TECHNICAL OVERVIEW OF THE STATE'S SUBSISTENCE PROGRAM

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Technical Report Number 64

Alaska Department of Fish and Game
Division of Subsistence

1981
Submission by the State of Alaska to the United States Department of the Interior
Technical Overview of the State's Subsistence Program

Alaska Department of Fish and Game

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# Table of Contents

I. Introduction......................................................... 1

II. Policy Development Prior to Enactment of the State's Subsistence Statute................................................. 1

III. Policy Development From Enactment of Chapter 151, Session Laws of Alaska 1978 until Enactment of Public Law 96-487 (December 2, 1980)............................................................... 5
   A. The Department of Fish and Game Subsistence Task Force.... 5
   B. The Boards of Fisheries and Game: Policy Statements, and Regulatory Actions........................................ 6
   C. The Subsistence Section, Alaska Department of Fish and Game in the Period Prior to December 2, 1980............. 9
   D. Subsistence Regulations and Public Participation in Regulatory Processes............................................. 13

IV. Development of Policies and Regulations in the Period from December 1980 until December 1981................................................................. 14
   A. Joint Board Consideration of the Analytical Approach suggested by the Department of Fish and Game........... 15
   B. Board of Fisheries Regulatory Actions....................... 19
   C. Board of Game Regulatory Actions........................... 22
   D. Summary of Subsistence-Related Board Activities........... 24
   E. The Subsistence Division........................................ 24

V. The Department's ANILCA Title VIII Implementation Program... 27
   A. Establishment of Regional Councils.......................... 27
   B. Staffing, Technical Support and Scientific Data for the Regional Councils...................................... 29

VI. Summary.............................................................. 33
I. INTRODUCTION

Alaska’s human history is thoroughly entwined with the use of wild, renewable resources. Among northern aboriginal peoples, adaptations directly related to patterns and cycles of resource availability are among the key elements of sociocultural differentiation. After contact with western society, the harvest and distribution of locally available food and materials continued to provide essential economic, nutritional, cultural and social benefits to a large number of communities and households. For non-Native residents, as well, the use of fish and game traditionally has satisfied similarly important needs. Today both Natives and non-Natives participate in subsistence economic systems. These economies may be understood as non-codified systems of production and distribution which effectively facilitate the harvest, use and exchange of renewable resources. Although modern subsistence systems in Alaska usually have some cash flow, they produce goods primarily for local consumption rather than for export and have only limited connections to the market economy. See Lonner, T., Subsistence as an Economic System in Alaska: Theoretical and Policy Implications (1980). Even in towns having viable non-subsistence economic elements, subsistence systems nevertheless may be functional and vital to the entire community at certain times of the year, or to subcommunities, groups, or households which rely on subsistence harvests.

II. POLICY DEVELOPMENT PRIOR TO ENACTMENT OF THE STATE'S SUBSISTENCE STATUTE

Against this background, the State of Alaska has generated policies, research, and regulations to address subsistence. The evolution of
these developments began at statehood. However, the State's first Fish and Game Title, enacted in 1959, contained only one reference to subsistence. Subsistence fishing was identified as non-commercial fishing with a gill net, seine or fish wheel. See AS 16.05.940(17). Accordingly, the Board of Fish and Game regulated non-commercial gill net and fish wheel fishing as subsistence. Although subsistence fishing regulations were adopted, the Board did not establish specific criteria for participation in the fishery; anyone could apply for a subsistence fishing permit.

In regulating game harvests, the Board did not adopt explicit subsistence provisions or differentiate between subsistence hunting and other types of hunting.

This approach to subsistence must be considered in context: harvest competition was still relatively low from Alaska's small population; in many areas enforcement of regulations was minimal or non-existent; and information on the extent and patterns of subsistence use was not readily available. Under these circumstances the Board concluded that its bag limits and seasons were sufficient to provide for subsistence.

Even before increased harvest demands from all user groups led the Board to adopt formal policies on subsistence, the Alaska Legislature demonstrated its concern for the continuation of subsistence opportunities. In 1961, the House passed a resolution urging amendments to the federal Migratory Waterfowl Act which would have allowed spring hunting of migratory waterfowl; the House emphasized the importance of this harvest
to residents of northern and western Alaska. See 1961 Alaska Sess. L., House Resolution No. 29 (April 3, 1961). In 1963, the Senate requested the Secretary of the Interior to rule formally "that migratory waterfowl may be taken in Alaska by persons who have been traditionally or are otherwise dependent on them for subsistence." 1963 Resolutions of Alaska, Senate Resolution No. 50 (March 26, 1963).

In 1975 the Alaska Legislature divided the Board into distinct Boards of Fisheries and Game. See AS 16.05.251 and AS 16.05.255. For the first time the legislature also authorized the Board of Game to regulate subsistence hunting separately. See AS 16.05.257 (other provisions governing the Board's authority in relation to subsistence uses appear in AS 16.05.255). The legislative letter of intent accompanying House Bill 369, which was adopted as chapter 199, Session Laws of Alaska 1975, contained the following language:

It is the intent of the majority of the House Resources Committee in reporting out HR 369 to have the Board of Fish and Game adopt regulations relating to subsistence hunting parallel to the regulations governing the existing fishing regulations.

It is not the intent of the committee to deny subsistence hunting to any resident of the state of Alaska who is eligible to subsistence hunt. It is further the intent of the committee that the Board define subsistence hunting by regulation.

In 1976, the legislature changed the subsistence hunting provisions so that local residents could petition for subsistence hunting areas. See AS 16.05.257. In its findings, the legislature stated:

[T]raditional dependence on fish and game resources is a continuing and necessary way of life in many areas of the state and . . . the protection of subsistence usage of these resources is essential to the health, safety and general welfare of the citizens of the state in those areas.

Section 1, chapter 269, Session Laws of Alaska 1976.
During the same year, the Boards adopted a policy statement which provided, in part:

By reason of culture, location, economic situation or choice, large numbers of people will find it impossible to abandon or alter their way of life at a pace paralleling changes brought by new shifts in land status and ownership, nonrenewable resource developments, road extensions and transportation improvements and a phenomenal rate of population growth. . . .

The existing variety of cultures and life styles in Alaska are of great value and should be preserved. While limitations on the productivity of fish and game must discourage continued increases in the numbers of subsistence type resource users, domestic utilization is still of fundamental importance to many Alaskans, and accordingly it is assigned the highest priority among beneficial uses.

Policy Statement on Subsistence Utilization of Fish and Game, Alaska Board of Fish and Game, and the Commissioner of Fish and Game #76-12-FB.

The Board of Game soon attempted to implement this policy through an emergency regulation allowing a limited harvest of bulls from the then-declining Western Arctic Caribou Herd. The regulation authorized 3,000 permits to be distributed among 16 northern villages. The village allocations were to be based on recommendations of village councils and corporations in light of population, need, availability of alternative food and employment, and other factors which assist in meeting "minimum sustenance" needs. This action would have provided a clear priority for rural users of the Western Arctic Herd. However, the Alaska courts ruled that improper administrative procedures had been used in implementing the regulatory decision. Thus, without reaching the question of the Board's authority to allocate on the bases chosen, the court nullified the action. See State v. Tanana Valley Sportsmen's Association, 583 P. 2d 854 (Alaska 1977).

-4-
III. POLICY DEVELOPMENT FROM ENACTMENT OF CHAPTER 151, SESSION LAWS OF ALASKA 1978, UNTIL ENACTMENT OF PUBLIC LAW 96-487 (DECEMBER 2, 1980)

Between 1975 and 1978 numerous bills were introduced in the Alaska Legislature to make provision for subsistence. Ultimately, House Bill 960 emerged as the composite legislative vehicle for resolving the various policy approaches. H.B. 960 became chapter 151 of the 1978 Alaska Session Laws. The full text of the statute appears in Appendix 1. When it became effective on October 10, 1978, the new statute established specific parameters for the State's subsistence program. Among the most significant provisions are the following:

1. A definition of "subsistence uses" which leaves to the Boards of Fisheries and Game the task of giving content to "customary and traditional uses" through the Board's normal administrative procedures;

2. Priority for subsistence uses in allocations of both fish and game resources;

3. Mandatory procedures for use by the Board of Game when considering special hunting regulations for subsistence;

4. A new research program within the Department of Fish and Game to provide baseline data, issue-specific information, and policy recommendations related to subsistence use of fish and game.

A. The Department of Fish and Game Subsistence Task Force

The enactment of chapter 151, Session Laws of Alaska 1978, meant that the Department and the Boards would have to make certain adjustments to meet the statutory mandate. In August 1978, the Commissioner of Fish and Game appointed a Subsistence Task Force to advise him on appropriate steps for implementation of the new law. In November 1978 the Task Force issued its report containing numerous recommendations. This report is attached as Appendix 2. Its conclusions were of necessity
limited by the extremely small amount of data then available on subsistence systems, but they emphasized the importance of an energetic, integrated program -- including critical regulatory steps:

[The] the Boards of Fisheries and Game will carry the principal burden in defining terms expressed in the law, in determining what constitutes 'subsistence use' in practice, in deciding where and for what species a subsistence priority should be established, and in deciding by what regulatory means this priority will be implemented.


The Task Force noted that "a number of existing policies, regulations, and management strategies accommodate or provide a preference to subsistence-type uses." Id. at 4. In addition, the report observed:

A wide range of regulations have been promulgated which favor local uses through timing and duration of seasons, liberal or non-existent bag limits, legalization of sale or barter in some cases, constraints on means of access, and even selective enforcement. . . . However, it is also clear that in some cases these mechanisms are no longer adequate in practice, or may not meet new legal criteria. While the Task Force recognizes that various changes in details of policy and in regulations will be necessary, it is important to emphasize that the flexibility of the present regulatory system can accommodate the changing needs of both subsistence and other resource users.

Id. at 4-5.

B. The Boards of Fisheries and Game: Policy Statements and Regulatory Actions

The Alaska Boards of Fisheries and Game also acted quickly to clarify how the existing system would be used to meet the new law's requirements. During their spring 1979 joint meeting, the Boards adopted a policy statement which provided, in part:
Whenever possible, the subsistence priority should be achieved by existing regulatory techniques, such as open and closed seasons, bag limits, control of methods and means of take, and controlled use areas. When a resource is plentiful enough to accommodate all uses, the Boards may not need to distinguish between different types of use. Special regulations such as designation of a subsistence hunting or fishing area to allocate a subsistence resource to local subsistence users may be enacted if the above approach is inappropriate or ineffective.

If further restriction is necessary, priority among subsistence users will be based on 1) customary and direct dependence upon the resource as the mainstay of one's livelihood; 2) local residency; and 3) availability of alternative resources. The Board will depend heavily on data gathered by the Subsistence Section in achieving priority for subsistence and in considering the three factors above.

Alaska Boards of Fisheries and Game, Policy #79-5-JR (March 1979).

This policy is attached as Appendix 3.

The Alaska Attorney General's opinion which accompanies this submission analyzes how the Tier I - Tier II priority structure addresses the interests of rural residents. It is important to note here, though, that the Boards' statement expressly considered the needs of users residing in rural areas, i.e., those users who are "local" to the resource:

Implicit in the two criteria of 'direct dependence' and 'availability of alternative resources' is the idea that a subsistence priority is based to some extent on the actual needs of people. Subsistence needs of individuals, families, and cultural groups may differ in type and degree. . . . Elements to consider in establishing the level of subsistence need include location, local cultures, tradition, customs, and alternative resources.

The Boards recognize the need for regional differences in the approach to fish and game management and they will maintain flexibility by periodically examining social and economic conditions, as well as biological conditions which may warrant a change in subsistence uses and the Board's regulations.

Id.

-7-
The non-binding guidelines adopted by the Boards also articulate steps to protect local harvest opportunities. These guidelines provide, in part:

1. When the Board finds it necessary to restrict the harvest of a resource, the Board shall determine appropriate bag limits and season restrictions governing all user groups. The subsistence preference may be accomplished by setting limits and seasons sensitive to local use patterns in the area affected.

2. When the Board finds it necessary to restrict the harvest further, the Board shall determine appropriate controls on access governing all user groups. The subsistence preference may be accomplished by making it more inconvenient for distant user groups to engage in harvest.

3. When the Board finds it necessary to restrict the harvest further, the Board shall determine appropriate methods and means governing all user groups. The subsistence preference may be accomplished by adopting methods and means most available to local user groups.

4. When the Board finds it necessary to restrict the harvest further, the Board may create a regulation which allows for adequate subsistence harvest by residents of the area and a limited sport harvest by other user groups. This area accomplishes the subsistence priority addressed in 1978 SLA 151.

5. When the Board finds it necessary to restrict the harvest further and still implement the subsistence priority, the Board shall create a subsistence area which allows for a quota-controlled harvest by residents of the area only.

6. When the Board finds it necessary to restrict the harvest to a limited number of area residents, the Board shall utilize criteria for allocation (consistent with 1978 SLA 151) among area residents based, in part, on the suggestions and evidence provided by area residents.


The Boards' policy statement also noted that subsistence uses provide a variety of benefits which are not limited to nutrition:
The Board of Fisheries and the Board of Game recognize that existing cultures and life styles in Alaska are of great value and should be preserved. Accordingly, customary and traditional subsistence uses of fish and game are assigned a priority among beneficial uses. . . .

Beyond directly satisfying food requirements, home consumption of fish and game tends to preserve cultures and traditions and gives gratification to a strong desire possessed by many Alaskans to harvest their own food. The latter functions seem genuinely important to the physical and psychological well-being of a large number of Alaskans.

Alaska Boards of Fisheries and Game, Policy #79-5-JB (March 1979).

C. The Subsistence Section, Alaska Department of Fish and Game in the Period Prior to December 2, 1980.

At about the same time as the Boards were considering their policy statement, the new Subsistence Section of the Department of Fish and Game was just beginning operations. Its role, development and funding are significant indices of the State's progress in creating a high quality subsistence program which satisfies Title VIII requirements.

The duties of the Subsistence Division are specified in AS 16.05.094:

The section of subsistence and fishing shall:

(1) compile existing data and conduct studies to gather information, including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;

(2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;

(3) make information gathered available to the public, appropriate agencies, and other organized bodies;

(4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;
(5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;

(6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

(7) participate with other divisions in the preparation of statewide and regional management plans so that those plans reorganize and incorporate the needs of subsistence users of fish and game.

The research responsibilities of the Division fall into two major areas:

(a) baseline research having multiple utility for informing the public, government agencies and other entities, see AS 16.05.094 (1), (2) and (3); and (b) issue-specific information gathering for use by the Department, the Boards, and the public. See AS 16.05.094 (4), (5) and (7). In addition, the Division's policy recommendation roles extend beyond allocation to include the full range of regulatory matters which may affect subsistence uses. See AS 16.05.094 (4), (5) and (6).

The Alaska House of Representatives Special Committee on Subsistence described the evolution of the Subsistence Section as follows:

Much of the responsibility for implementation of the subsistence law was assigned to the new, statutorily created, Subsistence Section in the Department of Fish and Game. See AS 16.05.094. Because the Department had never conducted social research, an immense gap existed between programs for biological studies and programs needed for socio-economic research on subsistence. Indeed, the Department was in no position to provide the extensive data needed by the Boards to make reasonable decisions affecting subsistence. By contrast to the other divisions of the Department, the duties specified by AS 16.05.094 for the Subsistence Section give heavy emphasis to socio-economic research with none of the management and enforcement functions normally associated with the Department.

In order to meet [its statutory] responsibilities, the Subsistence Section needed a staff which could not only understand basic biological relationships, but also conduct effective socio-
economic research. Of course, this required the Department to hire personnel with substantially different skills than those normally associated with fish and game management. As a result, the Subsistence Section was not actually operational until mid-1979.

Although the subsistence law was approved by the Governor in July 1978, staffing the new Subsistence Section was a time-consuming process. A Chief and Assistant Chief were appointed in February 1979; and hiring of 'resource specialists,' the new Subsistence Section job class, was underway in mid-1979. Positions in Anchorage, Barrow, Bethel, Dillingham, Kotzebue and Nome were filled by late 1979. Addition of resource specialists in Fairbanks, Galena and Juneau required several more months; and regional supervisors were not hired until early 1980. Applicants also were recruited through the fish and game technician registers and assigned to specific field offices.

In addition to these personnel matters, the Section made administrative arrangements and equipment purchases associated with field office start-up. Taken together, the normal steps necessary to become operational meant that the Subsistence Section was not able to begin actual field work until mid-1979, and was not fully operational until 1980.

Since its inception, the Section has produced more than 30 technical reports. Initial Subsistence Section projects were directed primarily toward resource allocation problems and regulatory proposals to be considered by the Alaska Boards of Fisheries and Game. In addition to these matters, recent studies have addressed a variety of critical resource use problems, and have substantially increased the information available on the roles of subsistence in family and community life; historical and present patterns of use; elements of subsistence economic systems, and many other issues. . . .

The Section's highly productive research program has provided essential data for decision making by the Boards and has established fundamental baseline data for many areas. Such studies often are the only work ever addressed to these problems; and the Section's ground-breaking applied research has moved the Department of Fish and Game into a potentially productive era of using both biological and socio-economic research tools.

The Section's program continues to be exceptionally active. Numerous projects currently are in progress throughout the state. Staff members conduct their field operations from offices in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kotzebue, and Nome, as well as several small communities.

"History and Implementation of CH. 151, SLA 1978, the State's Subsistence
Despite the difficulties inherent in establishing a new program where none had existed previously, the Subsistence Section rapidly established a field base and a set of preliminary research priorities. Initial research products were used directly by the Boards during the 1980 regulatory cycle. For example, the highly successful Copper River Subsistence Salmon Management Plan was based substantially on Subsistence Section research data. See 5 AAC 01.647. The Plan is attached as Appendix 5. Research projects were begun as rapidly as field positions could be filled. In addition, bilingual local persons were hired to work with the Section's resource specialists. By December 1980 a statewide staffing pattern had been established, two mid-level program staff had been added outside of Section headquarters, and studies were in progress for all regions.

Although the Section's early research efforts were aimed primarily at major allocation issues, the unavailability of reliable baseline data compelled the Section to begin developing its own program of applied research to address these data needs. Potential subsistence impacts resulting primarily from proposed land use changes and industrial development underscored the importance of high quality baseline information which could be used in various processes: impact assessments, land and resource use planning, and community decision making. Accordingly, during calendar year 1980 the Subsistence Section planned projects within each region to conduct applied baseline research. By December
1980 these efforts were developing as the foundation of the Section's program, and other issue-specific studies were designed in conjunction with sound baseline work.

D. Subsistence Regulations and Public Participation in Regulatory Processes

Alaska law expressly provides for a system of advisory committees "composed of persons well informed on the fish or game resources of the locality." AS 16.05.260. The advisory committee chairman has authority, to hold public hearings on fish or game matters. Id. In addition, the statute explicitly contemplates regulatory recommendations by the committees:

Recommendations from the advisory committees shall be forwarded to the appropriate board for their consideration but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee the appropriate board shall inform the appropriate advisory committee of this action and state the reasons for not following the recommendations. Id.

In making regulatory decisions affecting subsistence uses, the Boards directly utilize information provided by advisory committee representatives at regulatory meetings. Although the procedures of the two Boards differ in detail, both provide opportunities for advisory committee representatives to offer information as the Boards consider particular regulatory proposals. This goes well beyond the participation normally provided to the general public.

In addition to the local advisory committees, the Boards established "a system of regional fish and game councils to provide a regional forum
for the collection and expression of opinions and recommendations on matters relating to fish and wildlife resources and to assist the Board of Fisheries and Game in deliberations concerning promulgation of regulations." 5 AAC 96.200. The Boards also created six "fish and game resource management regions": Southeast, Southcentral, Southwest, Western, Arctic, and Interior. 5 AAC 96.210. These regions encompass all lands and fresh waters and were identified "[f]or the purposes of conservation and management of the fish and wildlife resources of the state." 5 AAC 96.210. A copy of the 1980 Regulations for Local Fish and Game Advisory Committees and Regional Councils is attached as Appendix 6.

The Board of Fisheries and the Board of Game utilized substantially different approaches in adopting regulations for subsistence uses. The Fisheries Board enacted separate regulations for subsistence fishing; this approach was consistent with the formal divisions between commercial, sport, and subsistence fishing which had existed since statehood. The Alaska Subsistence Fishing Regulations for 1979 and 1980 are attached as Appendices 7 and 8. In contrast to this approach, the Board of Game provided for all harvests within the same regulatory framework. This approach was consistent with the Boards' policy statement which emphasized that special regulations to accommodate the subsistence priority would be used only when other methods are not sufficient. See Alaska Boards of Fisheries and Game, Policy #79-5-JB (March 1979). The 1979 and 1980 Alaska Game Regulations are attached as Appendices 9 and 10.

IV. DEVELOPMENT OF POLICIES AND REGULATIONS IN THE PERIOD FROM DECEMBER 1980 UNTIL DECEMBER 1981
A. Joint Board Consideration of the Analytical Approach Suggested By
the Department of Fish and Game

The Alaska National Interest Lands Conservation Act (ANILCA), Public
Law 96-487 (December 2, 1980), became effective while the Boards of
Fisheries and Game were conducting their fall joint meetings. The
Boards listened to an explanation of the new law's implications from
staff of the Governor and of the Attorney General, and were advised
to proceed cautiously in assuring that the State retains full management
authority. The Boards also reviewed the Tier I - Tier II priority format
suggested by the Alaska Department of Law and approved the Department of
Fish and Game position paper on subsistence.

The Department of Law suggested three levels of priority implementation
corresponding to three general levels of resource abundance:

1. When resource populations are adequate to satisfy all user de-
mands without impairing sustained yield, the priority does not
come into play;

2. Tier I: When resource populations are such that some harvest
restrictions are necessary to maintain sustained yield or to
assure continuation of subsistence uses, a priority must be
provided to subsistence;
   a. The Boards have discretion to determine how the priority
      should be structured;
   b. The Boards can allow non-subsistence uses to continue as
      long as the priority for subsistence is adequate;

3. Tier II: When further restriction is necessary to maintain
sustained yield or to assure continuation of subsistence uses,
three statutory criteria must be employed:
   a. Customary and direct dependence upon the resource as the
      mainstay of one's livelihood;
   b. Local residency; and
   c. Availability of alternative resources.
The Board can allow non-subsistence uses to continue if it concludes that they are in the public interest and that the core subsistence use will receive adequate priority.

The Department of Fish and Game presented a position paper containing five recommendations for specific steps to assure that the subsistence priority is met:

1. Examine existing subsistence uses and regulations by area and species;
2. Characterize subsistence uses in Alaska on the basis of identifiable factors;
3. Select criteria and evaluative measures by which the statutory language will be implemented;
4. Include subsistence provisions in all management plans;
5. Follow decision-making procedures which integrate the subsistence priority and make statutory compliance a routine matter.

See Subsistence: A Position Paper, Alaska Department of Fish and Game (November 24, 1980). The position paper is attached as Appendix 11.

Of particular significance to the present overview are the two parts of the position paper covering characteristics of subsistence use and implementation of statutory language.

The Department of Fish and Game suggested a set of interlocked continua which might be helpful in describing customary and traditional uses:

Long <---------------------------Time Depth------------------------------>Short
Rural<-----------------------------Community Base------------------------->Urban
Kinship<--------------------------Social Role----------------------------->Individual/Family
Community<------------------------Economic Role------------------------->Personal Use
and regional
economic and nutritional
self-sufficiency

-16-
Food, clothing, Actual Uses Primarily food
fuel, tools,
shelter, handicraft,
barter, etc.

Many resources Range of Uses Few Species
(fish, game, fowl,
vegetation, etc.)

More stable Pattern of Uses Less stable
(opportunistic
area, time, species,
gear, efficiency, pro-
ductivity, use level,
sharing/bartering,
division of labor,
effort level, etc.)

Due to changing Variation in use level Due to high
economic and and pattern urban in-
resource con-
ditions, and
local population
growth

Primarily Social and Psychological Primarily in-
extended kinship Products individual and
community, inter-
generational, and
immediate family
cultural

Subsistence: A Position Paper, Alaska Department of Fish and Game
(November 24, 1980) at 3-4.

The position paper noted that the Boards have administrative authority
to determine what combination of points along these continua constitutes
customary and traditional use in order to provide the priority. In
addition, the left ends of these continua taken together may be understood
as corresponding generally to rural subsistence patterns.

However, the Department emphasized that the continua were not intended as
absolute formulas but rather were offered as a framework within which
the Boards can make decisions on a case-by-case basis. That is, although the Boards might rely upon the continua as analytical tools, the particular combination of factors indicating customary and traditional use should be determined specifically for each situation considered.

In suggesting methods for implementing the statutory language, the position paper recommended ways in which subsistence could be accommodated using routine procedures and case-specific data:

It is suggested that the Boards consider customary and traditional uses to be those noncommercial and nonwasteful uses (as defined in AS 16.05.940[]) . . . which have been pursued by a community or a group of persons for a significant period of time. . . .

[I]t is the historic use pattern of the community or group which is to be accorded a priority in regulation. the use pattern for Tier I is made up of a number of elements needing consideration (e.g., areas, times, methods and means, species, stocks, productivity, efficiency, and so on). Evidence on these elements should be considered by the Boards.

The range of elements useful for consideration by the Boards in Tier I and Tier II decisions may be applied on a statewide basis. However, the criteria and measures within each element may vary on an area-by-area, case-by-case basis.

For example, in Tier II decisions, 'direct dependence' is a statutory element for consideration. The Board may conclude that one criterion within 'dependence' is the role of the resource in meeting nutritional needs. The measure within the criterion may be, for example, the number of meals per week in which the resource is normally used. Other measures could be the timing of consumption (e.g., first fresh meat in spring) or nutritional significance (e.g., source of particular fats or oils, foods that preserve well for winter.) It is suggested that the Boards begin their analysis of customary and traditional use with an assessment of user profiles and use patterns on a case-by-case basis. This would give the Department an opportunity to uncover the elements which appear naturally in real-life situations. After consideration of a number of cases, the Boards could then identify those elements, criteria, and measures which they have found most useful in their analyses. This process will, in turn, make the Department['s] research and Boards' decision-making more routine.
At the December 1981 meetings, only the Board of Fisheries considered regulatory proposals. (The Board of Game normally conducts regulatory business during its spring meeting.) At that session, the Board received advisory committee and staff reports as well as public testimony on subsistence and adopted most of its finfish regulations for 1981. The Alaska Subsistence Fishing Regulations 1981 are attached as Appendix 12.

The Board also adopted Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, #80-79-FB, which established ten characteristics for identifying "customary and traditional" uses of Cook Inlet Salmon. The findings and policy #80-79-FB are attached as Appendix 13. The Board deferred final action on Cook Inlet salmon regulations until its spring meeting. In April 1981 it considered additional testimony and reaffirmed the basic thrust of the previously adopted criteria. In its Amended Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, Resolution #81-91-FB, the Board recognized that "the past and current permitting system and regulations governing subsistence fishing in Cook Inlet do not necessarily reflect and protect the customary and traditional use of salmon resources in the area." In order to rectify these inconsistencies, the Board adopted the following "characteristics", all of which were to be applied in identifying customary and traditional uses:

1. A long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance.

2. A use pattern established by an identified community, sub-
community, or group having preponderant concentrations of persons showing past use.

3. A use pattern associated with specific stocks and seasons.

4. A use pattern based on the most efficient and productive gear and economical use of time, energy, and money.

5. A use pattern occurring in reasonable geographic proximity to the primary residence of the community, group, or individual.

6. A use pattern occurring in locations with easiest and most direct access to the resources.

7. A use pattern which includes a history of traditional modes of handling, preparing, and storing the product (without precluding recent technological advances).

8. A use pattern which includes the intergenerational transmission of activities and skills.

9. A use pattern in which the effort and products are distributed on a community and family basis (including trade, bartering, sharing, and gift-giving).

10. A use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.


The Board also applied these ten criteria to information on the record concerning uses of Cook Inlet salmon. The villages of English Bay, Port Graham, and Tyonek were found to have customary and traditional uses because they had established all ten characteristics. Accordingly, the Board adopted subsistence fishing regulations applicable to those communities.

For purposes of the present submission, it is important to note that the
ten criteria provide substantial protection for rural communities. Indeed, the content of these characteristics clearly makes it easier for residents of rural villages to establish their customary and traditional uses than for urban residents to make a similar showing. All ten criteria must be met in order to establish customary and traditional use; therefore, it is much more difficult for residents of urbanized areas to make the requisite showing. The communities which demonstrated their subsistence uses of Cook Inlet Salmon under the ten criteria were all small villages without road connections to a major urban area.1

The Board's development and use of specific eligibility criteria are important for several reasons. Although the Board had adopted regulations since statehood in order to govern subsistence fishing and had made subsistence allocations since long before the effective date of the State's subsistence statute, this was the first time the Board had made a formal regulatory decision about which uses should be designated as subsistence.

In the past, subsistence fishing permits had been available to any applicant; no explicit eligibility standards had been applied. Accordingly, in many areas "subsistence" fishing had grown to mean something other than the subsistence use contemplated by chapter 151, Session Laws of Alaska 1978. That is, in certain areas a high proportion of subsistence permittees were new participants in the fishery who had few, if any, historic, economic, or other established connections to the resource.

By using its 10-point formula, the Board was able to allocate salmon in an area of resource competition which previously had been characterized
by unlimited issuance of "subsistence" fishing permits without regard to whether the use was customary and traditional. Accordingly, the Board's 1981 spring meeting laid important groundwork for a regular, predictable inquiry using the general approach suggested in the Department's position paper on subsistence.

C. Board of Game Regulatory Actions

The Board of Game took steps at its 1981 spring regulatory meeting which increased the likelihood that certain rural residents would receive a permit to hunt the Nelchina Caribou Herd. After hearing staff reports, advisory committee recommendations, and public testimony, the Board expressed its view that all Alaska residents who hunt the Nelchina herd for meat should be considered eligible for a permit at Tier I. The Board also noted that within this group is a smaller segment having a higher level of reliance on the resource.

The Board adopted regulations allocating 1600 permits to hunt the Nelchina Caribou Herd. Of this total, 1450 were reserved for resident meat hunters (Tier I in the Board's analysis) and non-resident hunters; 150 were tentatively reserved for users meeting Tier II standards. All permits were to be issued by random drawing. In addition, a special winter season was created so that applicants receiving Tier II permits could take caribou when the herd is in the eastern part of its range.

To participate in the Tier II drawing for a permit to hunt the Nelchina Caribou Herd during the winter season, each applicant was required, in part, to show that he or she:
1. Resides in game management unit 13, 14A or 14B and has no permanent abode elsewhere;

2. Lives or has lived for the previous five years in a household "where not commercially taken fish and game have comprised more than half of the meat and fish of the diet", and

3. Is a member of a household having a gross income of $12,000 or less for the previous income tax filing year.

See 5 AAC 81.055(c) (3).

The Nelchina Caribou hunt conditions provided, in part:

1. No more than five percent of the permits will be issued to non-residents of Alaska;

2. Up to 150 Tier II permits will be valid for the fall and winter seasons; the remaining permits will be valid for the fall season only;

3. Applications for Tier II permits will be drawn first;
   a. If all 150 permits are issued, the remaining unsuccessful applications will be included in the drawing for the fall hunt;
   b. If fewer than 150 permit applications are received, excess permits will be available as part of the permit pool for the fall season.

See 5 AAC 81.055. A copy of Alaska 1981-82 Permit Drawing Hunts is attached as Appendix 15; the drawing for the 150 Tier II permits is described at page 3 under "Caribou Hunt 503". General application requirements and fees are summarized on page 1 of the drawing hunt brochure.

The Board of Game intended that eligibility characteristics described above correspond to the Tier II requirements of the Alaska subsistence law:

1. customary and direct dependence upon the resource as the mainstay of one's livelihood;

2. local residency; and

3. availability of alternative resources.

AS 16.05.255(b). Adoption of Tier II criteria represents the Board's
clearest statement about eligibility for the subsistence priority, and it indicates how the Board intends to use these standards to protect the most dependent users. The Alaska Game Regulations 1981 are attached as Appendix 16.

D. Summary of Subsistence-Related Board Activities

In summary, both Boards have moved carefully in implementing the subsistence priority. Although they have chosen different approaches, both have adopted certain measures which tend to benefit rural residents. The diverse specific measures chosen are too detailed to be discussed here, but memoranda by the Department staff members who serve, in part, as regulations advisors during Board meetings are attached as Appendices 17 and 18; these memoranda describe the Boards' other regulatory actions which are related to subsistence uses.

E. The Subsistence Division

The Subsistence Section was elevated to Division status by order of the Governor during 1981. This change recognized the importance of the subsistence program to the Department's mission. As of July 1, 1981, the Subsistence Division has the same status as all other divisions of the Department.

The Division has continued to develop its field-based research program in the directions discussed previously. The planning which was begun in 1980 for more comprehensive baseline research in all regions of the State was transformed into initial field efforts -- including contractual work in areas without Subsistence Division staff -- and into budget
requests. These research functions have become even more important in light of the Fisheries Board's emphasis on community characteristics. In addition, the enactment of ANILCA has generated a variety of planning processes in which regional councils have a role. Accordingly, the Subsistence Division has strengthened its baseline efforts for fiscal year 1982 and plans enhanced baseline research activities for fiscal year 1983 to provide a better foundation for other ANILCA-related projects.

In 1981, the Subsistence Division also opened two new offices in rural communities, Nikolai and Fort Yukon, and staffed them with qualified local residents. In addition, Resource Specialists were hired for the Southeast Alaska Region and for the Copper River Basin-Prince William Sound area in the Southcentral Alaska Region.

The following Subsistence Division research products were completed between December 1980 and December 1981:

Andersen, D., Statewide Subsistence Bibliography and Index;
Andersen, D., Subsistence Bibliography Project--Arctic Coast;
Andersen, D., Subsistence Bibliography Project--Northwest Alaska;
Andersen, D., Subsistence Bibliography Project--Northern Interior;
Cunningham, P., A Technical Report Describing an Algorithm to Estimate Number of Persons Who Have Participated in the Cook Inlet Subsistence Fishery Four or More Years;
Behnke, S., Contemporary Fish and Wildlife Use and the Economy of the Inland Denaina (draft);
Behnke, S., Draft Options for Naknek River Subsistence Fishery;
Behnke, S., Memorandum: Status of Subsistence Fisheries in Bristol Bay, 1980;
Behnke, S., Naknek River Subsistence Proposals;

Rehnke, S., Subsistence Use of Brown Bear in the Bristol Bay Area: A Review of Available Information;

Caulfield, R., Interim Report on the Survey of Permit Holders in the Tanana River Subsistence Permit Fishery (Subunit Y6-C);

Caulfield, R., Tanana River (Y-6C) Subsistence Permit Fishery Utilization Study, 1981 Operational Plan;

Huntington, C., Survey Information for Subsistence King Salmon Drift Gill Netting in Yukon Area District 4A;

Kelso, D., Presentation to the Special Committee on Subsistence;

Langdon, S., and Worl, R., Distribution and Exchange of Subsistence Resources in Alaska (Note: contractual study);

Pedersen, S., and Caulfield, R., Some Elements of Subsistence Land and Resource Use Within the Range of the Porcupine Caribou Herd in Alaska;

Stanek, R., Subsistence Fishery Permit Survey: Cook Inlet -- 1980;

Stanek, R., Nelchina Caribou Use Assessment;

Stanek, R., Tyonek King Salmon Subsistence Fishery: 1980 Activities Report;

Stickney, A., Subsistence Resource Utilization: Nikolai and Telida -- Interim Report;

Stickney, A., Subsistence Resource Utilization: Nikolai and Telida -- Interim Report II;

Thomas, D., Nome River Subsistence Research Report;

Thomas, D., Norton Sound - Bering Strait Subsistence King Crab Fishery;

Thomas, D., Norton Sound Baseline Subsistence Study: Shaktoolik;

Veltre, D., and Veltre, M., A Preliminary Baseline Study of Subsistence Resource Utilization in the Pribilof Islands;

Wolfe, R., Yukon Delta Sociocultural Systems Analysis (draft) (Note: contractual study prepared for Alaska Outer Continental Shelf Socioeconomic Studies Program, Bureau of Land Management).
V. THE DEPARTMENT'S ANILCA TITLE VIII IMPLEMENTATION PROGRAM

The Department began planning for ANILCA implementation during 1980. By early 1981, a comprehensive plan and a budget request had been prepared. During the 1981 legislative session, the Department's ANILCA implementation budget was approved. Approximately three and one-half million dollars were appropriated specifically for Title VIII implementation during fiscal year 1982 in the following project categories:

1. Establishing regional councils;
2. Operational and technical support for regional councils;
3. Resource assessments;
4. Litigation;
5. Data support for state and regional council representatives to park and park monument commissions.

The Department began full implementation efforts on July 1, 1981. The sequential phases of the Department's Title VIII effort will be implemented throughout fiscal year 1982 and will continue as a regular part of the Department's ongoing program.

A. Establishment of Regional Councils

Prior to ANILCA, the State's regional councils operated within general, flexible regions. The Department and the Boards have now initiated action to clarify the regional boundaries in order to reinforce the institutional role of the councils. The Boards have always believed that flexibility is essential if the councils are to be effective. That is, fish and game frequently cross political and geographical boundaries. These resource populations may be taken in more than
one region. In order for the regional council system to address the concerns of all the people who may harvest these animals, the councils must be structured to allow participation by all groups interested in a particular resource question.

In order to assure that regional differences in subsistence use are adequately accommodated and workable boundaries are developed, a public participation process was initiated during the summer of 1981. Two boundary delineation workshops were held in late September as the first steps in this public participation process. One of these workshops was organized specifically to include representatives of local advisory committees and of groups interested in subsistence. The materials resulting from these workshops are attached as Appendix 20. Packets of information, including a variety of boundary options, were distributed to advisory committees, workshop participants, legislators, and others. Additional public comment was solicited prior to the Commissioner's selection of regional boundaries for submission as a proposal to the Boards. Substantial comment was received before the Commissioner's final choice. Proposed boundaries will be submitted to the joint meeting of the Boards of Fisheries and Game in December.

The Boards also will be considering regulations to govern the conduct of regional council business and the manner in which council recommendations are addressed. Although existing regulations establish procedures for regional council functioning, proposals will be offered which articulate the councils' authority and operations so as to make clear that the regular, formal council role apparently intended by Congress has been
firmly established. In addition, the Board will consider proposals which incorporate the Title VIII standards for Board review of regional council recommendations.

Regional council regulations can be adopted only by the Boards of Fisheries and Game acting jointly. The Boards meet regularly in the spring and fall of each year to consider regulatory proposals. Accordingly, the December 1981 meeting is the Boards' first opportunity to consider proposals since the Department's AMILCA response program was approved by the Alaska Legislature. It is also the first time specific proposals reflecting Title VIII regional council considerations have been submitted to the Boards. Because consideration of these proposals will not be completed prior to December 2, 1981, a summary of relevant action by the Boards will be submitted as a supplement to this submission.

B. Staffing, Technical Support and Scientific Data for the Regional Councils

The Department has begun to implement three kinds of support for the regional councils: (1) operational-logistical support, (2) technical liaison and social science data support, and (3) biological data support. The first of these, operational-logistical support, will be provided by six new professional positions plus clerical staff attached to the Executive Director, Alaska Boards of Fisheries and Game. To the extent practicable, these staff will be assigned to a particular council and be located full time in the region served by that council. They will assist the council in conduct of its day-to-day operations, including: arranging travel, agendas, and accounting services; distributing
Board-related materials; responding to questions; facilitating intracouncil and intercouncil communication; recording minutes of meetings; assisting councils in transmitting their views to the Boards; advising the councils concerning available resources which may be useful in performance of council work; and providing logistical support for all phases of the council's authorized functions.

The Executive Director has prepared position descriptions which have been submitted for approval by the Alaska Department of Administration. Recruitment and hiring can begin as soon as these administrative steps are completed. Because of the time lags involved in this process, it is unlikely that full staffing will be achieved by December 2, 1981. Nevertheless, the positions have been funded and the Department is committed to hiring qualified professionals. Progress in staff development for the councils will be summarized in a supplement to this submission.

The Subsistence Division currently is hiring two levels of professional staff to provide technical liaison and social science data to the regional councils. As part of its operating budget, the Division will add six Resource Specialist III positions. To the extent practicable, these staff will be assigned to and located in regions associated with particular councils. These staff will be qualified social science professionals with expertise in a range of field and institutional settings. Their functions will include: direct technical liaison to the regional councils; technical consultation with councils and staff regarding conduct of council functions; provision of extant technical and scientific data to councils; coordination and supervision of Division -30-
field research related to regional council concerns throughout the region; design and quality control of studies conducted at the regional council's request; and provision of technical services to the council in formulating its work products (e.g., annual reports and regulatory recommendations).

In light of these responsibilities, the Resource Specialist III's will have little time for original field research; accordingly, the Alaska Legislature approved two years of funding for six Resource Specialist II's to conduct field studies in response to regional council needs. These efforts will build upon ongoing baseline work conducted as part of the Division's core program and will address three areas:

1. Problem-specific, applied research directed toward anticipated data needs of the councils;
2. Issue-specific, applied research in response to data requests of the councils;
3. Issue-specific, applied research in response to data requests of the councils' representatives to park and park monument commissions.

The Resource Specialist II positions are intended as full time field research positions, and to the extent practicable they will be located in the region served by a particular council.

Because Title VIII makes clear that the highest quality, most current social science data are necessary in order to fulfill regional council functions, the Subsistence Division's program is intended to provide sound baseline data (ongoing project), current data and technical liaison (new Resource Specialist III positions), and issue or problem area studies (new Resource Specialist II positions).
All the new resource specialist positions have been approved and recruitment is underway. Three of the six R.S. III's have been hired. It is anticipated that staffing will be substantially complete by early 1981.

In order to fulfill the regional councils' authorized functions, reliable biological information also is required. Accordingly, the Department's management divisions -- Commercial Fisheries, Game, and Sport Fish -- have been authorized to conduct data analyses and field studies which will provide resource information to the councils. Although these tasks will differ depending upon the species and questions being studied, the following are representative steps:

1. Determine key harvest or conflict areas;
2. Review and assemble existing data for use by the councils;
3. Design and conduct field studies (e.g., surveys of harvest catch and effort, catch sampling, life histories, catalogs and inventories, surveys of resource abundance and population structure);
4. Compile and analyze new field data, including data processing functions;
5. Assemble and distribute new data to local advisory committees and regional councils.

The management divisions also will provide limited operational and technical support to the regional councils. Services anticipated for the local advisory committees and regional councils include preparing and presenting: proposals and supporting materials, staff comments, and data or technical information on resource status and use. Game Division also will supplement the council staff with clerical assistance,
formal recording of the proceedings, audio-visual equipment, and other logistical services.

VI. SUMMARY

The State of Alaska has implemented a comprehensive subsistence program based upon the priority appearing in Alaska's subsistence statute. Research leading to both baseline and issue-specific data is conducted by the Subsistence Division, Alaska Department of Fish and Game. These data are used by the Boards of Fisheries and Game in considering allocation proposals. The information also is used by state and federal agencies, local communities, and other entities in making decisions affecting subsistence land and resource use.

The existing local advisory committee and regional council system provides a participation framework that is consistent with Title VIII provisions. The Department and the boards presently are in the process of delineating regional boundaries within which the councils will operate. In addition, the boards will consider proposals for regulations to govern the conduct of regional council business and the standards by which council recommendations are considered. The Department also has developed a plan for providing adequate, qualified staff to the regional councils and for fulfilling other Title VIII functions.

When these refinements and extensions are complete, the State will have a fully integrated system of research, management, and regulatory participation. These diverse program elements, together with the
provisions of law discussed in the Attorney General's opinion, establish the performance required by Title VIII of the Alaska National Interests Lands Conservation Act.
Note:

1. The Board recognized that "these use patterns may occur in road-connected communities as well as in non-road-connected areas" and that the ten characteristics may be established not only by communities but also by subcommunities, groups and individuals. Alaska Board of Fisheries, Amended Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, Resolution #81-91-FB, (April 6, 1981). However, on the record presented, the Board concluded that no other showing of customary and traditional uses of Cook Inlet Salmon had been made.

2. A list of the Subsistence Division's major written products completed since the Division became operations in 1979 appears as Appendix 19.
Appendices

1. Chapter 151, Alaska Session Laws of 1978


3. Alaska Boards of Fisheries and Game, Policy # 79-5-JR (March 1979)


5. Copper River Subsistence Salmon Management Plan, 5 AAC 01.630 and 5 AAC 01.647

6. 1980 Regulations for Local Fish and Game Advisory Committees and Regional Councils

7. 1979 Alaska Subsistence Fishing Regulations

8. 1980 Alaska Subsistence Fishing Regulations

9. 1979 Alaska Game Regulations

10. 1980 Alaska Game Regulations

11. Subsistence: A Position Paper, Alaska Department of Fish and Game (November 24, 1980)

12. 1981 Alaska Subsistence Fishing Regulations

13. Alaska Board of Fisheries, Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, #80-79-FB


15. Alaska 1981-82 Permit Drawing Hunts

16. 1981 Alaska Game Regulations

17. Memorandum from Robert A. Hinman, Deputy Director, Division of Game to Greg Cook, Executive Director, Boards of Fisheries and Game, "Subsistence Provisions in 5 AAC" (May 27, 1981)

19. Subsistence Division Written Work Products
20. Alyeska Regional Boundary Workshop Summary