Botelho filed a lawsuit to establish the legitimacy of the Harrison Creek - Portage Creek right-of-way in the Central mining district north of Fairbanks. This fulfilled a pledge to the Legislature made at a February hearing.

At the same hearing, Commissioner Shively allowed as how DNR could follow up the Outdoor Council's efforts by asserting the remaining 340 well documented RS2477's if the Legislature provided some funding.

Soon after, the Fairbanks Chamber of Commerce passed a resolution urging the state to get on with the RS2477 work, and indicating willingness to help fund the Outdoor Council's efforts on assertions.

Most recently the Council received a letter from Tom Allen, BLM Alaska Director, indicating that all of the Council's assertions would be recorded and passed on to other federal agencies as necessary. Mr. Allen also expressed willingness to address questions on further

administrative actions by the federal government, and to work with all parties to address access needs.

Finally, the Legislature has passed a resolution, SJR 13, objecting to the arbitrary policy put out by Secretary Babbitt, and is looking at other ways to legitimize RS2477's. There is hope.

In 1996, Outdoor council volunteers compiled existing state data on 240 rights-of-ways. They went across the street and filed assertions with the Bureau of Land Management. BLM agreed to record the assertions, but because of a federal impasse could not take further administrative action. Aside from a few roads on RS2477 rights-of-ways established years ago by the State, this was the first time numerous trails had been formally identified as RS2477 rights-of-ways.

Department of Natural Resources staff has prepared an outline of work and costs for asserting another 340 trails and recording them.

Please contact the Governor and say thanks for the lawsuit. Contact your legislators urging them to keep pushing for RS2477's.

4/21/97

Julia Kitka — President

Called

4:00 AM
4/21/97

AFN

274-3611
Elisa

to Discuss Subsistence

She said she'd come to Juneau. We need to talk with Native Legislators

also call

Will Mayo Juneau Chiefs
452-8251

Morris Thompson
Daperon 452-4755

Read Julia's report
\$150,000
\$ in budget for compliance
60,000 Non-Natives +
40,000 Natives
All subsistence users!!

We should focus on what we have in common:

- (1) Protect Habitat & G
- (2) Build up allot of F&G to help first rate.
- (3) Have one committee focus on this - need to agree to solution.

We can find a solution, but there is a strong # of ppl who just want the feds to take over. They are doing this with the states' inability for 70 years.

FISCAL NOTE

STATE OF ALASKA
97 LEGISLATIVE SESSION

No. 1
Bill Version: HJR 21
(H) Publish Date: 4/1/97

Dept. Affected _____
BRU: _____
Components: _____
Serial # _____

Title: Relating to amendment of Title VIII
of the Alaska National Interest
Sponsor: Conservation Act/ REP. MASEK
Requestor: House Resources Committee

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS :

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)
see attached analysis

Prepared by: House Resources Committee
Co-Chair Scott Organ
Scott Organ

Date: 3/13/97
Phone: 465-3715
Phone: