

ALASKA LEGISLATURE COMMITTEES FILES 1997-1998 8672

9687 SENATE RESOURCES

Representative Bill Williams

Page 2

March 31, 1997

Sherry M. Aitken 814 Charles St. Sitka, AK

Mary Winger 720 A Bristol Sitka AK.

Raeann Johnson 501 Venetian Sitka, Ak.

George Johnson 102 Kubak Dr. Sitka, AK.

S. LAWRIE 138 WOLFF SITKA AK.

Mark Elwood 102 Kubak Dr. Sitka, AK

Multiple horizontal lines for additional entries.

Alaska Harvest Divers Association
Sitka Branch
P.O. Box 6423
Sitka, Alaska 99835
March 31, 1997

Representative Bill Williams
Alaska State Legislature
State Capitol, Room 424
Juneau, AK 99801-1182

Dear Representative Williams:

The Sitka divers support House Bill 198. We have been working for many years to develop our dive fishery in the Sitka area. Funding for this fishery has been requested as City and Borough priorities for a decade; however, the fishery has not developed because money has not been appropriated for the developing fishery.

In the Sitka area we have some geoduck and sea cucumber dive fisheries which are currently open. These fisheries represent a small portion of the dive resources located adjacent to our city and borough. House Bill 198 is part of a Dive Fisheries Economic Development Project which will begin to move us forward in the development of these resources.

At the same time we are working on several other elements connected with the project. It is our desire to develop these resources for the long-term benefit of our fishermen and community.

The following individuals support House Bill 198. Thank you for your support in this effort and we look forward to our continuing work with you and your staff.

Sincerely

Greg Cushing

- ~~Paul Shumaker P.O. Box 2024 Sitka Alaska~~
- ~~Paul Shumaker 1511-5 5th St Sitka Alaska~~
- James Galun 507 KATLON CT SITKA AK
- Virginia Daigler 317 Paterson Sitka AK
- Paul Hill P.O. Box 3204 Sitka AK
- Gerry Hill P.O. Box 6373 Sitka, AK

Southeast Alaska Harvest Divers Association
Ketchikan Chapter
P.O. Box 6263
Ketchikan, AK 99901
March 29, 1997

Representative Bill Williams
Alaska State Legislature
State Capitol
Juneau, AK 99801-1102

Dear Representative Williams:

We would like to thank you for securing funding for the red urchin fishery for the continuation of the fishery after June 30. We understand that it is one year's funding only and that you were able to secure the money because of our initiative in stepping forward in our support of House Bill 198. While the red urchin fishery is important, and many of us participate in it, it is only one small part of what is addressed in House Bill 198 and the Dive Fishery Economic Development Project. We view this legislation as an opportunity to provide economic development for not only Ketchikan, but, for all of southeast. It will allow us to work in a positive manner with the Department of Fish & Game to develop these resources.

The most important fact relating to House Bill 198 is that it provides a level entrance for all the participants in the fishery. The funding mechanism currently in place is voluntary and has caused considerable confusion. House Bill 198 will provide opportunity for stability and accountability which we believe is very important.

The following individuals support House Bill 198 and the development project. We will continue to work in a forward looking manner to ensure the goals of the project are met. Thank you for your vision and support.

Sincerely,

Southeast Alaska Harvest Divers Association

James H. Bray 2134 2nd Ave Ketchikan Alaska 99901
Dennis M. Stetel 12410 Sanger St Ketchikan AK 99901
M. Annemiele POB 7022 Ketchikan, AK 99901
George Pihlman P.O. Box 5322 KTW AK
Barbara Jones 237 Madison Ketchikan AK 99901
Sandra Swain 1850 Water Street, KTW, AK 99901

March 29, 1997

~~Russell Schow~~ Russell Schow PO Box 6451 S. Hoadik
 Bill Shat 10437 Kingfisher Rd Ktn AK
 Nancy Davies Nancy DAVIES Box 8335 Ktn AK
 Scott Swain SCOTT SWAIN 1050 WATER ST. KTN. AK.
 Swain Murman Pox 6335 KTN. AK.
~~Christine Underst~~ Christine Underst Box 3031 Ktn, AK 99901
 Mark L. Gatti MARK L. GATTI 316 Sheehan B-3 Ktn. AK
 Rod Bray Rod BRAY 324 Alder St.
 Don E. Hanzgen Don Hanzgen PO Box 20008 KTN.
 James B. Clark 312 Front Ktn
 PO Box 7801 Ketchikan
 Nora Bain 334 Front St 11 11
 Paul McIntosh Paul M. S. Intosh PO Box 6412 Ketchikan, AK 99901
 Greg Holt 1740 Sayles St. Ktn AK 99901

March 7, 1997

Devin & Bridget Myers
PO Box 8155
Ketchikan, AK 99901

Dear Mr. Williams:

We appreciate your efforts in trying to create jobs in the community through the dive fisheries. The intent of this letter is to give you a little ammunition in the form of real numbers related to the urchin fishery. We would also like to offer our warm bodies and opinions whenever you think they would be helpful.

We moved to Ketchikan specifically because we believe in the long term viability of the fisheries affected by the moratorium. We attempted to move here in the fall of 1995, but we were forced to reconsider when the cucumber fishery in Southeast ended about three months earlier than projected. We love the area and hope to become a valuable part of the community here.

The following is a bare-bones list of money I (Devin) have spent since the opening of the fishery in the second week of January:

\$1,600	Boyer Barge	\$2,000	Fuel
\$400	Murray Pacific	\$1,100	Gray Marine
\$100	Alaska Dive Svc.	\$345	Service Auto
\$250	Southeast Comm.	\$175	Moorage
\$700 in wages to tenders whom are Ketchikan residents			
\$600 in groceries from local merchants to feed the crew			

This list is by no means comprehensive! Using only these expenses, just one boat is responsible for returning \$6,225 to Ketchikan. This is in 6 weeks - and the Alaska Department of Fish and Game projected a October 1 - September 30 fishery prior to its opening and in the future.

My wife is also employed full-time, and paying her own share of taxes locally, and we rent an apartment in town. We have several friends who also have made what they hope is a permanent move to Ketchikan. Please do all you can to help us stay, purchase homes, and raise families in this wonderful community.

We ask you to help secure funding to keep the fishery alive. The peak prices for urchin roe are November and December, when we weren't yet

fishing, but we should be in coming years. Also, studies have shown that the quality of urchin roe improves when some "thinning" occurs, and even if there is no increase in catch limits, the dollar return will improve in coming years - IF we have a fishery.

We support local processors and jobs, and are confident that in the years to come, the majority of the product will be processed locally. However, the fact remains that we make more money if there are more potential buyers, and we do not like to see buyers excluded. When fisheries shut down the out-of-state processors last week, it cost us a minimum of \$1500. Please keep the divers at the top of your list when negotiating in the future. They have the least power, particularly because they are out fishing during much of the negotiations, and are taking on the most risk to get this fishery rolling. Fund the fishery, and the processing will follow.

Again, don't hesitate to call us if you need further information, or if you feel our voices can make a difference. We wish you the best of luck in getting the maximum amount of dollars into the community!

Sincerely;

Handwritten signatures of Devin and Bridget Myers. The signature on the left is 'Devin' and the one on the right is 'Bridget Myers'.

Devin and Bridget Myers
(907) 247-7774

Greg Cushing
407 Hemlock Street
Sitka AK 99835

April 8, 1997

Representative Alan Austerman
Chairman Special Committee on Fisheries
State Capitol
Juneau AK 99801-1182

Dear Representative Austerman:

I am writing to urge your committee to approve HB 198. This bill is vital to our efforts to conduct an orderly development of our region's dive fisheries.

As a lifelong resident of Sitka and a commercial fisherman and diver for 25 years, I have become very familiar with our area's resources. The potential for region-wide, long-term, stable dive fisheries is great. We have been working hard to establish a survey / assessment program in order to initialize the development of these fisheries.

We have a strong commitment to this development. We are willing to assess ourselves to ensure that future management is funded.

These fisheries will be very important to S E Alaska communities as they will be carried out during the Fall and Winter months, the traditional off-season. This will result in local divers having multi-specie work opportunities for months, rather than for a few days as is currently.

I would have preferred to be at this committee meeting in person, but could not because of family matters.

Thank you for your consideration of H B 198.

Sincerely,

Greg Cushing

HB

204

SENATE COMMITTEE REPORT

DATE: 2/10/98

FURTHER:

DATE TURNED
IN TO OFFICE: 2-19-98

Resources Committee considered SENATE BILL NO. 204

"An Act providing the commissioner of natural resources with the authority to make grants of state land to municipalities for the construction and operation of sport and recreational facilities and structures."

and recommends:

- be replaced with _____ CS SB 204 (les)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Thomas J. Jeman</i>	✓	<i>Amend</i>	✓		
<i>John T. ...</i>	✓				
<i>Bob ...</i>	✓				
<i>Richard ...</i>	✓				
<i>Paul ...</i>					
CHAIR: <i>John T. ...</i>		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DNR - LANDS	2/18	X	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOT

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CS SB 204 (CRA)
(S) Publish Date: 2-10-98

Revision Date: _____
Title: "...Grants of state land to municipalities for construction...of sport and recreational facilities..."
Sponsor: Sen. Taylor
Requestor: S CRA

Dept Affected Natural Resources
BRU: Resource Development
Component: Land Development
Component Serial No. 431

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY99	FY00	FY01	FY02	FY03	FY04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
305 GF/Program Receipts						
307 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ _____

POSITIONS

POSITIONS	FY99	FY00	FY01	FY02	FY03	FY04
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)

No fiscal impact is anticipated because the bill largely duplicates existing DNR authority. AS 38.05.810(a) already allows DNR to grant land to a municipality for public purposes, which would include a public recreation or sport facility, and AS 38.05.810(g) already requires DNR to retain a reversionary interest in the granted land. The bill's new authority, allowing the municipality to trade the former state land for other land, would probably not be used and therefore is not anticipated to have any fiscal impact. The reverter clause would attach to the land granted by DNR, not to other land the municipality swaps it for. Private landowners would probably not be willing to exchange their parcels for municipal land encumbered by a reverter clause, as the private landowners would lose title to their new land if the municipality's development plans fall through or are not executed on time.

Prepared by: Jane Angvik *[Signature]* Phone: 907-269-8503
 Division: Land Date: 6-Feb-98
 Approved by Commissioner: [Signature]
 Agency: Natural Resources Date: 2-6-98

ALASKA STATE LEGISLATURE



House of Representatives
Special Committee on Fisheries

Sponsor Statement

HB 204

HB 204 amends the existing moratorium law to provide for a workable and effective moratorium process as part of Alaska's existing fisheries management. The current moratorium statute has proved unworkable and confusing.

The current process involves multiple steps where a fisher seeking a moratorium must first go to the Commissioner of Fish and Game, who, in turn must seek authorization from the Board of Fisheries. Once authorization is granted from the Board of Fisheries, the Commissioner may then petition the Commercial Fisheries Entry Commission to provide a moratorium. The Commission is then authorized to go forward if it can make findings required by the current statute, which are difficult to understand and mutually inconsistent.

This cumbersome and confusing process prevents a quick response in fisheries that are growing too rapidly to ensure effective management. As a result, the resource and the economic livelihood of fishers could be jeopardized. In some situations, ADF&G's only recourse is to close the fishery or refuse to open a new fishery if effort cannot be controlled.

HB 204 would allow fishers seeking a moratorium to petition the commission directly. This legislation would also give the commission the authority to place a moratorium on vessels and gear as well as individuals. This is important in a fishery like the Bering Sea Korean hair crab fishery where large vessels may use a number of different skippers in a season.

Under the current statute, eligibility to participate during the moratorium is based on past participation. This requirement precludes the use of a

moratorium in new fisheries or in fisheries that have remained closed for years. In these two situations, participation levels in an open-access fishery may be initially too great to promote resource conservation and sustainable fisheries. HB 204 would allow the commission to implement a moratorium in such fisheries and base eligibility on other reasonable standards such as participation in similar fisheries.

Additionally, HB 204 would allow the state to extend its moratorium authority to offshore fisheries adjacent to state waters when consistent with federal law.

Improving the moratorium law is consistent with our concern for developing and protecting jobs, as well as streamlining government and resource protection.

SENATE CS FOR CS FOR HOUSE BILL NO. 204(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON FISHERIES

A BILL

FOR AN ACT ENTITLED

1 "An Act revising the procedures and authority of the Alaska Commercial Fisheries
2 Entry Commission, the Board of Fisheries, and the Department of Fish and Game
3 to establish a moratorium on participants or vessels, or both, participating in
4 certain fisheries; and providing for an effective date."

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

6 * Section 1. AS 16.43.150(f) is amended to read:

7 (f) Except for permits that are not transferable under AS 16.43.170(c), [OR]

8 (e), or (i), an entry permit survives the death of the holder.

9 * Sec. 2. AS 16.43.170(b) is amended to read:

10 (b) Except as provided in (c), [AND] (e), and (i) of this section, the holder of
11 an entry permit may transfer the permit to another person or to the commission upon
12 60 days notice of intent to transfer under regulations adopted by the commission. No
13 sooner than 60 days nor later than 12 months from the date of notice to the
14 commission, the holder of an entry permit may transfer the permit. If the proposed

1 transferee, other than the commission, can demonstrate the present ability to participate
2 actively in the fishery and the transfer does not violate any provision of this chapter
3 or regulations adopted under it, and if a certificate for the permit under
4 AS 16.10.333(b)(1) - (2), 16.10.338, or AS 44.81.231(a) is not in effect, the
5 commission shall approve the transfer and reissue the entry permit to the transferee
6 provided that neither party is prohibited by law from participating in the transfer.

7 * Sec. 3. AS 16.43.170 is amended by adding a new subsection to read:

8 (i) The holder of an entry permit that is subject to regulations adopted under
9 AS 16.43.225(b)(2) may transfer the permit only to the commission.

10 * Sec. 4. AS 16.43.225(a) is repealed and reenacted to read:

11 (a) Subject to (b) of this section, the commission may establish a moratorium
12 on entry of new participants or vessels, or both, into a fishery when the commission
13 finds that the purposes of this chapter under AS 16.43.010(a) would be served.

14 * Sec. 5. AS 16.43.225(b) is repealed and reenacted to read:

15 (b) The commission may establish a moratorium on

16 (1) entry of new participants or vessels, or both, into a fishery as
17 described in (a) of this section in order to

18 (A) allow time for the commission, in consultation with the
19 Department of Fish and Game and the Board of Fisheries, to investigate and
20 evaluate management alternatives, including establishment of a maximum
21 number of entry permits under AS 16.43.240;

22 (B) allow the Department of Fish and Game and the Board of
23 Fisheries to open a fishery or potential fishery that would otherwise remain
24 closed for protection against overharvest resulting from open access into the
25 fishery; or

26 (C) develop regulatory or legislative proposals to address needs
27 of the fishery that cannot be met under existing statutes or regulations; and

28 (2) entry of new participants into a fishery if concurrently with the
29 adoption of regulations establishing the moratorium the commission adopts regulations

30 (A) prohibiting the transfer of any entry permit that may be
31 issued for the fishery at any time following the establishment of the

1 moratorium; and

2 (B) allowing the holder of an entry permit for the fishery to
3 transfer the entry permit only to the commission for reissuance under
4 procedures established by the commission.

5 * Sec. 6. AS 16.43.225(c) is amended to read:

6 (c) The commission may establish a moratorium under this section for a
7 continuous period of up to four years. A moratorium established under this section
8 may be extended for no more than two additional years if necessary to serve a
9 purpose under (b)(1) of this section. After a moratorium has expired, the [A]
10 fishery [THAT HAS BEEN SUBJECT TO A MORATORIUM UNDER THIS
11 SECTION] may not be subjected to a subsequent moratorium under this section unless
12 five years have elapsed [SINCE THE PREVIOUS MORATORIUM EXPIRED].

13 * Sec. 7. AS 16.43.225(d) is amended to read:

14 (d) While a moratorium is in effect, the commission shall investigate and
15 evaluate management alternatives, including establishment of [CONDUCT
16 INVESTIGATIONS TO DETERMINE WHETHER] a maximum number of entry
17 permits [SHOULD BE ESTABLISHED] under AS 16.43.240, by

18 (1) conducting research into conditions in the fishery;

19 (2) consulting with the Department of Fish and Game and the Board
20 of Fisheries; and

21 (3) consulting with participants in the fishery and other members of
22 the public.

23 * Sec. 8. AS 16.43.225(e) is amended to read:

24 (e) The commission shall establish by regulation the qualifications for
25 applicants for an interim-use permit, annual vessel permit, or both for a fishery
26 subject to a moratorium under this section. When applicable, the [THE]
27 qualifications must include the minimum requirements for past or present participation
28 and harvest in the fishery as of the qualification date described in AS 16.43.260(f).
29 When establishing a moratorium for a new fishery or for a closed fishery, the
30 commission may use other reasonable standards to determine qualifications
31 consistent with this section, which may include past participation in similar or

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related fisheries. The commission may not issue an interim-use permit for a fishery subject to a moratorium under this section unless the applicant satisfies [CAN SATISFY] the qualifications established under this subsection and establishes [ESTABLISH] the present ability and intent to participate actively in the fishery.

* Sec. 9. AS 16.43.225 is amended by adding new subsections to read:

(f) A permit issued under this section is a use privilege that may be modified or revoked by the legislature without compensation.

(g) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may release to a vessel owner information on the vessel's history of harvests in a fishery or other relevant information that is necessary to apply for a vessel permit.

(h) The commission may charge a fee for the privileges conveyed by a vessel permit issued in this section. The fee must reasonably reflect the rate of economic return for the relevant fishery, except that, by regulation, the commission may provide for a reduced fee for an applicant who has a family income falling within the federal poverty guidelines as adjusted by the commission to reflect appropriate cost-of-living differentials.

(i) Unless provided otherwise by a state statute or regulation, neither a permit issued under this section nor the use of the permit or a permitted vessel in the fishery subject to a moratorium under this section may be used to establish eligibility for a permit in that fishery after the expiration of the moratorium.

(j) The commission may adopt regulations providing for the transfer of a vessel permit to another vessel if the original permitted vessel is sunk, destroyed, or damaged to the extent that the vessel is inoperable for the fishery for which the permit is issued.

(k) As permitted by federal law and consistent with this chapter, the commission may establish a moratorium in offshore fisheries adjacent to territorial waters of the state.

* Sec. 10. AS 16.43.260(f) is amended to read:

(f) When the commission establishes the maximum number of entry permits under AS 16.43.240 for a fishery that is subject to a moratorium under AS 16.43.225, an applicant for an entry permit for the fishery shall be assigned to a priority

1 classification based solely upon the applicant's qualifications as of the [EFFECTIVE]
2 date of the commission's order providing for public notice of the proposed
3 regulatory action to establish [STATUTE OR REGULATION ESTABLISHING] the
4 moratorium.

5 * Sec. 11. AS 16.43.911 is amended by adding a new subsection to read:

6 (f) In this section, "vessel permit" includes a vessel permit issued under
7 AS 16.43.225, 16.43.901, or 16.43.906.

8 * Sec. 12. Section 6, ch. 97, SLA 1997, is amended to read:

9 Sec. 6. AS 16.43.906, added by sec. 3 of this Act, and AS 16.43.911(c)
10 [AS 16.43.911] are repealed July 1, 2001.

11 * Sec. 13. AS 16.05.050(19) and 16.05.251(g) are repealed.

12 * Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

No. 1
 Bill version: HB 204
 (H) Publish Date: 3/25/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act revising the procedures and authority of the Alaska BRU: Commercial Fisheries (Limited) Entry Commission
Commercial Fisheries Entry Commission Component: Limited Entry Program Administration
 Sponsor: House Special Committee on Fisheries
 Requester: House Special Committee on Fisheries COMPONENT SERIAL NO. 0471

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Roger Kolden Phone: 789-6160
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/21/97
 Approved by Commissioner: Bruce Twamley Date: 3/21/97
 Agency: Commercial Fisheries (Limited) Entry Commission

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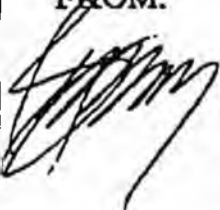
TO: The Honorable Tony Knowles
Governor of Alaska

DATE: February 4, 1997

HAND - CARRY

FAX NO.: 789-6170

TELEPHONE NO.: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
 Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twomley, Chairman
Mail Stop: 0302

SUBJECT: Improved Moratorium
Legislation for
Commercial Fisheries

1. Introduction: The Task for the Alaska Commercial Fisheries Entry Commission and the Alaska Department of Fish and Game

Last July, you signed into law HB 547 and HB 538, that, respectively, established a four-year moratorium in the Southeast Alaska dive fisheries and the Bering Sea Korean hair crab fishery. At the time your July 3, 1996 letter (copy attached) to The Honorable Drue Pearce, President of the Senate and The Honorable Gail Phillips, Speaker of the House, expressed concern about fisheries management decisions made by legislation, and you asked the Commercial Fisheries Entry Commission and the Department of Fish and Game to review existing statutes and recommend changes to existing law to provide more workable and effective general moratorium provisions.

2. Problems of the Existing Moratorium Law

We are happy to undertake this task because we recognize (1) the dysfunctionality of the current moratorium provisions and (2) the heavy burden on individual fishers to seek legislation to achieve a moratorium in their fisheries. This memo suggests ideas for new legislation to provide a functional moratorium tool as part of Alaska's existing fisheries management process.

Existing statutes do provide a means to establish a moratorium in a commercial fishery. However, as your valued staff member Mary McDowell well recognizes, the current statutes are unworkable. We worked with Ms. McDowell at the time this legislation was developed, and the final product to emerge from the Legislature bore little resemblance to the legislation originally supported by Senator Eliason.

One seeking a moratorium must first go to the Commissioner of Fish and Game, who, in turn, must seek authorization from the Board of Fisheries. AS 16.43.225; AS 16.05.251(g). If the Board of Fisheries authorizes the Commissioner to go forward, the Commissioner may then petition the Commercial Fisheries Entry Commission to provide a moratorium. *Id.*

The Commission is then authorized to go forward if it can make the findings required by AS 16.43.225(b)(2). However, the Commission must also meet the requirements of AS 16.43.225(a), which are inconsistent with those of AS 16.43.225(b)(2). Additionally, the standards set forth in AS 16.43.225(a) are difficult to understand and mutually inconsistent.

This cumbersome and confusing, multi-step process prevents quick response in fisheries that are growing too rapidly to ensure effective management. As a result, the resource and the economic livelihood of the fishers could be jeopardized. In some situations, ADF&G's only recourse is to close the fishery or refuse to open a new fishery if effort cannot be controlled.

Petitioners should be able to approach CFEC directly to request a moratorium in their fisheries. The Alaska Department of Fish and Game would not be bypassed in such a procedure. Unless the Alaska Department of Fish and Game could defend a moratorium proposal from the standpoint of resource conservation, our proposal could not realistically go forward. All moratoria to date were adopted because additional advice, regulations or new laws were needed to formulate an effective management plan. Consultations with industry, ADF&G, the Board of Fisheries and the Legislature are extremely important during a temporary moratorium.

In short, the ambiguity and inconsistency of the standards in the existing legislation create an obstacle to a moratorium. Additionally, by the time one pursued the matter before the Board of Fish, through ADF&G's Commissioner, and then before CFEC, the situation sought to be addressed by a moratorium would likely be aggravated by additional participants wanting to beat a moratorium deadline.

3. CFEC Suggestions for Better Moratorium Legislation

Our ideas below suggest more effective procedure and standards that we believe we and the public could understand and apply.

(a) The purpose of a moratorium is to quickly put a lid on participation levels in order to buy time to develop better management tools and avoid risks from greater participation. The Entry Commission has existing authority to make permanent decisions to limit entry into a commercial fishery. In contrast, a moratorium would likely be limited to four years. Therefore, it is difficult to justify the more burdensome existing procedure for establishing a moratorium. We recommend the Commission be authorized to establish a moratorium under appropriate standards, so fishers are required to go to only one agency.

(b) Appropriate standards can be found in the existing limited entry legislation. Limited entry under the existing system is authorized when limiting a fishery would "promote the conservation and sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska" AS 16.43.010(a). We propose

legislation that would authorize a moratorium when necessary to serve these same statutory purposes, but where it can not be shown (for example, due to lack of sufficient information) that limited entry under the existing system would be most beneficial.

* (c) Another problem with the existing moratorium legislation is the qualification date can only be the effective date of the regulation adopted following the full administrative procedure. In practice, this can not be accomplished in less than four months, and if a fishery is open during the process, large numbers of new participants can enter the fishery in the hope of beating the moratorium qualification date. We have recent examples of this well-known phenomenon. We believe a moratorium could be more effective if the qualification date could clearly be authorized as the date of public notice of the proposal for a moratorium (or another reasonable date). Such a qualification date would allow the Commission to provide actual notice of the proposal to anyone holding a license in the fishery as well as anyone purchasing a license in the fishery from that date forward.

(d) CFEC should be able to use a moratorium instead of limited entry if new or additional information surfaces during the regulatory process that suggests reconsideration of a proposed limitation.

Our recent proposal to limit entry into the Southeast shrimp pot fishery is a case in point. There was substantial support for our proposal, but the record that developed from the public hearings pointed toward a greatly increased number of permit holders above the level ADF&G said was manageable. Participation levels in the fishery had already swelled, and continued to rise in anticipation of limited entry. CFEC either had to adopt a higher maximum number or allow the open-access shrimp fishery to continue escalating unchecked. Either choice resulted in a fishery with a large number of participants.

The shrimp fishery might have benefitted from a moratorium rather than limited entry, but CFEC did not have that option. A moratorium would have allowed a period with no further increase in participants, during which time CFEC could have consulted with ADF&G and the Board of Fisheries about the most effective way to manage this rapidly expanding fishery. A moratorium could have allowed time for ADF&G and the Board to adopt regulations establishing a management plan for the fishery or additional regulations defining shrimp pot gear. These regulations would have provided the means for a limited entry program, if adopted, to effectively control effort, protect the resource and maintain the economic viability of the fishery.

(e) Eligibility to participate during the moratorium could be based on past participation prior to the qualification date or other reasonable standards that serve the purposes of the legislation. This alternative is important, because there are fisheries that remain closed for fear participation levels would be too great to sustain them if reopened. Similarly, there are potential new fisheries that would not be opened for the same reason. In such fisheries, there would be no recent past participation to measure for purposes of eligibility. Alternatives such as a lottery to select a manageable number of participants would be useful. Eligibility to participate in a lottery could be conditioned on relevant fishing experience and other reasonable criteria. This authority could allow fishers and the state (through additional jobs and revenue) to benefit from a fishery that would otherwise remain closed.

February 4, 1997

The Southeast sea urchin dive fishery is a good example of a new fishery that could have benefitted from improvements in the current moratorium statutes. ADF&G had been reluctant to open new urchin fisheries because there may be too many divers for the available resource. CFEC could not implement a moratorium under existing statutes because of the difficulty in applying the standards and the lack of history of participation on which to base eligibility. The Legislature was left to create a moratorium for the Southeast dive fisheries (including sea urchins), but over 500 persons will be eligible to fish in a new sea urchin fishery.

(f) To be effective, moratorium authority would need to be available to limit vessels and gear as well as individuals. Additionally, the four-year limit to the duration of a moratorium is the standard the Legislature has so far embraced. It would be useful if the moratorium could be extended beyond four years provided certain standards could be met: for example, in the event that additional legislation was required to provide the means to rationalize a fishery.

4. Conclusion and Recommendation

If the ideas presented here appear to be workable and desirable, we would be happy to consult with the Department of Law to develop specific statutory language. Our experience with proposed legislation affecting limited entry leads us to make a recommendation: limited entry legislation has been most successful when real fishers promoted the legislation and enlisted sponsorship by their local legislators. There are various groups of fishers who might have a direct stake in such legislation. For example, demersal shelf rockfish fishers from Sitka might have an interest in this matter. Paul Larson, Deputy Director, Commercial Fisheries Management and Development, has also suggested participants in the new groundfish fisheries emerging in State waters might see such legislation as a valuable tool to check growth in their fisheries.

We suggest improving the moratorium law would be consistent with your concern for developing and protecting jobs, as well as streamlining government and resource protection. A workable moratorium law would allow CFEC to do the job the Legislature intended it to do, and allow the Legislature to focus on other issues.

Attachment

cc: Jim Ayers, Chief of Staff
Mary McDowell, Special Assistant for Fisheries
Patrick Pourchot, Legislative Director
Shari Kochman, Deputy Legislative Director
Frank Rue, Commissioner, ADF&G
David Benton, Deputy Commissioner, ADF&G
Robert C. Clasby, Director, CFMD
Paul R. Larson, Deputy Director, CFMD
Steven Daugherty, Assistant Attorney General

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

PO Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

July 3, 1996

The Honorable Drue Pearce
President of the Senate
716 W. 4th Avenue, Suite 500
Anchorage, AK 99501-2133

The Honorable Gail Phillips
Speaker of the House
716 W. 4th Avenue, Suite 620
Anchorage, AK 99501-2133

RECEIVED

JUL - 5 1996

OFFICE OF THE GOVERNOR
JUNEAU, ALASKA

Dear President Pearce and Speaker Phillips:

Today I am signing House Bill 547, establishing a four-year moratorium on entry into the Southeast Alaska dive fisheries, and House Bill 538, establishing a four-year moratorium for the Bering Sea Korean hair crab fishery and providing for a vessel permit limited entry system. While there are important pragmatic reasons to implement provisions of these bills, I am concerned about the legislation from a public policy and resource management standpoint.

Addressing management of specific fisheries through legislation is not the ideal approach. Alaska's fisheries management system has proven highly effective in maintaining healthy and sustainable resources because it is run by scientists, professional fisheries administrators, and boards and commissions, rather than through the legislative process.

However, over the last few years, situations in several developing fisheries have pointed out that the provisions in existing law regarding the imposition of a moratorium are cumbersome and ineffective. The lack of sufficient funding for the Department of Fish and Game to conduct needed biological research on new or developing fisheries aggravates this situation. Thus, in fisheries such as those addressed in HB 547 and HB 538, we find ourselves having to quickly impose a moratorium through legislation to prevent damage to a fragile resource or the economic health and stability of a dynamic fishery.

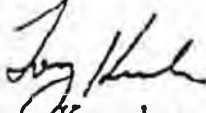
Given the current lack of workable alternative approaches, I recognize several compelling reasons for signing these bills. These include:

- Significant increases in numbers of participants, both recent and anticipated, and the lack of adequate information threaten the conservation of stocks and the stability of these fisheries.
- Severe budget constraints on the Department of Fish and Game prevent gathering of sufficient information and necessitate conservative management of these fisheries.
- A veto of these bills and return to open access could create a stampede into these fragile fisheries. A moratorium will allow a "time out" for proper evaluation to ensure a well managed fishery providing conservation of the resources and sustained economic opportunity for Alaskans in the future.
- The bills establish moratoriums of set duration, not permanent limitations. Nor do they require limited entry. The moratoriums will provide opportunity for public participation in the design of future management options for each of the fisheries, as well as cooperation between the Commercial Fisheries Entry Commission, the Department of Fish and Game, and the Board of Fisheries.

As these bills demonstrate, we need to develop new statutes that provide our professional fisheries managers with the means to easily establish a moratorium in a particular fishery when the need arises. Therefore, I am directing the Commercial Fisheries Entry Commission to work with the Department of Fish and Game to review existing statutes and to recommend changes to make the fishery moratorium provisions more workable and effective.

I will provide the legislature with the results of this review and look forward to working with its members on amending our statutes. The goal is to avoid the need for future emergency legislation for our developing fisheries as exhibited by these two bills.

Sincerely,


Tony Knowles
Governor

cc: Commissioner Frank Rue
Dept. of Fish and Game

Bruce Twomley, Chair,
Commercial Fisheries Entry Commission

HEB

243

SENATE COMMITTEE REPORT

DATE: 5/6/97

FURTHER:

DATE TURNED IN TO OFFICE: 5/8/97

Resources Committee considered CS FOR SPONSOR SUBSTITUTE FOR HB 243(RES)

"An Act delaying the repeal of the current law regarding subsistence use of fish and game; amending the effective date of secs. 3 and 5, ch. 1, SSSLA 1992; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# _____

SIGNING: DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Adrian L. Taylor</i>	<input checked="" type="checkbox"/>	<i>Henry J. ...</i>		<input checked="" type="checkbox"/>	
<i>Loren D. ...</i>	<input checked="" type="checkbox"/>				
<i>Lynnda Green</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Rick Hatford</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>H. Resources</i>	<i>5/2</i>	<input checked="" type="checkbox"/>	

ALASKA STATE LEGISLATURE



House of Representatives
Special Committee on Fisheries

SPONSOR STATEMENT SSHB 243

Under terms of the Act by which the state's 1992 subsistence law was enacted (Sec. 3, CH.1, SSSLA 1992), the 1992 law will be repealed on October 1, 1997. It will then be replaced by its predecessor, the 1986 subsistence law. This "sunset" provision was premised on the expectation that the legislature would consider reinstating the 1992 law following a review by the Governor.

Although there are many similarities between the 1986 and the 1992 versions of Alaska's subsistence law, there are some significant differences which favor the 1992 law.

First, the 1992 law incorporates the concept of "nonsubsistence areas" which was recently upheld by the Alaska Supreme Court. These are areas or communities where dependence on subsistence is not a principal characteristic of the economy, culture and way of life of the community or area, as determined by the Boards of Fisheries and Game based on several specific criteria. This allows the Boards to identify places such as the Anchorage bowl or parts of the Kenai Peninsula where the subsistence priority does not apply.

A second major advantage of the 1992 law is its definition of "customary and traditional", "customary trade" and "reasonable opportunity". These definitions are lacking in the 1986 law and hence are a continuous focus of controversy and litigation. The definitions in the 1992 law recognize prior interpretations of the Boards and give them latitude to further refine those definitions. The definition of "customary trade" and its legislative history clarify that trade is noncommercial and also requires the Boards to identify and provide for those trades.

Another advantage of maintaining the 1992 law is that all Board regulations will remain intact. If the law is allowed to sunset, the Boards will be required

to review all regulations for consistency with the 1986 subsistence law. In 1989, the rural preference in the 1986 law was deemed unconstitutional by Alaska Supreme Court in McDowell v. Alaska. Reviewing and rewriting current subsistence regulations would be a time-consuming, expensive process that will disrupt the Boards' regulatory meetings and create public confusion. This disruption should not occur until the legislature decides that it prefers to return to the provisions of the 1986 law.

In sum, the clarifying definitions alone make the 1992 law an improvement over the 1986 law. Reverting to the 1986 law will be costly to the state and its citizens, both in terms of money and public confusion, and will serve no purpose. HB 243 should be passed to simply extend the state's 1992 subsistence law.

FISCAL NOTE

STATE OF ALASKA
17 LEGISLATIVE SESSION

BILL NO. CSSSHB243 (RES)

Title: An Act delaying the repeal of the current law
regarding subsistence use of fish & Game...

Sponsor: House Special Committee on Fisheries
Requestor: House Resources Committee

Dept. Affected Dept. of Fish & Game
BRU: _____

Components: _____
Serial # _____

PENDITURES/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
Licenses, 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
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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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

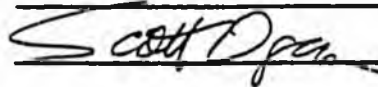
POSITIONS:

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-Chairman Scott Ogan



Date: May 2, 1997
Phone: (907)465-3715

Phone: _____

**How Alaska's Subsistence Law is Working:
Comparing Its Implementation
Before and After 1992**

**Steven R. Behnke
Steven R. Behnke and Associates,
Juneau, Alaska**

**A Report to the
Alaska Department of Fish and Game
Division of Subsistence
March 1, 1996**

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.

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



Rev. 6'98

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Department of Education
State of Alaska

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- 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.2d 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.

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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 dependant 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 Katy 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

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 (1) 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 or 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

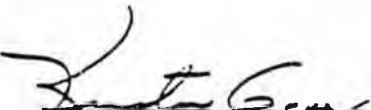
The following officers of the Legislature certify that the attached enrolled bill, CCS HB 601, consisting of 8 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

Passed by the House June 22, 1992



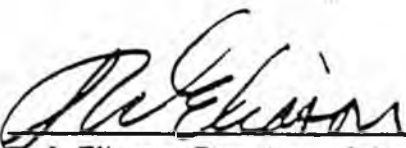
Ben Grussendorf, Speaker of the House

ATTEST:



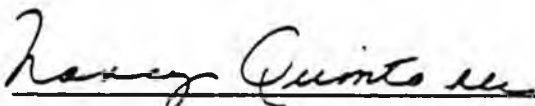
Kristin Gray, Chief Clerk of the House

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

HB

284

SENATE COMMITTEE REPORT

DATE: 5/2/98

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Resources Committee considered CS FOR HOUSE BILL NO. 284(FIN)

"An Act relating to infestations and diseases of timber."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Johnson</i>	✓		
		<i>Drew A. Lunden</i>			X
		<i>Lyle Green</i>	✓		
CHAIR: <i>Rich Halford</i>	✓	CHAIR:			

NEW FISCAL NOTE(S)!

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>DNR</i>	<i>3/10</i>		✓

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature



State Capitol
Juneau AK
99801-1152

Official Business

SPONSOR STATEMENT

HB 284-"An Act Relating to Infestations and Diseases of Timber"

This legislation amends AS 41.17.082(d) to require the commissioner to implement necessary salvage measures when timber on state or municipal forest land is:

- (1) infested or diseased and thereby poses a significant threat to surrounding healthy timber, or**
- (2) subjected to an environmental catastrophe, and as a result, is susceptible to infestation or disease, to prevent the spread of infestation or disease, the timber shall be salvaged as rapidly as practicable...if possible, salvage should occur before there is a significant loss of merchantability of the timber.**

FISCAL NOTE

No: 1

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Bill Version: CSHB 284 (RES)
(H) Publish Date: 4/9/98

Revision Date: _____ Dept Affected: Natural Resources
 Title: Infestations and diseases of timber BRU: Resource Development
 Component: Forest Management & Development
 Sponsor: Hodgins
 Requestor: (H)RES Component Serial No. 435

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	390.6	390.6	390.6	390.6	390.6	390.6
TRAVEL	45.0	45.0	45.0	45.0	45.0	45.0
CONTRACTUAL	180.0	180.0	180.0	180.0	180.0	180.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	615.6	615.6	615.6	615.6	615.6	615.6

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	615.6	615.6	615.6	615.6	615.6	615.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	615.6	615.6	615.6	615.6	615.6	615.6

Estimate of any current year (FY98) cost: \$ 0.0

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	6	6	6	6	6	6
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

- 1) This bill would require more extensive insect and disease surveys to identify all infested or diseased areas and to determine where insect or disease outbreaks are likely to spread from one land ownership to another. Estimated cost would be 15 additional surveys @ \$10.0/survey = \$150.0 contractual services.
- 2) Declaration of infestation zones would require documentation and publicity. Estimate 15 declarations @ \$4.0/action = \$60.0 personal services.
- 3) DNR would need additional funding to develop infestation suppression agreements with all landowners in infestation zone. Estimate 30 agreements @ \$3.7 each = \$111.0 personal services for 3 weeks of a Forester II's time for each agreements. Plus 15.0 travel.

Cont. on attached page

Prepared by: Jeff Jahnke, Director *[Signature]* Imw Phone: 465-3375
 Division: Forestry Date: 10-Mar-98
 Approved by Commissioner: *[Signature]* Date: _____
 Agency: Natural Resources

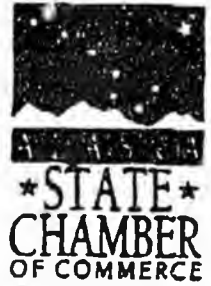
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ANALYSIS. cont.

- 4) DNR would require additional funding for salvage on state land. Currently the department relies on CIP funding to offer salvage timber sales in excess of the amount possible under operating funds. Estimated cost = 1 Forester II x 2 regions x 9 months x \$5.4/mo = \$97.2 + 3 For Tech III x 2 regions x 6 months x \$3.4/mo = \$122.4; + \$30.0 travel costs for layout and \$30.0 contractual funding for notice and equipment needs. Total = \$279.6. On average, this would fund salvage sale design and layout for approximately 5.4 MMBF/year and reforestation on approximately 540 acres. Sales could be in any part of the state depending on the location of infestations and availability of markets.
- 5) This would require a total of 3 new full-time Forester II positions and 6 new part-time Forest Tech III positions located primarily in Southcentral and Interior Alaska.
- 6) Change in net revenue is assumed to be zero. Some salvage sales would bring in net revenue, but many would be deficit sales.

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515



February 3, 1997

Honorable Gail Phillips
Alaska State Legislature
State Capital
Juneau, AK 99801-1182

Dear Speaker Phillips,

The Alaska State Chamber of Commerce has adopted two resolutions on timber issues as priorities for 1997. Resolution 97-8 asks for committed efforts in maintaining the viability of Alaska's Forest Products Industry and Resolution 97-10 is in support of a Spruce Bark Beetle Infestation Environmental Emergency Declaration. The extent of our members' concern for this single Alaska renewable resource is apparent with two out of the Alaska State Chamber's ten top priorities being timber issues.

I am now working on the timber issues addressed by our resolutions and have two major concerns about the State's management of this important renewable resource. These two items alone are a direct reflection on the ability we have to manage the forests of Alaska.

What are the responsibilities by state statute of the Board of Forestry? Does the criteria of this board reflect the right emphasis and focus to establish the policy for managing this renewable resource as dictated by our state's constitution? The State of Alaska's Division of Forestry needs immediate direction and support to provide for the management of our forest's health and the harvest of our timber resources. The status of Spruce Bark Beetle Infestation alone demonstrates a neglect and lack of leadership in establishing a management practice for our Alaska's valuable forests.

Why hasn't the State of Alaska established a criteria of experience, background and education requirements for the job description of the State Forester's position? This is the person who is charged with the management responsibilities of our forests and should be instrumental in drafting a plan that will address all aspects of forest management. The applicant should have experience in providing for timber harvest of this resource and the credentials to put into affect an immediate plan of restoration for our forest's ecosystem in the dead and dying forests.

Looking at the decline of a timber industry in Alaska and the sad destruction in the management of our State's forests, it's time for someone to decide "who leads, who follows and who is to get out of the way".

I look forward to your response so that I may share the information provided to me with my Board of Directors. Thank You.

Sincerely,


Kathryn Thomas
Chairman



Terry T. Brady, certified forester®
forest products development and consulting

Husky
Wood & Forestry Services
3842 Wesleyan Drive
Anchorage, AK 99508-4821

Phone (907) 333-9462
Telefax (907) 333-9462
email - Huskywood@compuserve.com

By Telefax: House Resources Committee
Attn: Kathleen Moore
1-907-465-32655

March 12, 1998

TESTIMONY RE HOUSE BILL 284
An Act relating to infestations and diseases of timber

My Name is Terry T. Brady. I am a certified forester. I have a Master of Science degree from the College of Forest Resources, Univ. of Washington. I have been actively involved in Alaskan natural resource issues since the late 1950's, in all parts of the state. I have also been an international forestry and forest products consultant, with clients in Canada, Scandinavia and the Far East.

Three key Alaska forest related laws must be considered when contemplating proposed House Bill 284, and its strengthening of Alaska's Forest Resources and Practices Act., AS 41.17 et seq. These are:

AS 41.15.010. Intent

It is the intent of AS 41.15.010 - 41.15.170 to provide protection.

commensurate with the value of the resources at risk, for the natural resources and watersheds on land that is owned privately, by the state, or by a municipality.

AS 41.15.020. Regulations

The commissioner shall, by regulation, make provision for the protection of forested land in the state from fire and other destructive agents.

AS 41.17.010. Declaration of intent

The legislature declares that

(1) the forest resources of Alaska are among the most valuable natural resources of the state, and furnish timber and wood products, fish and wildlife, tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

(2) economic enterprises and other activities and pursuits derived from forest resources warrant the continuing recognition and support of the state;

(3) the state has a fundamental obligation to ensure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the needs of all Alaska for the many products, benefits, and services obtained from them:

If the intent and legislative direction of these laws are being followed, then there is no need to implement HB 284.

However, on review, these laws are not being followed. The State is not protecting state, municipal and private land from fire and other destructive agents (AS 41.15.)

The state is not meeting its fundamental obligation to ensure management of forest resources to provide for the needs of forest consumers, whether industrial or not.

The evidence is in the millions of acres of dead, dying and threatened forests, impacted in great part by the largest infestation of bark beetles ever recorded.

Thus, the mandates of HB 284 are needed, provided the Legislature is willing to back its own laws. I advocate that HB 284 be passed.

Sincerely,

A handwritten signature in black ink, appearing to read "Lloyd B. ...".

Resolutions address education, road bills

By DAVE O LUCAS

Peninsula Citizen

The Kenai Peninsula Borough Assembly Tuesday night passed three resolutions dealing with important state legislation that were added to the regular agenda.

Referred to by assembly members as "laydowns," the add-on resolutions are a common phenomenon when the legislative session begins to heat up, according to Borough Attorney Collette Thompson. Assembly committees or individual members acting on behalf of their constituents often pass these resolutions in response to proposed state legislation that might have a direct effect on the borough.

Resolution 98-016, "supporting increased educational funding in Alaska's public schools and encouraging the Alaska Legislature to provide an increase in the school foundation formula," introduced by Patrick O'Brien, passed the assembly without comment after being placed on the consent agenda for the meeting. Items on the consent agenda are passed automatically unless

an objection is raised.

The resolution further states that the assembly

"Supports the current efforts by the Alaska State Legislature to increase the education funding formula so that it more equitably distributes funding and support to all districts.

"Strongly supports the placing of additional funds into education and strongly supports inflation proofing the education funding formula."

"Supports the Legislature's utilization of the evidence supplied in the McDowell Report, simplified funding and providing 70 percent of all effort be used in the classroom."

Resolution 98-018, "in support of Senate Bill 263, an act relating to secondary roads and Senate Bill 264, an act relating to municipal road maintenance" also passed on the consent agenda. The two bills are designed to help upgrade the state's secondary roads and encourage local governments to take over maintenance of those roads by adding to the state's share of maintenance costs.

Resolution 98-017, "opposing passage of Senate Bill 208, which would require voter approval for the formation, alteration or abolishment of certain service areas," introduced by Ron Drathman, passed on a 6-2 vote. Assembly member Dale Bagley objected to putting the resolution on the consent agenda.

"I think this is something we should stay out of," said Bagley.

Both the borough's legal department and the Alaska Municipal League have concluded that the bill is detrimental to local governments, argued Drathman, limiting their ability to control the actions of their service areas. The resolution also states "Senate Bill 208 appears to violate the intent of the Alaska Constitution" and that it would "enable a minority of the affected population in proposed service areas to essentially veto an action that may be in the best interests of the municipality as a whole."

Complete copies of the resolutions can be obtained by contacting the borough clerk's office or on the borough's web site at borough.kenai.ak.us.

only, which might help alleviate some of the problem. Assembly member Dale Bagley objected to that line of discussion being allowed in the appeals hearing, saying it wasn't pertinent to the question at hand.

Nonetheless, the borough does have some options for managing the flow of people using the right of way that could be exercised in the future, such as erecting barriers or signs to prevent parking or overnight camping in the right of way.

Assembly member Ron Drathman said he opposed the appeal.

"The evidence is overwhelming that everybody in Seward uses this right of way all summer," he said.

Assembly member Drew Scalzi said that while he sympathized with Fischer, he couldn't support his appeal either. The borough's duty is to provide public access, he noted, and vacating the right of way might lessen the pressure on the state to create a viable alternative in the park. Scalzi also noted that the borough would likely be confronting this problem more often in the

Brown said afterward he was unhappy with the way some of the procedures in the hearing had been carried out. Drathman, a canny parliamentarian and always willing to needle Brown on procedural matters, pointed out the president could blame himself since he was in charge of the proceedings.

Brown said later he was mainly concerned that the proceedings be conducted as closely to the letter as possible, to ensure fairness for the person appealing.

"Taking on 'the government' can be really intimidating for normal people," said Brown. "I don't want anybody in that position to feel like they aren't getting a fair shot."

In other business, the assembly voted against passage of an ordinance that would have granted a sales tax exemption for Rolfers (a type of massage therapy) similar to the break provided for other health care providers.

The ordinance, sponsored by Merkes, failed on a 7-1 vote. An amendment that would have extended

solutions pertaining to bills pending before the state Legislature in Juneau.

Cooper Landing resident Sherman C. "Red" Smith gave a presentation on an "action plan for beetle kill timber utilization." Smith urged assembly members and the community to take any possible steps to reduce the economic value from the dead and dying spruce trees on the peninsula.

Mayor Navarre also addressed the beetle problem, providing the assembly with a quick update on a 10-week's meeting of the federally-funded beetle task force. Navarre's comments focused primarily on fire prevention, an issue of community importance as warm weather approaches.

If it turns out that federal grant money secured to fund the task force can't be spent on fire protection measures until after the group makes its report to congress, Navarre said he might ask the assembly to authorize spending some borough funds which could later be reimbursed. "I hope that

...Bears

Continued from page A-1

you add more and more to the mix, you have more DLPs - bears killing

of life and property - on a quota system - much like they are in Peninsula. The quota is the annual take of female

He characterized Bear Montana as an "island" by people, similar in some ways to the Kenai Peninsula - a narrow isthmus of territory what less than Bear Mountain.

In Montana, he said, food source is pine nuts. When sources fail, the bears starve in search of food and mortality naturally follows.

"The Kenai is really rich in salmon and lots of food for habitat," Schwartz said. "Conservation efforts here are much more likely to be successful than down here."

Some of the effects of increased human presence in the Yellowstone region are what's happened to Yellowstone's famous cutthroat

Bears used to benefit when the cutthroat cutthroat lake's tributary streams spring to spawn.

"It was sort of like a race run," Schwartz said.

...Plan

Continued from page A-1

Alaska Natives who settled in the Alaska Native Settlement Act of 1971.

The task force's plan is to mirror ANILCA Green's proposal would change in that law. Green discussed his plan with U.S. Sen. Ted Stevens and Frank Murkowski during a trip to Washington last weekend.

"What they want is to change that the people who need it - constitutionally," Green

In the past, both senators



Resource Development Council for Alaska, Inc.

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April 20, 1998

Representative Mark Hodgins
State Capitol 110
Juneau, AK 99801-1182

Re: Support for HB 284

Dear Representative Hodgins:

The Resource Development Council would like to lend its support to HB 284, legislation relating to the spruce bark beetle infestation on the Kenai Peninsula.

RDC is a membership-funded, non-profit trade organization made up of businesses and individuals from all resource sectors, Native corporations, labor unions, and business associations. RDC's mission is to grow Alaska through the responsible development of our natural resources.

Timber harvesting is necessary to restore the forest's health and the Commissioner of Natural Resources needs the flexibility to act quickly and definitively under the provisions of HB 284.

Fish streams, wildlife habitat, and view sheds are in greater jeopardy from the aging spruce dying and falling down than from salvage operations that can be done properly and professionally to re-establish a healthy forest which has or will be deforested by the beetle.

Along with improving forest health, strategic harvesting also helps eliminate the fire hazard dead trees pose to life and property. Letting nature take its course could result in devastating wildfires and a forest that will likely evolve into grasslands void of evergreens for generations.

Salvaging portions of the Peninsula's dead and dying timber would generate new economic activity and jobs, as well as allow Alaskans to utilize the infested trees, which have a value for several years after the beetle kills them.

New roads built to reach harvest areas would diversify recreation opportunities and venues, allowing residents access to high country for mountain biking, hiking and skiing.

Forest scientists emphasize that a combined program of logging and reforestation can restore forest health much faster than doing nothing.

Thank you for the opportunity to comment on HB 284. RDC strongly supports this legislation and we urge its passage this session to give the Commissioner of DNR the rapid ability to restore forest health and reduce the risk of catastrophic fire.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

A handwritten signature in black ink that reads "Ken Freeman". The signature is written in a cursive style with a long, sweeping underline.

Ken Freeman
Executive Director



This edition
sponsored by

National Bank of Alaska

Resource Review

June 1997 A periodic publication

1.1 million acres of dead and dying spruce, infestation increases 61 percent in two years, impacts are far reaching

Spruce beetle infestation reaches unprecedented proportions



A mechanical tree-planting system is used to plant spruce seedlings on lands logged near Ninilchik by Circle DE Pacific. The company planted nearly 500,000 seedlings last year on 1,600 acres of state and university land. All state-owned land must be reforested after logging. (Photo courtesy Circle DE)

The spruce bark beetle infestation in Southcentral Alaska has reached unprecedented proportions and is now the largest spruce beetle event ever recorded in North America.

Statewide aerial surveys mapped more than 1.1 million acres of dead and dying beetle-infested spruce in 1996, a 61 percent increase over the past two years. [The beetle infestation continues to have the most significant ecological impact of any natural agent of change in Alaska forests] according to the recently-released Forest Health Management Report, prepared by foresters from the Alaska Department of Natural Resources and the U.S. Forest Service.

State and federal foresters estimate that 20 million to 30 million trees are being killed annually by the beetle attacks — more than 90 million in recent years.

[Foresters stress it's the intensity of the infestation that sets it apart from previous infestations. Because of its intensity, foresters are concerned about the lack of spruce regeneration and other far-reaching impacts.]

Jerry Boughton, Program Manager of the State and Private Forestry Section of the U.S. Forest Service, warned that impacts associated with the beetle infestation range from direct economic loss in lumber, forest fiber and real estate values to a decline in scenic beauty and wildlife species dependent upon mature spruce stands. Boughton noted that impacts to fisheries is also a concern as salmon spawning streams need a continual supply of large woody

(Continued on page 4)

Forest health in sharp decline as beetle infestation spreads

(Continued from page 1)

debris, which will decline as large diameter spruce are killed by beetles. Boughton said the intense beetle outbreaks may also kill large amounts of interception vegetation, impacting the dynamics of stream flow, which in turn could pose a threat to the overall watershed.

Boughton warned that "fuel-loading" has increased throughout Southcentral Alaska forests because of the beetle-killed trees. Fuel loading on the Anchorage Hillside alone has risen from about two tons per acre to more than 35 tons per acre, increasing the risks of a catastrophic wildfire.

The areas of most intense beetle activity are in Southcentral Alaska where 837,499 acres were infested last year, an increase of almost 20 percent over the previous year. Spruce mortality in many areas of Southcentral now exceeds 80 percent. In the Copper River Basin, 234,581 acres were hit by the bug, an increase of 65,000 acres over 1995.

The beetle continues to make inroads into the central part of the Kenai Peninsula around Skilak Lake, the southwestern part of Kachemak Bay near Seldovia, the valleys of Turnagain Arm and the west side of Cook Inlet. In the Anchorage bowl, infestations are moving down the Hillside area and spreading across the city. Beetle pressure also seems to be building in the Mat-Su Valley.

In Anchorage, the beetle activity nearly doubled for the second consecutive year to 15,310 acres. Forty percent of the total, over 6,000 acres, occur on the Hillside.

More than 418,357 acres of state and private land have been hit by the beetle while 338,754 acres of Native timber have been infested. Some 26,772 acres of national forest lands have been impacted while 346,873 acres of other federal lands have been hit by the bug.

Boughton and other foresters point



At the 1996 Annual Board of Directors meeting, RDC Board member Paula Easley referred to a newspaper account of the 1996 Big Lake fire. Many large landowners risk the immediate, potentially catastrophic loss of an economic resource as the beetle infestation increases the risk of wildfires. Fire management costs may dramatically increase in coming years.

out that there are a variety of techniques that can be used to prevent, mitigate and reduce impacts associated with beetle infestations. However, before pest management options can be developed, the resource objectives for a particular stand, watershed and landscape must be determined.

Foresters note that properly applied silvicultural practices, including timber harvesting and fire management, can maintain the forest diversity needed to provide the range of products and amenities available in the forest.

In Southcentral Alaska, the logging of beetle-killed timber is the first stage in a reforestation process that will lead to healthier forests faster than if nothing is done. On some federal, state and private lands, trees are being replanted and modern silviculture practices are being implemented to encourage natural regeneration.

The U.S. Forest Service has designed a series of timber sales in the Chugach National Forest to address specific recreation, wildlife and visual resource interests while still

accomplishing the objective of logging dead or dying spruce while lowering the fire danger through "fuel removal." Those sales, however, continue to draw opposition from environmentalists who contend nothing should be done.

Logging opponents have dominated the public process in determining appropriate approaches to addressing the decline in forest health. Their influence within government agencies has blocked any significant actions toward mitigating the impacts of the infestation and restoring forest health.

RDC urges its members to write letters to the Forest Service and the State Division of Forestry supporting timber sales targeting dead or dying spruce. Members are encouraged to write their local newspaper, especially in response to anti-logging letters from environmental activists.

Editor's Note: For residents in outbreak areas, the window of opportunity to protect large, live spruce trees may be as short as this spring. Contact the Alaska Cooperative Extension at 279-6575 for information.

STATE OF ALASKA

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OFFICE OF THE COMMISSIONER

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April 23, 1998

Rep. Mark Hodgins
State Capitol Room 110
Juneau, AK 99801-1182

Dear Representative Hodgins,

This is in response to your request for information on past studies of the bark beetle epidemic on the Kenai Peninsula. Three past efforts have looked at parts of the issue:


- In 1992, DNR completed the Forest Health Management Plan for the Western Kenai Peninsula and Kalgin Island. DNR has been steadily implementing the recommendations of that report for state land.
- In 1994, the DNR Commissioner convened an Advisory Panel to review the FY 94-98 Five-year Schedule of Timber Sales for the Kenai Area. DNR has incorporated the consensus recommendations from the Panel into subsequent Five-year Schedules.
- In 1995, DNR and the US Forest Service completed the Moose Pass Cooperative Project. DNR has been implementing the recommendations from the project on state land, including salvage sales in the Moose Pass area. The US Forest Service has held no Moose Pass sales since the project was completed.

In addition, the Department of Fish and Game (ADF&G) compiled a bibliography of research related to the infestation. Unfortunately, few of the studies were done in Alaska – much of the research is from other infestations in the Lower 48. ADF&G and the US Forest Service have several research projects in progress.

In 1996, the House and Senate Resources Committees also held joint hearings on the infestation, coordinated with a review by the Society of American Foresters. At the hearing, experts from British Columbia recommended that the state spend \$50 to \$100 million dollars per year on forest management to respond to the infestation and prevent future outbreaks.

The Kenai Spruce Bark Beetle Task Force, currently underway, is the most comprehensive of the reviews. It addresses all land ownerships, and is considering health and safety issues as well as timber management. The Task Force has drafted a list of priority projects that will be finalized at their meeting on May 6, 1998. DNR continues to support this process and recommends that legislative action be coordinated with the Task Force priorities.

Sincerely,


Carol Carroll,
Legislative Liaison

"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"

Fire threat heightens in Homer

Spruce bark beetle, dry weather to blame

By JON LITTLE
Daily News Peninsula Bureau

SOLDOTNA — Homer's East End Road may become a wildfire-response model this summer under plans being generated by the Kenai Peninsula Borough's spruce bark beetle task force.

The rural road may see wider shoulders, cleared "sites of refuge" and repairs along rutted side roads so heavy emergency trucks can get through.

Also, people living on the southern Kenai Peninsula probably will be deluged with all the pamphlets and meetings they can handle as various agencies try to get the word out on how to avoid losing lives and homes to wildfire.

The beetle task force plans to issue its complete list of ideas later this week, but fast action around Homer was high on the group's agenda Wednesday at the end of a two-day discussion.

East End Road, from eight to 20 miles outside Homer, is a narrow country road crowded on both sides by old stands of tightly packed spruce, now dying from the ongoing infestation of bark beetles. People have built homes among the trees.

While fire risk from dead spruce is a complex issue, task force members are operating under the assumption that dead trees will ignite easier than moist living trees. On a dry day, they say, dead forests will ignite with little more than a dropped match. Add wind to the mixture, and the result could be the kind of fast-moving wildfire that ravaged Big Lake in June 1996.

The fear is, such a wildfire could bear

FIRE THREAT: Homer facing dangerous season

Continued from Page B-1

down on East End Road and trap people on the wrong side of the dead-end road.

One idea kicked around by the panel was to accelerate parts of the state's road construction plans for East End Road. The rutted old pavement is due for repairs in a couple of years, but Borough Mayor Mike Navarre said perhaps the state can get a jump on clearing the right of way of trees. Paving still could be completed later.

Another idea was to carve small clearings along the road that might serve as refuges — places where someone could hunker down a few hours if fire blocks the road.

While East End Road is considered a critical fire risk, it is not the only place where people have carved out homes on the edge of the Peninsula's vast wildlands. Task force members suggest governments come up with a list of all the Peninsula's high-risk areas.

The entire region south of Tustumena Lake, the location for most of the Peninsula's

beetle infestation, is seen as a hot zone, they said.

Beyond immediate fire risk, the panel is considering recommendations for future studies of the Peninsula's vegetation patterns and the effect of roads on fire risk to help agencies make decisions as they react to the spread of beetles.

The task force was funded by a \$500,000 grant from the U.S. Forest Service. It has until June 30 to file a report.

Fire season, meanwhile, begins Wednesday along the south-facing Homer benchlands as snow melts and before moist spring grasses have emerged.

A series of public meetings has been scheduled to discuss the beetle problem and the panel's conclusions. They are set for April 14, from 1 to 5 p.m. and 7 to 9 p.m. at the Borough Building in Soldotna; April 15, from 9 a.m. to 3 p.m. at the Borough Building and then 7 to 9 p.m. the same day at the Bidarka Inn in Homer; and April 16, from 10 a.m. to 3 p.m. again in the Borough Building, followed by a 7-to-9 p.m. meeting at the Moose Pass school.

People living on the southern Kenai Peninsula probably will be deluged with all the pamphlets and meetings they can handle.

THE GREAT ALA
SPORTSM



Please see Page B-3. FIRE THREAT

Beetle-kill panel agrees on fire risk

By JON LITTLE
Daily News Peninsula Bureau

SOLDOTNA — A federally funded task force grappling with the Kenai Peninsula's spruce bark beetle epidemic has embarked on a four-month fact-finding mission by agreeing on one point: Trees killed by the infestation pose an immediate safety risk to homes.

But finding agreement on just what to do about that risk is another matter. Some people want to log trees for fire breaks. Others contend that grasses that grow in fire breaks are just as flammable as dead trees.

Such are the questions facing the 17-member panel made up of foresters, landowners, loggers, recreationalists and firefighters. Led by Borough Mayor Mike Navarre, the group has until June 30 to issue a report.

Navarre said he hopes the

report will act as a kind of road map of options for the broad group of affected landowners. Since the beetles know no boundaries, any approach will involve federal, state, borough and private property owners.

The task force kicked off its first brainstorming session Wednesday at the Borough Building in Soldotna. The issue of immediate fire risk this spring cropped up.

"There are probably some things that could be fleshed out quickly and mechanically done this year," said Phil Janik, Alaska regional forester of the U.S. Forest Service. "If we could jumpstart that portion of this process, realizing the rest is going to be more complicated, it would serve us well."

One community seen as a tinderbox is East End Road outside downtown Homer, where houses are tucked into

a forest of tightly packed spruce. Bark beetles already have killed about 70 percent of those trees and only one road leads in and out.

Some of the \$500,000 Forest Service grant that is paying for the task force might be spent to reduce immediate fire risks such as that, Navarre said. But he warned that the scope of the infestation would quickly outstrip those funds.

The panel also wants to address broader issues, such as forest policy in wildlands where the beetles have killed virtually all the old spruce. Is logging and reforestation the best response, or should the forests be left to regenerate on their own?

While some people have proposed a rapid timber sale program that would remove unsightly trees while the dying spruce still have economic value, members of the task

force said Wednesday timber sales would not cover the costs of the epidemic.

Janik suggested the panel seek research into the nature of Peninsula forests. "We need to know what's happening out there, what has happened and what will happen in 50 to 100 years," he said.

Since the mid-1980s, an epidemic of spruce bark beetles has burrowed into Peninsula forests from Cooper Landing to Homer, killing trees by eating away their inner bark.

Various reports have indicated between 1 million acres and 3 million acres of the 10 million-acre borough are affected.

Some say the epidemic is part of a centuries-old cycle of forest growth. Others urge government to mow down the dead trees for their remaining lumber value and to cut fire risk.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FORESTRY

TONY KNOWLES, GOVERNOR

3601 C Street, Suite 1034
Anchorage, Alaska 99503-5937

File No: 9-3185.5

January 30, 1998

*Good for
beetle update*

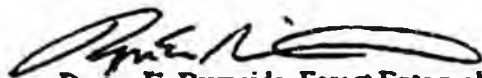
Dear Friends and Forest Users:

Enclosed is a summary--1997 Alaska Forest Insect and Disease *CONDITIONS IN BRIEF*-- of the 1997 statewide aerial insect and disease survey conducted by the U.S. Forest Service and State of Alaska, Department of Natural Resources, Division of Forestry. Also enclosed is a listing of forest health and survey information that is available, how to access the information (via Internet, e-mail, etc.), and sample map products from the surveys, showing primarily spruce beetle activity in the state. A more detailed description of the survey, recently published in report form, is available on request.

> A few important points should be noted from our survey results: (1) While the number of acres of active insect infestation were "down" for most of the major forest pests including spruce beetle, cumulative effects on the forest landscape are significant. For example, since about 1992, more than 5 million acres of Alaska's forests have been affected by insects with spruce beetle-caused tree mortality accounting for 2.3 million acres of this total. A significant level of bark beetle activity can still be expected over the next several years in some areas especially if moderate climate patterns continue and adequate numbers of uninfested large diameter host trees remain in the infested areas. (2) Forest diseases are also a significant disturbance agent in Alaska's forests, although much of this damage is not evident from aerial surveys. Yellow-cedar decline, the most spectacular forest problem in southeast Alaska, is present on more than 477,000 acres. Heart and butt rot fungi also affect a large proportion of the gross volume in spruce/hemlock and white spruce forests in Alaska. In some stands on the Kenai Peninsula, for example, up to 2/3 of the standing volume of living spruce can be infected by rot fungi yet show little or no visible damage.

If you would like to receive more specific information about forest pest surveys for your area, obtain a copy of the 1997 Alaska Conditions report, or have land included in the 1998 survey, please mail or fax a completed Survey & Information Request Form (enclosed). If you have additional questions or comments you may also contact me by e-mail <rogerb@dnr.state.ak.us> or visit our local office in Anchorage.

Sincerely,



Roger E. Burnside, Forest Entomologist
Resource Management - Insects & Disease
ph: (907) 269-8460/8463 or fax: 561-6659;

Enclosures

"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"

Tongass National Forest Fact Sheet

- AS
of 1996

• Size:
17 million acres, largest in America

• Forested lands:
10 million acres, 5.4 million acres commercial timber

• Forested lands opened to logging:
1.7 million acres (31% of commercial timber)

• Areas of the Tongass closed to logging:
63% of all forested lands closed to logging, 8.3 million acres
58% of old-growth, commercial forest closed to logging
6.6 million acres designated Wilderness (closed to logging)

• Average annual timber harvest:
10,000 acres, 302 million board feet

• Harvest rotation:
100 years

• Total timber harvest since 1954:
340,000 acres, 17% of area allocated for logging
9% of Tongass old-growth acreage

Maybe 360,000 today?

• Total potential harvest of old-growth acreage in 100-year rotation:
37%

• Sustainable timber harvests (from 1.7 million acre base opened to logging):
556 million board feet annual potential on 100-year rotation cycle
302 million board feet is average annual harvest from Tongass
450 million board feet is allowable harvest under current TLMP
297 million board feet is new annual harvest under TLMP Revision

• Products from Tongasss Timber:
Dimensional lumber, window and door cut stock, decking, lumber, boats and boat repair, paneling, fencing, roof shingles, chips for paper and dissolving pulp which is a component of textiles, fabric garments, upholstery, curtains, carpeting, industrial belting, hosing, tires, cellophane/packing, sponges, sausage casing, artificial kidneys, nonwoven disposable protective clothing, encapsulate electronic equipment, bakery goods, emulsifiers, low calorie ice cream, cosmetics, cellophane (biodegradable wrap), toothpaste, formica, artificial leathers, molded luggage, laminates, tissue, photo film and artificial vanilla.

Ken → This figure is 2 years old, but only several thousand acres are harvested yearly.