

No. 24-179

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**IN THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT**

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STATE OF ALASKA DEPARTMENT OF FISH AND GAME,  
*Plaintiff - Appellant,*

v.

FEDERAL SUBSISTENCE BOARD; et al.,  
*Defendants - Appellees,*

and

ORGANIZED VILLAGE OF KAKE,  
*Intervenor-Defendant - Appellee.*

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On appeal from the U.S. District Court  
for the District of Alaska, Anchorage  
No. 3:20-cv-00195-SLG  
Hon. Sharon L. Gleason

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**APPELLANT STATE OF ALASKA'S OPENING BRIEF**

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Laura Wolff  
Assistant Attorney General  
Department of Law  
1031 West Fourth Ave, Suite 200  
Anchorage, AK 99501  
(907) 269-6612  
laura.wolff@alaska.gov

*Attorney for Appellant*  
STATE OF ALASKA

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## INTRODUCTION

The regulation of hunting is a core part of a state’s police powers. *See Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976). And when Congress passed the Alaska Statehood Act, it made clear that the State of Alaska would—like other states—control management of wildlife throughout its borders, including on federal lands. Pub. L. 85-508, § 6(e), 72 Stat. 339 (1958). This core state power is of such importance to Alaska that sustainably managing wildlife is enshrined in the state Constitution. Alaska Const., art. 8, § 4.

When Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), it recognized that “Alaska is different.” *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016). And it intended to protect that difference and the economic and social needs of the State of Alaska and its people by expressly maintaining the State’s plenary management of hunting throughout its territory, including on federal public lands. *See* 16 U.S.C. §§ 3101(d); 3202(a).

Congress made a narrow exception to the State’s plenary control, as provided in Title VIII of ANILCA. 16 U.S.C. § 3202(a). That title affords a preference to rural subsistence users “when it is necessary to restrict taking to assure . . . the continuation of subsistence uses of [certain] population[s of fish or wildlife].” 16 U.S.C. § 3112(2); *see also* 16 U.S.C. §§ 3114, 3125(3). The preference does not allow the Federal Subsistence Board to open hunting seasons

that the State has closed. *See* 16 U.S.C. §§ 3112(2), 3114, 3125, 3202(a). And the preference does not allow the Federal Subsistence Board to delegate federal power—much less power it did not even have—outside the agency. *See Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1210–11 (9th Cir. 2001) (discussing that Congress may delegate federal authority to a tribe, but only when Congress “expressly delegated to the Tribe” that authority).

Yet that is exactly what the Federal Subsistence Board did. The Board exceeded its statutory authority when it usurped the State’s management of wildlife by opening a hunting season for the Village of Kake. It further exceeded its authority by delegating to the Village the decisions of who gets to hunt and who gets the spoils of the hunt.

The Court should reverse the district court’s order and conclude that the Board acted beyond its authority when it opened the Kake hunt and delegated federal authority related to the hunt outside the federal agency.

### **JURISDICTIONAL STATEMENT**

The district court had jurisdiction over this case pursuant to 28 U.S.C. § 1331. The State of Alaska appeals from the district court’s final judgment dated November 6, 2023, 1-ER-2. Alaska timely filed its notice of appeal on January 4, 2024, 2-ER-94. Fed. R. App. P. 4(a)(1)(B). This Court’s jurisdiction over the appeal arises under 28 U.S.C. § 1291.

## ISSUES PRESENTED

1. When the State has opened a hunting season, ANILCA permits the Secretaries to *restrict* the taking of wildlife on federal public land by non-rural hunters in order to give rural subsistence users a hunting priority. *See* 16 U.S.C. § 3112(2); *see also* 16 U.S.C. §§ 3114, 3125(3). ANILCA says nothing about whether the Secretaries can open new hunting seasons. Because of this silence, the district court gave the federal agency *Chevron* deference, and concluded that the agency reasonably interpreted Congress's silence as authorization to open hunting seasons. Did the federal agency exceed its statutory authority when it opened the Kake hunt for rural subsistence users even though the State had closed the hunting season?
  
2. The Constitution vests federal power in the federal government. Delegation of federal power to another sovereign may be permissible, but only if Congress expressly authorized that delegation. *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1216 (9th Cir. 2001) (en banc). Even when Congress expressly delegates authority, there are still constitutional limits on delegation. *United States v. Mazurie*, 419 U.S. 544, 556–57 (1975). The district court did not consider whether Congress even implicitly (much less expressly) intended to allow the Secretaries to delegate the administration of a federal hunt to tribes. It concluded instead that the delegation was lawful because it was only a small delegation of authority and

because the Tribe was in the best position to execute that authority. Did the district court err in concluding that the Board's delegation of hunting authority<sup>1</sup> was lawful?

### **AUTHORITIES**

All relevant statutory and regulatory authorities, along with some excerpts of legislative history, appear in the Addendum to this brief.

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<sup>1</sup> The State's position, as describe in issue 1, is that the Board does not have this authority, and so could not possibly delegate it to the Tribe in the first instance. Should this Court agree with the State on issue 1, it need not get to issue 2.



## STATEMENT OF THE CASE

### I. The State manages wildlife throughout Alaska.

Regulation of wildlife is part of a state’s historic “broad trustee and police powers.” *See Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976). Pursuant to that power, states manage hunting and wildlife within their borders, including on federal land, unless expressly limited by Congress. *See id.* at 543.

When Congress passed the Alaska Statehood Act, it intended to transfer to Alaska the same broad measure of administration and jurisdiction over wildlife as possessed by other states. *Metlakatla Indian Commty. v. Egan*, 369 U.S. 45, 57 (1962); Pub. L. 85-508, § 6(e), 72 Stat. 339 (1958). And the following year, after the Secretary of the Interior recognized that Alaska managed its resources in “the broad national interest,” the State assumed full management of its wildlife resources. Executive Order 10857 (Dec. 29, 1959), printed in 25 Fed. Reg. 33.

The State manages its wildlife under the constitutionally-mandated “sustained yield” principle. Alaska Const., art. 8, § 4. “Sustained yield” is defined by statute for wildlife management as “the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis.” Alaska Stat. § 16.05.255(k)(5). This principle balances “maximum use of natural resources with their continued availability to future generations.” *West v. State, Bd. of Game*,

248 P.3d 689, 696 (Alaska 2010). Unlike the federal government, the State actively manages wildlife so that there is a surplus of game to be harvested. *Compare, e.g.*, Alaska Admin. Code tit. 5, §§ 92.106–127 (establishing intensive management plans to meet caribou, deer, and moose harvest needs), *with* ADF&G’s Report on the Unimak Caribou Herd (2014) (discussing how U.S. Fish and Wildlife Service denied State’s request to actively manage herd on federal lands and instead allowed caribou population to dwindle towards possible extirpation), [http://www.adfg.alaska.gov/static/research/wildlife/speciesmanagementreports/pdfs/caribou\\_2015\\_chapter\\_6\\_unit\\_10\\_unimak.pdf](http://www.adfg.alaska.gov/static/research/wildlife/speciesmanagementreports/pdfs/caribou_2015_chapter_6_unit_10_unimak.pdf).

In Alaska, the Department of Fish & Game administers regulations adopted by the Board of Game in accordance with its statutory duty to “promote . . . hunting” and “preserve the heritage of . . . hunting . . . in the state.” Alaska Stat. § 16.05.050(a)(19). The Board of Game provides “for the conservation and development” of Alaska’s game resources. Alaska Stat. § 16.05.221(b). Critical to the Board of Game’s management is its ability to establish seasons for hunting. Alaska Stat. § 16.05.255(a). It regulates “the conservation, development, or utilization of game in a manner that addresses whether, how, when, and where the public asset of game is allocated or appropriated.” Alaska Stat. § 16.05.255(j).

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) and in doing so expressly preserved Alaska’s control over wildlife

management throughout its territory, including on federal public lands. 16 U.S.C. § 3202(a). Congress provided that “[n]othing in this Act is intended to . . . diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in [Title VIII] . . . .” 16 U.S.C. § 3202(a).

Title VIII, the subsistence title, protects the subsistence way of life for rural Alaskans. *Alaska v. Fed’l Subsistence Bd.*, 544 F.3d 1089, 1091 (9th Cir. 2008). Congress made statutory findings and policy determinations at the beginning of Title VIII, 16 U.S.C. §§ 3111, 3112, which help inform implementation of the substantive provisions of the Act, 16 U.S.C. §§ 3113–3126. One of the main purposes of the subsistence program is to grant certain subsistence uses priority over other uses. 16 U.S.C. §§ 3112(2); 3114; 3125(3). ANILCA defines subsistence users as both Native and non-Native rural Alaskans who engage in customary and traditional uses of wildlife. *See* 16 U.S.C. § 3113. Many non-rural Alaskans, including many former rural residents who have cultural and traditional ties to subsistence hunting but who have been displaced to urban areas for health, education, and other social reasons, also practice subsistence hunting under the State’s statutory subsistence priority, Alaska Stat. § 16.05.258, but they are not recognized as subsistence users under ANILCA.

Congress envisioned that the State of Alaska would implement the rural subsistence priority, 16 U.S.C. § 3115(d), and the State did so for many years. *See Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1189 (9th Cir. 2000). When the Alaska Supreme Court ruled that the Alaska Constitution prohibited a preference based on rural residency, the Secretary of the Interior and the Secretary of Agriculture took over implementing Title VIII. Temporary Subsistence Management Regulations for Public Lands in Alaska, 55 Fed. Reg. 27,114, 27,114 (June 29, 1990) (discussing how the Secretaries “implement a joint program to grant a preference in favor of subsistence uses of fish and wildlife resources on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA’s requirements”); *McDowell v. State*, 785 P.2d 1, 9 (Alaska 1989) (holding that the Alaska Constitution bars implementing ANILCA’s rural subsistence preference).

The Secretary of the Interior and the Secretary of Agriculture then created the Federal Subsistence Board (“Board”), and delegated to the Board their authority “for administering the subsistence taking and uses of fish and wildlife on public lands.<sup>[2]</sup>” 50 C.F.R. § 100.10; 36 C.F.R. § 242.10.<sup>3</sup>

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<sup>2</sup> “Public lands” are federal, as opposed to State or private, lands. 16 U.S.C. §§ 3102(1)–(3).

<sup>3</sup> The same regulations are published both under Title 50 (Interior’s regulation) and also Title 36 (Agriculture’s regulations).



## **II. The Board opened a 60-day hunt for the Village of Kake.**

In the spring of 2020, the Organized Village of Kake, a federally recognized tribe, requested the opening of an emergency hunt of two bull moose and five male deer for its tribal citizens. 2-ER-64. It did not request a hunt for non-tribal members of the community who, under ANILCA, would be qualified to participate. 2-ER-64, 67. The Tribe alleged that the COVID-19 pandemic made the meat delivered to its community stores more expensive and of poorer quality than wild game. 2-ER-64, 66–67. It requested an emergency hunt because the harvestable surplus from the prior state season had already been taken and the upcoming moose and deer hunting season would not open until the fall and late summer, respectively. *See, e.g.*, 50 C.F.R. § 100.26(n)(3); 36 C.F.R. § 242.26(n)(3) (incorporating State seasons) and Alaska Dep’t Fish & Game, Alaska Hunting Regulations – Unit 3, <https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/gmu3.pdf>. Without meaningfully consulting with the State how this emergency hunt would affect its wildlife management, the Board approved the Tribe’s request and authorized an emergency hunt, opening the moose and deer season in late June and permitting the Tribe to harvest two bull moose and five male deer.<sup>4</sup> 2-ER-59–63. The Board delegated to the Tribe the decision of who would be able to participate

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<sup>4</sup> This special action is labeled throughout the record as WSA19-14.



in the special hunt. 2-ER-62. And the Tribe published on Facebook its intent to give meat first to “Kake Elders that are enrolled tribal members,” and if there is leftover moose meat, to “as many enrolled [tribal] member households as possible.” *See* 1-ER-40–41; 2-ER-108 (Dist. Ct. Dkt. 62 at 14—brief containing screenshot).<sup>5</sup>

The Board relied on the Secretaries’ “[e]mergency special action” regulation, which provides “[i]n an emergency situation, if necessary . . . for public safety reasons, the Board may immediately open or close public lands for the taking of fish and wildlife for subsistence uses” for a period that “may not exceed 60 days.” 50 C.F.R. § 100.19(a); 36 C.F.R. § 242.19(a); 2-ER-62–63. The Board reasoned that “public safety related to food security concerns” merited opening the hunt. 2-ER-63. The Board further found that the harvest “presents no known conservation concern for the growing population of moose and stable population of Sitka black-tailed deer in the harvest area,” and that restricting the harvest to male animals would “reduce the impact to the population.” 2-ER-63. In reaching these conclusions, there was no meaningful consultation with the State—the primary manager of the moose and deer populations. 2-ER-59–61.

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<sup>5</sup> Notwithstanding this post, the local federal ranger instructed the Tribe to distribute meat “regardless of race or tribal status,” and the Tribe’s president responded that the Tribe was “mindful of this” and did not have a problem distributing to anyone if they are in need. 2-ER-58.

**III. The State sued, the district court dismissed as moot the State’s arguments related to the Kake hunt, and this Court reversed and remanded.**

The State sued the Federal Subsistence Board and several federal officials alleging, among other things, that the Board violated ANILCA by opening an emergency hunt in Kake. 2-ER-70–93. Without getting to the merits of the State’s argument that the Board lacked the statutory authority to open a hunting season, the district court concluded that a challenge to the Kake hunt did not fit within the “capable of repetition, yet evading review” exception to mootness. *Dep’t of Fish and Game v. Fed’l Sub. Bd.*, 574 F. Supp. 3d 710, 726–29 (D. Alaska 2020).

The State appealed and this Court reversed, concluding that whether the Board violated ANILCA by opening the Kake hunt fit within that mootness exception. *Dep’t of Fish and Game v. Fed’l Sub. Bd.*, 62 F.4th 1177, 1181–83 (9th Cir. 2023). And it remanded back to the district court because “Alaska’s claim raises a question of first impression in this circuit and requires resolution of complicated issues of statutory interpretation.” *Id.* at 1183.

**IV. The district court rejected the State’s arguments on the merits.**

The district court addressed the primary issue on remand—whether ANILCA gives the Board authority to open an emergency hunt to rural subsistence users—as well as issues related to the legality of delegating the Kake hunt. 1-ER-3–44 (to be published in F. Supp. 3d). It used the *Chevron* framework to determine

whether the agency acted within its statutory authority. 1-ER-29. First, it concluded that ANILCA is silent as to whether the federal government may open hunts, in that the Act “does not explicitly authorize nor expressly prohibit the federal government from opening rural subsistence hunts for public safety reasons.” 1-ER-29. The district court found this silence “ambiguous.” 1-ER-29. Next, it applied the second step of *Chevron* and concluded that the Board’s interpretation of ANILCA was “a permissible construction of the statute.” 1-ER-38. The court concluded it was reasonable for the Board to interpret ANILCA as giving the Secretaries authority to open emergency subsistence hunts for public safety reasons. *See* 1-ER-38. It reasoned that the purpose of the subsistence title in ANILCA was to “provide the opportunity for rural residents engaged in a substance way of life to continue to do so,” and having the authority to open seasons fit within that purpose. 1-ER-33–34. It concluded that regional councils advised the Secretaries on the “management” of “taking” wildlife for subsistence, and “taking” wildlife “necessarily implies that the federal government would be able to both close and open emergency rural subsistence hunts for public safety reasons on public lands.” 1-ER-31.

The district court further concluded that the Federal Subsistence Board did not need express statutory authority to subdelegate aspects of the hunt to the tribe, and that the agency’s delegation was “reasonable and logical.” 1-ER-42–43.

The State appeals.

### SUMMARY OF THE ARGUMENT

1. When the Board opened an emergency 60-day hunt in Kake, the Board exceeded its statutory authority. The district court correctly concluded that Congress did not expressly authorize the Secretaries to open hunting seasons the State had closed. 1-ER-29. The district court erred, however, in concluding the Board could poach that authority by relying on *Chevron* deference. 1-ER-38.

The Board is not entitled to *Chevron* deference because there is no statutory ambiguity that would authorize *opening* seasons. Through ANILCA, Congress expressly preserved the State of Alaska’s ability to manage its fish and wildlife resources throughout its borders. 16 U.S.C. § 3202(a). Congress made a narrow exception as provided in Title VIII, which affords a preference to rural subsistence users, but only “when it is necessary *to restrict* taking in order to assure . . . the continuation of subsistence uses.” 16 U.S.C. §§ 3112(2) (*italics added*); *see also* 16 U.S.C. § 3114. Congress considered and rejected a version of the bill authorizing the Secretaries to open seasons. *See infra* pages 28–29. The Board may not rely on *Chevron* to give itself, through regulation, the precise power Congress decided not to authorize.

*Chevron* deference is also inappropriate here because when Congress legislates in areas of traditional state authority—like regulation of hunting—it must



do so clearly. *See Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991). And, as the district court already correctly concluded, Congress did not clearly authorize the Secretaries to open hunts. 1-ER-29–30.

2. If the Board had the authority to open the season, the Board still acted outside the scope of its authority by delegating to Kake the decision of who gets to hunt and who gets the meat. Although *Congress* may delegate federal authority to a sovereign, such as a tribe, it must do so expressly. *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1211 (9th Cir. 2001). Congress did not do that here. An agency may not subdelegate authority that Congress did not clearly authorize.

### **STANDARDS OF REVIEW**

Review of the agency’s decision to open the hunt falls under § 706 of the Administrative Procedure Act. The Court will hold unlawful an agency’s decision that is “not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2).

Whether an agency action is not “in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations” is a question of statutory interpretation. *Nw. Envtl. Advocates v. U.S. E.P.A.*, 537 F.3d 1006, 1014 (9th Cir. 2008). Agency action is not in accordance with law when “it is in conflict with the language of the statute.” *Id.* Likewise, whether an agency’s interpretation of the scope of its authority is “ultimately inconsistent” with the statute depends on the



“text and context of the statute,” as well as “[t]he legislative history.” *Sturgeon v. Frost*, 587 U.S. 28, 52–54 (2019).

## ARGUMENT

### **I. The Federal Subsistence Board exceeded its authority when it opened the Kake hunt.**

#### **A. ANILCA does not give the Secretaries authority to open seasons.**

Congress did not, in passing ANILCA, choose to preempt the State’s holistic management of hunting throughout its borders that Congress had granted that State at statehood. To the contrary, Congress maintained the status quo, with one narrow exception. Section 3202, titled “Taking of fish and wildlife,” provides, in relevant part:

Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in subchapter II [Title VIII] of this chapter, or to amend the Alaska constitution.

16 U.S.C. § 3202(a). This provision directs that except as provided in Title VIII of ANILCA, the State has the authority to regulate the taking of wildlife. Prior to ANILCA, the State regulated hunting throughout all its borders including on federal lands.<sup>6</sup>

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<sup>6</sup> When Congress recently enacted a law invalidating a federal rule that purported to manage wildlife statewide, Pub. L. 115-20, 131 Stat. 86 (2017), the Alaska delegation reiterated: “The Alaska National Interest Lands Conservation Act in 1980 further, in fact, verified what the Statehood Act did: protecting the right of the State to manage fish and game”; Alaska’s “congressional delegation

Congress narrowly changed the status quo by authorizing the Secretaries of the Interior and Agriculture to carry out Title VIII if the State was unable to do so. 16 U.S.C. §§ 3115(d), 3124. But that authority is limited to what Congress intended and authorized. And Congress did not authorize or intend the Secretaries to open hunts that the State had closed.

Rather, Congress simply intended to afford rural subsistence users a “priority” or “preference.” 16 U.S.C. § 3114. Section 3114, titled “preference for subsistence uses” affords a “priority” to “the taking on public lands of fish and wildlife for nonwasteful subsistence uses.” When the Secretaries promulgated subsistence regulations, they asserted they were implementing a “program to grant a *preference* in favor of subsistence uses of fish and wildlife resources on public lands.” Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D, 57 Fed. Reg. 22,530 (May 28, 1992) (*italics added*). The Secretaries’ authority revolves around this preference.

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fought to include explicit provisions in [ANILCA] that made it abundantly clear that the State of Alaska still had primacy in managing fish and game throughout the entire State—State lands and Federal lands”; and in passing the Alaska Statehood Act and ANILCA “Congress made it clear: Alaska, you are to manage the fish and wildlife within your borders.” 163 Cong. Rec. H1260, 2017 WL 640640 (Feb. 16, 2017) (remarks of Congressman Young); 163 Cong. Rec. S1864–05, S1868, 2017 WL 1066358 (Mar. 21, 2017) (remarks of Sens. Sullivan and Murkowski).

A priority or preference does not mean the creation of an opportunity where none exists, but rather advantaging one group at the expense of another. *See* Merriam-Webster Online Dictionary, <https://www.merriamwebster.com> (search for “preference” and “priority”). For instance, if a frequent flyer has priority or preferred seating on a plane, she can get a better seat on a flight. But she cannot demand that the airline schedule an entirely new flight. As applied here, it means that the Secretaries can restrict hunting on public lands to prioritize rural subsistence uses, but they cannot create new seasons.

The text of ANILCA makes clear that this priority is to be effectuated by *restricting* hunters who are not rural subsistence users. In ANILCA’s statutory policy section, Congress announced that this priority applies “when it is necessary to *restrict* taking.” 16 U.S.C. § 3112(2) (emphasis added).<sup>7</sup> While the policy section is not self-executing, it informs the Court’s interpretation of § 3114, the substantive “preference” provision in ANILCA. *See, e.g., Sturgeon*, 587 U.S. at 52–54 (using ANILCA’s statement of purpose to inform interpretation of § 103(e)

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<sup>7</sup> Section 3112(2) reads: “It is hereby declared to be the policy of Congress that – (2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska *when it is necessary to restrict taking* in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses;” (emphasis added).

and the limited scope of federal regulatory authority). Section 3114 itself further speaks in terms of restrictions: it outlines subpriorities within the rural subsistence priority that may be implemented “[w]henever it is necessary to *restrict* the taking of populations of fish and wildlife.” 16 U.S.C. § 3114 (emphasis added).

To be clear, the State opens hunting seasons whenever possible. It is legally-obligated to maintain game populations so that people can hunt. Alaska Const., art. 8, § 4; Alaska Stat. § 16.05.255(k)(5). And Congress enacted ANILCA with the background understanding that the State would manage wildlife throughout its borders to promote hunting and a high level of game for hunting. *See* Alaska Statehood Act, Pub. L. 85-508, § 6(e), 72 Stat. 339 (1958); Alaska Const., art. 8, § 4. The rural subsistence priority comes into play when, despite the State’s opening hunting seasons, rural subsistence users are still not getting enough meat such that the Secretaries must restrict non-rural use.

Not only is the rural subsistence priority effectuated by restrictions, but Congress even restricted the Secretaries’ use of restrictions. ANILCA prohibits the Secretaries from restricting the taking of wildlife on public lands unless “necessary” for certain enumerated reasons. 16 U.S.C. §§ 3114, 3125, 3126. The Secretaries can restrict rural subsistence hunting or any other hunting (including closing down hunts completely), but only if “necessary” (1) to protect the continued viability of certain populations, (2) to continue rural subsistence uses of



those populations, (3) for public safety, and (4) for administration. 16 U.S.C. §§ 3114, 3125, 3126.

While the Secretaries may temporarily *close* federal public lands “if necessary for reasons of public safety,” the power to “close” does not include the power to “open.”<sup>8</sup> Section 3126 provides that the Secretaries may close public lands to rural subsistence users for public safety reasons. In drafting § 3126, Congressmen contemplated that the Secretaries “might prohibit subsistence hunting within a certain area surrounding public campgrounds or hiking trails.” H. Rep. 95-1045, Part II at 92 (1978) (A-64). Section 3125 discusses when the Secretaries may restrict other types of hunting, and incorporates the “public safety” reason for restrictions applied to rural subsistence hunting. This way, when the Secretaries restrict rural subsistence hunting on that nearby campground, they may also restrict non-rural subsistence hunting.

The legislative history supports the plain meaning of the text, which gives effect to the priority only through *restrictions* on taking wildlife. The sectional analyses of the bill that became ANILCA clarify that the priority is effectuated by “restrictions on taking” wildlife. S. Rep. 96-413, at 269–70 (1979) (A-22–23);

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<sup>8</sup> The State agrees that the Secretary has the authority to close and reopen a season that the State has opened. But that is different from opening a season the State has closed.



S. Rep. 95-1300, at 221 (1978) (A-48). “If a particular fish or wildlife population (e.g. salmon, moose or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed . . . .” S. Rep. 96-413, at 269 (A-22); S. Rep. 95-1300, at 221 (A-48). Conversely, “if the continued viability of a particular population or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons” (i.e., “all persons engaged in subsistence and other uses”), ANILCA directs the establishment of “regulations which *restrict* the taking of such population to Alaska residents engaged in subsistence uses.” S. Rep. 96-413, at 269–70 (A-22–23) (emphasis added); S. Rep. 95-1300, at 221 (A-48). Congress never authorized the opposite of *restricting* hunting (i.e., opening hunting seasons for rural subsistence users).

In fact, Congress rejected a version of the bill that gave the Secretaries authority to *open* seasons. In May 1978, the House of Representatives passed its version of ANILCA (H.R. 39), and forwarded the bill to the Senate. House Comm. On Interior and Insular Affairs, Calendar, H.R. 39 (1980) (A-10). The House bill gave the Secretaries emergency authority to “open public lands, or any portion thereof, to subsistence uses by local residents” while the State still managed the subsistence preference. *See* Section 705(d)(2) of H.R. 39, 96th Cong. (1978), and

H. Rep. 95-1045, Part II at 27, 93 (1978) (A-60, 65, 85). The House Report noted that the proposed federal authority to open a season could occur only in “very limited circumstances,” would constitute an “extraordinary action,” could not occur before providing notice to the State, and could not be extended for greater than 60 days “under any circumstances.” H. Rep. 95-1045, Part II at 93 (1978) (A-65). Upon receiving H.R. 39, the Senate sent the bill to the Committee on Energy and Natural Resources, which held seven days of hearings in Washington D.C. in addition to two weeks of workshops in Alaska villages. S. Rep. 95-1300, at 112 (1978) (A-41). Among the many comments received about H.R. 39, the Alaska Board of Fish and Game objected to the wildlife management provisions on rural subsistence use that “essentially supplant an integrated statewide management system with a fragmented system under federal government direction.” 95 Cong. Rec. S9383 (June 19, 1978) (remarks of Mr. Stevens) (A-68). The Committee made significant changes to the House’s bill, explaining that it “adopted a subsistence management system similar in concept to the House approach” but “after careful consideration the committee [] modified the Federal-State relationship in a number of important aspects.” S. Rep. 95-1300, at 196 (1978) (A-43). One change the Committee made was *deleting* the provision authorizing the Secretaries to *open* an emergency season. *Compare* Title VIII in 95-1300 at 26–32

(A-34–40), *with* Section 705(d)(2) in H.R. 39, 96th Cong., 2d Sess. (1978) (A-85). And Congress passed the version of the bill that no longer contained that provision.

“Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987); *see also United States v. \$814,254.76, in U.S. Currency, Contents of Valley Nat. Bank Acct. No. 1500-8339*, 51 F.3d 207, 212 (9th Cir. 1995) (“This explicit deletion of a provision the only purpose of which was to provide for retroactive enforcement is strong evidence that Congress intended only prospective application.”); *Century Sw. Cable Television, Inc. v. CHIF Assocs.*, 33 F.3d 1068, 1071 (9th Cir. 1994) (presuming that Congress did not mean to authorize cable companies to install boxes, wires, bolts, and screws to buildings because Congress deleted a provision that would have authorized such installation from an earlier version of a bill).

Despite the fact that Congress declined to give the Secretaries the authority to *open* emergency hunts, that is precisely the authority the Board has purported to give itself through regulation. 50 C.F.R. § 100.19 and 36 C.F.R. § 242.19 (giving itself authority to act in emergency situations for reasons of “public safety” to “open . . . public lands for the taking of fish and wildlife for subsistence uses”).

The Board acted ultra vires when it opened the Kake hunt because it had no statutory authority to open seasons regardless of the reason.

In reviewing ANILCA’s legislative history, the district court of Alaska observed that “[t]hrough the various legislative sessions, the role of the Secretar[ies] was consciously and intentionally reduced, and the role of the State was correspondingly increased.” *John v. United States*, 1994 WL 487830, at \*7 (D. Alaska Mar. 30, 1994).<sup>9</sup> The penultimate version of the bill (H.R. 39) gave the Secretaries emergency authority to open hunts and allowed the Secretaries to “close the public lands . . . to all consumptive uses except subsistence uses by local residents” when State regulations “threaten[ed . . . ] the ability of [rural] subsistence-dependent Alaska residents . . . to satisfy their subsistence needs.” H.R. 39 (emphasis added) (A-83). The final version of ANILCA deleted the emergency authority to open hunts, but maintained the Secretaries authority to close public lands when State regulations did not meet ANILCA’s requirements. It did not suddenly expand the Secretaries’ authority. Rather, ANILCA says that if the State does not implement the subsistence preference, then then the Secretaries

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<sup>9</sup> In the 1990s, the district court analyzed *who* can implement Title VIII and *where* it applied. *Id.* at \*1. The court independently reviewed the “voluminous” legislative history and attached a synopsis to its opinion. *Id.* at \*7, 19–21. This Court reversed in part the district court’s decision and narrowed where ANILCA applies, but it did not disrupt the district court’s lengthy analysis of legislative history. *Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995).



could “exercise [their] *closure* and other administrative authority over public lands.” 16 U.S.C. §§ 3115(c), (d) (emphasis added); *see also id.* § 3116. As the Secretaries described in the preamble to the subsistence regulations, once Alaska could no longer effectuate the priority, the Secretaries became tasked with implementing a “program to grant a preference in favor of subsistence uses of fish and wildlife resources on public lands.” 57 Fed. Reg. at 22,530. And the Secretaries would do so unless the State implemented laws consistent with “the definition, preference and participation as specified in sections 803 [3113], 804 [3114], and 805 [3115] of ANILCA.” 57 Fed. Reg. at 22,530. In other words, the Secretaries were now responsible for the ensuring that the definition of “subsistence uses” met Congress’s intention as defined in § 3113 (i.e., “the customary and traditional uses by rural Alaska residents of wild, renewable resources”). The Secretaries were now responsible for granting a priority as described in § 3114 for rural subsistence uses, and as defined in § 3113. And the Secretaries were now responsible for considering the reports and recommendations of regional advisory councils “in the exercise of [their] closure and other administrative authority over the public lands.” 16 U.S.C. § 3115(c).

“Other administrative authority” is not a catchall phrase for being able to make any rules related to rural subsistence hunting. It means administrative authority the Secretaries have pursuant to any other statutes (or other parts of



ANILCA) and administrative authority given to the Secretaries in the subsistence title, such as the authority to determine what “customary and traditional uses” means. *See, e.g., Alaska v. Federal Subsistence Bd.*, 544 F.3d 1089, 1092 (9th Cir. 2008) (discussing how the Board makes “customary and traditional” subsistence use determinations and uses advice of the regional advisory councils to make these determinations).

This Court should conclude that ANILCA plainly does not give the Secretaries the authority to open hunting seasons. Notably, the district court did not find that ANILCA plainly gives the Secretaries this authority. 1-ER-29–30. Rather, it concluded that ANILCA is silent as to whether Congress gave the Secretaries this authority and that the Secretaries’ interpretation is entitled to *Chevron* deference. 1-ER-38. But the statute is clear and does not give the Secretaries the authority to open seasons. To the extent this Court disagrees, and to the extent *Chevron* remains good law after this Supreme Court term, *Chevron* is still inappropriate here given the federalism concerns.

**B. ANILCA cannot implicitly preempt the State’s traditional management of its wildlife.**

Congress may not legislate in areas traditionally regulated by states unless it makes its intention “unmistakably clear.” *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991) (“Congress should make its intention ‘clear and manifest’ if it intends to pre-empt the historic powers of the States[.]”). The United States Supreme Court

“precedents require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power . . . .” *United States Forest Serv. v. Cowpasture River Pres. Ass’n*, 590 U.S. 604, 621–22 (2020); *United States v. Bass*, 404 U.S. 336, 349 (1971) (“[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.”). This means that *Chevron* deference, which defers to agency interpretations when there is an “ambiguity” or “silence,” is simply irreconcilable with allowing agencies to interpret silence as authority to preempt historic state police powers. Indeed, the Supreme Court has refused to afford *Chevron* deference “where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.” *See Solid Waste Agency of N. Cook County v. U.S. Army Corp of Eng’rs*, 531 U.S. 159, 172–73 (2001). And the Tenth Circuit has agreed that courts should presume federal law does not “supercede [the State’s] historical police powers to manage wildlife on federal lands within its borders ‘unless that was the clear and manifest purpose of Congress.’” *Wyoming v. United States*, 279 F.3d 1214, 1231 (10th Cir. 2002) (concluded that conflicting state law was preempted, but only because Congress clearly intended its law to grant federal agencies the authority to preempt state law).

*Chevron* deference is inapplicable here because it would permit federal encroachment upon the State’s historic police power without clear Congressional intent. The State has historic police powers over managing fish and wildlife throughout its territory, including on federal lands. *See Kleppe*, 426 U.S. at 545. This is critical because wildlife, especially migratory wildlife, do not distinguish between state and federal lands. And more than half of land within Alaska’s borders is federal.

When Congress passed the Alaska Statehood Act of 1958, it provided that the *State*, not the federal government, would manage fish and wildlife throughout Alaska. Pub. L. 85-508, § 6(e), 72 Stat. at 340–41. Sustainably managing wildlife is of such importance to the State that it is enshrined in the state Constitution. Alaska Const., art. 8, § 4. The State’s ability to execute this constitutional mandate depends on its ability to comprehensively prohibit hunting throughout its borders, except during the limited times when it opens hunting seasons. *See, e.g.*, Alaska Admin. Code tit. 5 § 85.001 (“Game may not be taken by hunting except as specifically provided in this chapter.”).

To be clear, Congress may, pursuant to the Property Clause, choose to preempt state management of fish and wildlife on federal lands. *See Kleppe*, 426 U.S. at 542–43; *see also* U.S. Const. art. IV, § 3, cl. 2. But Congress, rather than the agency, must make that choice, and it must do so clearly. Congress did not

in Title VIII give the Secretaries authority to preempt the State's primacy in managing wildlife by opening hunting seasons. Rather, Congress authorized the Secretaries to preempt State law and provide a priority to rural subsistence users, but only by *restricting* other users when hunting seasons were otherwise open, and only when necessary for certain enumerated reasons. *See* 16 U.S.C. §§ 3112(2), 3114, 3125(3); *see also* S. Rep. 96-413, at 269–70 (1979) (A-22–23); S. Rep. 95-1300, at 221 (1978) (A-48). Title VIII does not authorize the Secretaries to open a season that the State has closed for management purposes.

Nonetheless, the Federal Subsistence Board upended the State's conservation of its resources by opening a hunting season that the State had closed. The Kake hunt, which allowed the taking of two moose and five deer, may seem modest at first glance. 2-ER-62. But during the prior hunting season, there were only 26 bucks taken from the Kake area, and 55 total bulls harvested from the entire island on which Kake is located. 2-ER-63. While the State's management of deer and moose meant that there were no conservation concerns to the resource *before* the Board opened the hunt, increasing the available take like the Board did had the potential to *create* a conservation concern. 2-ER-63. To maintain a sustainable population, the State determines how many deer and moose should survive from year to year and sets hunting limits based on the estimated harvestable surplus. *See, e.g.*, 2-ER-46 (discussing how opening a season the State



has closed creates a “harvest debt”), 2-ER-51 (explaining how the “State determines the harvestable surplus to assure sustainable populations”), 2-ER-47 (explaining how State uses hunting data “in conjunction with population, composition, and habitat data to make informed management decisions ensuring the sustainability of the harvest and populations”). It is the State, rather than the federal land manager, that does the bulk of the biologic and population data collection and analysis to manage hunting. When the Board opens a new season and takes from the baseline population necessary to sustain the species, the Board effectively preempts the State’s managerial role in conserving the species. When Congress passed ANILCA, it simply did not intend to give the Secretaries that quintessential State authority.

*Chevron* deference, which defers to agency interpretations when there is an “ambiguity” or “silence” is irreconcilable with the presumption against federal encroachment into the traditional state police power in the absence of unambiguous and unmistakably clear direction from Congress. Assuming statutory silence triggers *Chevron* deference in other situations, it is inappropriate in this instance. Deference to the Secretaries’ interpretation here would shift the balance of federal-state management, and such a shift requires clear intent rather than statutory silence. And the district court correctly concluded that ANILCA does not clearly give the Secretaries the authority to open hunting seasons. 1-ER-29–30.



Because Congress did not give the Secretaries the authority to open a hunting season, the Secretaries unlawfully opened a special hunt for the Village of Kake. Assuming this Court agrees, this Court need not also analyze whether hunt was unlawful for a second reason: because the Board lacked authority to delegate administration of the hunt to the Tribe.

## **II. The Federal Subsistence Board unlawfully delegated management of the hunt outside the federal agency.**

The Constitution limits the federal government's authority to delegate governmental power outside of the federal government. *See Carter v. Carter Coal Co.*, 298 U.S. 238, 310–311 (1936); *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940). This limitation on delegation is supported by multiple rationales. The delegation of federal power to outside parties violates the Constitution's vesting clauses because it cedes legislative, executive, or judicial powers of the federal government. *See Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. 43, 88 (2015) (Thomas, J., concurrence). The delegation of federal power to outside parties can undermine due process. *Id.* at 46. It can prevent judicial review. *See Defs. Of Wildlife v. Gutierrez*, 532 F.3d 913, 925–27 (D.C. Cir. 2008) (concluding that Coast Guard could not constitutionally delegate its decision-making authority to a specialized agency of the United Nations, and if it did, it would undermine APA review because that international agency is not subject to the APA). And the delegation of federal powers to outside parties can harm

democratic decision-making by allowing unaccountable parties to make public policy. *See Ass’n of Am. Railroads*, 575 U.S. at 55; *U.S. Telecom Ass’n v. F.C.C.*, 359 F.3d 554, 565–66 (D.C. Cir. 2004) (“[D]elegation to outside entities increases the risk that these parties will not share the agency’s ‘national vision and perspective,’ and thus may pursue goals inconsistent with those of the agency and the underlying statutory scheme.”) (internal citation and quotation marks omitted).

Although the Constitution limits delegation of federal authority, it does not completely prohibit it.

Congress may delegate federal authority to another sovereign, such as a tribe, but only so long as two prerequisites are met. *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1211 (9th Cir. 2001). First, Congress must have “expressly delegated to the Tribe” the authority at issue. *Id.* at 1211. “To demonstrate congressional delegation of power, express authorization is required.” *Burlington N. Santa Fe R. Co. v. Assiniboine and Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 771 (9th Cir. 2003). Second, such delegation must be something Congress may constitutionally delegate. *Bugenig*, 266 F.3d at 1222. Courts have concluded that Congress may delegate federal authority to a tribe if a tribe would otherwise have independent authority over the subject matter. *E.g., United States v. Mazurie*, 419 U.S. 544, 557 (1975). For instance, the United States Supreme Court has concluded that a tribe’s independent authority over “matters that affect the

internal and social relations of tribal life” is “sufficient to protect Congress’ decision to vest in tribal councils” the federal authority over the distribution and use of intoxicants on reservations. *Id.* at 557. And this Court has concluded that the “federal government could delegate to the Tribe its authority to protect cultural and historical resources of significance” because the Tribe possesses “some ‘independent authority over the subject matter’ at issue.” *Bugenig*, 266 F.3d at 1223 (citing *Mazurie*, 419 U.S. at 554).<sup>10</sup>

Here, the district court did not even analyze whether *Congress* intended to delegate management of hunting to tribes, much less whether Congress expressly delegated such authority. 1-ER-42–43. Instead, it concluded that a federal agency can subdelegate to an entity outside the federal government without “express statutory authority.” 1-ER-43. This is legal error. And it makes no sense. Why would courts require congressional delegation to be express but agencies can willy-nilly delegate federal authority when it strikes their fancy? Delegations of federal authority to outside parties—even to other sovereigns—are improper absent affirmative congressional authorization. *See U.S. Telecom Ass’n*, 359 F.3d at 565. The relevant issue is not, as the district court intimated, whether it was “reasonable

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<sup>10</sup> The precise boundaries of Congress’s ability to delegate federal power are not germane to the issue in this case because Congress did not, in ANILCA, expressly authorize delegation of federal authority to tribes.

and logical” for the agency to subdelegate federal authority to the Tribe. 1-ER-43. The issue is whether Congress intended to do so.

The district court cited *Assiniboine & Sioux Tribes v. Bd. of Oil and Gas*, 792 F.2d 782, 795 (9th Cir.1986), and *Southern Pacific Transp. Co. v. Watt*, 700 F.2d 550, 556 (9th Cir. 1983), for the proposition that an agency may subdelegate final decision-making authority outside the federal agency absent express Congressional intent. 1-ER-43. But neither case supports that proposition. In *Assiniboine*, this Court concluded that because Congress did not expressly authorize the agency to subdelegate federal authority to the State, the “legislative silence” counseled against finding that the agency had authority to subdelegate its decision-making power. *Assiniboine*, 792 F.2d at 795–96. The Court noted that there would not be a nondelegation problem if the State’s role were merely advisory or if the State simply provided “a convenient means to accumulate necessary facts,” *id.* at 793 & 797, but there would be an “unlawful delegation of authority” if the federal agency did not provide “meaningful independent review” of the State’s recommendation. *Id.* at 795.

And in *Southern Pacific*, a federal agency made the tribe’s consent a prerequisite to the federal agency’s granting a right of way, but the agency retained the ultimate authority to grant a right of way. 700 F.2d 550, 556 (9th Cir. 1983). In that case, the federal agency incorporated into its decision-making process “the



wishes of a body with independent authority over the affected lands,” but retained the ultimate decision-making authority. *Id.*

Here, the Board abdicated its decision-making to a sovereign that does not have independent authority over the affected lands or over hunting. 43 U.S.C. § 1603 (extinguishment of aboriginal hunting rights and land claims); *see also Alaska v. Native Vill. of Venetie Tribal Gov’t*, 522 U.S. 520, 524 (1998) (discussing how ANCSA extinguished aboriginal claims and transferred land title to ANCSA corporations). The Board unlawfully delegated, without oversight, the licensure of who got to hunt and the rules for who got the meat.

Had the district court correctly focused its analysis on Congress’s intent, it would have concluded that Congress did not—expressly or otherwise—intend to delegate federal authority to tribes. Rather, Congress set up two sets of advisory committees, local and regional bodies, to provide advice and recommendations to the Secretaries, who remain the ultimate decision-makers. 16 U.S.C. § 3115(d). And the Secretaries use the advice specifically from regional advisory councils in exercising their “closure and other administrative authority over the public lands.” 16 U.S.C. § 3115(c). While Congress permitted the Secretaries to “cooperate” with other entities, it did not permit abdication of federal authority to those entities. 16 U.S.C. § 3119. The only entity outside the federal government that Congress clearly allowed to independently effectuate the rural subsistence priority is the

State. 16 U.S.C. § 3115(d). In short, Congress did not intend to delegate implementation of ANILCA to tribes.

The federal government and Tribe asserted below that there was either no delegation or only minor delegation. 1-ER-41–42. But, as the district court correctly found, there was a subdelegation of federal authority concerning the Tribe’s permitting of who got to hunt and the Tribe’s rules for who was entitled to meat. 1-ER-42. A small unconstitutional delegation of federal decision-making authority is still an unconstitutional delegation of federal decision-making authority. Because Congress did not intend to delegate such authority, this Court need not consider whether Congress could have constitutionally delegated that authority.

### **CONCLUSION**

For these reasons, the Court should reverse the district court’s decision. This Court should conclude that the Board exceeded its authority by opening a hunting season and it is precluded from doing so in the future. If this Court agrees that the special hunt was unlawful because the Secretaries do not have authority to open hunts, it need not resolve whether the hunt was unlawful for a second reason. If this Court finds that ANILCA does authorize the Secretaries to open special hunts, then the Court should conclude that the Board unlawfully delegated the management of the special hunt to the Tribe.

Dated: April 19, 2024.

TREG TAYLOR  
ATTORNEY GENERAL

/s/ *Laura Wolff*

Laura Wolff

Alaska Bar No. 1411108

**STATEMENT OF RELATED CASES**

The State is not aware of any related cases pending before this Court.



### **CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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Date: April 19, 2024.

TREG TAYLOR  
ATTORNEY GENERAL

/s/ Laura Wolff  
Laura Wolff

Attorney for Appellant  
State of Alaska

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FOR THE NINTH CIRCUIT**

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- ☐ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

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## **16 U.S.C. § 3111. Congressional declaration of findings**

The Congress finds and declares that--

- (1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;
- (2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;
- (3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;
- (4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and
- (5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

## **16 U.S.C. § 3112. Congressional statement of policy**

It is hereby declared to be the policy of Congress that--



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

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

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

## **16 U.S.C. § 3114. Preference for subsistence uses**

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

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

**16 U.S.C. § 3125. Limitations and savings clauses**

Nothing in this subchapter shall be construed as--

- (1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;
- (2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;
- (3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 3126 of this title, to continue subsistence uses of such populations, or pursuant to other applicable law; or
- (4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-jj), section 100101(b)(1), chapter 1003, and sections 100751(a), 100752, 100753, and 102101 of Title 54, the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Magnuson-Stevens Fishery Conservation and Management Act (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777k), or any amendments to any one or more of such Acts or such title.



**16 U.S.C. § 3126. Closure to subsistence uses****(a) National parks and park monuments in Alaska; authorization of subsistence uses and sport fishing**

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

**(b) Closure for public safety, administration, or the continued viability of fish and wildlife population**

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

**16 U.S.C. § 3202. Taking of fish and wildlife****(a) Responsibility and authority of State of Alaska**

Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in subchapter II of this chapter, or to amend the Alaska constitution.

**(b) Responsibility and authority of Secretary**

Except as specifically provided otherwise by this Act, nothing in this Act is intended to enlarge or diminish the responsibility and authority of the Secretary over the management of the public lands.

**(c) Areas controlled; areas closed, exceptions**

The taking of fish and wildlife in all conservation system units, and in national conservation areas, national recreation areas, and national forests, shall be carried out in accordance with the provisions of this Act and other applicable State and Federal law. Those areas designated as national parks or national park system monuments in the State shall be closed to the taking of fish and wildlife, except that--

(1) notwithstanding any other provision of this Act, the Secretary shall administer those units of the National Park System, and those additions to existing units, established by this Act and which permit subsistence uses, to provide an opportunity for the continuance of such uses by local rural residents; and

(2) fishing shall be permitted by the Secretary in accordance with the provisions of this Act and other applicable State and Federal law.

**50 C.F.R. § 100.19 & 36 C.F.R. § 242.19 Special actions.**

(a) Emergency special actions. In an emergency situation, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons, the Board may immediately open or close public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for take for subsistence uses, or close public lands to take for nonsubsistence uses of fish and wildlife, or restrict the requirements for take for nonsubsistence uses.

(1) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action. Such a Council recommendation, if any, will be subject to the requirements of § 100.18(a)(4).



(2) The emergency action will be effective when directed by the Board, may not exceed 60 days, and may not be extended unless the procedures for adoption of a temporary special action, as set forth in paragraph (b) of this section, have been followed.

(b) Temporary special actions. After adequate notice and public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for subsistence take, or close public lands for the taking of fish and wildlife for nonsubsistence uses, or restrict take for nonsubsistence uses.

(1) The Board may make such temporary changes only after it determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted.

(i) Prior to implementing a temporary special action, the Board will consult with the State of Alaska and the Chairs of the Regional Councils of the affected regions.

(ii) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of § 100.18(a)(4).

(2) The length of any temporary action will be confined to the minimum time period or harvest limit determined by the Board to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.

(c) The Board may reject a request for either an emergency or a temporary special action if the Board concludes that there are no time-sensitive circumstances necessitating a regulatory change before the next regular proposal cycle. However, a special action request that has been rejected for this reason may be deferred, if appropriate and after consultation with the proponent, for consideration during the next regular proposal cycle. The Board will consider changes to customary and traditional use determinations in subpart C of this part only during the regular proposal cycle.

(d) The Board will provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/index.cfm>). When appropriate, notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. The Board will publish notice and reasons justifying the special action in the Federal Register as soon as practicable.

(e) The decision of the Board on any proposed special action will constitute its final administrative action.

(f) Regulations authorizing any individual agency to implement closures or restrictions on public lands managed by the agency remain unaffected by the regulations in this part.

(g) Fish and wildlife may not be taken in violation of any restriction, closure, or change authorized by the Board.

HOUSE Committee on Interior and Insular Affairs Committee Calendar  
95th Congress

\*H.R. 39 (Serial No. 95-16)

O

(H.R. 1974)  
(H.R. 2876)  
(H.R. 5505)  
(H.R. 6564)  
(H.R. 9473)  
(H.R. 10467)  
(H.R. 10888)  
(H.R. 11213)  
(H.R. 11599)  
(H.R. 12625)  
(H.R. 12703)  
(See also H.R. 1454, H.R. 5605, H.R. 8651)

MR. UDALL (FOR HIMSELF), MR. PHILLIP BURTON, MR. BINGHAM, MR. ANDERSON OF ILLINOIS, MR. BRODHEAD, MR. CARR, MR. DELLUMS, MR. DRINAN, MR. EDGAR, MR. EDWARDS OF CALIFORNIA, MR. FRASER, MR. HARRINGTON, MR. JEFFORDS, MR. KASTENMEIER, MR. MINETA, MR. MOAKLEY, MR. MOFFETT, MR. NOLAN, MR. OTTINGER, MR. RONCALIO, MR. SEIBERLING, MR. WAXMAN, MR. TSONGAS, AND MR. WEAVER

To designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, Wild and Scenic Rivers and National Wilderness Preservation System, and for other purposes. (H.R. 2063, 94th Cong.). (Alaska National Interest Lands Conservation Act).

Jan. 4, 1977—Introduced.

Mar. 3, 1977—Briefing concerning the Status of d-2 Lands and the Alaska Native Claims Settlement Act, by the Department of the Interior.

Apr. 21, 1977—Subcommittee hearing.

Apr. 22, 1977—Subcommittee hearing.

Apr. 25, 1977—Subcommittee hearing.

Apr. 28, 1977—Subcommittee hearing.

Apr. 29, 1977—Subcommittee hearing.

May 2, 1977—Subcommittee hearing.

May 3, 1977—Subcommittee hearing.

May 7, 1977—Field hearing, Chicago, Illinois.

May 14, 1977—Field hearing, Atlanta, Georgia.

June 4, 1977—Field hearing, Denver, Colorado.

June 18, 1977—Field hearing, Seattle, Washington.

June 23, 1977—Briefing on the Status of Mineral Resource Assessment in Alaska, by the United States Geological Survey and the Bureau of Mines, Department of the Interior.

July 1-10, 1977—Subcommittee traveled to Southeast Alaska for field inspection of proposed wilderness areas and forest management practices in the Tongass National Forest, and for public hearings and town meetings on H.R. 39.

July 3, 1977—Town meeting, Pelican, Alaska.

July 3, 1977—Town meeting, Hoonah, Alaska.

July 4, 1977—Town meeting, Petersburg, Alaska.

July 4, 1977—Town meeting, Kake, Alaska.

July 5, 1977—Field hearing, Sitka, Alaska.

July 6, 1977—Town meeting, Angoon, Alaska.

July 7, 1977—Field hearing, Juneau, Alaska.

July 9, 1977—Field hearing, Ketchikan, Alaska.

July 19, 1977—Briefing on Management Practices and wilderness proposals in the Tongass and Chugach National Forests, Alaska by the U.S. Forest Service, Dept. of Agriculture.

July 21-22, 1977—Hearings on delays in conveyance of public lands under the Alaska Native Claims Settlement Act.

Aug. 2, 1977—Report requested from Interior.

Aug. 2, 1977—Report requested from Agriculture on provisions which would designate portions of the Chugach and Tongass National Forests as wilderness.

Aug. 6-21, 1977—Subcommittee traveled to Alaska for public hearings, town meetings, and field inspections of areas proposed in H.R. 39 as additions to the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems.

Aug. 8, 1977—Town meeting, Bethel, Alaska.

Aug. 9, 1977—Town meeting, Chevak, Alaska.

Aug. 9, 1977—Town meeting, Togiak, Alaska.

Aug. 10, 1977—Town meeting, Dillingham, Alaska.

Aug. 10, 1977—Town meeting Nondalton, Alaska.

Aug. 11, 1977—Town meeting, English Bay, Alaska.

Continued



H.R. 39—continued

Aug. 12, 1977—Field hearing, Anchorage, Alaska.  
 Aug. 13, 1977—Town meeting, Glennallen, Alaska.  
 Aug. 13, 1977—Town meeting, Yakutat, Alaska.  
 Aug. 14, 1977—Town meeting, Fort Yukon, Alaska.  
 Aug. 17, 1977—Town meeting, Ambler, Alaska.  
 Aug. 17, 1977—Town meeting, Anaktuvuk Pass, Alaska.  
 Aug. 17, 1977—Town meeting, Kotzebue, Alaska.  
 Aug. 18, 1977—Town meeting, Noatak, Alaska.  
 Aug. 18, 1977—Town meeting, Shishmaref, Alaska.  
 Aug. 19, 1977—Town meeting, Galena, Alaska.  
 Aug. 20, 1977—Field hearing, Fairbanks, Alaska.  
 Sept. 12, 1977—Continuation of hearings on delays in conveyance of public lands under the Alaska Native Claims Settlement Act.  
 Sept. 15, 1977—Subcommittee hearing on Administration's proposal.  
 Sept. 21, 1977—Interior. Favorable, if amended.  
 Sept. 21, 1977—Subcommittee hearing on Administration's proposed amendments.  
 Oct. 13, 1977—Staff briefing.  
 Oct. 17, 1977—Staff briefing.  
 Oct. 18, 1977—Staff briefing.  
 Oct. 20, 1977—Staff briefing.  
 Oct. 25, 1977—Staff briefing.  
 Oct. 27, 1977—Staff briefing.  
 Oct. 28, 1977—Staff briefing.  
 Oct. 31, 1977—Staff briefing.  
 Nov. 1, 1977—Staff briefing.  
 Nov. 3, 1977—Staff briefing.  
 Jan. 17, 1978—Subcommittee markup.  
 Jan. 18, 1978—Subcommittee markup.  
 Jan. 19, 1978—Subcommittee markup.  
 Jan. 20, 1978—Subcommittee markup.  
 Jan. 23, 1978—Subcommittee markup.  
 Jan. 24, 1978—Subcommittee markup.  
 Jan. 26, 1978—Subcommittee markup.  
 Jan. 27, 1978—Subcommittee markup.  
 Jan. 30, 1978—Subcommittee markup.  
 Jan. 31, 1978—Subcommittee markup.  
 Feb. 2, 1978—Subcommittee markup.  
 Feb. 3, 1978—Subcommittee markup.  
 Feb. 6, 1978—Subcommittee markup.  
 Feb. 7, 1978—Subcommittee markup. Reported to Full Committee, amended.  
 Feb. 28, 1978—Full Committee markup.  
 Mar. 1, 1978—Full Committee markup.  
 Mar. 2, 1978—Full Committee markup.  
 Mar. 3, 1978—Full Committee markup.  
 Mar. 6, 1978—Full Committee markup.  
 Mar. 8, 1978—Full Committee markup.  
 Mar. 8, 1978—Agriculture. Comments on Wilderness in Southeast Alaska.  
 Mar. 8, 1978—Agriculture. Supplemental comments and proposed amendments to February 15, 1978, Committee Print.  
 Mar. 13, 1978—Full Committee markup.  
 Mar. 14, 1978—Full Committee markup.  
 Mar. 15, 1978—Full Committee markup.  
 Mar. 21, 1978—Full Committee ordered reported, amended. (32 yeas, 13 nays).  
 Apr. 7, 1978—Report filed in House. **H.Rept. 95-1045 (Part I)**  
 Apr. 7, 1978—Sequentially referred to House Merchant Marine and Fisheries Committee.  
 May 4, 1978—Reported from Merchant Marine and Fisheries Committee. **H.Rept. 95-1045 (Part II)**.  
 May 10, 1978—Rule requested.  
 May 16, 1978—Rule (open) granted making the text of H.R. 12625 in order as an amendment in the nature of a substitute for H.R. 39. (H.Res. 1186, H.Rept. 95-1199).  
 May 17, 1978—Rule adopted. (H.Res. 1186 - 354 yeas, 42 nays) and debate began.  
 May 18, 1978—Floor debate.  
 May 19, 1978—Passed House, amended. (277 yeas, 31 nays).  
 Oct. 9, 1978—Reported in Senate. **S.Rept. 95-1300**  
 (No Senate action was taken on H.R. 39. With an objective of maintaining the status quo until Congress could act, on October 14, 1978, the House of Representatives passed, by unanimous consent, S. 658, amended, to extend protective withdrawals of all federal lands within boundaries of all areas either contained in H.R. 39 as passed by the House, encompassed in Senate Report 95-1300 as reported by the Senate Committee on Energy and Natural Resources, or as recommended by the Administration, which ever is largest, for a period of time not to exceed one year. The bill failed to pass the Senate).



## HOUSE Committee on Interior and Insular Affairs Committee Calendar

Jan. 15, 1979—Introduced.  
 Feb. 1, 1979—Briefing by Secretary of Interior Cecil D. Andrus on administrative actions taken to protect Alaska national interest lands; and by Assistant Secretary of Agriculture M. Rupert Cutler on the present status of national forest land allocations in Alaska.  
 Feb. 6-8, 1979—Committee hearings.  
 Feb. 13, 1979—Committee hearing.  
 Feb. 22, 1979—Agriculture. Recommendations.  
 Feb. 26, 1979—Interior. Recommendations.  
 Feb. 27, 1979—Committee markup.  
 Feb. 28, 1979—Full Committee ordered reported, amended. (23 yeas, 20 nays). (Text of H.R. 2199, amended, adopted as substitute to language of H.R. 39).  
 Mar. 1, 1979—Full Committee met.  
 Mar. 5, 1979—Reports requested from Interior, Agriculture on H.R. 39 as ordered reported.  
 Mar. 13, 1979—Interior. Unfavorable to bill as ordered reported.  
 Mar. 15, 1979—Agriculture. Favorable, if amended.  
 Mar. 16, 1979—Agriculture. Supplemental. Unfavorable to bill as ordered reported.  
 Mar. 19, 1979—Referral to the Committees on Interior and Insular Affairs, and Merchant Marine and Fisheries extended for an additional period ending not later than April 23, 1979.  
 Mar. 21, 1979—Rule requested.  
 Apr. 18, 1979—Reported to House. H.Rept. 96-97 (Part I)  
 Apr. 23, 1979—Reported from House Merchant Marine and Fisheries Committee. H.Rept. 96-97 (Part II).  
 May 1, 1979—Rule (open) granted, making in order the Interior Committee amendment (Huckaby) as the original text, the Merchant Marine Committee amendment (Breaux-Dingell) in order as a substitute for the Interior Committee bill, and H.R. 3651 (Udall-Anderson) in order as a substitute for the Merchant Marine bill. (H.Res. 243, H.Rept. 96-113).  
 May 4, 1979—Rule adopted. (H.Res. 243 - 236 yeas, 18 nays). Debate began.  
 May 10, 1979—Floor debate.  
 May 15, 1979—Floor debate.  
 May 16, 1979—Passed House, amended. (360 yeas, 65 nays). Prior to final passage, the language of H.R. 3651 (the Udall-Anderson substitute), amended, was adopted. (268 yeas, 157 nays).  
 Nov. 14, 1979—Reported in Senate. S.Rept. 96-413  
 July 21, 22, 23, 24, 25, 1980—Senate floor debate.  
 Aug. 4, 5, 18, 1980—Senate floor debate.  
 Aug. 19, 1980—Passed Senate, amended. (78 yeas, 14 nays).  
 Nov. 12, 1980—House agreed to the Senate amendment.  
 Dec. 2, 1980—Approved. P.L. 96-487

GAO: 315

96TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 96-413

ALASKA NATIONAL INTEREST LANDS

REPORT

OF THE

COMMITTEE ON ENERGY  
AND NATURAL RESOURCES  
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

H.R. 39



NOVEMBER 14 (legislative day, NOVEMBER 5), 1979.—Ordered to be printed

2535

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(iii)

the area's existing pulp and saw mills. Some 10 mmbf. of State lands timber annually may also have impact.

Set forth below in tabular form is a summary of the Committee's action last year relative to timber availability and wilderness designation in the Tongass. While some of the base data has changed slightly since the completion of the TLUMP, the assumptions and approach employed by the Committee in designating wilderness in Southeast Alaska are still valid.

Estimated Timber Yield Available for Harvest Each Year: <sup>1</sup>		<i>Million board feet</i>
Total potential sustained yield from all classifications (excludes State or Native timber).....		1,180
Unregulated (reserved, small parcels, 75-plus percent slopes, soil hazards) .....		-290
Other reserved and not available (various timber retention factors applied for resource protection).....		-172
Total potential sustained yield less unregulated and other reserved...		718
Marginal (available but subject to economic or technical restraints) .....		-158
Net total sustained annual yield of standard and special categories or "available average annual harvest".....		560
Estimated Effect of Committee Wilderness Package:		
Total annual potential yield less what is reserved, non-harvestable, or marginal "A-base".....		560
10,000,000 per year investment for increased timber yield and \$5,000,000 loan fund.....		60
Impact of Native timber.....		36
Estimated allowable cut before deductions.....		656
Additional Reduction for Proposed Wilderness Designation.....		-80
Additional reduction for possible relocation of Native timber off Admiralty Island.....		-7
Annual allowable cut less wilderness and Native timber relocation.....		569

<sup>1</sup> Assumes the "A-base" Alternative from the Tongass Land Use Management Plan including a \$1,600,000 investment for preroad ing into selected areas.

Thus, it appears that the Committee recommendations will indeed protect the existing timber industry in Southeast while providing wilderness designation for several key areas.

The Committee realizes that there is some disagreement regarding the figures presented above relative to timber availability, potential yield investment opportunities, etc. During its deliberations, the Committee was unable to obtain a consistent set of data from the Forest Service regarding these factors. However, the Committee feels that the numbers employed in the calculations above are fair estimates of the effect the Committee actions will have on timber supply levels from the Tongass.

## TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

### OVERVIEW

Alaska's more than 200 rural villages are unique in that they are the last communities in the United States in which a substantial number of residents are still dependent upon the harvest of renewable re-



sources on the public lands for their sustenance. The importance of subsistence uses of such resources to the physical, economic and cultural well-being of Alaska Natives and other rural residents has been exhaustively chronicled in testimony presented at hearings, town meetings and workshops held by the committee during consideration of both the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. The committee notes that the report of the Committee on Interior and Insular Affairs of the House of Representatives on H.R. 39 (House Report No. 95-1045, Part I, pp. 181-187) documents the importance of such uses in considerable detail.

#### HISTORY OF CONCERN

The Committee has had a long-standing concern for the protection of subsistence resources and uses in Alaska. In Section 21 of S. 35, the Senate version of the Alaska Native Claims Settlement Act, the Secretary was directed to establish subsistence zones on the public lands, and, in circumstances in which subsistence resources or uses were threatened, to exercise his closure authority by prohibiting all consumptive uses of such resources within a zone except for subsistence uses by Alaska Natives. The conferees failed to adopt this provision in the conference report; however, the statement of the managers clearly established the intent of the Congress that the Secretary exercise his closure authority in a manner consistent with the purposes of Section 21:

The conference committee, after careful consideration believes that all Native interest in subsistence resource lands can and will be protected by the secretary through the exercise of his existing withdrawal authority. The secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The conference committee expects both the secretary and the state to take any action necessary to protect the subsistence needs of the natives.

In 1973, the committee adopted, and the Congress enacted, provisions in the Trans-Alaska Oil Pipeline Act (P.L. 93-153) which provided for strict liability of the pipeline right-of-way holder for "fish, wildlife, biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes" and required stipulations in all oil and gas pipeline right-of-way permits to protect the "interests of individuals living in the general area of the right-of-way permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes." Other Acts of Congress also have recognized the unique dependence of rural Alaskans on subsistence resources. For example, the Marine Mammal Protection Act includes a subsistence exemption for Native residents of coastal villages in Alaska (16 U.S.C. 1371(b)). Similarly, subsistence uses by Alaska Natives and other residents of Native villages are exempted from coverage of the Endangered Species Act (16 U.S.C. 1539(e)).

## COMMITTEE AMENDMENT

The subsistence management provisions of S. 9 as introduced reflect a delicate balance between the traditional responsibility of the State of Alaska for the regulation of fish and wildlife populations within the State and the responsibility of the Federal Government for the attainment of national interest goals, including the protection of the traditional lifestyle and culture of Alaska Natives.

The Committee amendment differs from Title VII of H.R. 39, as passed by the House of Representatives in two respects. The first relates to subsistence hunting by local residents within national parks and monuments. Under the Committee amendment, parks and monuments are closed to all forms of hunting unless subsistence uses are permitted by this Act. Subsistence resources commissions are to be established to recommend a program for subsistence hunting in such parks and monuments.

The second major difference is the means for enforcement of the subsistence preference. The House bill requires the Secretary to take certain administrative actions if he determines that the State has failed to establish a subsistence program or to implement such a program in a manner which adequately satisfies the preference for subsistence uses. While the committee has retained broad Federal guidelines to ensure the adequate implementation of the subsistence preference on the public lands and the Secretary's ongoing responsibility to monitor the State's implementation of such preference, the Committee believes that the responsibility of the Secretary to ensure the protection of subsistence uses and the satisfaction of subsistence needs of Alaska Natives and other rural residents can best be met by providing legal representation for such residents before the United States District Court in appropriate instances in which the Secretary has determined, after consultation with the State, that the State has not timely or adequately provided for the preference for subsistence uses. Although it is the intent of the committee to neither enlarge nor diminish any existing authority of the Secretary to take appropriate administrative action to protect subsistence uses and satisfy subsistence needs of rural residents of Alaska, the committee believes that the responsibilities and authorities of the Secretary and the United States District Court set forth in section 804-807 ensure the protection of subsistence activities and the discharge of Federal responsibilities.

During consideration of Alaska National Interest Lands legislation, the Committee adopted several changes to the subsistence management and use title in S. 9 which clarify the Committee's intent and improve the workability of the subsistence management system.

Major changes adopted by the Committee include:

*The Conservation of Healthy Populations of Fish and Wildlife*

Long-term protection of fish and wildlife populations is necessary to ensure the continuation of the opportunity for a subsistence way of life. Consequently, subsistence uses on the public lands must be conducted in a manner consistent with "the conservation of healthy populations of fish and wildlife", an approach emphasized by the Committee in a series of amendments to incorporate that concept into the language of Sections 802(1), 808(b), and 815 (1) and (3). It also

should be noted that a recommendation of a regional council pursuant to Section 805 would not be supported by substantial evidence if the recommendation is inconsistent with the conservation of healthy populations of fish and wildlife. The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and manipulation of the components of the ecosystem.

*Definition of "Subsistence Uses"*

Although many residents of cities such as Ketchikan, Juneau, Anchorage, and Fairbanks harvest renewable resources from the public lands for personal or family consumption, by its very nature a "subsistence use" is something done only by Native and non-Native residents of "rural" Alaska. The Committee adopted an amendment to clarify this point by limiting application of the definition to areas of "rural" Alaska including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other Native and non-Native villages scattered throughout the State. However, the Committee does not intend to imply that the rural nature of such communities is a static condition; the direction of the economic development and rural character of such communities may change over time. It should be emphasized that this amendment is not intended to impose a "durational" rural residency requirement in the definition or impede the traditional movement of Alaska residents between the rural areas and the major population centers and vice versa. Nor does the amendment prohibit the taking of fish and wildlife on certain public lands by normal residents. Rather, nonsubsistence uses may continue in accordance with existing law but do not enjoy any preference on the public lands, and, consequently, may be restricted pursuant to Section 804 when necessary to protect subsistence resources or to ensure the satisfaction of the subsistence needs of rural residents.



The definition has been modified to eliminate the "for personal or family consumption" limitation upon the taking of wild, renewable resources for "customary trade". The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses". The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title.

#### *Local And Regional Participation*

An amendment to section 805 clarifies that regardless of whether the regional council system is established by the Secretary or the State, the relationship between the regional councils and the Secretary or the State is the same; that is, either the Secretary or the State may choose not to follow a recommendation made by a council if the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. Another important amendment clarifies that if the State enacts and implements laws of general applicability which satisfy the requirements of Sections 803, 804, and 805, then, unless and until repealed, such State laws shall supersede Sections 803, 804, and 805 insofar as such sections govern State responsibility for the taking of fish and wildlife on the public lands for subsistence uses.

#### *Judicial Enforcement*

The major amendment to Section 807 clarifies that while the Secretary is not required to hold a hearing (either informal or pursuant to formal procedures set forth in the Administrative Procedures Act) prior to bringing a civil action against the State on behalf of a local committee or regional council, he is required, prior to bringing such action, to make a determination in writing setting forth substantial evidence that the State has failed to make adequate and timely provision of the subsistence preference after having been provided a reasonable opportunity to do so, and that such failure threatens the ability of local residents to satisfy their subsistence needs.

#### *Subsistence and Land-Use Decisions*

The Committee adopted two important technical amendments to Section 810. The first substitutes the well-recognized legal standard of "reasonable" in place of "adequate" to describe the steps which the head of a Federal agency must take to minimize adverse impacts on subsistence uses prior to permitting a withdrawal, reservation, lease, permit, or other use, occupancy, or disposition of the public lands which would significantly restrict subsistence uses, although it should be recognized that steps which are "inadequate" to minimize adverse impacts will rarely be "reasonable" within the meaning of this section. The second amendment clarifies that the requirements of Section 810 are "procedural" in that until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses.



*Elimination of the 10-Year Level of Use*

The Committee adopted an amendment to Section 815(1) which eliminated the 10-year standard of measurement on the level of subsistence uses on the public lands. In place of the 10-year standard the Committee substituted language to clarify that nothing in the subsistence management and use title is intended to permit the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with "the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife". The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units.

*Nonsubsistence Uses of Fish and Wildlife on the Public Lands*

An amendment to Section 815(3) clarifies that the subsistence management and use title is not intended to restrict nonsubsistence uses of fish and wildlife permitted on the public lands except as necessary pursuant to Sections 804 and 816. Nonsubsistence uses also may be appropriately restricted in accordance with other applicable laws in addition to the subsistence title.

The amendments described above are the major clarifying amendments to the subsistence management and use title adopted by the Committee. However, the Committee also adopted a number of technical amendments which are consistent with the title developed last year and which improve the technical workability of the subsistence management system. It also should be noted that nothing in Sections 802, 804, or 807 is intended to affect the Secretary's closure authority pursuant to Section 816.

**TITLE IX—IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND THE ALASKA STATEHOOD ACT**

Title IX of S. 9, as introduced, established an expedited legislative conveyance procedure for Native land selections under the Alaska Native Claims Settlement Act and for State selections under the Alaska Statehood Act. Several other provisions designed to facilitate State and native land conveyances were also included in Title IX. The title was adopted by the Committee as a means, along with the designation of national interest lands in the remainder of the bill, to help resolve Alaska's uncertain land ownership status with respect to State and Native land selections and conveyances. Title IX contains the substantive provisions which follow from the finding in Title I, that a prompt and thorough resolution of the status of Alaska public lands is in the best interest of everyone in the Nation.

Several minor amendments to Title IX were agreed to by the Committee and are described in the discussion below.

H.R. 39, as passed by the House, contains language which is similar to the Committee amendment with respect to conveyances to village corporations and other provisions related to native lands, but does not include a provision comparable to Section 902 (other Conveyances to Native Corporations).

cultural, or scientific resources of the special management area would be adversely affected.

Subsection 706(c) withdraws the land in special management areas from the operation of the United States Mining law. The provision for classification and opening of these lands are identical to those provided for national conservation areas established pursuant to Title IV. The Committee does not intend that these lands be managed as wilderness.

Subsection 706(d) directs the Secretary of Agriculture to monitor timber supply and demand in Southeastern Alaska. At any time after ten years after the date of enactment, the Secretary is directed to request a waiver of the prohibition on timber sales if he finds that timber in any special management area must be sold to maintain the supply to dependent industry at a rate of 520 million board feet per year.

Subsections 706 (e) and (f) provide an expedited procedure for a Congressional approval of any waiver request.

Subsection 706(g) gives the State of Alaska standing to seek a Federal Court Order directing the Secretary of Agriculture to make the finding required and transmit a proposed statutory waiver. The Committee included this provision so as to give the State an opportunity to challenge the Secretary's failure to seek a waiver if it believes that the Secretary of Agriculture should have made the finding required by subsection 706(d). Of course, the State would have to present evidence substantiating its claim and the Secretary of Agriculture would have the opportunity to rebut such evidence.

#### *Section 707: National Forest Timber Utilization Program*

Section 707 establishes a special timber utilization program for the Tongass National Forest. The program is designed to help make Federal timber available from marginal lands. The program includes construction and maintenance of forest development roads under subsection 707(a) and a special loan program to assist timber purchasers under subsection 707(b).

### **TITLE VIII—SUBSISTENCE MANAGEMENT AND USE**

#### *Section 801: Findings*

The findings are based on the hearings, town meetings and workshops held by the committee in Alaska and Washington. The findings provide the factual and legal foundation for Congressional action to protect subsistence resources and uses on the public lands. The committee recognizes the importance of continued subsistence uses to the economy and lifestyle of rural Alaska, and particularly to the culture of the Alaska Natives. Alternative food sources generally are not available in most rural village to offset a diminution of the traditional subsistence harvest. However, the continuation of subsistence uses in rural Alaska is threatened by the rapid population growth of Anchorage, Fairbanks and other urban centers and the resultant pressure which urban residents engaged in subsistence and sports uses have placed upon important fish and wildlife populations in heretofore remote areas of the State. The subsistence management and use title is the culmination of Congressional action initiated

by Congress by the Alaska Native Claims Settlement Act to protect and provide for continued subsistence uses by Alaska Natives and other rural residents, and is based upon the constitutional authority of Congress over Native affairs and its authority under the Property Clause and the Commerce Clause. The committee also has determined that the protection of the subsistence way of life and the fish and wildlife populations upon which that lifestyle depends necessitates the establishment of an administrative structure which enables rural residents with personal knowledge of local conditions and requirements to have a meaningful role in the regulations and management of fish and wildlife and subsistence uses on the public lands.

#### *Section 802: Policy*

Based upon the findings in the preceding section, three basic policies have been established which shall guide the activities of the Federal government and the State on the public lands: that the utilization of the public lands is to cause the least adverse impact possible upon rural residents who depend upon subsistence uses for their economic and physical well-being and cultural vitality; the nonwasteful subsistence uses of fish, wildlife and other renewable resources, e.g., berries, timber, grasses, shall be the first priority consumptive use of such resources on the public lands, and when or where it is necessary to restrict the taking of such resources, taking for nonwasteful subsistence uses shall be given preference over other consumptive uses; and that the successful management of subsistence resources and activities requires long term cooperation between adjacent landowners and managers, including appropriate State and Federal agencies, Native corporations, and other nations.

#### *Section 803: Definition*

The committee has adopted a definition of "subsistence uses" based on the definition of that term set forth in section 15, ch. 151 SLA 1978 (A.S. 16.05.940) of the Alaska Statutes. In turn, the State definition was modeled on section 703 of the House bill. "Subsistence uses" are defined as the customary and traditional use in Alaska of fish, wildlife and other renewable resources for direct personal or family consumption, for the making and selling of handicraft articles from the non-edible by-products of fish and wildlife taken for direct personal or family consumption, and for customary trade, barter, or sharing for personal or family consumption. The definition of "family" recognizes extended family patterns common to all of Alaska's Native cultures. "Family" includes any person living in a household on a permanent basis as well as those persons living outside the household who are related by blood, marriage or adoption (legal or equitable). "Barter" means the exchange or trade of fish or wildlife, or their parts, for other fish or wildlife, or their parts, or for other food or nonedible items other than money if the exchange is of a limited and noncommercial nature. This definition of "barter" recognizes that in many rural villages the subsistence diet must be supplemented with other foods which may be available from the village store and other sources, and that the limited noncommercial barter of subsistence resources for nonedible items is an essential element of the rural subsistence lifestyle. The definition of "subsistence uses" is intended to include all



Alaska residents who utilize renewable resources for direct personal or family consumption.

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. The factors of local residency, economic dependence, and availability of alternative resources have been included in section 804 rather than in the definition. Although a truly comprehensive definition of "subsistence uses" must include a mix of those factors, the committee has determined that they should be incorporated through appropriate action by the State rulemaking authority in conjunction with the recommendations of the regional councils established pursuant to section 805 to implement the subsistence preference set forth in section 804. Sections 803-805 are intended to establish a dynamic process for the regulation of subsistence resources and uses which will enable rural people to participate in the decisionmaking process of the State rulemaking authority in the inclusion of the local residency, economic dependence, and availability of alternative resources factors into the definition of "subsistence uses" on a case-by-case basis to meet the needs of a particular management situation in a particular area.

#### *Section 804: Preference for Subsistence Uses*

This section requires both the State and the Federal government to accord nonwasteful subsistence uses a preference over the taking of such resources for other purposes on the public lands. Although the committee recognizes that only rarely will the failure to adequately provide for the preference result in the threat of literal starvation, in many instances the failure to obtain fish to dry for winter use or fresh meat to supplement other foods can engender considerable individual, community and cultural trauma and hardship. Consequently, this section envisions that governmental action affecting subsistence resources and uses shall be undertaken in a manner which adequately provides for the preference on an ongoing basis and not only when critical allocation decisions may be necessary because a particular subsistence resource may be threatened with depletion, so long as such action is conducted in a manner which is consistent with the protection of the continued viability of fish and wildlife populations which may be affected by such action. If a particular fish or wildlife population (e.g. salmon, moose or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the State rulemaking authority. However, if the continued viability of a particular population or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons, the State rulemaking authority, in conjunction with the recommendations of the regional council representing the affected area, is required by this section

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to establish regulations which restrict the taking of such population to Alaska residents engaged in subsistence uses.

If "subsistence uses" must be further restricted to protect the continued viability of the population or to ensure the satisfaction of rural subsistence needs, the State rulemaking authority, in conjunction with the recommendations of the regional council, must limit such uses to local residents of the affected area, or, if necessary, only those local residents with the most customary and direct dependence on the population as the mainstay of livelihood and with the least access to alternative food supplies. In the latter situation, the committee believes that in making such difficult allocation decisions, the State rulemaking authority, in conjunction with the recommendations of the regional council, should endeavor to utilize the special knowledge of local conditions and requirements of the local advisory committees within the affected region. This section also requires the Secretary of the Interior and the Secretary of Agriculture to give subsistence uses preferential consideration in their management activities on the public lands which directly relate to the taking of fish and wildlife, and to take appropriate action to protect such uses and the continued viability of fish and wildlife populations upon which the continuation of such uses depend.

*Section 805: Local and Regional Participation*

The committee has determined that the opportunity for rural residents of Alaska with personal knowledge of local conditions and requirements to participate effectively in the management and regulation of subsistence resources on the public is important in order to assure both the continued viability of fish and wildlife populations of national importance and the ability of rural people engaged in a subsistence lifestyle to continue to do so. Although the State has indicated that it intends to provide greater support to its existing local advisory committees and establish a system of regional councils throughout the rural areas of the state which will have a major role in the State rulemaking authority's establishment of seasons, bag limits and the provision of the preference for subsistence uses in their respective areas, the State still is in the process of establishing such a system. Section 805 implements section 801(5) by requiring the Secretary of the Interior to establish a regional council, and if necessary a local committee, system on the public lands if within one year from the date of enactment of this Act the State has not yet established a system for local and regional participation which satisfies the requirement of this section.

The State system of local and regional participation shall be in compliance with the requirements of this section and the Secretary shall not establish local committees or regional councils if the State: (1) divides the public lands into at least six regions. The number and boundaries of the regions must be sufficient to assure that regional differences in subsistence uses are adequately accommodated.

However, it is the intent of the Committee that the number and boundaries of the regions be established in a manner which does not permit the large urban population centers to dominate the regional council system and exercise control over the regulation of subsistence resources in the rural areas; (2) strengthens the existing State local

fish and game advisory committee system by adequately funding committee activities, assigning appropriate staff and distributing available support data to the committees, and encouraging the committees to work closely with the regional councils to develop a recommended strategy for the management of subsistence resources within each region and recommendations concerning policies, standards, guidelines, and regulations to implement the strategy; (3) establishes a regional council within each region composed of residents of the region with duties and responsibilities analogous to those set forth in section 805(a)(3), and assigns staff and distributes available support data to the councils; and (4) provides by statute or regulation that recommendations made by the regional councils to the State rulemaking authority concerning the taking of fish and wildlife populations on the public lands within their respective regions for subsistence uses shall be considered by the authority during the course of its administrative proceedings.

The rulemaking authority may choose not to follow a recommendation if it determines that based on the evidence presented during the course of the administrative proceedings of the board the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If the authority makes such a determination and chooses not to follow the recommendation it shall set forth the factual basis and the reasons for its decision.

So long as the State is in full compliance with the requirements of this section, the Secretary of the Interior shall reimburse the State for reasonable costs relating to the operation of the local committees and the establishment and operation of the regional councils. Such reimbursement may not exceed 50 per centum of such costs in any fiscal year, and total payments to the State shall not exceed the sum of \$5,000,000 in any one fiscal year.

If the Secretary determines, one year after the date of this Act and after notice and hearing, that the State is not in full compliance with the requirements of this section, he shall establish a regional council system, and if necessary a local committee system, on the public lands pursuant to the requirements of this section. In performing this monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands the Secretary of the Interior and the Secretary of Agriculture shall be guided by the annual report and advice of the regional councils established by the Secretary of the Interior pursuant to this section, and shall follow such advice unless he determines in writing that such evidence is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs.

#### *Section 806: Federal Monitoring*

This section requires the Secretary of the Interior to monitor the State's provision of the preference for subsistence uses on the public lands including, in consultation with the Secretary of Agriculture, units of the National Forest System. Such monitoring responsibilities should include ongoing communication and cooperation between Federal land and resources managers and Alaska Department of Fish and

Game personnel, local fish and game advisory committees, regional councils, the State Board of Game and the State Board of Fisheries. In addition, the Secretary must develop a capability to monitor both the status of fish and wildlife populations on the public lands harvested for subsistence uses and State regulatory and enforcement activities to provide the preference for subsistence uses, particularly in the rural areas of Alaska. The monitoring capability must enable the Secretary to aid in the identification of potential problems before fish or wildlife populations become threatened with depletion with resultant hardship to rural subsistence-dependent residents, and communicate information about, and suggested recommendations for the solutions of, such problems to the State, the local committees, and the regional councils in a timely manner. However, such monitoring capability need not necessarily require the creation of a new or separate administrative structure within the Department of the Interior.

*Section 807: Judicial Enforcement*

In addition to his monitoring responsibilities set forth in section 806, this section requires the Secretary of the Interior to investigate any allegation made by a local committee or regional council established by the Secretary or the State pursuant to section 805 that the State is not adequately providing for the preference for subsistence uses within a particular area of the public lands, as to the taking of a particular fish or wildlife population on such lands, or in some other manner. The Secretary shall investigate and report publicly on the results of his investigation. After communicating the results of his investigation to the State, if the Secretary determines that the State still is not adequately providing for the preference after having had a reasonable opportunity to do so, he shall file a civil action against the State in the District Court on behalf and at the request of the local committee or regional council which made the allegation to require the State to take such actions as are necessary to adequately and timely provide such preference.

The failure to adequately restrict the harvest of a particular fish or wildlife population by persons engaged in subsistence or other uses in a particular area (e.g. salmon on the Copper River, moose on the lower Yukon, or caribou in the northwest arctic) pursuant to the criteria set forth in section 804 may threaten such population with immediate and irreparable harm and engender considerable hardship among residents of rural communities which are dependent upon such populations. Consequently, the committee believes that in many situations time may be of the essence to prevent such threat of harm to subsistence resources or human hardship and that temporary judicial relief may be necessary.

The committee also recognizes that because of the location of the Federal courts, inclement weather, poor communication and transportation systems, and the geographical, and in many instances cultural, isolation of many rural communities, timely and effective temporary relief may not be possible under normal judicial procedures. In recognition of these unusual circumstances, this section requires that upon the filing of the complaint, if the District Court makes appropriate findings based upon the pleadings as set forth in this section it shall issue an order to the State to show cause why relief requested in the



complaint should not be granted, and also requires the court to expedite the action in every way. However, no order granting temporary relief shall be issued until the State has been provided an opportunity for hearing. Temporary relief may not be necessary in every case and should terminate upon the alleviation of the circumstances which required such relief. Based upon the circumstances of each situation, the court should endeavor to give due deference to the expertise of the Alaska Department of Fish and Game in regulating and conserving fish and wildlife populations in Alaska which are the subject of subsistence uses. Temporary relief should be limited to an order directing the State to issue an emergency regulation either closing a portion of the public lands to the taking of a particular fish or wildlife population except for subsistence uses by local residents of the affected area (or the most subsistence dependent residents of the area), or, less frequently, opening the harvest of such population to such residents. The taking of fish or wildlife for subsistence uses as directed in the order shall be conducted in conformance with applicable State regulations governing such taking which are not directly related to the regulations which have been superseded by the order, or are not in conflict with such order.

To the extent practicable the court should endeavor to fashion a temporary order which draws upon the expertise and special knowledge of the Alaska Department of Fish and Game. Permanent relief shall be limited to directing the State to submit new regulations to the court which adequately provide for the preference for subsistence uses in the situation which gave rise to the action. When, and if, the court determines that such regulations adequately provide for the preference such regulations shall be incorporated as part of the final order. Such final order shall terminate upon the expiration of the normal period of validity under State law (generally one year) of the regulations which were superseded by the regulations incorporated in the order. Although local committee or regional council may obtain immediate judicial review in State court of a determination of the Board of Game or Board of Fisheries that a regional recommendation should not be adopted because it is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs, this section shall be the sole Federal judicial remedy created by this title for a local committee or regional council which determines that the preference for subsistence uses has not been adequately provided by the State in its region. Consequently, such board or council could simultaneously seek judicial review in State court of the refusal of the Board of Game or Board of Fisheries to adopt a regional recommendation and request an investigation by the Secretary, and potentially the filing of a civil action, pursuant to this section.

*Section 808: Park and Monument Resources Commissions*

This section establishes a subsistence resources commission for each national park or monument within which subsistence uses are permitted by this Act. Each council shall be composed of nine members: Three members appointed by the Secretary of the Interior, three members appointed by the the Governor of Alaska, and three members



appointed by the regional council established by the Secretary or the State pursuant to section 805 which has jurisdiction within the area in which the park or monument is located. Members of the commission appointed by the regional council must be a member of either the regional council or a local committee within the region, and also a resident of a village within or adjacent to the park or monument or whose residents engage in subsistence uses within the park or monument. The commissions shall be established within one year from the date of enactment of this Act, and within eighteen months from the date of enactment of this Act shall devise and recommend a program which provides for subsistence uses of wildlife within the park or monument. Each commission should work closely with the local committees and regional boards in its region and with local communities whose residents are dependent upon the continuation of subsistence uses within the park or monument.

Each year thereafter each commission shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which it deems necessary, if any. The Secretary shall promptly implement the subsistence program, or yearly recommendations, unless he determines in writing that such program, or yearly recommendation, violates recognized principles of wildlife conservation, is contrary to the purposes for which the park or monument is established, or would be detrimental to the satisfaction of subsistence needs. Pending development and implementation of the subsistence program in each park or monument, the Secretary shall manage such park or monument to permit subsistence uses by local residents.

*Section 809: Cooperative Agreements*

This section authorizes and encourages the Secretary of the Interior and the Secretary of Agriculture to enter into cooperative agreements and otherwise cooperate with other Federal agencies, the State, Native corporations, and other appropriate persons and organizations, including other nations, to manage and protect fish and wildlife resources utilized for subsistence purposes and to otherwise effectuate the purposes and policies of this title.

*Section 810: Subsistence and Land Use Decisions*

This section requires all Federal land managers and Federal agencies with primary jurisdiction over the public lands, including conservation system unit managers and the Bureau of Land Management, to evaluate the effect on subsistence uses and needs in determining whether to withdraw, reserve, lease or otherwise permit the use, occupancy, or disposition of the public lands under any provision of law authorizing such actions. Prior to any withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses, the head of the appropriate Federal agency shall give notice to the appropriate State agency and local committees and regional councils, give notice to local residents of the area and hold a hearing in the vicinity of the area involved, and determine that such a significant restriction of subsistence uses is necessary and consistent with sound management principles for the utilization of the public lands, that the proposed activity will involve the minimal amount of public lands necessary to accom-

plish the purposes of the proposed action, and that reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources. If the Secretary is also required to prepare an environmental impact statement pursuant to the National Environmental Policy Act as well as comply with the requirements of this section, he shall provide the notice and hearing as part of the preparation of, and include the findings required by this section in, such environmental impact statement. This section is not to be construed as prohibiting, impairing or in any manner affecting the selection by, and conveyance to the State of Alaska or any Native corporation of any portion of the public lands selected or conveyed pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

*Section 811: Access*

This section requires the Secretary of the Interior and Secretary of Agriculture to ensure that residents engaged in subsistence uses shall have appropriate access to subsistence resources on the public lands, and shall permit the taking of fish and wildlife for subsistence uses in areas of Alaska designated as national preserves, national conservation areas, national recreation areas, national parks and monuments in which subsistence uses specifically are permitted by this Act, and areas of the National Wildlife Refuge, National Forest, and Wild and Scenic Rivers Systems in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

The committee intends that access to fish and wildlife populations shall be provided to local residents engaged in subsistence uses regardless of where such populations may be located in the future (except that the section is not intended to permit the subsistence use of wildlife in national parks and monuments which are permanently closed to such uses). Traditional habitat and migration routes may be altered by transportation systems and development activities on the public lands. By focusing on access to the resource itself, rather than on the particular portion of the public lands upon which the resources may presently be located, this section provides the flexibility necessary to ensure the continuation of subsistence uses in the future, subject to reasonable regulation.

This section also recognizes the importance of the use of snow-machines, motorboats, and other means of surface transportation traditionally employed for subsistence purposes on the public lands. Although aircraft are not included within the purview of this section, reference to means "traditionally employed" for subsistence purposes is not intended to foreclose the use of new, as yet unidentified means of surface transportation, so long as such means are subject to reasonable regulation necessary to prevent waste or damage to fish, wildlife or terrain.

*Section 812: Research*

This section requires the Fish and Wildlife Service and the National Park Service to work in close cooperation with each other and with the State of Alaska and other appropriate Federal agencies in conducting new and ongoing research on fish and wildlife populations utilized for subsistence purposes on the public lands, and on the subsistence use of such populations. The section requires both agencies to utilize the

special knowledge of local conditions and requirements of local residents engaged in subsistence uses in their area.

The expertise of the local committees and regional councils also is a valuable source of information about subsistence resources and uses, and the committee expects all Federal agencies engaged in subsistence related research to inform the appropriate committees and councils about research projects being planned or conducted in their respective areas and work closely with those organizations. The results and data obtained from research conducted pursuant to this section shall be made available to the State, the local committees and regional councils, and other appropriate persons and organizations. The committee also respects that research conducted pursuant to this section will be undertaken in a manner which does not disrupt the traditional activities of rural residents engaged in subsistence uses, as well as the communities and cultures of which such residents may be a part.

#### *Section 813: Periodic Reports*

Four years after the date of enactment of this Act and every three years thereafter, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the congress which shall include a description and evaluation of monitoring activities undertaken pursuant to section 806, the status of fish and wildlife populations on the public lands harvested for subsistence uses, a description of the nature and extend of subsistence and other uses of fish and wildlife on the public lands, a description of the role of subsistence uses in the economy and culture of rural Alaska, comments on the report by the State of Alaska, the local committees and regional councils and other appropriate persons and organizations, a description of those actions taken by the Secretary or the State, or which may need to be taken in the future to protect and continue subsistence uses on the public lands, and such other recommendations as the Secretary deems appropriate. A notice of the report shall be published in the Federal Register and the report made available to the public.

#### *Section 814: Regulations*

This section requires the Secretary of the Interior and the Secretary of Agriculture to prescribe such regulations as are necessary and appropriate to carry out their respective responsibilities under this title.

#### *Section 815: Limitations; Savings Clauses*

This section provides that nothing in this Act is intended to be construed as granting any property right in any subsistence resource on the public lands; permitting the level of subsistence uses to be inconsistent with the conservation of healthy populations of fish and wildlife, within a conservation system unit, and with the conservation of natural and healthy populations within a national park or monument; permitting any privilege which may be granted by the State to any person with respect to subsistence uses to be assigned; permitting any subsistence use of fish or wildlife on any portion of the public lands which was permanently closed to such uses on January 1, 1978; vesting elsewhere than in the Secretary any authority to manipulate habitat on any portion of the public lands; enlarging or diminishing the responsibility and authority of the State of Alaska for the management



of fish and wildlife on the public lands except as specifically provided in this Act; amending the Alaska constitution; or modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife.

*Section 816: Closure to Subsistence Uses*

This section provides that all national parks and monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence and sport fishing shall be permitted in such areas in accordance with the provisions of this title and other applicable laws of the United States and the State of Alaska. Except as specifically provided in this section nothing in this title is intended to enlarge or diminish the authority of the Secretary under existing law including the Wildlife Refuge Administration Act, and the BLM Organic Act, to designate areas where, and establish periods when, no taking of fish or wildlife shall be permitted on the public lands for reasons of public safety, administration, to assure the continued viability of a particular fish or wildlife population or for other purposes. Thus, the Secretary remains empowered to authorize a more restrictive hunting season than is otherwise permitted by State law. However, in recognition of the importance of subsistence uses by rural residents of Alaska, notwithstanding any other provision of this Act or other law, subsistence uses of a particular fish or wildlife population on the public lands, and such uses by local residents within conservation system units which are open to subsistence uses (including national parks and monuments), may be prohibited on the public lands, or on any portion thereof, only temporarily for reasons of public safety, administration, or to assure the continued viability of such population.

Such a closure must be preceded by consultation with the State and adequate notice and hearing in the vicinity of the area of the closure, unless the Secretary determines that an emergency situation exists and that emergency measures must be taken to protect the public safety or the continued viability of a particular fish or wildlife population. In the latter situation, the Secretary may immediately close the public lands, or any portion thereof, to subsistence uses of a particular fish or wildlife population for a period not to exceed sixty days, which may not be subsequently extended unless the Secretary affirmatively establishes, after notice and hearing, that such an extension is justified. No closure for purposes of administration may be made prior to notice and hearing in the vicinity of the area of the closure. No closure order to the taking of a fish or wildlife population for subsistence uses authorized by this section shall extend longer than necessary to achieve the immediate purpose for the closure established at the hearing held prior to the issuance of such order.

Thus, for example, while the Secretary may prohibit the taking of wildlife for subsistence uses for reasons of public safety in a certain area surrounding a public campground, roadway or hiking trail, such a closure should not be limited to any arbitrary or inflexible time period. Rather, it should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of



the public lands reasonably necessary to achieve this purpose. Although, this section authorizes the restriction of subsistence uses for purposes of administration, recognition of the importance of subsistence activities to most rural residents requires that this authority be utilized narrowly and with consistent restraint. In exercising this authority to protect the continued viability of a fish or wildlife population, it is not the intent of the Committee that actual depletion of a population or an emergency exist before a closure under this section may be justified. Continued subsistence uses by rural residents can only be maintained if the continued viability of fish and wildlife populations utilized for subsistence purposes can be maintained.

**TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS  
SETTLEMENT ACT AND ALASKA STATEHOOD ACT**

*Section 901: Conveyances to Village Corporations*

This section provides for the conveyance by legislative action of surface rights to eligible Village Corporations, and in some cases, subsurface rights to eligible Regional Corporations. All conveyances made by this section are subject to valid existing rights and may be subject to public easement reservations as provided in Section 903(a).

Subsection (a) provides that the provisions of this section shall be applicable only to Native corporations which elect to receive conveyance pursuant to this section within 180 days.

Subsection (b) legislatively conveys land to eligible Village Corporations where such land is mandated by ANCSA to be selected by the Village Corporation.

Paragraph (1) conveys to a Village Corporation, found eligible by the Secretary, the surface estate to public land in its "core" township or townships. A "core" township is that township which encloses all or part of the improved area constituting the Village. The conveyance is immediate, subject to valid existing rights, and must be otherwise consistent with provisions of the ANCSA such as acreage limitations, contiguity, and location in respect to Home Rule or First-class cities.

Where two or more Villages, by reason of locality, have claim to the same township, the conveyance is delayed until the Village Corporations involved agree to the division of the township, or such dispute is settled by arbitration (see subsection (c)).

Paragraph (2) conveys to a Village Corporation, found eligible by the Secretary, the surface estate to State of Alaska "selected" lands (such are not public lands under Section 3(e) of the ANCSA) in the "core" township. The conveyance procedures and criteria are the same as for paragraph (1) except that certain types of lands, currently in litigation or dispute, are not conveyed by this legislation. These types of land are those lands selected, but not yet patented to the State, under the School or University Land Grants, the Mental Health Land Grant, or where the State had by December 18, 1971, conditionally granted title to a third party pursuant to the tentative approval authority of Section 6(g) of the Alaska Statehood Act. Should the results of the litigation or settlement of the disputes be in favor of the Native Corporation, the Secretary would be required to subsequently convey such lands under either the procedures of Section 902 or the ANCSA, as appropriate.

95TH CONGRESS }  
2d Session

SENATE

{ REPORT  
No. 95-1300

DESIGNATING CERTAIN LANDS IN THE STATE  
OF ALASKA AS UNITS OF THE NATIONAL PARK,  
NATIONAL WILDLIFE REFUGE, NATIONAL WILD  
AND SCENIC RIVERS, AND NATIONAL WILDER-  
NESS PRESERVATION SYSTEMS, AND FOR OTHER  
PURPOSES

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REPORT

OF THE

COMMITTEE ON ENERGY  
AND NATURAL RESOURCES  
UNITED STATES SENATE

together with

MINORITY, ADDITIONAL, AND SUPPLEMENTAL  
VIEWS

TO ACCOMPANY

H.R. 39



OCTOBER 9 (legislative day, SEPTEMBER 28), 1978.—Ordered to be printed

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(iii)

## ADMINISTRATION

SEC. 709. Except as otherwise expressly provided for in this Act wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture for areas designated in sections 701 and 702 shall, as applicable, be deemed to be a reference to the Secretary.

## TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

## FINDINGS

SEC. 801. The Congress finds and declares that—

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

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

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

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

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

## POLICY

SEC. 802. It is hereby declared to be the policy of Congress that—

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

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

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



including Native corporations, appropriate State and Federal agencies, and other nations.

#### DEFINITIONS

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

- (1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and
- (2) "barter" means the exchange or trade of fish or wildlife or their parts, taken for subsistence uses—
  - (A) for other fish or game or their parts; or
  - (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

#### PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded preference over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such preference shall be based on—

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

#### LOCAL AND REGIONAL PARTICIPATION

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

- (1) at least five Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;
- (2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3) (D) (iv) of this subsection; and
- (3) a regional advisory council in each subsistence resource region.

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

- (A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;
- (B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;
- (C) the encouragement of local and regional participation in the decision-making process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;
- (D) the preparation of an annual report to the Secretary which shall contain—

- (i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;
- (ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;
- (iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

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

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

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall be guided by the annual report and advice of the regional councils concerning the management of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary shall follow the advice of such councils unless he determines in writing that such advice is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be determined to the satisfaction of subsistence needs.

(d) The Secretary shall not implement subsection (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State divides the public lands into at least five regions as set forth in subsection (a) (1); adequately maintains its local fish and game advisory committee structure; establishes a regional council in each region composed of residents of the region with duties and responsibilities analogous to those set forth in subsection (a) (3); assigns staff and distributes available support data to the local committees and regional councils as set forth in subsection (b); and provides that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall make findings of fact detailing the basis for its failure to adopt the recommendation.

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

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

#### FEDERAL MONITORING

Sec. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate annually and at such other times as he deems necessary of his views on the effectiveness of the

State in providing such preference, any exercise of his closure or other administration authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

#### JUDICIAL ENFORCEMENT

SEC. 807. In performance of his monitoring responsibilities required in section 806, if the Secretary and appropriate State agency are notified in writing by a local committee or regional council established by the Secretary or the State pursuant to section 805 that the preference for subsistence uses set forth in section 804 is not adequately provided in its region, setting forth the facts upon which such belief is based and detailing efforts to obtain timely relief through available State grievance procedures, the Secretary shall investigate and report publicly on the results of his investigation. If the Secretary determines that the preference for subsistence uses is not adequately provided and that timely relief has not been obtained, he shall submit his views to the Governor and seek to ensure the adequate and timely provision of such preference through discussions with the State. The Secretary shall inform the committee or council which submitted the notification to him of the results of such discussions. If the Secretary determines that the State has failed to make adequate and timely provision for the preference for subsistence uses after having been provided a reasonable opportunity to do so and that such failure threatens the ability of subsistence-dependent Alaska residents to satisfy their subsistence needs, at the request of the committee or council which submitted the notification to him, the Secretary shall bring an action in the United States district court on behalf of such committee or council to require the State to take such actions as are necessary to provide such preference. Such action shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time and shall be expedited in every way by such court. Upon the filing of the complaint, if the pleadings indicate that the State has failed to adequately provide for the preference for subsistence uses, that such failure imminently threatens the ability of subsistence-dependent residents to satisfy their subsistence needs, that immediate relief is necessary to assure that those residents who may have been adversely affected by such failure are provided a timely opportunity to satisfy such needs, and that immediate relief will not threaten the continued viability of fish and wildlife populations toward which such relief may be directed, the district court shall issue an order directing the State to show cause why the features of the State's provision of the preference which render such provision inadequate should not be enjoined and the State be directed to permit the taking of such fish or wildlife populations only for subsistence uses by those residents who have been adversely affected by the State's failure to provide for the preference. No order granting such temporary relief shall be issued until the State has been provided an opportunity for hearing, and such order shall provide that such taking for subsistence uses shall be subject to regulation by the State in a manner which adequately provides for the satisfaction of the subsistence preference requirement. The court shall provide relief, other than temporary relief, by directing the State to submit regulations which satisfy the subsistence preference requirement. When approved by the court, such regulations shall be incorporated as part of the final judicial order. Such order shall be valid only for such period as normally provided for the regulations at issue by State law. This section shall constitute the sole Federal judicial remedy created by this title for a local committee or regional council which determines that the preference for subsistence uses set forth in subsection 804 has not been adequately provided by the State in its region.

#### PARK AND MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

SEC. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint four members to a subsistence resources commission for each national park or monument within which subsistence uses are permitted by this Act. The regional council established pursuant to section 805 which has jurisdiction within the area in which the park or monument is located shall appoint four members to the commission each of whom is a member of either the regional council or a local committee within the region and also is a resident of a village within or adjacent to the park or monument or whose



residents engage in subsistence uses within the park or monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local committees and regional councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

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

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

#### COOPERATIVE AGREEMENTS

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

#### SUBSISTENCE AND LAND USE DECISIONS

SEC. 810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

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

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

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

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

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land con-



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veyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

## ACCESS

SEC. 811. The Secretary shall ensure that persons engaged in subsistence uses shall have appropriate access to subsistence resources on the public lands.

## SNOWMOBILES AND MOTORBOATS

SEC. 812. Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to such regulations as are necessary to prevent waste, or damage to fish, wildlife, or terrain.

## RESEARCH

SEC. 813. The Secretary, acting through the United States Fish and Wildlife Service and the National Park Service and in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of subsistence users; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

## PERIODIC REPORTS

SEC. 814. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

- (1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 804;
- (2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;
- (3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;
- (4) the role of subsistence uses in the economy and culture of rural Alaska;
- (5) comments on the Secretary's report by the State, the local councils and regional councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;
- (6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and
- (7) such other recommendations the Secretary deems appropriate.

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

## REGULATIONS

SEC. 815. Each Secretary shall prescribe such regulations as are necessary and appropriate to carry out their respective responsibilities under this title.

## LIMITATIONS, SAVINGS CLAUSES

SEC. 816. Nothing in this Act shall be construed as—

- (1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife on such lands to be significantly expanded beyond the level of such uses occurring during the ten-year period before January 1, 1978. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;
- (2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which

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was permanently closed to such uses on January 1, 1978, or as vesting elsewhere than in the Secretary any authority to manipulate habitat on any portion of the public lands;

(3) enlarging or diminishing the responsibility and authority of the State of Alaska for management of fish and wildlife on public lands as specifically provided in this Act, or as amending the Alaska constitution; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1151-1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Conservation Act (45 Stat. 1222; 16 U.S.C. 715-715s), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777k), or any amendments to any one or more of such Acts.

#### CLOSURE TO SUBSISTENCE USES

SEC. 817. (a) All national parks and monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence and sport fishing shall be authorized in such areas by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

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

#### TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

##### CONVEYANCES TO VILLAGE CORPORATIONS

SEC. 901. (a) "CORE" TOWNSHIPS, ETC.—(1) (A) Except to the extent that conveyance of a surface estate would be inconsistent with section 12(a), 14(a), 14(b), or 22(1) of the Alaska Native Claims Settlement Act, subject to valid existing rights and section 903(a) of this Act, there is hereby conveyed to and vested in each Village Corporation for a Native village which is determined by the Secretary to be eligible for land under sections 11 or 16 of the Alaska Native Claims Settlement Act, and which did not elect to acquire a former reserve under section 19(b) of such Act, all of the right, title and interest of the United States in and to the surface estate in the public lands, as defined in such Act, in the township or townships withdrawn pursuant to section 11(a) (1) or 16(a) of such Act in which all or any part of such village is located. As used in this paragraph the term "Native village" has the same meaning such term has in section 3(c) of the Alaska Native Claims Settlement Act.

(B) Where two or more Village Corporations are entitled to the same land by virtue of the same township or townships embracing all or part of the Native

#### IV. LEGISLATIVE HISTORY

The Committee had 11 bills relating to the Alaska National Interest Lands pending before it during the 95th Congress. S. 499, containing the 1973 proposals of Interior Secretary Rogers C.B. Morton and S. 500, the Alaska Coalition proposal, were introduced by Senators Jackson and Hansen (by request), on January 28, 1977.

On May 12, 1977, Senator Metcalf introduced S. 1500 as a substitute for S. 500. Senator Durkin introduced an amendment to S. 1500 (No. 2176) on May 16, 1978. Senator Stevens' proposal, S. 1787 was introduced June 30, 1977. S. 2465, the Carter Administration proposal was introduced by request on January 31, 1978. Senator Gravel introduced his bill, S. 2944, on April 15, 1978.

H.R. 39, as passed by the House, was referred to the Committee on June 8, 1978.

In addition to comprehensive Alaska lands legislation, S. 1546, introduced by Senator Abourezk creating a National Preserve on Admiralty Island, S. 3016 proposed by Senator Gravel and Stevens and S. 3303, proposed by the Administration containing numerous provisions to improve the implementation of the Alaska Native Claims Settlement Act, were referred to the Committee on Energy and Natural Resources.

The Full Committee held 7 days of hearings in Washington on the Alaska National Interest Lands bills during the 95th Congress. During the 94th Congress 2 days of hearings were held on S. 1687, the Administration "d-2" proposal. In addition the Committee staff conducted workshops in 7 Alaska villages during September 1977 and chaired 7 days of workshops in February, 1978.

Committee markup of the pending legislation, commenced on June 22, 1978. After 46 markup sessions, the Committee ordered favorably reported H.R. 39 with an amendment in the nature of a substitute, on October 5, 1978.

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Estimated Effect of Committee Wilderness Package:		<i>Million board feet</i>
Total annual potential yield less what is reserved, non-harvestable, or marginal "A-base".....		560
10,000,000 per year investment for increased timber yield and \$5,000,000 loan fund.....		60
Impact of Native timber.....		36
Estimated allowable cut before deductions.....		656
Additional Reduction for Proposed Wilderness Designation.....		-80
Additional reduction for possible relocation of Native timber off Admiralty Island.....		-7
Annual allowable cut less wilderness and Native timber relocation.....		569

Thus, it appears that the Committee recommendations will indeed protect the existing timber industry in Southeast while providing wilderness designation for several key areas.

The Committee realizes that there is some disagreement regarding the figures presented above relative to timber availability, potential yield investment opportunities, etc. During its deliberations, the Committee was unable to obtain a consistent set of data from the Forest Service regarding these factors. However, the Committee feels that the numbers employed in the calculations above are fair estimates of the effect the Committee actions will have on timber supply levels from the Tongass.

#### TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

##### OVERVIEW

Alaska's more than 200 rural villages are unique in that they are the last communities in the United States in which a substantial number of residents are still dependent upon the harvest of renewable resources on the public lands for their sustenance. The importance of subsistence uses of such resources to the physical, economic and cultural well-being of Alaska Natives and other rural residents has been exhaustively chronicled in testimony presented at hearings, town meetings and workshops held by the committee during consideration of both the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. The committee notes that the report of the Committee on Interior and Insular Affairs of the House of Representatives on H.R. 39 (House Report No. 95-1045, Part I, pp. 181-187) documents the importance of such uses in considerable detail.

##### HISTORY OF CONCERN

The Committee has had a long-standing concern for the protection of subsistence resources and uses in Alaska. In Section 21 of S. 35, the Senate version of the Alaska Native Claims Settlement Act, the Secretary was directed to establish subsistence zones on the public lands, and, in circumstances in which subsistence resources or uses were threatened, to exercise his closure authority by prohibiting all consumptive uses of such resources within a zone except for subsistence uses by Alaska Natives. The conferees failed to adopt this provision



in the conference report; however, the statement of the managers clearly established the intent of the Congress that the Secretary exercise his closure authority in a manner consistent with the purposes of Section 21:

The conference committee, after careful consideration believes that all Native interest in subsistence resource lands can and will be protected by the secretary through the exercise of his existing withdrawal authority. The secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The conference committee expects both the secretary and the state to take any action necessary to protect the subsistence needs of the natives."

In 1973, the committee adopted, and the Congress enacted, provisions in the Trans-Alaska Oil Pipeline Act (P.L. 93-153) which provided for strict liability of the pipeline right-of-way holder for "fish, wildlife, biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes" and required stipulations in all oil and gas pipeline right-of-way permits to protect the "interests of individuals living in the general area of the right-of-way permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes". Other Acts of Congress also have recognized the unique dependence of rural Alaskans on subsistence resources. For example, the Marine Mammal Protection Act includes a subsistence exemption for Native residents of coastal villages in Alaska (16 U.S.C. 1371(b)). Similarly, subsistence uses by Alaska Natives and other residents of Native villages are exempted from coverage of the Endangered Species Act (16 U.S.C. 1539(e)).

#### FEDERAL AND STATE RESPONSIBILITY

The subsistence management provisions of H.R. 39 as passed by the House of Representatives reflect a delicate balance between the traditional responsibility of the State of Alaska for the regulation of fish and wildlife populations within the State and the responsibility of the Federal government for the attainment of national interest goals, including the protection of the traditional lifestyle and culture of Alaska Natives. Although the committee has adopted a subsistence management system similar in concept to the House approach, after careful consideration the committee has modified the Federal-State relationship in a number of important aspects.

Section 704 of the House bill requires the State to develop and implement a subsistence management program which includes a regionalized regulatory system for the management of fish and wildlife on the public lands for subsistence uses, and laws or regulations which provide preference for nonwasteful subsistence uses by local residents consumptive uses of fish and wildlife on the public lands. The State regulations must further provide preferences for subsistence uses shall

be based upon local residency, customary and direct dependence upon such populations as the mainstay of livelihood and the availability of alternative resources. The committee determined that inclusion of these requirements as part of a federally mandated State program is an unnecessary intrusion into traditional State responsibility for fish and wildlife management. Consequently, the committee retained both of these requirements in sections 804 and 805 respectively, but has eliminated the requirement that they be included as part of a formal State program.

Section 705(c) of the House bill requires the Secretary to take certain administrative action if he determines that the State has failed to establish a subsistence program or to implement such a program in a manner which adequately satisfies the preference for subsistence uses. While the committee has retained broad Federal guidelines to ensure the adequate implementation of the subsistence preference on the public lands and the Secretary's ongoing responsibility to monitor the State's implementation of such preference, the Committee believes that the responsibility of the Secretary to ensure the protection of subsistence uses and the satisfaction of subsistence needs of Alaska Natives and other rural residents can best be met by providing legal representation for such residents before the United States District Court in appropriate instances in which the Secretary has determined, after consultation with the State, that the State has not timely or adequately provided for the preference for subsistence uses. Although it is the intent of the committee to neither enlarge nor diminish any existing authority of the Secretary to take appropriate administrative action to protect subsistence uses and satisfy subsistence needs of rural residents of Alaska, the committee believes that the responsibilities and authorities of the Secretary and the United States District Court set forth in section 804-807 ensure the protection of subsistence activities and the discharge of Federal responsibilities.

#### TITLE IX—IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND THE ALASKA STATEHOOD ACT

Title IX was adopted by the Committee as a means, along with the designation of national interest lands in the remainder of the bill, to help resolve Alaska's uncertain land ownership status, with respect to State and Native land selections and conveyances. Title IX contains the substantive provisions which follow from the finding in Title I, that a prompt and thorough resolution of the status of Alaska public lands is in the best interests of everyone in the Nation.

##### *Native land interests*

Section 14 of the Alaska Native Claims Settlement Act required the Secretary to issue conveyances to Native village and regional corporations immediately after the lands were selected from the withdrawals. This mandate for immediate conveyance was consistent with the Congressional commitment in section 2(b) of the Act that the settlement should "be accomplished rapidly, with certainty, in conformity with the real economic and social needs of the Natives, without litigation (and) with maximum participation by Natives in decisions affecting their rights and property . . .".

## VII. SECTION-BY-SECTION ANALYSIS

In general, the table of contents and the language of the Committee substitute speak for themselves. However, the language in title VII relative to the Special Management Areas and Forest Utilization Program; title VIII, Subsistence Management and Use; title IX, Implementation of Alaska Native Claims Settlement Act and Alaska Statehood Act; title X, Federal North Slope Lands Study Program; title XI, Transportation and Utility Systems In and Across, and Access Into, Conservation System Units; title XII, Federal State Cooperation; title XIII, Administrative Provision; title XIV, Amendments to the Alaska Native Claims Settlement Act and Related Provisions; the title XV, National Need Mineral Activity Recommendation Process, is technical in nature and is therefore analyzed in greater detail in the following section of the report.

### TITLE VII—NATIONAL WILDERNESS RESERVATION SYSTEMS

#### *Section 703(b): Designation of Wilderness in the National Forests System*

The Committee amendment, like the House-passed bill, includes language urging the Secretary of Agriculture to negotiate in good faith with the Native Corporations who have selections on Admiralty Island in an effort to find lands of comparable value on another part of the forest. The Committee is hopeful that an option can be presented to those corporations in the near future so that their full entitlements may be conveyed without extensive resource damage to Admiralty Island.

As these selections rights are located on portions of Admiralty Island designated as a special management area under the Committee amendment, any timber on these lands currently withdrawn from the allowable cut is to be included in the cut should an exchange take place.

#### *Section 705. Designation of special management areas within the Tongass National Forest*

This section designates nine areas of national forest land as "Special Management Areas" to protect the lands now and to provide management flexibility. Thus, the designation recognizes the important public values of these lands and the many existing uncertainties about future timber supply and demand in Southeastern Alaska.

#### *Section 706: Management rules for special management areas*

This section sets forth the management rules for special management areas. Under subsection 706(b) timber sales from these lands are prohibited for at least ten years after date of enactment. Despite this prohibition the timber volume on these lands will be included in determining the annual allowable sale quantity on the Tongass National Forest. This provision does not affect timber sales made prior to enactment of this Act.

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Subsection 706(c) withdraws the land in special management areas from the operation of the United States Mining law. The provision for classification and opening of these lands are identical to those provided for national conservation areas established pursuant to Title IV. The Committee does not intend that these lands be managed as wilderness.

Subsection 706(d) directs the Secretary of Agriculture to monitor timber supply and demand in Southeastern Alaska. At any time after ten years after the date of enactment, the Secretary is directed to request a waiver of the prohibition on timber sales if he finds that timber in any special management area must be sold to maintain the supply to dependent industry at a rate of 520 million board feet per year.

Subsections 706 (e) and (f) provide an expedited procedure for a Congressional approval of any waiver request.

Subsection 706(g) gives the State of Alaska standing to seek a Federal Court Order directing the Secretary of Agriculture to make the finding required and transmit a proposed statutory waiver. The Committee included this provision so as to give the State an opportunity to challenge the Secretary's failure to seek a waiver if it believes that the Secretary of Agriculture should have made the finding required by subsection 706(d). Of course, the State would have to present evidence substantiating its claim and the Secretary of Agriculture would have the opportunity to rebut such evidence.

*Section 707: National forest timber utilization program*

Section 707 establishes a special timber utilization program for the Tongass National Forest. The program is designed to help make Federal timber available from marginal lands. The program includes construction and maintenance of forest development roads under subsection 707(a) and a special loan program to assist timber purchasers under subsection 707(b).

## TITLE VIII—SUSPENSIVE MANAGEMENT AND USE

*Section 801 Findings*

The findings are based on the hearings, town meetings and workshops held by the committee in Alaska and Washington. The findings provide the factual and legal foundation for Congressional action to protect subsistence resources and uses on the public lands. The committee recognizes the importance of continued subsistence uses to the economy and lifestyle of rural Alaska, and particularly to the culture of the Alaska Natives. Alternative food sources generally are not available in most rural villages to offset a diminution of the traditional subsistence harvest. However, the continuation of subsistence uses in rural Alaska is threatened by the rapid population growth of Anchorage, Fairbanks and other urban centers and the resultant pressure which urban residents engaged in subsistence and sports uses have placed upon important fish and wildlife populations in heretofore remote areas of the State. The subsistence management and use title is the culmination of Congressional action initiated by Congress by the Alaska Native Claims Settlement Act to protect and provide for continued subsistence uses by Alaska Natives and



other rural residents, and is based upon the constitutional authority of Congress over Native affairs and its authority under the Property Clause and the Commerce Clause. The committee also has determined that the protection of the subsistence way of life and the fish and wildlife populations upon which that lifestyle depends necessitates the establishment of an administrative structure which enables rural subsistence-dependent residents with personal knowledge of local conditions and requirements to have a meaningful role in the regulations and management of fish and wildlife and subsistence uses on the public lands.

#### *Section 802: Policy*

Based upon the findings in the preceding section, three basic policies have been established which shall guide the activities of the Federal government and the State on the public lands: that the utilization of the public lands is to cause the least adverse impact possible upon rural residents who depend upon subsistence uses for their economic and physical well-being and cultural vitality; that nonwasteful subsistence uses of fish, wildlife and other renewable resources, e.g. berries, timber, grasses, shall be the first priority consumptive use of such resources on the public lands, and when or where it is necessary to restrict the taking of such resources, taking for nonwasteful subsistence uses shall be given preference over other consumptive uses; and that the successful management of subsistence resources and activities requires long term cooperation between adjacent landowners and managers, including appropriate State and Federal agencies, Native corporations, and other nations.

#### *Section 803: Definition*

The committee has adopted a definition of "subsistence uses" based on the definition of that term set forth in section 15, ch. 151 SLA 1978 (A.S. 16.05.940) of the Alaska Statutes. In turn, the State definition was modeled on section 703 of the House bill. "Subsistence uses" are defined as the customary and traditional use in Alaska of fish, wildlife and other renewable resources for direct personal or family consumption, for the making and selling of handicraft articles from the non-edible by-products of fish and wildlife taken for direct personal or family consumption, and for customary trade, barter, or sharing for personal or family consumption. The definition of "family" recognizes extended family patterns common to all of Alaska's Native cultures. "Family" includes any person living in a household on a permanent basis as well as those persons living outside the household who are related by blood, marriage or adoption (legal or equitable). "Barter" means the exchange or trade of fish or wildlife, or their parts, for other fish or wildlife, or their parts, or for other food or nonedible items other than money if the exchange is of a limited and noncommercial nature. This definition of "barter" recognizes that in many rural villages the subsistence diet must be supplemented with other foods which may be available from the village store and other sources, and that the limited noncommercial barter of subsistence resources for nonedible items is an essential element of the rural subsistence lifestyle. The definition of "subsistence uses" is intended to include all Alaska residents who utilize renewable resources for direct personal or family consumption.

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. The factors of local residency, economic dependence, and availability of alternative resources have been included in section 804 rather than in the definition. Although a truly comprehensive definition of "subsistence uses" must include a mix of those factors, the committee has determined that they should be incorporated through appropriate action by the State rulemaking authority in conjunction with the recommendations of the regional councils established pursuant to section 805 to implement the subsistence preference set forth in section 804. Sections 803-805 are intended to establish a dynamic process for the regulation of subsistence resources and uses which will enable rural people to participate in the decisionmaking process of the State rulemaking authority in the inclusion of the local residency, economic dependence, and availability of alternative resources factors into the definition of "subsistence uses" on a case-by-case basis to meet the needs of a particular management situation in a particular area.

*Section 804: Preference for subsistence uses*

This section requires both the State and the Federal government to accord nonwasteful subsistence uses a preference over the taking of such resources for other purposes on the public lands. Although the committee recognizes that only rarely will the failure to adequately provide for the preference result in the threat of literal starvation, in many instances the failure to obtain fish to dry for winter use or fresh meat to supplement other foods can engender considerable individual, community and cultural trauma and hardship. Consequently, this section envisions that governmental action affecting subsistence resources and uses shall be undertaken in a manner which adequately provides for the preference on an ongoing basis and not only when critical allocation decisions may be necessary because a particular subsistence resource may be threatened with depletion, so long as such action is conducted in a manner which is consistent with the protection of the continued viability of fish and wildlife populations which may be affected by such action. If a particular fish or wildlife population (e.g. salmon, moose or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the State rulemaking authority. However, if the continued viability of a particular population or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons, the State rulemaking authority, in conjunction with the recommendations of the regional council representing the affected area, is required by this section to establish regulations which restrict the taking of such population to Alaska residents engaged in subsistence uses.

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If "subsistence uses" must be further restricted to protect the continued viability of the population or to ensure the satisfaction of rural subsistence needs, the State rulemaking authority, in conjunction with the recommendations of the regional council, must limit such uses to local residents of the affected area, or, if necessary, only those local residents with the most customary and direct dependence on the population as the mainstay of livelihood and with the least access to alternative food supplies. In the latter situation, the committee believes that in making such difficult allocation decisions, the State rulemaking authority, in conjunction with the recommendations of the regional council, should endeavor to utilize the special knowledge of local conditions and requirements of the local advisory committees within the affected region. This section also requires the Secretary of the Interior and the Secretary of Agriculture to give subsistence uses preferential consideration in their management activities on the public lands which directly relate to the taking of fish and wildlife, and to take appropriate action to protect such uses and the continued viability of fish and wildlife populations upon which the continuation of such uses depend.

*Section 805: Local and regional participation*

The committee has determined that the opportunity for rural residents of Alaska with personal knowledge of local conditions and requirements to participate effectively in the management and regulation of subsistence resources on the public is important in order to assure both the continued viability of fish and wildlife populations of national importance and the ability of rural people engaged in a subsistence lifestyle to continue to do so. Although the State has indicated that it intends to provide greater support to its existing local advisory committees and establish a system of regional councils throughout the rural areas of the state which will have a major role in the State rulemaking authority's establishment of seasons, bag limits and the provision of the preference for subsistence uses in their respective areas, the State still is in the process of establishing such a system. Section 805 implements section 801(5) by requiring the Secretary of the Interior to establish a regional council, and if necessary a local committee, system on the public lands if within one year from the date of enactment of this Act the State has not yet established a system for local and regional participation which satisfies the requirement of this section.

The State system of local and regional participation shall be in compliance with the requirements of this section and the Secretary shall not establish local committees or regional councils if the State: (1) divides the public lands into at least five regions. The number and boundaries of the regions must be sufficient to assure that regional differences in subsistence uses are adequately accommodated. The committee believes that more than five regions may well be necessary to assure such accommodation, but that the Alaska legislature, the Alaska Department of Fish and Game and the rural villages are best suited to finalize this structure.

However, it is the intent of the Committee that the number and boundaries of the regions be established in a manner which does not

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permit the large urban population centers to dominate the regional council system and exercise control over the regulation of subsistence resources in the rural areas; (2) strengthens the existing

State local fish and game advisory committee system by adequately funding committee activities, assigning appropriate staff and distributing available support data to the committees, and encouraging the committees to work closely with the regional councils to develop a recommended strategy for the management of subsistence resources within each region and recommendations concerning policies, standards, guidelines, and regulations to implement the strategy; (3) establishes a regional council within each region composed of residents of the region with duties and responsibilities analogous to those set forth in section 805(a) (3), and assigns staff and distributes available support data to the councils; and (4) provides by statute or regulation that recommendations made by the regional councils to the State Board of Game of Board of Fisheries concerning the taking of fish and wildlife populations on the public lands within their respective regions for subsistence uses shall be considered by the board during the course of its administrative proceedings.

The board may choose not to follow a recommendation if it determines that based on the evidence presented during the course of the administrative proceedings of the board the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of rural subsistence needs. If the board makes such a determination and chooses not to follow the recommendation it shall make findings of fact detailing the basis for its failure to adopt the recommendation.

If a recommendation is not followed by the board as set forth in the preceding sentence, the board may modify the recommendation to provide for, and in a manner consistent with, the preference for subsistence uses set forth in section 804. So long as the State is in full compliance with the requirements of this section, the Secretary of the Interior may reimburse the State for reasonable costs relating to the operation of the local committees and the establishment and operation of the regional councils. Such reimbursement may not exceed 50 per centum of such costs in any fiscal year, and total payments to the State shall not exceed the sum of \$5,000,000 in any one fiscal year.

If the Secretary determines, one year after the date of this Act and after notice and hearing, that the State is not in full compliance with the requirements of this section, he shall establish a regional council system, and if necessary a local committee system, on the public lands pursuant to the requirements of this section. In performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands the Secretary of the Interior and the Secretary of Agriculture shall be guided by the annual report and advice of the regional councils established by the Secretary of the Interior pursuant to this section, and shall follow such advice unless he determines in writing that such evidence is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of rural subsistence needs.



*Section 806: Federal monitoring*

This section requires the Secretary of the Interior to monitor the State's provision of the preference for subsistence uses on the public lands including, in consultation with the Secretary of Agriculture, units of the National Forest System. Such monitoring responsibilities should include ongoing communication and cooperation between Federal land and resources managers and Alaska Department of Fish and Game personnel, local fish and game advisory committees, regional councils, the State Board of Game and the State Board of Fisheries. In addition, the Secretary must develop a capability to monitor both the status of fish and wildlife populations on the public lands harvested for subsistence uses, and State regulatory and enforcement activities to provide the preference for subsistence uses, particularly in the rural areas of Alaska. The monitoring capability must enable the Secretary to aid in the identification of potential problems before fish or wildlife populations become threatened with depletion with resultant hardship to rural subsistence-dependent residents, and communicate information about, and suggested recommendations for the solutions of, such problems to the State, the local committees, and the regional councils in a timely manner. However, such monitoring capability need not necessarily require the creation of a new or separate administrative structure within the Department of the Interior.

*Section 807: Judicial enforcement*

In addition to his monitoring responsibilities set forth in section 806, this section requires the Secretary of the Interior to investigate any allegation made by a local committee or regional council established by the Secretary or the State pursuant to section 805 that the State is not adequately providing for the preference for subsistence uses within a particular area of the public lands, as to the taking of a particular fish or wildlife population on such lands, or in some other manner. The Secretary shall investigate and report publicly on the results of his investigation. After communicating the results of his investigation to the State, if the Secretary determines that the State still is not adequately providing for the preference after having had a reasonable opportunity to do so, he shall file a civil action against the State in the District Court on behalf, and at the request of the local committee or regional council which made the allegation to require the State to take such actions as are necessary to adequately and timely provide such preference.

The failure to adequately restrict the harvest of a particular fish or wildlife population by persons engaged in subsistence or other uses in a particular area (e.g. salmon on the Copper River, moose on the lower Yukon, or caribou in the northwest arctic) pursuant to the criteria set forth in section 804 may threaten such population with immediate and irreparable harm and engender considerable hardship among residents of rural communities which are dependent upon such populations. Consequently, the committee believes that in many situations time may be of the essence to prevent such threat of harm to subsistence resources or human hardship and that temporary judicial relief may be necessary.

The committee also recognizes that because of the location of the Federal courts, inclement weather, poor communication and transpor-

tation systems, and the geographical, and in many instances cultural, isolation of many rural communities, timely and effective temporary relief may not be possible under normal judicial procedures. In recognition of these unusual circumstances, this section requires that upon the filing of the complaint, if the District Court makes appropriate findings based upon the pleadings as set forth in this section it shall issue an order to the State to show cause why relief requested in the complaint should not be granted, and also requires the court to expedite the action in every way. However, no order granting temporary relief shall be issued until the State has been provided an opportunity for hearing. Temporary relief may not be necessary in every case and should terminate upon the alleviation of the circumstances which required such relief. Based upon the circumstances of each situation, the court should endeavor to give due deference to the expertise of the Alaska Department of Fish and Game in regulating and conserving fish and wildlife populations in Alaska which are the subject of subsistence uses. Temporary relief should be limited to an order directing the State to issue an emergency regulation either closing a portion of the public lands to the taking of a particular fish or wildlife population except for subsistence uses by local residents of the affected area (or the most subsistence dependent residents of the area), or, less frequently, opening the harvest of such population to such residents. The taking of fish or wildlife for subsistence uses as directed in the order shall be conducted in conformance with applicable State regulations governing such taking which are not directly related to the regulations which have been superseded by the order, or are not in conflict with such order.

To the extent practicable the court should endeavor to fashion a temporary order which draws upon the expertise and special knowledge of the Alaska Department of Fish and Game. Permanent relief shall be limited to directing the State to submit new regulations to the court which adequately provide for the preference for subsistence uses in the situation which gave rise to the action. When, and if, the court determines that such regulations adequately provide for the preference such regulations shall be incorporated as part of the final order. Such final order shall terminate upon the expiration of the normal period of validity under State law (generally one year) of the regulations which were superseded by the regulations incorporated in the order. Although local committee or regional council may obtain immediate judicial review in State court of a determination of the Board of Game or Board of Fisheries that a regional recommendation should not be adopted because it is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs, this section shall be the sole Federal judicial remedy created by this title for a local committee or regional council which determines that the preference for subsistence uses has not been adequately provided by the State in its region. Consequently, such board or council could simultaneously seek judicial review in State court of the refusal of the Board of Game or Board of Fisheries to adopt a regional recommendation and request an investigation by the Secretary, and potentially the filing of a civil action, pursuant to this section.

*Section 808: Park and Monument Resources Commissions*

This section establishes a subsistence resources commission for each national park or monument within which subsistence uses are permitted by this Act. Each council shall be composed of twelve members: Four members appointed by the Secretary of the Interior, four members appointed by the Governor of Alaska, and four members appointed by the regional council established by the Secretary or the State pursuant to section 805 which has jurisdiction within the area in which the park or monument is located. Members of the commission appointed by the regional council must be a member of either the regional council or a local committee within the region, and also a resident of a village within or adjacent to the park or monument or whose residents engage in subsistence uses within the park or monument. The commissions shall be established within one year from the date of enactment of this Act, and within eighteen months from the date of enactment of this Act shall devise and recommend a program which provides for subsistence uses of wildlife within the park or monument. Each commission should work closely with the local committees and regional boards in its region and with local communities whose residents are dependent upon the continuation of subsistence uses within the park or monument.

Each year thereafter each commission shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which it deems necessary, if any. The Secretary shall promptly implement the subsistence program, or yearly recommendations, unless he determines in writing that such program, or yearly recommendation, violates recognized principles of wildlife conservation, threatens the continued viability of wildlife populations within the park or monument, or would be detrimental to the satisfaction of subsistence needs. Pending development and implementation of the subsistence program in each park or monument, the Secretary shall manage such part or monument to permit subsistence uses by local residents.

*Section 809: Cooperative agreements*

This section authorizes and encourages the Secretary of the Interior and the Secretary of Agriculture to enter into cooperative agreements and otherwise cooperate with other Federal agencies, the State, Native corporations, and other appropriate persons and organizations, including other nations, to manage and protect fish and wildlife resources utilized for subsistence purposes and to otherwise effectuate the purposes and policies of this title.

*Section 810: Subsistence and land use decisions*

This section requires all Federal land managers and Federal agencies with primary jurisdiction over the public lands, including conservation system unit managers and the Bureau of Land Management, to evaluate the effect on subsistence uses and needs in determining whether to withdraw, reserve, lease or otherwise permit the use, occupancy, or disposition of the public lands under any provision of law authorizing such actions. Prior to any withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands



which would significantly restrict subsistence uses, the head of the appropriate Federal agency shall give notice to the appropriate State agency and local committees and regional councils, give notice to local residents of the area and hold a hearing in the vicinity of the area involved, and determine that such a significant restriction of subsistence uses is necessary and consistent with sound management principles for the utilization of the public lands, that the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of the proposed action, and that adequate steps will be taken to minimize adverse impacts upon subsistence uses and resources. If the Secretary is also required to prepare an environmental impact statement pursuant to the National Environmental Policy Act as well as comply with the requirements of this section, he shall provide the notice and hearing as part of the preparation of, and include the findings required by this section in, such environmental impact statement. This section is not to be construed as prohibiting, impairing or in any manner affecting the selection by, and conveyance to the State of Alaska or any Native corporation of any portion of the public lands selected or conveyed pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

*Section 811: Access*

This section requires the Secretary of the Interior and Secretary of Agriculture to ensure that residents engaged in subsistence uses shall have appropriate access to subsistence resources on the public lands, and shall permit the taking of fish and wildlife for subsistence uses in areas of Alaska designated as national preserves, national conservation areas, national recreation areas, national parks and monuments in which subsistence uses specifically are permitted by this Act, and areas of the National Wildlife Refuge, National Forest, and Wild and Scenic Rivers Systems in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

The committee intends that access to fish and wildlife populations shall be provided to local residents engaged in subsistence uses regardless of where such populations may be located in the future (except that the section is not intended to permit the subsistence use of wildlife in national parks and monuments which are permanently closed to such uses). Traditional habitat and migration routes may be altered by transportation systems and development activities on the public lands. By focusing on access to the resource itself, rather than on the particular portion of the public lands upon which the resources may presently be located, this section provides the flexibility necessary to ensure the continuation of subsistence uses in the future, subject to reasonable regulation.

*Section 812: Snowmobiles and motorboats*

This section recognizes the importance of the use of snowmachines, motorboats, and other means of surface transportation traditionally employed for subsistence purposes on the public lands. Although aircraft are not included within the purview of this section, reference to means "traditionally employed" for subsistence purposes is not intended to foreclose the use of new, as yet unidentified means of surface transportation, so long as such means are subject to reasonable regula-



tion necessary to prevent waste or damage to fish, wildlife or terrain. The section requires the Secretary to permit such appropriate uses by local residents, and must be considered as a compliment to section 811 since the provision of access to subsistence resources would not be "appropriate" if the means of surface transportation to utilize such access is unreasonably restricted.

*Section 813: Research*

This section requires the Fish and Wildlife Service and the National Park Service to work in close cooperation with each other and with the State of Alaska and other appropriate Federal agencies in conducting new and ongoing research on fish and wildlife populations utilized for subsistence purposes on the public lands, and on the subsistence use of such populations. The section requires both agencies to utilize the special knowledge of local conditions and requirements of local residents of rural villages who are dependent upon the continuation of subsistence uses in their area.

The expertise of the local committees and regional councils also is a valuable source of information about subsistence resources and uses, and the committee expects all Federal agencies engaged in subsistence related research to inform the appropriate committees and councils about research projects being planned or conducted in their respective areas and work closely with those organizations. The results and data obtained from research conducted pursuant to this section shall be made available to the State, the local committees and regional councils, and other appropriate persons and organizations. The committee also respects that research conducted pursuant to this section will be undertaken in a manner which does not disrupt the traditional activities of rural residents engaged in subsistence uses, as well as the communities and cultures of which such residents may be a part.

*Section 814: Periodic reports*

Four years after the date of enactment of this Act and every three years thereafter, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the congress which shall include a description and evaluation of monitoring activities undertaken pursuant to section 806, the status of fish and wildlife populations on the public lands harvested for subsistence uses, a description of the nature and extent of subsistence and other uses of fish and wildlife on the public lands, a description of the role of subsistence uses in the economy and culture of rural Alaska, comments on the report by the State of Alaska, the local committees and regional councils and other appropriate persons and organizations, a description of those actions taken by the Secretary or the State, or which may need to be taken in the future to protect and continue subsistence uses on the public lands, and such other recommendations as the Secretary deems appropriate. A notice of the report shall be published in the Federal Register and the report made available to the public.

*Section 815: Regulations*

This section requires the Secretary of the Interior and the Secretary of Agriculture to prescribe such regulations as are necessary and appropriate to carry out their respective responsibilities under this title.

*Section 816: Limitations; savings clauses*

This section provides that nothing in this Act is intended to be construed as granting any property right in any subsistence resource on the public lands, permitting the level of subsistence uses on the public lands to significantly expand beyond the level of such uses occurring during the ten-year period before January 1, 1978, permitting any privilege which may be granted by the State to any person with respect to subsistence uses to be assigned, permitting any subsistence use of fish or wildlife on any portion of the public lands which was permanently closed to such uses on January 1, 1978, vesting elsewhere than in the Secretary any authority to manipulate habitat on any portion of the public lands, enlarging or diminishing the responsibility and authority of the State of Alaska for the management of fish and wildlife on the public lands except as specifically provided in this Act, amending the Alaska constitution, or modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife.

*Section 817: Closure to subsistence uses*

This section provides that all national parks and monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence and sport fishing shall be permitted in such areas in accordance with the provisions of this title and other applicable laws of the United States and the State of Alaska. Except as specifically provided in this section nothing in this title is intended to enlarge or diminish the authority of the Secretary under existing law including the Wildlife Refuge Administration Act, and the BLM Organic Act, to designate areas where, and establish periods when, no taking of fish or wildlife shall be permitted on the public lands for reasons of public safety, administration, to assure the continued viability of a particular fish or wildlife population or for other purposes. Thus, the Secretary remains empowered to authorize a more restrictive hunting season than is otherwise permitted by State law. However, in recognition of the importance of subsistence uses by rural residents of Alaska, notwithstanding any other provision of this Act or other law, subsistence uses of a particular fish or wildlife population on the public lands, and such uses by local residents within conservation system units which are open to subsistence uses (including national parks and monuments), may be prohibited on the public lands, or on any portion thereof, only temporarily for reasons of public safety, administration, or to assure the continued viability of such population.

Such a closure must be preceded by consultation with the State and adequate notice and hearing in the vicinity of the area of the closure, unless the Secretary determines that an emergency situation exists and that emergency measures must be taken to protect the public safety or the continued viability of a particular fish or wildlife population. In the latter situation, the Secretary may immediately close the public lands, or any portion thereof, to subsistence uses of a particular fish or wildlife population for a period not to exceed sixty days, which may not be subsequently extended unless the Secretary affirmatively establishes, after notice and hearing, that such an extension is justified.

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No closure for purposes of administration may be made prior to notice and hearing in the vicinity of the area of the closure. No closure order to the taking of a fish or wildlife population for subsistence uses authorized by this section shall extend longer than necessary to achieve the immediate purpose for the closure established at the hearing held prior to the issuance of such order.

Thus, for example, while the Secretary may prohibit the taking of wildlife for subsistence uses for reasons of public safety in a certain area surrounding a public campground, roadway or hiking trail, such a closure should not be limited to any arbitrary or inflexible time period. Rather, it should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose. Although, this section authorizes the restriction of subsistence uses for purposes of administration, recognition of the importance of subsistence activities to most rural residents requires that this authority be utilized narrowly and with consistent restraint. In exercising his authority to protect the continued viability of a fish or wildlife population, it is not the intent of the Committee that actual depletion of a population or an emergency exist before a closure under this section may be justified. Continued subsistence uses by local subsistence-dependent residents can only be maintained if the continued viability of fish and wildlife populations utilized for subsistence purposes can be maintained.

#### TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS. SETTLEMENT ACT AND ALASKA STATEHOOD ACT

##### *Section 901: Conveyances to village corporations*

This section provides for the conveyance by legislative action of surface rights to eligible Village Corporations, and in some cases, subsurface rights to eligible Village and Regional Corporations. All conveyances made by this section are subject to valid existing rights and may be subject to public easement reservations as provided in Section 903(a).

Subsection (a) legislatively conveys land to eligible Village Corporations where such land is mandated by ANCSA to be selected by the Village Corporation.

Paragraph (1) conveys to a Village Corporation, found eligible by the Secretary, the surface estate to public land in its "core" township or townships. A "core" township is that township which encloses all or part of the improved area constituting the Village. The conveyance is immediate, subject to valid existing rights, and must be otherwise consistent with provisions of the ANCSA such as acreage limitations, contiguity, and location in respect to Home Rule or First-class cities.

Where two or more Villages, by reason of locality, have claim to the same township, the conveyance is delayed until the Village Corporations involved agree to the division of the township, or such dispute is settled by arbitration (see subsection (c)).



95th Congress, 2d Session - - - - - House Report No. 96-1045, Part II

ALASKA NATIONAL INTEREST LANDS  
CONSERVATION ACT OF 1978

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REPORT  
OF THE  
COMMITTEE ON MERCHANT MARINE  
AND FISHERIES  
HOUSE OF REPRESENTATIVES

together with  
ADDITIONAL AND SUPPLEMENTAL  
VIEWS

TO ACCOMPANY

H.R. 39

(Including the cost estimate of the  
Congressional Budget Office)



MAY 4, 1978.—Committed to the Committee of the Whole House  
on the State of the Union and ordered to be printed

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(d) EMERGENCY AUTHORITY.—(1) Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses if necessary for reasons of public safety, administration, or to assure the natural stability and continued productivity of one or more fish or wildlife populations on such lands which are subject to such uses. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the natural stability and continued productivity of one or more fish and wildlife populations on such lands which are subject to such uses, the Secretary may immediately close the public lands, or any portion thereof, to subsistence uses and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after adequate notice and public hearing, that such closure should be extended.

(2) If such notice to the State under subsection (a) or (b), the Secretary determines that extraordinary measures must be taken to protect public welfare, he may open public lands, or any portion thereof, to subsistence uses by local residents and publish the reasons justifying such action in the Federal Register. Such emergency action shall be effective when made, but shall not extend for a period of time greater than sixty days, or until such time as the threat to the public welfare which necessitated such action has been resolved, whichever time first occurs.

#### COOPERATIVE ARRANGEMENTS

SEC. 706. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title.

#### SUBSISTENCE AND LAND USE DECISIONS

SEC. 707. In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on the subsistence needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation,

areas where it has existed in the past. The committee notes that some commercial trappers in Alaska must, by necessity, use snowmachines for access and feels that the Secretary should not prohibit the use of snowmachines by commercial trappers within Refuge wilderness areas where they have been used in the past, but he may regulate their use.

#### TITLE VII—SUBSISTENCE

The committee adopted a large number of amendments to title VII as reported by the Interior Committee. These amendments adopt the basic structure of title VII as reported by the Interior Committee, but make several important changes designed to ensure a workable administrative structure and a more effective State-Federal relationship in this area.

##### *Section 703—Definition*

The committee amended the definition of "subsistence uses" to emphasize that, with the exception of handicraft articles made from the nonedible byproducts of fish and wildlife taken for personal or family use, "subsistence uses" should not include commercial uses of fish and wildlife. It is intended with the above noted caveat that legitimate subsistence uses of wild resources shall be those involving the direct personal or family use for food, shelter, fuel, clothing, tools, or transportation.

The committee, however, recognizes that an important part of the subsistence lifestyle in Alaska involves trading, bartering, and sharing among subsistence users. The inclusion of "trade, barter or sharing among subsistence users" within the purview of the definition of accepted subsistence uses of wild, renewable resources recognizes the use of these subsistence resources by members of the traditional Native community who are dependent upon such resources for personal or family consumption, but have not participated in the actual subsistence harvest. In addition, the definition permits the trade or barter of subsistence resources by subsistence users in exchange for nonsubsistence commodities, so long as the person to whom the reserve is traded or bartered himself utilizes the resources for personal or family consumption. Nevertheless, the committee does not intend that the reference to trade or barter in the definition should permit any commercial or quasi-commercial use of fish and wildlife resources. The reference to "customary" trading and sharing is intended to emphasize that these activities are sanctioned by this section only to the extent that they have been commonly occurring in Alaska.

The committee notes that the commercial exception for the making and selling of handicraft articles out of nonedible byproducts only applies to fish and wildlife taken for personal or family use. In other words, this provision is not intended to cover the commercial sale of articles from fish and wildlife whose edible parts have not been taken for consumption by the subsistence user or his family.

##### *Section 704—State regulation*

The committee amendments to section 704 authorizes the State to regulate the taking of fish and wildlife on public lands for subsistence uses by developing a subsistence management program meeting the standards specified in section 704(b).

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Section 704(a) authorizes the State to regulate, in a manner consistent with the policies set out in section 702, the taking of fish and wildlife on public lands for subsistence purposes. This regulatory authorization does not, however, override the other provisions of this act or of existing Federal law. The most obvious example of an existing Federal statute which remains unchanged by the language in section 704 would be the National Wildlife Refuge System Administration Act of 1966. The Secretary of the Interior's regulatory jurisdiction over the taking of fish and wildlife within national wildlife refuges would, therefore, remain unaffected by the enactment of this act. Thus, the Secretary would still be empowered to authorize a more restrictive sport hunting season within refuges than is otherwise allowed by State law. Such routine restrictions based upon the authority of the National Wildlife Refuge System Administration Act would not be required to go through the closure process outlined in section 705(c) of this title.

The standards adopted by the committee in section 704(b) parallel those in the Interior Committee version of title VII.

Thus, the State program should include the following elements:

(1) The maintenance of the natural stability and continued productivity of fish and wildlife populations. The committee feels that any State subsistence management program should seek to maintain fish and wildlife populations at healthy levels permitting a sustained yield. The committee recognizes that animal populations tend to fluctuate in the wild naturally, and the reference to "natural stability" recognizes this fact.

(2) A system capable of regulating and monitoring subsistence uses and other consumptive uses of fish and wildlife populations.

(3) A grievance procedure.

(4) The establishment of not less than five management regions. This provision is intended to insure that regional differences in subsistence uses are adequately accommodated. The upper limit of 12 regions adopted by the Interior Committee has been eliminated.

(5) State laws or regulations which—

(a) provide for the regulation of the taking of fish and wildlife by a professionally staffed agency and provide for an enforcement agency. This section recognizes that in Alaska the Department of Fish and Game has primary responsibility for the regulation of fish and game, but the department of public safety has primary enforcement responsibility. This section would permit the continuation of the present arrangement or the transfer of enforcement to the department of fish and game.

(b) provide preference for nonwasteful subsistence uses by local residents over other consumptive uses of fish and wildlife populations. The committee does not intend that this general statement of a preference for local subsistence users should be construed as authorizing different treatment of subsistence versus nonsubsistence users, except as provided in section 704(b)(5)(C).

(c) provide for the establishment of a preference system when necessary in order to reduce hunting or fishing pressure on the resource. Such a system shall be established on the basis of (i) customary and direct dependence upon the resource as the main-

stay of livelihood, (ii) local residency, and (iii) the availability of alternative resources. This section is central to the provision of a preference for subsistence users. It recognizes that in Alaska there may be circumstances where it is necessary to restrict the taking of fish and wildlife in order to assure the continued abundance of fish and wildlife populations. This section establishes a method of restricting the taking of fish and wildlife in such circumstances while permitting those most in need of subsistence resources to continue hunting and fishing. The section also recognizes that in some cases it may be necessary to give preference to one subsistence user over another. In such a situation, preference should be given to the local user who has the greatest need for the resource. The transient subsistence user could, therefore, be precluded under a preference system from taking fish and wildlife.

(6) A system of local and regional fish and wildlife councils within each management region.

Section 704(b) (8) requires the State agency to be guided by the advice of the regional councils concerning the taking of fish and wildlife on public land within their respective region. This section makes it clear that the State agency need be guided by the advice of the councils only if such advice is supported by substantial evidence, does not violate a recognized principle of fish and wildlife conservation or is not detrimental to the satisfaction of subsistence needs.

*Section 705—Enforcement Duties of the Secretary of the Interior*

Section 705 authorizes the Secretary to take special actions to protect the fish and wildlife populations on the public lands and the ability of subsistence-dependent Alaska residents to satisfy their subsistence needs. In contrast to the Interior Committee version of title VII, the Secretary would not be authorized to suspend the State's authority to manage subsistence resources or to take over the management of those resources on the public lands. Rather, the Secretary's discretion would be limited to closing the public lands to subsistence and nonsubsistence uses under certain circumstances and opening the lands to subsistence uses by local residents under very extraordinary circumstances.

Section 705(c) authorizes the Secretary to close the public lands to all consumptive uses, except subsistence uses by local residents, if he determines that the State has either failed to develop a subsistence program or has failed to make necessary changes in the program as indicated by the Secretary pursuant to section 705(a). Before the Secretary could close public lands, however, he would have to make the further finding that the State's failure threatens the natural stability and continued productivity of the fish and wildlife populations on public lands or the ability of subsistence dependent Alaska residents to satisfy their subsistence needs. This closure could only be effective for 60 days before the Secretary would have to affirmatively establish that the State is not in compliance with this title or with its subsistence program, and that the threat to wildlife populations or to subsistence users exists.

Section 705(d) authorizes the Secretary to utilize the full extent of his constitutional authority over Native affairs and the public lands

to close the public lands, including units of the conservation system, or portions thereof, to all consumptive uses, including subsistence uses for one of three reasons. First, the Secretary could close the public lands to subsistence activities for reasons of public safety. As the public's use and enjoyment of the Alaskan parks and refuges increases, so too does the potential danger to human safety resulting from subsistence hunting activities. While recognizing the importance of subsistence uses to rural people in Alaska, units of the conservation system are nevertheless of national importance and the Secretary should be empowered to accommodate subsistence activities to visitor use when warranted for reasons of public safety. Thus, for example, the Secretary might prohibit subsistence hunting within a certain area surrounding public campgrounds or hiking trails. Such restrictions would probably be necessary for as long as the public used the particular park or refuge.

The Secretary would also be authorized to restrict or prohibit subsistence activities for reasons of administration. The committee does not expect this broad authorization to be frivolously used, yet it was felt necessary to give the Secretary sufficient discretion to respond to the needs of a developing park and refuge system in Alaska. This is in addition to his regular authority to protect parks and refuges under existing law.

Finally, the Secretary would be authorized to prohibit subsistence activities in order to ensure the natural stability and continued productivity of one or more populations of fish and wildlife. This authorization merely reflects the obvious: that the subsistence needs of rural people can only be satisfied if healthy and productive populations of fish and wildlife species can be maintained. While according subsistence a priority over sport hunting and other consumptive uses, the committee recognizes that this may not always be enough to maintain a distinct population of a particular species. In such a situation, subsistence users could be required to diminish or halt their consumption of that species. This approach reflects the fact that healthy populations of fish and wildlife on public lands are a national resource of great significance and that all Americans, whether subsistence user or not, must be prepared to contribute to their preservation. This is consistent with the major purposes for the refuge system set forth in section 302.

Two final points need to be stressed concerning Secretarial closures for one of the three enumerated reasons. First, this section recognizes that any total ban on subsistence uses can have a disastrous effect on the well-being of rural Alaskans. Thus, the Secretary could only close the public lands to subsistence uses for 60 days without affirmatively establishing the need for continued closure. The committee notes that the Secretary could initially close the public lands only after providing notice of his intended action to the State and after conducting a public hearing.

Second, although located in a subsection entitled "Emergency Authority", it is not the intent of the committee that an emergency exist before the Secretary may exercise his closure authority. The prudent management of fish and wildlife resources and national parks and refuges would dictate that the Secretary be allowed to act prior to the existence of an actual emergency.

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Section 705 (d) (2), however, authorizes the Secretary to open public land to subsistence uses in certain very limited circumstances. In order to take this extraordinary action, the Secretary would first have to provide notice to the State. After providing the requisite notice to the State, the Secretary could open the public lands to subsistence uses by local residents if he determines that extraordinary measures must be taken to protect the public welfare. This extraordinary action could not be extended for greater than 60 days under any circumstances. The committee anticipates that this section would only be employed in very unusual situations.

It should be noted that section 705 gives the Secretary certain oversight responsibilities. Recognizing that a deficient State program can have a significant adverse impact upon subsistence users and upon populations of fish and wildlife, the committee believes that time may be of the essence in the exercise of the Secretary's responsibilities. It is, therefore, the committee's view that formal hearings on the record under the Administrative Procedure Act will be too time-consuming and cumbersome. Therefore, wherever section 705 requires the Secretary to hold a "hearing" before taking a certain action, the committee intends it to be an informal public hearing and not a formal hearing on the record under 5 U.S.C. § 556.

*Section 706—Cooperative Agreements*

Section 706 authorizes the Secretary to enter into cooperative agreements or to otherwise cooperate with other Federal agencies, the State, Native corporations, or other appropriate persons or organizations to protect subsistence resources and uses.

*Section 707—Subsistence and Land-Use Decisions*

Section 707 directs the Federal land-managing agencies to consider potential impacts on subsistence of various land-use decisions which may be taken in the future.

*Section 708—Access*

Section 708 directs the Secretary to ensure that persons engaged in traditional or customary subsistence activities shall have appropriate access to subsistence resources on the public land.

*Section 709—Snowmobiles and Motorboats*

Section 709 requires the Secretary to permit the appropriate use of snowmobiles and motorboats for subsistence purposes on the public lands, subject to reasonable regulations which are necessary to protect the natural values of those lands.

*Section 710—Research*

Section 710 recognizes the importance of research in the effective management and protection of fish and wildlife resources and subsistence uses. The committee feels that the United States Fish and Wildlife Service is best suited to coordinate the wildlife research activities of the Federal Government, the Alaska Department of Fish and Game, the University of Alaska and other State agencies. The committee also expects both the Federal Government and the State to engage in additional research pursuant to their expanded responsi-

bilities under this title. Finally, the committee recognizes that many rural residents have special knowledge of subsistence resources which has not been fully utilized in the past in Federally sponsored research. Section 710 requires the Secretary to consult with and utilize the special knowledge of subsistence users.

*Section 711—Periodic Reports*

Section 711 directs the Secretary to report to the Congress on the implementation of this title within 4 years after enactment and every 3 years thereafter.

*Section 712—Regulations*

Section 712 authorizes the Secretary of the Interior and the Secretary of Agriculture to issue such regulations as may be necessary to carry out their duties under this title.

*Section 713—Other laws*

Section 713 provides that this title is not intended to modify or repeal the provisions of any Federal law governing the conservation or protection of fish and wildlife. The list of laws covered by this provision includes those listed in section 713 of H.R. 39 as reported by the Interior Committee and any other appropriate Federal law.

The committee decided against compiling a long list of Federal environmental statutes dealing with fish and wildlife matters which would remain unaffected by the language of title VII. Such a compendium approach would inevitably overlook conservation statutes otherwise qualifying for exemption. In order to be all inclusive, the Committee adopted general language exempting existing Federal conservation statutes. It is, however, the clear intent of the committee that statutes like the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., and the Marine Mammal Protection Act, 16 USC § 1361 et seq. fit within this language and are exempted from the provisions of title VII.

*Section 714—Limitations*

Section 714 makes it clear that nothing in this title is to be construed as granting a property right in subsistence resources, as permitting the level of subsistence uses of fish and wildlife on the public lands to be significantly expanded beyond those occurring between January 1, 1968, and January 1, 1978, as opening to subsistence uses any public lands now closed to such uses, or as vesting elsewhere than in the Secretary any authority to manipulate habitat on any portion of the public lands. The ten-year period preceding January 1, 1978, was chosen as the benchmark period because the data base on levels of harvest are the best during these years. It was also believed that this time-period would be of sufficient length to take into account fluctuations in harvest resulting from the natural shifts in wildlife population levels.

This section recognizes that Alaska is nearly stretched to the limit in its ability to satisfy the subsistence needs of its rural residents. The committee is concerned that the rural Alaskan population will continue to increase, thereby putting even more pressure on the beleaguered wildlife population. This section is intended to set an outer limit on the level of subsistence uses in Alaska. The committee's intent is not to measure the level of future subsistence uses against the hypotheti-

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cal statistical yardstick, but rather to reflect congressional concern for the protection of the opportunity for subsistence uses by persons now residing in rural areas. Thus, what constitutes a "significant" expansion in harvest would be expected to vary from species to species. While acknowledging the need for some expansion in the level of harvest in subsequent years, the committee nevertheless feels that such expansion should not adversely affect the natural stability and continued productivity of the fish and wildlife populations in Alaska.

Thus, if increased subsistence pressures prevent a particular fish or wildlife population from expanding its numbers or maintaining its population, the provisions of this subsection would require the imposition of restrictions on subsistence activities by the State or the Secretary.

*Section 715—Reimbursement to the State*

Section 715 authorizes reimbursement to the State for not to exceed 50 percent of the costs relating to the operation of the local and regional councils established pursuant to section 704(b)(6) and requires the Secretary to ensure that payments pursuant to this section and other sums are expended in a manner consistent with the policies set forth in section 702.

**TITLE IX—MINERALS ASSESSMENTS, EXPLORATION, DEVELOPMENT, AND EXTRACTION ON CONSERVATION SYSTEM UNITS**

The committee only adopted technical and conforming amendments to title IX as reported by the Interior Committee.

*Section 903—Continuation of mineral assessment programs in Alaska*

The amendment to section 903 provides that the mineral assessment program shall not apply to units of the National Wildlife Refuge System.

*Section 905—Areas subject to the mineral access process*

The amendment adopted by the committee makes a conforming change in section 905. The amendment deletes national wildlife refuges from the minerals access process and deletes any reference to the Arctic Range Special Study Area.

*Section 906—Initiation of the minerals access process by application of secretarial motion*

The amendment adopted by the committee makes a conforming change in this section to delete any references to the Arctic Range Special Study Area.

**TITLE X—TRANSPORTATION AND UTILITY SYSTEMS ON CONSERVATION SYSTEM UNITS**

The committee did not adopt any amendments to title X.

**TITLE XI—COORDINATION**

The committee did not adopt any amendments to title XI.

**TITLE XII—ADMINISTRATIVE PROVISIONS**

The committee amendments merely make conforming changes in title XII.

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CONGRESSIONAL RECORD  
 Proceedings and Debates of the 95th Congress  
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H.R. 39

ACTION

Remarks by Mr. Stevens

RESOLUTION OF ALASKA BOARDS  
 OF FISHERIES AND GAME

Mr. STEVENS. Mr. President, recently I have been notified of the Joint Alaska Boards of Fisheries and Game Resolution No. 78-2-JB relating to the Alaska D-2 land legislation. The Alaska Boards of Fisheries and Game find those provisions of H.R. 39 specifically addressing access to public lands, subsistence, and land designations unacceptable to the State of Alaska.

As you are well aware, I too believe the provisions of H.R. 39 as presently drafted would have adverse effects on Alaska. I have been asked to place this resolution in the record, and I ask unanimous consent to print in the RECORD the Alaska Boards of Fisheries and Game Resolution No. 78-2-JB.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

ALASKA BOARDS OF FISHERIES AND GAME RESOLUTION No. 78-2-JB RELATING TO 17(d) (2) LEGISLATION

Whereas 17(d) (2) legislation (HR 39) has passed the House Interior and Insular Affairs Committee; and

Whereas the House Merchant Marine and Fisheries Committee is considering this bill; and

Whereas Senator Gravel has drafted proposed legislation with major titles similar to those in HR 39; and

Whereas the Senate Energy and Natural Resources Committee will be preparing for mark-up sessions on (d) (2); and

Whereas 17(d) (2) legislation involves critical provisions relative to the State of Alaska and states' abilities to manage state fish and wildlife resources

Now therefore, the Alaska Boards of Fisheries and Game hereby resolve that the following provisions of HR 39 as now drafted are unacceptable to the State of Alaska:

1. Access to public lands and waters, including easements;

2. Fish and wildlife management provisions including those on subsistence which essentially supplant an integrated statewide management system with a fragmented system under federal government direction;

3. Excessive land designations that are closed or restrict hunting, fishing, trapping, and other recreational pursuits in much of the critical acreage of the State.

*Be it further resolved*, That the Boards of Fisheries and Game hereby direct the Department of Fish and Game to provide copies of this resolution with supporting information to all Fish and Game Advisory Committees in Alaska requesting their immediate consideration and action in the form of resolutions to be directed to Alaska's Governor and Congressional representatives.

*Be it further resolved*, That the Boards of Fisheries and Game request Governor Hammond, Senator Stevens, Senator Gravel, and Congressman Young to accept no compromise which in any way infringes upon the authority of the State of Alaska to manage the fish and wildlife within its boundaries.

GORDON JENSEN, Chairman,  
 Alaska Boards of Fisheries and Game.  
 Date: April 7, 1978, Anchorage, Alaska.

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95<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 39

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IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 17), 1978

Received

JUNE 8 (legislative day, MAY 17), 1978

Read twice and referred to the Committee on Energy and Natural Resources

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## AN ACT

To designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3                **SHORT TITLE AND TABLE OF CONTENTS**

4        **SECTION 1.** This Act, together with the following table  
5        of contents, may be cited as the "Alaska National Interest  
6        Lands Conservation Act".

II—O

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- Sec. 1301. Purposes.
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1 TITLE I—FINDINGS, POLICY, AND DEFINITIONS

2 FINDINGS

3 SEC. 101. Congress finds and declares that—

- 4 (1) through passage of the Alaska Statehood Act
- 5 and the Alaska Native Claims Settlement Act, the Con-
- 6 gress established policies for the disposition of the public
- 7 lands in Alaska and provided for future economic, social,
- 8 and cultural development in Alaska and for the fair and
- 9 just settlement of claims of Natives and Native groups

1 in volume, species, grade, and accessibility for timber on  
2 relevant lands within such units.

3 ACQUISITION AUTHORITY

4 SEC. 609. The Secretary of Agriculture is authorized, in  
5 accordance with the provisions of section 1101, to acquire  
6 privately owned land within the boundary of any area desig-  
7 nated as wilderness within the national forest by this Act.

8 TITLE VII—SUBSISTENCE

9 FINDINGS

10 SEC. 701. The Congress finds and declares that—

11 (1) the continuation of the opportunity for subsist-  
12 ence uses by Natives of Alaska on the public lands and  
13 on their Native lands is essential to their physical, eco-  
14 nomic, and cultural existence;

15 (2) the continuation of the opportunity for subsist-  
16 ence uses by some other residents of the State of Alaska  
17 on the public lands is essential to their physical, eco-  
18 nomic, and traditional existence;

19 (3) the situation in Alaska is unique in that, in  
20 most cases, no practical alternative means are available  
21 to replace the food supplies and other items gathered  
22 from fish and wildlife which supply persons dependent  
23 on subsistence uses;

24 (4) continuation of the opportunity for subsistence  
25 uses of resources on public and other lands in Alaska is

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1 threatened by the increasing population of Alaska, with  
2 resultant pressure on subsistence resources, by sudden  
3 decline in the populations of some wildlife species which  
4 are crucial subsistence resources, by increased accessibil-  
5 ity of remote areas containing subsistence resources, and  
6 by taking of fish and wildlife in a manner inconsistent  
7 with recognized principles of fish and wildlife  
8 management;

9 (5) in order to fulfill the policies and purposes of  
10 the Alaska Native Claims Settlement Act, and as a  
11 matter of equity, it is necessary for the Congress to  
12 invoke its constitutional authority over Native affairs  
13 and over management of the public lands to protect and  
14 provide for continued subsistence uses on public lands  
15 by Alaska Natives and other Alaska residents; and

16 (6) the national interest in the proper regulation,  
17 protection, and conservation of fish and wildlife on the  
18 public lands in Alaska and the continuation of the op-  
19 portunity for a subsistence way of life by the inhabitants  
20 of Alaska require that an administrative structure be  
21 established for the purpose of enabling people who have  
22 personal knowledge of local conditions and require-  
23 ments to have a meaningful role in the management  
24 of fish and wildlife and of subsistence uses on the public  
25 lands in Alaska.

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## POLICY

SEC. 702. It is hereby declared to be the policy of Congress that—

(1) management policies on the public lands in Alaska are to cause the least adverse impact possible on rural people who traditionally and consistently depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, the purpose of this title is to provide the opportunity for people engaged in a genuinely subsistence-oriented lifestyle to continue to do so if they desire and to allow such people to decide for themselves their own degree of subsistence dependency and the rate at which acculturation or adjustment to a nonsubsistence way of life may take place;

(2) nonwasteful subsistence use of fish and wildlife and other renewable resources shall be the first priority consumptive use of all such resources on the public lands of Alaska, and where it is necessary to restrict taking in order to assure the natural stability and continued productivity of a fish or wildlife resource or the continuation of subsistence uses of such resource, the taking of such

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1 resource for nonwasteful subsistence uses shall be given  
 2 preference on the public lands over recreational, sport,  
 3 or other consumptive uses; and

4 (3) except as otherwise provided by this Act or  
 5 other Federal laws, Federal land managing agencies, in  
 6 managing subsistence activities on the public lands and  
 7 in protecting the continued viability of all wild renew-  
 8 able resources in Alaska, shall cooperate with adjacent  
 9 landowners and land managers, including Native cor-  
 10 porations, appropriate State and Federal agencies, and  
 11 other nations.

#### 12 DEFINITION

13 SEC. 703. As used in this Act, the term “subsistence  
 14 uses” means the noncommercial (except as provided under  
 15 paragraph (2)) customary and traditional utilization with-  
 16 in the State of wild, renewable resources for—

17 (1) direct personal or family use for food, shelter,  
 18 fuel, clothing, tools, or transportation;

19 (2) the making and selling of handicraft articles  
 20 (including clothing), but only out of nonedible by-  
 21 products of fish and wildlife taken for such personal  
 22 or family use; or

23 (3) customary trade, barter, or sharing among  
 24 subsistence users for personal or family use.

1 STATE REGULATION

2 SEC. 704. IN GENERAL.—Except as otherwise provided  
3 by this Act and other Federal laws, the State may regu-  
4 late, in a manner consistent with the policies set forth in  
5 section 702, the taking of fish and wildlife on public  
6 lands for subsistence uses by developing and implement-  
7 ing a subsistence management program which meets the  
8 requirements set forth in subsection (b).

9 (b) STATE PROGRAM REQUIREMENTS.—The subsist-  
10 ence management program of the State shall include at  
11 least the following elements:

12 (1) The maintenance of the natural stability and  
13 continued productivity of fish and wildlife popula-  
14 tions which are on public lands and which are the  
15 subject of subsistence uses.

16 (2) A system capable of regulating and monitoring  
17 subsistence uses and other consumptive uses of such  
18 populations to ensure that timely and appropriate  
19 State action will be taken to carry out the purposes  
20 and policies of this title.

21 (3) A grievance procedure whereby any local coun-  
22 cil or regional council, required to be established under  
23 paragraph (6), which determines that the State is not  
24 in compliance, in whole or in part, with the State  
25 subsistence management program can obtain timely



1 review of such determination by, and obtain appro-  
2 priate relief from, the State agency referred to in  
3 paragraph (5) (A) or any other State rulemaking  
4 authority.

5 (4) The establishment of not less than five man-  
6 agement regions which, taken together, shall include  
7 all public lands where the State is exercising regu-  
8 latory authority under this title. The number and bound-  
9 aries of the management regions shall be sufficient to  
10 assure that regional differences in subsistence uses are  
11 adequately accommodated.

12 (5) State laws or regulations which—

13 (A) provide for the regulation by a profes-  
14 sionally staffed agency of the taking of fish and  
15 wildlife populations on the public lands for sub-  
16 sistence uses, provide that such agency have an  
17 administrative structure compatible with the pro-  
18 visions of this section, and provide for an agency  
19 which has adequate enforcement authority;

20 (B) provide preference for nonwasteful sub-  
21 sistence uses by local residents over other con-  
22 sumptive uses of fish and wildlife populations on  
23 the public lands; and

24 (C) provide, whenever it is necessary to re-  
25 strict the taking of such populations on public lands

1           for subsistence uses in order to protect their natural  
2           stability and continued productivity, or to continue  
3           such uses, for the establishment of appropriate re-  
4           strictions and limitations on, and preferences for,  
5           such uses which shall be based on—

6                   (i) customary and direct dependence upon  
7                   the populations as the mainstay of livelihood,

8                   (ii) local residency, and

9                   (iii) the availability of alternative re-  
10                  sources.

11           (6) A system of local and regional fish and  
12           wildlife councils within each management region  
13           established pursuant to paragraph (4). Each regional  
14           council shall be composed of residents of the region con-  
15           cerned and shall have the following functions:

16                   (A) The review, development, and evaluation  
17                   of proposals for regulations, policies, management  
18                   plans, and other matters relating to the conserva-  
19                   tion and utilization of fish and wildlife within  
20                   such region.

21                   (B) The provision of a forum for the expres-  
22                   sion of opinions and recommendations by persons  
23                   interested in any phase of fish and wildlife conserva-  
24                   tion and utilization.

25                   (C) The taking of appropriate action to ensure

1 local and regional participation in the decision-  
2 making process affecting the taking of fish and  
3 wildlife populations on public lands within the  
4 region for subsistence uses.

5 (D) The preparation of a recommended sub-  
6 sistence management plan for such region which  
7 shall be submitted to the State agency referred  
8 to in paragraph (5) (A) . The plan shall be updated  
9 annually and shall contain—

10 (i) an identification of current and antici-  
11 pated subsistence uses of fish and wildlife popu-  
12 lations within the region;

13 (ii) an evaluation of current and antici-  
14 pated subsistence needs for fish and wildlife  
15 populations within the region;

16 (iii) a recommended strategy for the man-  
17 agement of fish and wildlife populations to  
18 accommodate such subsistence uses and needs;  
19 and

20 (iv) recommendations concerning policies,  
21 standards, guidelines, and regulations necessary  
22 to implement the plan.

23 The local councils within each management region shall  
24 provide advice to, and shall assist, the regional council

1 with respect to carrying out the functions set forth in  
2 this paragraph.

3 (7) The assignment of adequate and necessary  
4 qualified staff to the regional councils and the timely  
5 distribution of all available relevant technical and scien-  
6 tific support data to the local councils and regional  
7 councils.

8 (8) A requirement that the State agency referred  
9 to in paragraph (5) (A) or any other State rulemaking  
10 authority shall be guided by the advice and recommen-  
11 dations of the regional councils concerning the taking of  
12 fish and wildlife populations on public lands within their  
13 respective regions for subsistence uses and shall imple-  
14 ment such recommendations unless the agency or author-  
15 ity, after a public hearing, determines that any such  
16 recommendation is not supported by substantial evidence  
17 presented at the hearing, violates recognized scientific  
18 principles of fish and wildlife conservation, or would be  
19 detrimental to the satisfaction of subsistence needs.

#### 20 ENFORCEMENT DUTIES OF THE SECRETARY

21 SEC. 705. (a) REVIEW BY THE SECRETARY.—The  
22 Secretary shall monitor the State subsistence management  
23 program and the implementation of such program. If the  
24 Secretary, after notice and hearing, determines that the  
25 program or its implementation is not in compliance with



1 this title, the Secretary shall so notify the State and shall  
2 indicate changes in the program or its implementation  
3 which he considers necessary to bring the State into  
4 compliance.

5 (b) REVIEW BY LOCAL AND REGIONAL COUNCILS.—

6 If a local council or regional council required to be estab-  
7 lished under section 704 (b) (6) determines that the State  
8 is not in compliance, in whole or in part, with the State  
9 subsistence management program, such council shall notify  
10 the Secretary in writing outlining the factual basis for  
11 such determination and detailing efforts which have been  
12 made to obtain timely relief through the grievance pro-  
13 cedure referred to in section 704 (b) (3). If the Secretary  
14 finds that based upon the representations of the council  
15 there is cause to believe that the State is not in compliance,  
16 in whole or in part, with the State program and that such  
17 council has failed to obtain timely relief through the State  
18 grievance procedure, he shall investigate and report pub-  
19 licly on the results of his investigation. If such results  
20 support the contention of the council, the Secretary shall  
21 so notify the State and shall indicate changes in its pro-  
22 gram or its implementation which he considers necessary  
23 to bring the State into compliance.

24 (c) HEARINGS AND CLOSURES.—If the State fails—

25 (1) to implement a subsistence management pro-

1        gram within eighteen months after the date of the  
2        enactment of this Act or by such later date as the  
3        Secretary deems reasonable; or

4            (2) to make, after a reasonable date, the changes  
5        in the subsistence management program or its imple-  
6        mentation as indicated by the Secretary under sub-  
7        section (a) or (b) ;

8        and the Secretary determines that such failure threatens  
9        the natural stability and continued productivity of the  
10       fish and wildlife populations on public lands in the area  
11       concerned, or the ability of subsistence-dependent Alaska  
12       residents in such area to satisfy their subsistence needs,  
13       the Secretary may close the public lands in such area to all  
14       consumptive uses except subsistence uses by local residents.  
15       The Secretary shall afford the State an opportunity to appeal  
16       such closure. Within thirty days after receipt of notice of  
17       such appeal, the Secretary shall afford the State a public  
18       hearing and, within thirty days after such hearing, shall  
19       make his final decision on such appeal. Unless the Secretary  
20       affirmatively establishes that the State is not in compliance  
21       with this title or with subsistence management program, and  
22       that the resulting threat determined under the preceding sen-  
23       tence exists, the Secretary shall revoke the closure. If the  
24       Secretary establishes that the State is not in such compli-  
25       ance, and that such resulting threat does exist, he may con-

1   tinue the closure, in whole or in part, until the State adopts  
2   measures complying with the Secretary's determination, or  
3   until such threat is otherwise ameliorated.

4       (d) EMERGENCY AUTHORITY.—(1) Notwithstanding  
5   any other provision of this Act or other law, the Secre-  
6   tary, after consultation with the State and adequate  
7   notice and public hearing, may temporarily close any  
8   public lands (including those within any conservation  
9   system unit), or any portion thereof, to subsistence uses  
10   if necessary for reasons of public safety, administration,  
11   or to assure the natural stability and continued productivity  
12   of one or more fish or wildlife populations on such lands  
13   which are subject to such uses. If the Secretary determines  
14   that an emergency situation exists and that extraordinary  
15   measures must be taken for public safety or to assure the  
16   natural stability and continued productivity of one or more  
17   fish and wildlife populations on such lands which are subject  
18   to such uses, the Secretary may immediately close the public  
19   lands, or any portion thereof, to subsistence uses and shall  
20   publish the reasons justifying the closure in the Federal  
21   Register. Such emergency closure shall be effective when  
22   made, shall not extend for a period exceeding sixty days,  
23   and may not subsequently be extended unless the Secretary  
24   affirmatively establishes, after adequate notice and public  
25   hearing, that such closure should be extended.

1       (2) If after notice to the State under subsection (a) or  
 2       (b), the Secretary determines that extraordinary measures  
 3       must be taken to protect public welfare, he may open public  
 4       lands, or any portion thereof, to subsistence uses by local  
 5       residents and publish the reasons justifying such action in  
 6       the Federal Register. Such emergency action shall be effec-  
 7       tive when made, but shall not extend for a period of time  
 8       greater than sixty days, or until such time as the threat to  
 9       the public welfare which necessitated such action has been  
 10      resolved, whichever time first occurs.

#### 11                   COOPERATIVE ARRANGEMENTS

12      SEC. 706. The Secretary may enter into cooperative  
 13      agreements or otherwise cooperate with other Federal  
 14      agencies, the State, Native Corporations, other appropriate  
 15      persons and organizations, and, acting through the Secre-  
 16      tary of State, other nations to effectuate the purposes and  
 17      policies of this title.

#### 18                   SUBSISTENCE AND LAND USE DECISIONS

19      SEC. 707. In determining whether to withdraw, re-  
 20      serve, lease, or otherwise permit the use, occupancy, or  
 21      disposition of public lands under any provision of law  
 22      authorizing such actions, the head of the Federal agency  
 23      having primary jurisdiction over such lands or his desig-  
 24      nee shall evaluate the effect of such use, occupancy, or  
 25      disposition on the subsistence needs, the availability of



1 other lands for the purposes sought to be achieved, and  
2 other alternatives which would reduce or eliminate the  
3 use, occupancy, or disposition of public lands needed for  
4 subsistence purposes. No such withdrawal, reservation,  
5 lease, permit, or other use, occupancy, or disposition of  
6 such lands which would significantly restrict subsistence  
7 uses shall be effected until the head of such Federal  
8 agency—

9 (1) gives notice to the State agency referred to  
10 in section 704 (b) (5) and the appropriate local coun-  
11 cils and regional councils required to be established  
12 under section 704 (b) (6) if such councils have been  
13 established,

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

16 (3) determines that (A) such a significant restric-  
17 tion of subsistence uses is necessary, consistent with  
18 sound management principles for the utilization of the  
19 public lands, (B) the proposed activity will involve the  
20 minimal amount of public lands necessary to accomplish  
21 the purposes of such use, occupancy, or other disposition,  
22 and (C) adequate steps will be taken to minimize  
23 adverse impacts upon subsistence uses and resources  
24 resulting from such actions.

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## 1 ACCESS

2 SEC. 708. The Secretary shall ensure that persons en-  
3 gaged in traditional or customary subsistence activities shall  
4 have appropriate access to subsistence resources on the public  
5 lands.

## 6 SNOWMOBILES AND MOTORBOATS

7 SEC. 709. Notwithstanding any other provision of this  
8 Act or other law, the Secretary shall permit on the public  
9 lands appropriate use for subsistence purposes of snow-  
10 mobiles, motorboats, and other means of surface transpor-  
11 tation traditionally employed for such purposes, subject to  
12 such regulations as are necessary to prevent abuse, waste,  
13 or damage to fish and wildlife, habitat, or other natural  
14 values.

## 15 RESEARCH

16 SEC. 710. The Secretary of the Interior, acting through  
17 the United States Fish and Wildlife Service and in coopera-  
18 tion with the State and other appropriate Federal agencies,  
19 shall undertake research on fish and wildlife and subsistence  
20 activities on the public lands, seek data from, consult with  
21 and utilize the special knowledge of subsistence users; and  
22 make the results of such research available to the State,  
23 the local councils and regional councils required to be es-  
24 tablished under section 704 (b) (6) , subsistence users, and  
25 other appropriate persons and organizations.

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1 PERIODIC REPORTS

2 SEC. 711. Within four years after the date of the en-  
3 actment of this Act, and within every three-year period  
4 thereafter, the Secretary of the Interior, in consultation  
5 with the Secretary of Agriculture, shall prepare and sub-  
6 mit a report to the President of the Senate and the Speaker  
7 of the House of Representatives on the implementation of  
8 this title. The report shall include—

9 (1) an evaluation of the results of the monitoring  
10 undertaken by the Secretary as required by section  
11 705 (a) ;

12 (2) the status of fish and wildlife populations on  
13 public lands that are subject to subsistence uses;

14 (3) a description of the nature and extent of sub-  
15 sistence uses and other uses of fish and wildlife on the  
16 public lands;

17 (4) the role of subsistence uses in the economy and  
18 culture of rural Alaska;

19 (5) comments on the Secretary's report by the  
20 State, the local councils and regional councils required  
21 to be established under section 704 (b) (6), and other  
22 appropriate persons and organizations;

23 (6) a description of those actions taken, or which  
24 may need to be taken in the future, to permit the con-





1 subsistence uses under the State subsistence management pro-  
 2 gram may be assigned to any other individual.

3 (b) CLOSED AREAS; HABITAT.—Nothing in this title  
 4 shall be construed as permitting any subsistence use of  
 5 the resources of any portion of the public lands (whether  
 6 or not within any conservation system unit) if any such  
 7 use was not permitted on the date of the enactment of  
 8 this Act or as vesting elsewhere than in the Secretary any  
 9 authority to manipulate habitat on any portion of the pub-  
 10 lic lands.

#### 11 REIMBURSEMENT TO THE STATE

12 SEC. 715. (a) AUTHORITY.—The Secretary of the In-  
 13 terior may reimburse the State wildlife agency, from funds  
 14 appropriated to the Department of the Interior, for reason-  
 15 able costs relating to the establishment and operation of the  
 16 local councils and regional councils required to be established  
 17 under section 704 (b) (6). Such reimbursement may not  
 18 exceed 50 per centum of such costs in any fiscal year. Such  
 19 costs shall be verified in a statement which the Secretary  
 20 determines to be adequate and accurate. Sums paid under  
 21 this section shall be in addition to any grants, payments, or  
 22 other sums to which the State is entitled from appropria-  
 23 tions to the Department of the Interior. The Secretary shall  
 24 ensure that such grants, payments, or other sums are ex-

1    pended in a manner consistent with the policies set forth in  
2    section 702.

3           (b) LIMITATION.—Total payments to the State under  
4    this section shall not exceed the sum of \$5,000,000 in any  
5    one fiscal year.

6           (c) REVIEWS.—The Secretary of the Interior shall  
7    periodically review the financial aspects of implementing  
8    the State program and shall advise the Congress at least  
9    once in every five years as to whether or not the maximum  
10   amount of payments specified in subsection (b) is adequate  
11   for proper implementation of the State program.

12   TITLE VIII—IMPLEMENTATION OF ALASKA  
13    NATIVE CLAIMS SETTLEMENT ACT AND  
14    ALASKA STATEHOOD ACT

15           CONVEYANCES TO VILLAGE CORPORATIONS

16           SEC. 801. (a) “CORE” TOWNSHIPS, ETC.—(1) Ex-  
17   cept to the extent that conveyance of a surface estate would  
18   be inconsistent with section 22(1) of the Alaska Native  
19   Claims Settlement Act, there is hereby conveyed to and  
20   vested in each Village Corporation for a Native village  
21   which is determined to be eligible for land under section 11  
22   or 16 of the Alaska Native Claims Settlement Act all of the  
23   right, title, and interest of the United States in and to the  
24   surface estate in the township or townships withdrawn pur-  
25   suant to section 11(a)(1)(A) or 16(a) of such Act in

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