Alaska Subsistence Management Chronology
1867 – 2011 *DRAFT (03-03-11)*

1867: US purchases Alaska from Russia. Under the Treaty of Succession, the federal government assumes responsibility for regulating fish and wildlife resources in Alaska.

1870: Fur seal harvest regulated. Congress imposes seasons and bag limits on the commercial taking of fur seals on the Pribilof Islands but authorizes Alaska Natives to take seals for food, clothing, and boat construction during the closed season, subject to regulations prescribed by the Secretary of the Treasury.

1884: Alaska Organic Act. Congress passes the Alaska Organic Act, which creates the District of Alaska and provides for civil government. The act makes no specific reference to regulation of fish and wildlife harvests, although the general laws of the State of Oregon are declared to be the laws of the District of Alaska. Regarding land use, the act specifies that "the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress…."

1895: Park Protection Act. Hunting and trapping in US national parks are banned by the Park Protection Act.

1902-03: Alaska Game Law. Congress passes Alaska's first game law in 1902, and the Secretary of Agriculture promulgates hunting regulations that are implemented in 1903. Local restrictions are imposed to protect caribou and walrus. The regulations also state, "Nothing in this act shall affect any law now in force in Alaska relating to the fur seal, sea otter, or any fur bearing animal, or prevent the killing of any game animal or bird for food or clothing at any time by natives, or by miners and explorers, when in need of food; but the game animals or birds so killed during closed season shall not be shipped or sold…." Protection of mammals is assigned to the US Bureau of Biological Survey (later merged with the US Bureau of Fisheries to become the US Fish and Wildlife Service).

1904: Game districts established. Three game districts are established in Alaska. Hunting seasons are modified for some species. Use of dogs for hunting deer, moose, and caribou is prohibited.

1908: Game districts merged. The three game districts in Alaska are merged into two districts. Regulations through 1925 address sport and guided hunting. The Governor of Alaska is authorized to hire game wardens and to register big game guides. The subsistence exemption is preserved.

1910: Sea otter hunting is banned in Alaskan waters.

1911: Hunting of sea otters and fur seals is controlled by legislation signed by Great Britain, Japan, Russia, and the US.

1912: Alaska achieves territorial status. Congress passes the Alaska Territorial Act, giving Alaska territorial status and a legislature.

1917: Mt. McKinley National Park established. President Wilson signs a bill establishing Mt. McKinley National Park "as a game refuge, and no person shall kill any game in said park except under an order from the Secretary of the Interior for the protection of persons or to protect or prevent the extermination of other animals or birds: PROVIDED, That prospectors and miners engaged in prospecting or mining in said park may take and kill therein so much game or birds as may be needed for their actual necessities when short of food; but in no case shall animals or birds be killed in said park for sale or removal therefrom, or wantonly…." Congress repealed the hunting provisions in 1928.

1918: Migratory Bird Treaty Act. The Migratory Bird Treaty Act is passed, which implements treaties with Canada and Great Britain. The act mandates a closed season on harvesting migratory birds and eggs from March 10 to September 1, but contains an exemption for Alaska Natives to harvest certain species for subsistence purposes during the closed season. However, the exemption does not apply to cranes, geese, migratory ducks, and swans—which are the primary species used for food.

1924: White Act. This act codifies a policy regarding salmon fisheries similar to the Alaska Game Act. Persons engaged in the commercial harvest of salmon are subject to restrictions on methods and means, but such restrictions do not apply to the taking of salmon "for local food requirements or for use as dog feed (P.L. 68-204, 43 Stat. 464).

1925: Alaska Game Act amended. Congress amends the Alaska Game Act and creates a 5-member Alaska Game Commission to regulate the taking of fish and wildlife in Alaska Territory, in consultation with the Secretary of Agriculture. This is the first time that citizens of Alaska are directly involved in regulating harvests of fish and game in the territory. The commission establishes hunting seasons, registers guides, and sets limits on the number of animals that can be harvested. The regulations may not restrict the emergency taking of wildlife for food unless the affected species is in danger of extinction, and the regulations authorize any Indian or Eskimo, prospector, or traveler to take animals, birds, or game fishes during the closed season when "in absolute need of food and other food is not available." Licenses are required for resident sport hunting. Alaska Natives who have not adopted "a civilized mode of living" are exempted from the licensing requirement.

1937: Reindeer and Whales. Congress adopts the Alaska Reindeer Industry Act, which institutes reindeer herding as a "means of subsistence" for Alaska Natives and is intended to promote their social and future economic welfare. The International Whaling Commission establishes regulations for whale hunting and gives protection to gray and right whales.

1940: Alaska Game Act amended. The provision of this act allowing harvest during the closed season is modified to read, "…when…in absolute need of food and other <u>sufficient</u> food is not available" (emphasis added).

1948: Alaskans vote by a 10 to 1 margin to abolish fish traps.

1959-60: Statehood. Alaska becomes the 49th state. The new State of Alaska Constitution does not allow differential treatment of Natives and non-Natives, which the federal government does due to its trust relationship with Native Americans. Article VIII, Section 3 of the new State Constitution states that, "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use" (the common use clause). Article VIII also requires management of renewable resources "on the sustained yield principle, subject to preferences among beneficial uses" and specifies that "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." Although there is no specific reference to subsistence uses in the state constitution, the convention delegates recognized that Native and rural residents need to continue to earn their livelihoods through hunting and fishing.

The federal government transfers authority for management of fish and game in Alaska to the new state government. The Alaska Game Commission is renamed the Alaska Board of Fish and Game and expands to seven members. Both the federal and state governments recognize subsistence fisheries. The first State fish and game code specifically authorizes subsistence fisheries and subsistence hunting of polar bears, auklets, guillemots, murres, and puffins and their eggs for food and clothing. Most game seasons and bag limits are so liberal that special language on point is not deemed necessary. The Alaska Board of Fish and Game is authorized to regulate non-commercial fisheries, which must be conducted with methods and means other than rod and reel. Recognition that subsistence uses differ from sport and commercial uses is reflected in the cost of a license: $15 resident hunting, sport fishing, and trapping license can be purchased for only 25 cents if the applicant meets income restrictions or historically was dependent upon fish and game for subsistence.

1961: Barrow "Duck-In". The State begins issuing citations to enforce provisions of the federal 1918 Migratory Bird Treaty Act, which provides for a closed season from March 10 – September 1. In response, 138 residents of Barrow each present a duck they had shot to the local federal game warden. A year later all charges are dropped, and the Fish and Wildlife Service begins to seek provisions that would allow Natives to take migratory birds and their eggs during the closed season. This and subsequent acts of protest and meetings around the state help to raise public awareness of Native rights and subsistence.

1971: The Alaska Native Claims Settlement Act (ANCSA) extinguishes aboriginal hunting and fishing rights in the course of settling land claims. In return, Alaska Natives receive 44 million acres of land and nearly $1 billion. The Joint Senate and House Conference Committee report makes it clear that Congress "expects both the Secretary (of the Interior) and the State to take any action necessary to protect the subsistence needs of the Natives." Section 17(d)(2) of ANCSA directs federal agencies to study lands in Alaska for establishment of new conservation system units totaling up to 80 million acres.

1972: Marine Mammal Protection Act. In its proposed versions, the Act would eliminate all taking of marine mammals, including subsistence takings by Alaska Natives. This result is averted when Alaska's congressional delegation succeeds in requiring hearings to be held across Alaska, at which local residents and ADF&G staff present evidence of the massive level of

Native dependence on marine mammal subsistence hunting. Following these hearings, Congress amends the bill to exempt coastal Alaska Natives from the national moratorium on the taking of marine mammals. Commercial sale of raw products from marine mammals is also prohibited, but authentic Native handicrafts and clothing may be made and sold. No restrictions on seasons, bag limits, or harvest methods are imposed, unless a marine mammal stock is determined to be "depleted." From 1972-1979, the State continues to manage marine mammal hunting in accordance with the Act, but that authority is lost to federal agencies as a result of a decision in *People of Togiak v. United States*, 470 F. Supp. 423 (USDC, D. of Columbia 1979). The State evaluated whether to seek Congressional action to regain management authority in the early 1980s but decided not to.

1973: Endangered Species Act. Congress passes the Endangered Species Act, which includes subsistence exemptions for Natives and non-Native residents of Native villages.

1975: Legislature expands Board of Game authorities to address subsistence. The Board of Game gains statutory authority (1975 SLA ch. 199) to set up subsistence hunting areas, control transportation within hunting areas, and open or close seasons to protect subsistence hunting. This law is never used to set up a subsistence hunting area, although other methods and means are used to address perceived subsistence needs.

1975: Alaska Native Foundation calls for subsistence legislation. To offset the effects of ANCSA on Native peoples, ANF issues a report recommending that the Alaska Legislature "should declare that subsistence uses take priority over hunting and fishing for other purposes" and that subsistence uses on national interest (d-2) lands should be protected.

1975: Caribou crash. With the crash of the Western Arctic Caribou Herd, the Alaska Department of Fish and Game and the Board of Game attempt to institute a priority system that would give hunting permits to residents in local villages most dependent on caribou. Three criteria are developed for this purpose: customary and direct dependence, local residency, and availability of alternate resources. [These three criteria eventually become the basis for distinguishing between subsistence users when Tier II hunts and fisheries are implemented by the State boards and when ANILCA Section 804 is triggered in the federal regulations.] A Fairbanks sportsman's group challenges this approach on the grounds the Board cannot allocate to individuals (State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854, 855-56, Alaska 1978). The courts decide the case in favor of the plaintiff based only on inconsistency with the Administrative Procedure Act requirements. The Opinion did not address the issues of inconsistency with the subsistence statute and state constitutional provisions.

1977: Alaska Eskimo Whaling Commission formed. The AEWC was established to counter a ban on bowhead whaling instituted by the International Whaling Commission and to protect the interests of coastal whaling communities.

1978: State passes comprehensive subsistence law. The State improves its subsistence laws by passing a comprehensive subsistence law which requires, once sustained yield has been ensured, that reasonable subsistence uses be allowed, with a priority if necessary (Ch. 151 SLA 1978). The law defines subsistence uses as "The customary and traditional uses in Alaska of wild, renewable resources for direct personal and family consumption as food, shelter, fuel,

clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife taken for personal and family consumption, and for the customary trade, barter, or sharing for personal and family consumption." The State regulatory boards are required to adopt regulations allowing subsistence uses when a harvestable surplus of a resource is available; in times of shortage, subsistence uses are given a preference over commercial, sport, or personal use. If further restrictions are necessary, the appropriate board is to determine priority for access to the resource on the basis of three criteria: customary and traditional dependence on the resource as a mainstay of one's livelihood, local residency, and availability of alternative resources. The Subsistence Section (later changed to Division) is established within the Department of Fish and Game and given a broad mandate to "compile existing data and conduct studies to gather information, including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of residents of the state."

1978: Eskimo Walrus Commission established. Harvest limits on walrus and closed seasons implemented by the State of Alaska in the 1960s caused conflicts with Alaska Natives. Following passage of the MMPA in 1972, harvests were limited to Alaska Natives and were unrestricted unless walrus numbers were "depleted." Media coverage of increases in illegal head hunting and the potential for harvest restrictions or a ban on walrus harvesting inspire walrus hunting communities to establish the Eskimo Walrus Commission.

1979: Potlatch moose. The Alaska Supreme Court rules in *Frank v. Alaska* that the First Amendment of the US Constitution and Article 1, Section 4, of the Alaska Constitution provide protection for the taking of moose for use in Athabaskan funeral potlatch ceremonies. This case began in 1975, when Carlos Frank shot a moose for use at a funeral potlatch in Minto. He was arrested and charged with unlawful transportation of illegally taken game. Frank raised the defense of religious freedom at his trial but was convicted when the court concluded that the potlatch did not specifically require moose meat. The Alaska Supreme Court action reversed the lower court decision.

1980: Alaska National Interest Lands Conservation Act (ANILCA) passed. In fulfillment of Section 17(d)(2) of ANCSA, Congress passes ANILCA, adding 104 million acres of new national parks, preserves, and wildlife refuges (P.L. 96-487, December 2, 1980 [94 Stat. 2371]) to the existing 30+ million acres of conservation system units. Title VIII of ANILCA establishes a preference for subsistence hunting and fishing by rural residents on federal lands and envisions the State of Alaska overseeing management of these subsistence uses on public lands. The act stipulates the federal government will provide the federal priority for subsistence use of fish and wildlife on federal land if the State does not. In 1980, implementation of the state subsistence law is consistent with Title VIII, and the State manages subsistence uses on all lands in Alaska under both laws.

1981: AEWC and NOAA negotiate a cooperative agreement. Under terms of this agreement, the National Oceanic and Atmospheric Association delegated responsibility for managing Eskimo whaling to the Alaska Eskimo Whaling Commission. The International Whaling Commission continues to set the quota, but administration and management of the quota are left to the AEWC. This agreement is heralded as "The first US commitment of the management of a subsistence resource to the subsistence users."

1982: Alaska Boards of Fisheries and Game establish eight criteria for defining customary and traditional and incorporate the federal rural distinction into state regulation. The Board of Fisheries originally adopted ten criteria as policy in December 1980 and only applied them to Cook Inlet fisheries. These ten criteria, later codified as 5 AAC 01.597, were subsequently challenged in the *Madison* case. The Joint Board adoption of the eight criteria took effect in May 1982.

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

1982: Repeal initiative. A statewide ballot initiative to repeal the state subsistence law (Proposition #7) fails at the polls with 59% of Alaskans voting against repeal.

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

1985: *Madison* decision. The Alaska Supreme Court rules in *Madison v. Alaska*, 696 P.2d 166 (Alaska 1985) that state fishing regulations limiting subsistence participation based on the ten criteria are not consistent with the state's 1978 subsistence statute, since the statute does not provide authority to limit use to only customary and traditional users below the Tier II level. This effectively voids the regulatory rural preference. The Interior Department notifies the State that the Madison decision puts the State out of compliance with ANILCA and threatens a takeover management of subsistence uses of fish and wildlife on public lands unless the State comes up with a new subsistence law, incorporating the rural priority.

1986: Rural preference added to State subsistence statute. The Alaska Legislature enacts a new law limiting subsistence eligibility to rural residents (Ch. 52 SLA 1986; AS 16.05.90) and defining r*ural* as an area where the "...noncommercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy..." The amended law requires the state boards to identify which fish stocks and wildlife populations are customarily taken by subsistence users and to adopt regulations providing subsistence users reasonable opportunity to harvest these resources. The Department of Interior again finds the state to be in compliance with Title VIII of ANILCA.

In State Superior Court, the *McDowell v. State of Alaska* suit is amended to challenge the new subsistence law. The Kenaitze Indian tribe also files a suit in federal court under ANILCA to protest the classification by the Boards of the Kenai Peninsula as an urban area (*Kenaitze Indian Tribe vs. State of Alaska*, No. A86-367).

1987: Kenaitzes initially denied. A federal court judge rules against the Kenaitze Tribe in the *Kenaitze* case, saying the definition of “rural” in the state subsistence law agrees with use of the word "rural" in federal subsistence law. The case is appealed to a higher court.

1987: McDowell initially denied. The State Superior Court holds that the 1986 subsistence law is constitutional and rules in favor of the State in *McDowell v. State of Alaska*. This case is appealed to the Alaska Supreme Court.

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

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

1989: Alaska and Inuvialuit Beluga Whale Committee established. Inspired by the success of the AEWC, the desire to ensure that beluga stocks remain healthy, and to forestall or minimize the impacts of actions by outside agencies on the subsistence hunt, late in 1987 the Director of the North Slope Borough Department of Wildlife Management invites coastal communities to form the AIBWC and initiate cooperative management of belugas before a crisis develops. The group adopts by-laws in 1989 and begins preparation of a management plan.

1989: RurAL CAP Survey. Rural Alaska Community Action Program, Inc., releases a report examining the state's implementation of the federal subsistence priority and its advisory committee system. Based on a mail out survey sent to all rural members of the state's fish and game advisory committees, the report finds that: "…the State's fish and game management system generally favors sport and commercial interests over subsistence interests. More committee members represent sport and/or commercial interests than subsistence interests. There is insufficient financial support and training of the committees, which tends to disfavor those in more remote areas who rely most heavily on subsistence. Finally, sport and commercial users were more comfortable with the nature of the regulations than were subsistence users. Taken together, these factors indicate that sport and commercial uses are more likely to be accommodated through the committee system than are subsistence uses."

1989: Lime Village decision. The Federal District Court rules in *Bobby v. State of Alaska* (filed in 1984) that the Board of Game may impose regulations such as seasons and bag limits only when the record shows a biological (or conservation) justification for such restrictions—i.e., seasons and bag limits are permissible under the State subsistence law, but only when those seasons and bag limits are consistent with customary and traditional uses. The court's findings are specific to hunting in the Lime Village area, but raise questions about applicability to other areas of the state. In response, the Board of Game amends the applicable regulations by removing individual bag limits for caribou and moose and allowing year round seasons for both species by residents of Lime Village, and establishing a caribou harvest quota.

December 22, 1989: *McDowell* decision. Ruling in *McDowell v. State of Alaska,* 785 P.2d 1 (Alaska 1989), the Alaska Supreme Court finds that the rural preference language of the 1986

state subsistence statute violates three provisions of Article VIII of the State Constitution (section 3 – "common use" clause; section 13 –"no exclusive right to fisheries" clause; and section 17 – "equal applicability" clause) because it excludes urban residents from subsistence activities. Other methods of exclusion might be used but not exclusively the place of residence. The court says that broadly defining subsistence users by geography of residence is unacceptable, since there are urban Alaskans who could legitimately claim to be subsistence users and rural residents who could not. The Court suggests that a classification scheme using individual characteristics would be more likely to pass muster. The rest of the subsistence statute, giving a preference to subsistence uses over other uses, remains intact. The result is that all Alaskans qualify as subsistence users in areas where state law authorizes subsistence uses. However, the ruling results in the state's subsistence program not being in compliance with ANILCA's preference for rural residents.

1989-90: State implements ceremonial regulations. In 1989, after both parties agree to dismissal of *Tanana v. Cowper*, the Board of Game implements a regulation authorizing the harvest of up to three moose for the Nuchalawoyya potlatch ceremony. In 1990, the Board of Game authorizes the harvest of up to three moose per regulatory year for the Stickdance ceremony.

January 5, 1990: Stay granted in McDowell case. The Alaska Supreme Court denies a motion for reconsideration of the McDowell decision but grants the State a stay until July 1, 1990. As a consequence, all existing regulations are in effect and are enforceable until that time.

April 1990: Federal government moves to assume responsibility for providing subsistence preference to rural residents on federal lands. On April 13, 1990, a Notice of Intent to propose regulations is published in the Federal Register. Temporary regulations published on June 8, 1990, establish a federal subsistence program that minimizes change to the state program, consistent with the federal government's ANILCA responsibilities.

May 1990: Legislature debates subsistence options. Among the options discussed by the State legislature is a draft constitutional amendment submitted by Governor Cowper. After lengthy hearings in the final days of the session, the House amends the Governor's proposed amendment but then rejects it by a vote of 20-20 (27 votes needed). The Senate never votes on the amendment.

June 8, 1990: Governor calls special session. Negotiations with several interest groups prior to opening of session fail to reach an agreement on a solution. After concluding that ANILCA cannot be changed and failing to change the State Constitution during the regular legislative session, Governor Cowper calls a special session. On opening day of the special session, Cowper introduces a constitutional amendment that would require, if approved by the voters at the next general election, a vote on the issue four years later. The amendment would prevent federal management of subsistence from occurring on July 1 and would give groups time to either sue on the constitutionality of ANILCA Title VIII or amend ANILCA. The governor's proposal was further amended by the Senate to require a vote in two years and, together with legislation creating a Subsistence Review Commission, passes the Senate in early July. However, on July 8, the House rejected it (26 in favor, 14 opposed), one vote short of the 2/3 majority required for a constitutional amendment.

June 1990: Cutler decision on severability. The Alaska Supreme Court remands *McDowell* to the lower court for implementation of its order, and, in an opinion dated June 20 with two subsequent clarifications, Judge Cutler finds the unconstitutional portion of the state subsistence law to be severable from the rest of the law. This leaves the State with a subsistence priority law on the books but with its application to only rural residents severed.

July 1990: Federal subsistence management begins. The Secretaries of the Interior and Agriculture assume responsibility for assuring the rural preference for subsistence uses of fish and wildlife on federal public lands as of July 1. They initiate a federal subsistence management program that creates the Federal Subsistence Board, composed of one representative each from the five federal land management agencies in Alaska (BLM, NPS, BIA, USFS, and USFWS) and a member of the public designated to chair the board. Initially, the federal agencies interpret "public lands" to include only lands and waters owned by the United States and generally only regulate subsistence use of wildlife.

July 1990: New subsistence hunts. The Alaska Board of Game holds an emergency meeting to promulgate regulations for the 1990 fall hunts. In anticipation of a larger pool of subsistence users (because all Alaskans were expected to be eligible to participate), nonresidents are excluded from many hunts, and other hunts are put on a Tier II, individual subsistence application, basis.

October 1990: All Alaskans eligible for subsistence. At a meeting of the joint Boards of Fisheries and Game on October 26, 1990, the Department of Law confirms that, following the *McDowell* decision, all Alaskans must be considered potential subsistence users of fish and game under State jurisdiction. The boards subsequently issue a policy statement indicating that it is impossible under the recent legal decisions to identify subsistence users.

November 1990: New subsistence fisheries. The Board of Fisheries establishes new subsistence fisheries in both upper and lower Cook Inlet. A subsequent policy states that subsistence fishing proposals throughout the state would be addressed only if subsistence needs are not being met or if the proposal addresses a conservation concern.

December 1990: Katie John et al. v. United States is filed. The complaint, filed in US District Court in Anchorage, seeks a judicial order requiring the Secretaries of the Interior and Agriculture to implement a subsistence salmon fishery at Batzulnetas on the Copper River, a customary and traditional fishing site used by plaintiffs Katie John of Mentasta and Doris Charles of Dot Lake. The plaintiffs claim that the definition of "public lands" in ANILCA includes marine and navigable waters. A favorable court ruling would require a substantial expansion of federal subsistence jurisdiction into fisheries.

February 1991: Governor's Subsistence Advisory Council is formed. Governor Hickel appoints an initial subsistence advisory group early in 1991 and reorganizes it in November to add public members and remove the state commissioners; in all, the groups meet for over a year. The ten-member group is charged with drafting a new subsistence statute that will comply with the State Constitution.

1991-92: Federal subsistence program is established. Publication in the spring of 1992 of an EIS on the Federal Subsistence Program in Alaska clarifies the federal government's intent with

regard to providing subsistence for rural residents on federal lands as mandated by ANILCA. The Federal Subsistence Board establishes a staff and regular meeting schedule and begins accepting public proposals. Other elements of the program include federal regional subsistence advisory councils and a process for identifying rural areas and customary and traditional uses. The program applies to hunting on federal public lands and to fishing in non-navigable federal waters.

February 1992: Governor introduces new subsistence legislation. Governor Hickel introduces a bill to the State Legislature that would establish a new subsistence statute. A key feature of the bill, which is based on the work of the governor's subsistence advisory council, is a presumption that residents of small communities will automatically meet specified subsistence criteria; in mid-sized communities this presumption is "rebuttable." Urban residents would have to apply for subsistence qualification on an individual basis and prove they practice a subsistence way of life. Also, nonsubsistence areas are authorized, and implementation would require amending ANILCA. Critics say, if the bill doesn't change the State Constitution, it won't comply with ANILCA. Native support is weak. The Legislature fails to take action on the bill. Other bills also are considered during the session but not passed, including AFN-sponsored legislation that provides a rural preference and also a second-level preference for urban residents who could demonstrate community or individual dependence.

February 1992: Federal subsistence regulations challenged. The State files suit in U.S. District Court (*Alaska v. Babbitt*) challenging regulations adopted by the Secretaries of the Interior and Agriculture to implement Title VIII of ANILCA and alleging that the regulations exceed federal authority insofar as they assert jurisdiction in waters located off "public lands."

June 15-22 1992: Governor convenes Special Session on Subsistence, 1992 Subsistence Law is enacted. Governor Hickel presents the State Legislature with a version of the bill that had been introduced in the previous session. Other bills also are introduced, plus motions to place a constitutional amendment on the ballot. Hickel's proposal (and the Native community's request for a rural amendment) is essentially gutted in the bitter eight-day session. The more substantive and controversial parts of the Hickel proposal, as well as several proposed rural amendments, are rejected in the special session. Instead, the legislature ultimately passes a subsistence bill that adopts the procedural and definitional parts of Governor Hickel's bill (without the proposed major changes) and that provides subsistence eligibility for all Alaskans, details a stepwise process for implementing the subsistence preference, includes a definition of "customary trade" and allows the Boards of Fisheries and Game to establish "nonsubsistence areas" in places where subsistence "is not part of the economy, culture, or way of life" of an area.

November 1992: Joint Boards of Fisheries and Game establish Nonsubsistence Areas. Meeting jointly, the Boards conduct a comprehensive review of existing subsistence regulations and establish nonsubsistence areas around Fairbanks, Anchorage/Mat-Su, Kenai, Juneau, and Ketchikan where subsistence regulations will not be established. Subsistence regulations within these areas are repealed. The joint boards also issue a call for proposals for other areas. At a subsequent meeting in March 1993, an area around Valdez also is designated as a nonsubsistence area. Later public proposals for additional areas, including Game Management Unit 13, all roaded areas, and an area on the Upper Holitna Drainage, are not adopted.

1992: Morry Decision. The Alaska Supreme Court overturns the State Superior Court decision in *State of Alaska v. Morry*. In 1983, Anaktuvuk Pass resident Morry filed suit after being cited for illegally taking a grizzly bear, claiming that the regulations under which he had been charged were procedurally invalid. Although the final court agreed with Morry on this count, it ruled against him on three larger issues of regulatory procedure: (1) All Alaskans are eligible subsistence users, at least at the Tier I level; (2) the federal "least adverse impact" standard was not stated in or implied by the "reasonable opportunity" standard of the 1986 State subsistence statute; and (3) the State regulatory boards may provide for customary and traditional practices in subsistence regulations but are not required to do so.

1993: Consolidation of legal cases. Judge Holland consolidates several cases that address two key subsistence management issues, referred to as the *Babbitt* or *Katie John* cases. The Babbitt case addresses who has management authority for subsistence management on federal public lands, while the Katie John portion involves where ANILCA applies and specifically addresses navigable waters. In February, at a status conference for Alaska v. Babbitt and several other ANILCA jurisdictional cases, Holland decides to handle these cases jointly and sets a briefing schedule. Holland says he will rule first on the scope of the federal government's authority ("who") before deciding if navigable waters are "public lands" or if the ANILCA priority applied off "public lands" ("where").

October 1993: State Superior Court finds Nonsubsistence Areas to be unconstitutional. Judge Fabe, in State Superior Court, finds in *Kenaitze v. State* that the nonsubsistence areas authorized by the 1992 state law are unconstitutional because they "effectively re-establish the rural/urban residency requirement struck down in McDowell" (*Kenaitze Indian Tribe v. State of Alaska*, 3AN-91-4560 Civil, Order, October 26, 1993). After the Alaska Supreme Court's subsequent denial of the state's motion for a stay, the Joint Boards meet in spring 1994 and authorize the Department of Fish and Game to enact emergency regulations that re-establish the previous subsistence regulations for the former nonsubsistence areas. The State also appeals the Fabe ruling to the Alaska Supreme Court.

January 1994: "Public Lands" ruling. Judge Holland makes a preliminary ruling in the *Katie John* case, concluding that federal public lands include the state's navigable waters and waters offshore three miles.

March 1994: U.S. District Court validates Federal Subsistence Board authority, extends federal management to include navigable waters. Following his preliminary rulings in *Katie John*, Judge Holland issues a final ruling that interprets ANILCA as giving the federal government broad authority to manage subsistence on federal public lands and extends jurisdiction to include navigable waters on federal lands. More specifically, public lands to which Title VIII of ANILCA applies are deemed to include all navigable waters in Alaska under the navigational servitude doctrine. A parallel ruling in the case of *Alaska v. Babbitt* finds that creation of the federal subsistence regulatory board does not exceed the authority granted by ANILCA. Both the state and federal governments immediately appeal these two rulings to the Ninth Circuit Court of Appeals.

May 1994: Secretary of the Interior declares intent to manage subsistence fisheries throughout Alaska. In a letter to the Governor that urges the State to take action necessary to come into compliance with ANILCA, Interior Secretary Babbitt states his intention to begin

management of subsistence fisheries, "pursuant to the direction of the federal courts," unless the State passes a constitutional amendment. Babbitt also directs the Federal Subsistence Board "to outline the steps necessary to assume management of all fisheries in the navigable waters of Alaska to safeguard a rural subsistence priority" and submit a written report to him no later than August 31. On May 20, the Hickel administration announces that it is working with the Alaska congressional delegation on a plan to enable the State to regain statewide control of subsistence management from federal agencies and the courts. The plan reportedly will involve amending the State Constitution and making changes to the subsistence provisions in ANILCA.

1994: State initiates cooperative caribou management plan. Responding to requests from a grassroots coalition, the Alaska Department of Fish and Game establishes the Fortymile Caribou Herd Planning Team to develop a management plan that would promote growth of this herd and facilitate its return to its traditional range in Alaska and Yukon. The success of this planning process inspires ADF&G to initiate similar collaborative wildlife management planning efforts around the state and signals a change in how the department addresses complex management issues.

January 1995: State drops Babbitt lawsuit. Governor Knowles directs the Attorney General to drop the state's appeal of the *Babbitt* case. In doing so, he says the case does not address the fundamental question of the constitutionality of ANILCA, that some claims are time barred or not ripe for review, and that other claims had been previously rejected. He further notes the state will continue the *Katie John* case.

April 1995: US Ninth Circuit Court of Appeals decides *Katie John* case. The US Ninth Court of Appeals holds that navigational servitude does not constitute "public lands" within the meaning of ANILCA. However, it finds that "public lands" include navigable waters in which the United States has a reserved water right and orders the federal agencies that administer the subsistence priority to identify the waters subject to that right. In the Ninth Circuit decision ruling against the State, judges say that ANILCA authorizes federal agencies to protect subsistence fishing on rivers across federal land and to curb commercial and sport fishing in state waters if necessary. "The issue raised by the parties cries out for a legislative, not a judicial, solution," the court noted. Federal agencies continue development of a fisheries plan and begin a process for identifying waters where federal subsistence fisheries regulations would apply.

May 1995: Alaska Supreme Court decides Nonsubsistence Areas are constitutional and the Tier II proximity criterion is not. The Alaska Supreme Court, in *State v. Kenaitze Indian Tribe*, 894 P.2d 632 (Alaska 1995), overturns the October 1993 State Superior Court decision and determines that "...the Tier II proximity of the domicile factor violates the Alaska Constitution because it bars Alaska residents from participating in certain subsistence activities based on where they live." The court also upholds the nonsubsistence area provisions of the 1992 State subsistence law, concluding that it is constitutional because "...it bars no Alaskan from participating in any fish or game user class." With this ruling, the previously designated nonsubsistence areas are automatically reinstated. The Kenaitze's challenge to the findings of the Joint Boards that resulted in the establishment of the Anchorage-MatSu-Kenai Peninsula nonsubsistence area is remanded back to the Superior Court.

August 1995: Alaska Supreme Court disagrees with Ninth Circuit Court on the scope of the federal subsistence law. Subsistence hunter Totemoff shot a deer on federal land with the

aid of a spotlight from a skiff in navigable waters above state-owned submerged lands and was convicted of violating the state regulation prohibiting hunting with the aid of artificial light. In *Totemoff v. State*, 905 P.2d 954 (Alaska 1995), the Alaska Supreme Court makes three significant findings. The court (1) concludes that the federal subsistence law does not preempt non-conflicting state law; therefore, the State can prosecute a subsistence user charged with spotlighting deer, since state law is not in conflict with ANILCA; (2) interprets ANILCA as not protecting customary and traditional means and methods; and (3) directly disagrees with the Ninth Circuit Court of Appeal's finding in *State v. Babbitt* (the Katie John case) that public lands include certain navigable waters. Because of the direct conflict with the federal court interpretation, the State files a petition for review by the US Supreme Court on December 5, 1995.

1995 - 1996: Governor directs Lt. Governor to begin "quiet diplomacy" effort: In an effort to develop a consensus position on subsistence, Lt. Governor Fran Ulmer consults with affected groups and produces a conceptual approach to resolving the subsistence impasse. This approach involves making changes to the State Constitution, state statutes, and ANILCA and becomes the basis for subsequent Knowles administration positions.

April 1996: Federal "Advance Notice of Rulemaking" in navigable waters with reserved water rights. On April 4, 1996, the US Departments of the Interior and Agriculture publicize an "advance notice of proposed rulemaking" in the Federal Register. Pursuant to the *Katie John* decision, they announce their intention to amend the scope and applicability of the federal subsistence program to include subsistence activities on inland navigable waters in which the US has a reserved water right. In addition, the rule amendments would authorize the Federal Subsistence Board to restrict or eliminate hunting, fishing, and trapping on state and private lands when the board determines that these activities interfere with their provision of the subsistence priority on public lands. Senator Ted Stevens engineers the first of three implementation delays in Congress.

May 1996: US Supreme Court denies petition to review Katie John. After the Ninth Circuit Court issues its final opinion on the *Katie John* case in December 1995, the State petitions the U.S. Supreme Court to review the decision. The US Supreme Court denies the state's petition on May 13, 1996.

1997: Governor Knowles convenes 7-member Subsistence Task Force. A task force recommendation released in January 1998 is "an interdependent package of technical amendments to ANILCA, a rural priority amendment to the Alaska constitution, and changes to the Alaska statutes." The effective date of the ANILCA and statutory amendments would have been the date of passage of the constitutional amendment by the voters.

January 1998-October 1999: Implementation of federal subsistence fisheries management delayed. Senator Ted Stevens negotiates a one-year moratorium on implementation of the *Katie John* decision in 1998, says it will be the last delay, then acquiesces in 1999 and extends until October 1, 1999, the effective date of federal management of fisheries. Stevens includes the task force ANILCA amendments in the FY 1998 appropriations bill, with a sunset provision if the legislature does not enact a constitutional amendment and state laws complying with ANILCA.

January 1998: Governor Knowles introduces subsistence legislation. Governor Knowles asks the Legislature to pass a Constitutional amendment and statutory changes during the regular session. The legislature takes no action.

1998: Legislative Council lawsuit dismissed. In January, the Alaska Legislative Council (representing Republican leaders of the legislature) and seventeen state legislators file suit challenging Title VIII of ANILCA and federal subsistence regulations (i.e., challenging the Secretaries' authority to preempt state management). The US District Court for the District of Columbia dismisses the case in July. Although the Legislative Council's claims differ from the state's claims in the *Babbitt* case, the court bars the claims the Legislative Council raised that could have been brought in that case. The court also finds that the six-year statute of limitations bars a facial Equal Protection challenge to ANILCA's rural/nonrural distinction. Finally, the court declines to review the proposed rule extending federal jurisdiction to navigable waters on ripeness grounds, because the rule was not final when the case was initiated. The Legislative Council appeals this ruling to the U.S. Court of Appeals for the D.C. Circuit. On July 13, 1999, the Court of Appeals for the District of Columbia Circuit affirms on other grounds, ruling that the plaintiffs lacked standing to sue.

June 1998: Knowles calls third Special Session. Legislators did not act on the Knowles task force package, so they are called into a special session that lasts six days. In the background, the Interior Department applies pressure, saying federal "takeover" of subsistence fisheries is imminent. The House lacks three votes to pass a rural priority amendment, which includes a two-year delay as a concession to ongoing court challenges.

July 1998: Knowles calls fourth Special Session on Subsistence. One month later, lawmakers return to Juneau for two days only and refuse to pass a constitutional amendment or other laws pertaining to subsistence management. Less than the necessary two-thirds of the House support legislation, and the Senate does not vote. Secretary Babbitt says federal agencies will publish regulations of subsistence fisheries on October 1, 1999.

January 1999: Knowles again introduces subsistence legislation. Again, the legislature refuses to pass a constitutional amendment or subsistence law to comply with ANILCA. The Secretaries issue a final rule implementing the *Katie John* decision that is to become effective on October 1, 1999, but may be delayed to December 1, 2000, if the State Legislature passes a bill or resolution to amend the State Constitution to provide for the Title VIII priority. The final rule expands the federal subsistence program to include all waters within the exterior boundaries of 34 identified federal areas, including waters passing through inholdings within these areas, as well as inland navigable waters adjacent to the exterior boundaries of the 34 areas. The rule also expands federal jurisdiction to lands selected but not conveyed to the State of Alaska and Alaska Native Corporations, if the land is within the boundaries of the National Park System, National Wildlife Refuge System, National Wild and Scenic River Systems, National Forest Monument, National Recreation or Conservation Areas, or new National forests or forest additions.

September 1999: Governor Knowles again calls the legislature into Special Session to address subsistence. After Senator Stevens institutes a final year's delay in the federal subsistence fishing regulations, the Legislature meets for nine days in a fifth special session. Governor Knowles again asks the Legislature to pass a Constitutional amendment. The House

votes to place a rural priority constitutional amendment on the ballot (28 to 12), but the Senate vote (12 to 8) is two votes short of the 14 necessary to put an amendment before the voters.

October 1, 1999: Federal subsistence jurisdiction expands. In January 1999, the Secretaries issue a final rule implementing the *Katie John* decision. The rule becomes effective October 1, 1999. The final rule expands the federal subsistence program to include all waters within the exterior boundaries of 34 identified federal areas, including waters passing through in-holdings within these areas, as well as inland navigable waters adjacent to the exterior boundaries of the 34 areas.

October 1999: Alaska Supreme Court rules in fisheries case. The Alaska Supreme Court rules in *Native Village of Elim v. State* that the Board of Fisheries, in adopting regulatory measures governing chum salmon in Norton Sound and False Pass, acted within the considerable discretion afforded it by the sustained yield clause of the Alaska Constitution and the State subsistence law. The court also upholds the validity of the board's mixed stock policy. The appellant argued that the Board had violated the sustained yield clause by not identifying a specific level of yield to be sustained for each fish stock, by not identifying management principles necessary to sustain that yield, and by not consciously applying such principles. The court disagrees, holding that a specific level of yield need not be determined for each stock and that the board's management plan contained and applied sustained yield principles. The court also upholds the board's identification of "all salmon" in Norton Sound as a subsistence stock, stating that "The Board must have the discretion to draw boundaries that are appropriate for a given set of circumstances" and finding that the grouping of stocks together in applying the subsistence preference was reasonable and appropriate in this case.

2000: Final District Court judgment in Katie John and State appeal. After the Secretaries' final rule becomes effective, the Federal District Court for Alaska issues a final judgment, affirming its prior ruling on ANILCA's application of federal subsistence fisheries to navigable waters. The State again appeals and asks for "en banc" consideration by the eleven appellate judges of the 9th Circuit Court of Appeals.

2000: Kenai Peninsula rural determination. The Federal Subsistence Board finds that the entire Kenai Peninsula is a rural place for purposes of administering the federal subsistence priority. This substantially increases the number of rural residents potentially qualifying for the federal subsistence priority.

September 2000: Ninth Circuit decision in Ninilchik Traditional Council case. Court held that Federal Subsistence Board Decisions--unlike prior state decisions which were subject to de novo review--would be afforded *Chevron* deference with any reasonable interpretation of ANILCA upheld. The Court held that: the Board reasonably interpreted ANILCA to allow balancing of the Act's competing purposes including subsistence use, conservation, and recreation; upheld the "meaningful preference" standard; upheld spike fork/50 inch antler restriction with 10 day advance subsistence season as "meaningful preference" in two subunits; but found nothing in the record to support for argument that a 2 day advance season in another subunit provided a meaningful preference.

2000: State/Federal work groups begin dual regulatory coordination efforts. Federal and State fisheries and wildlife regulators meet together under the terms of a draft "Interim

Memorandum of Agreement for Coordinated Fisheries and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska" that was initialed in 2000. The agreement establishes guidelines for subsequent agreements and protocols to implement coordinated management. Areas highlighted for coordinated actions include development of regulations, in-season management, research, special action requests, customary trade and barter, customary and traditional use determinations, and advisory committee/regional council activities. The agreement acknowledges the state's continuing responsibility and authority for managing fish and wildlife populations on all lands, including authorizing hunting and fishing on federal public lands, as well as the authority of the federal government to provide for subsistence uses by rural residents on federal public lands.

2000: Alaska Migratory Bird Co-Management Council established. The Council, comprised of 12 Native representatives, one federal, and one state representative is tasked with developing spring and summer migratory bird subsistence regulations. The efforts of the Native Migratory Bird Working Group in previous years led to formation of this council. The long process to authorize waterfowl hunting outside the fall season began in the mid-1980s, culminating in ratification of US-Canada and US-Mexico Migratory Bird Treaty Act protocols in 1995, ratification of these amended treaties by the US Senate in 1997, and formal implementation of the amended treaties in 1999.

2001: Appellate Court decision in Katie John. A majority of the judges of the Ninth Circuit Court of Appeals, sitting en banc, reaffirm the court's earlier decision, holding that ANILCA gives the federal government the power to manage subsistence uses on navigable waters that are covered by the federal reserved water rights doctrine. Three of the nine appellate judges said ANILCA should be interpreted to give the federal government power over all navigable waters, and three said ANILCA should be interpreted to give it power over no navigable waters. The State asks for, and is granted, an extension until October 4, 2001, to file a petition for certiorari which will ask the US Supreme Court to review the circuit court's decision. Governor Knowles drops further appeals to the US Supreme Court leaving the Appeals Court decision in place despite its contradiction with the Alaska Supreme Court *Totemoff* decision.

2001: Kenai rural designation reconsidered. The Federal Subsistence Board reconsiders its 2000 determination that the entire Kenai Peninsula is rural and finds that Homer, Seward, Kenai, and adjoining communities are non-rural for purposes of the federal subsistence priority.

August 2001: Subsistence summit proposes rural priority. Governor Knowles appoints an 11-member Subsistence Drafting Group to work on a draft constitutional amendment and recommendations for implementation by the State Legislature. After several meetings, the group deadlocks over creating a subsistence priority for urban residents, Alaska Natives, or tribes. A working draft recommends a priority for "customary and traditional subsistence uses" and a priority for rural residents when restrictions are necessary to ensure sustained yield management of fish and wildlife. At the August summit of business, religious and Native leaders, along with a few critics of the rural priority, the task force proposes a rural priority constitutional amendment with a second tier priority for urban residents who can demonstrate a long-term, consistent pattern of subsistence uses and for communities with subsistence traditions.

2002: Anchorage supports vote on amendment. By nearly a three-fourths margin, Anchorage voters approve an advisory question, "Shall the citizens of Anchorage urge the Alaska

Legislature to resolve the subsistence issue by placing a constitutional amendment before the qualified voters at the November 2002 general election?"

2002: Subsistence management history published. **"**Alaska Subsistence: A National Park Service Management History," written by NPS historian Frank Norris, is published. The report reconstructs the history of subsistence management in Alaska and a detailed analysis of the subsistence debate.

2002: Government-to-Government policy adopted. The Department of Fish and Game and the Alaska Boards of Fisheries and Game adopt a "Policy on Government-to-Government Relations with the Federally Recognized Tribes of Alaska." The goal is to ensure appropriate consultation with tribes "prior to taking action or undertaking activities that significantly or uniquely affect a tribe or tribes…" This action follows implementation in 2001 of the Millennium Agreement between the Federally Recognized Sovereign Tribes of Alaska and the State of Alaska.

May 2002: Federal Subsistence Board authorizes bear handicraft sales. At its spring meeting, the Federal Subsistence Board considers a proposal to include black and brown bear in the definition of "furbearer," for purposes of allowing the sale of handicrafts made from bear fur. Regional advisory councils split on the issue, but a majority opposes the proposal, in part because the proposal conflicts with cultural traditions and practices involving bears and especially brown or grizzly bears. The Federal Board opposes the proposal but adopts regulatory language that allows the sale of handicrafts made from black bear fur, consistent with an existing State regulation adopted in 1998.

May 2002: Knowles calls sixth Special Session. Governor Knowles calls another special session. In addition to the Knowles package, lawmakers weigh an alternative plan awarding priority to those who live nearest to any fish or wildlife in short supply.

January 2003: Customary trade of fish authorized. The Federal Subsistence Board adopts final revised rules governing the customary trade of fish and their parts and eggs taken under the federal subsistence regulations. The new rules authorize the continued customary trade of fish resources for cash. Rural residents can trade fish resources to non-rural residents if the purchaser uses them for personal and family consumption. Under the revised rule, fish, their parts, or their eggs may not be sold to fishery businesses. The federal board later implements limitations on the cash value of salmon that can be exchanged in the Bristol Bay region (December 2003) and in the Upper Copper River District (January 2005), consistent with recommendations from the regional advisory councils for these areas.

The State and the Southeast Alaska Seiners' Association appeal the board's decision and file Requests for Reconsideration. The State argues that since no evidence of customary trade practices was included in the board deliberations, there is no way to know if the rulemaking is consistent with customary practices. The State also points out that the final rules are inconsistent with the recommendations of some regional advisory councils. The federal board rejected the requests for reconsideration but did not make the necessary findings mandated in Section 805(c) of ANILCA.

2003: Court Ruling in *Manning v. Alaska*. Alaska Superior Court Judge Sen Tan rules that taking residence into account in State Tier II permit hunt applicants meets constitutional strictures in all cases but rules the question unconstitutional because it concludes that it was not the least possible infringement on subsistence participation. The State appeals this decision to the Alaska Supreme Court and asks that, if the high court agrees with the Superior Court, to overturn the *McDowell* and *Kenaitze* decisions and to clarify residency issues.

May 2003: Federal Subsistence Board authorizes ceremonial uses. The Federal Subsistence Board implements a statewide provision allowing the take of wildlife for traditional funerary or mortuary ceremonies. It is modeled after the corresponding State regulation adopted in November 2002 but differs in two ways: (1) The federal regulation allows the harvest of "wildlife," while the State provisions apply only to "big game;" and (2) The federal regulation exempts from prior notification requirements harvesting for the Koyukon and Gwich'in potlatch ceremonies, while the State exemption applies only to the Koyukon ceremony.

July 2003: Governor seeks representation on Federal Subsistence Board. Governor Murkowski requests that Secretary of the Interior Norton appoint a State of Alaska representative as a non-voting member of the Federal Subsistence Board. NARF, AFN, RurAL CAP, and several Alaska Native governments oppose the request. At a November Federal Board work session, Fish and Game Deputy Commissioner Wayne Regelin gives testimony explaining that this would enable the State to actively participate in board deliberations and, when appropriate, to offer information and alternative courses of action that would provide for the federal subsistence priority without eliminating other uses on federal public lands.

February 2004: State liaison to the Federal Subsistence Board designated. The Federal Subsistence Board meets in executive session and supports the state's request for a non-voting seat on the board. Secretary Norton approves the request and asserts that the appointment is consistent with provisions of the Record of Decision for the EIS adopted in 1992, which calls for a state liaison and ten regional advisory council chairs to serve as active but non-voting consultants to the board. She says the appointment "will enhance our ability to cooperate and coordinate with the State, and in doing so facilitate a stronger and more successful subsistence program for the benefit of all users." Governor Murkowski designates the Commissioner of the Department of Fish and Game to fill this seat.

January 2004: Regional advisory council membership challenged. In ruling on one of the claims in *Safari Club v. Demientieff* (filed in US District Court in 1998), Judge Holland concludes that the Safari Club has standing for purposes of challenging the fair balance requirements of the regional advisory council composition under the Federal Advisory Committee Act (FACA). He finds that a council comprised of only subsistence users which excludes the viewpoints of non-subsistence users of federal public lands is not fairly balanced. Holland dismisses claims by five plaintiffs who said they had been injured by federal customary and traditional use determinations.

April 2004: Regional advisory council membership modified. The Department of the Interior publishes a proposed rule in the April 15 Federal Register to modify the composition of the regional advisory councils and expand membership on most councils to ensure that each council represents a diversity of interests. The Federal Subsistence Board "will strive to ensure that 70 percent of the members represent subsistence interests within a region and 30 percent of the

members represent commercial and sport interests within a region." This action responds to the *Safari Club v. Demientieff* ruling and to the board's own recommendations pursuant to a national review of advisory councils that preceded this legal decision.

March 2004: Board of Game authorizes brown bear fur handicraft sales. At its February-March 2004 meeting in Fairbanks, the Board of Game implements a statewide regulation authorizing the sale of handicraft items made from the fur of brown bears. State regulations define "fur" as not including the claws. In April, the Alaska Professional Hunters Association petitions the Board of Game to revise its decision by excluding Game Management Units 1 – 9 and by limiting the regulation to intensive management areas. The board denies this petition on the grounds that it does not meet the criteria for adoption of an emergency regulation.

March 2004: *State of Alaska v. Manning* update. The State of Alaska submits a brief to the Alaska Supreme Court requesting reversal of the trial court's invalidation of the state's Tier II subsistence hunting permit point system and asking the court to declare the regulation to be constitutionally valid. The State identifies several issues for consideration by the court, including a potentially significant one that involves the 1989 *McDowell v. State* decision: "If the standard of review set in *McDowell v. State*, 785 P.2d 1 (Alaska 1989) is deemed to be inconsistent with a finding that 5 AAC 92.070(b)(1) is constitutional, the case should be reinterpreted or revised."

May 2004: Use of bear claws for making and selling handicrafts authorized. The Federal Subsistence Board adopts a new regulation permitting the sale of handicraft items made from the fur of brown bears (including claws) taken on federal public lands in the Southeast, Eastern Interior and Bristol Bay regions, and clarifies its intent to continue to allow the sale of handicrafts made with black bear fur, including claws, statewide. The Office of Subsistence Management distributes an informational sheet designed to clarify what is and is not allowed under these provisions of the federal subsistence regulations.

May 2004: Secretary of the Interior decides against intervention in Area M commercial salmon fisheries. In a May 28, 2004, letter responding to petitioners seeking federal intervention and letter to the Chair of the Federal Board, Secretary of the Interior Gail Norton decided against extending federal jurisdiction to intervene in the Alaska Peninsula/Aleutian Islands (Area M) commercial salmon fisheries and, instead, encouraged the State of Alaska to step up monitoring and research to protect Western Alaska salmon fisheries. The petitions were a response to Alaska Board of Fisheries action in February 2004 which liberalized the Area M commercial salmon fishing regulations. Norton's letters establish the bar by which the federal program would extend jurisdiction, clarifying that the Secretary would not extend jurisdiction in the absence of a clear demonstration that actions beyond Federal jurisdiction constitute a substantial and impermissible interference with a federally protected right, directly causing a failure to provide the subsistence priority on the federal public lands. The Secretary found it was unlikely that the state's regulatory changes for the June marine fishery would result in a failure to provide a subsistence priority in inland waters and noted that federal intervention to preempt the State's authority to regulate within its own jurisdiction would be an extraordinary decision.

August 2004: State appeals Federal board ruling on sale of handicrafts. The State files a Request for Reconsideration to the Federal Subsistence Board, asking that its May 2004 decision allowing the sale of handicraft items made from the fur (including claws) of bears taken for

subsistence purposes be reversed. Focusing primarily on the sale of handicrafts made from bear claws, the State asserts that the practice is inconsistent with "sound management principles and the conservation of healthy populations of fish and wildlife," authorizes a practice that has not been found to be customary and traditional, and potentially allows commercial sales. In November, the federal board rejects the State's appeal, concluding that the appeal contained no new relevant information, did not demonstrate that existing information used by the board was incorrect, and did not demonstrate that the board erred in its interpretation of information, applicable law, or regulation.

January 2005: New lawsuits filed. On January 6, the State of Alaska files a lawsuit in the District of Columbia challenging the final rule implementing the *Katie John v. United States*, which specifies that the US must protect the subsistence uses of fisheries in navigable waters where the US possesses a reserved water right. The State challenges implementation of this ruling by arguing that the US Supreme Court's prior decisions establish a reserved waters doctrine process that requires a quantification of waters necessary to fulfill specific purposes. The suit challenges the regulations on three grounds: (1) The regulations expand federal jurisdiction to include waters that are adjacent to and even downstream from federal lands in ways not authorized by *Katie John* or the Supreme Court; (2) the regulations purport to apply to marine waters beyond the mean high tide mark, which is contrary to ANILCA and the doctrine of reserved water rights; and (3) the regulations claim jurisdiction over State and private lands and waters despite the fact that Title VIII of ANILCA is limited to federal public lands.

On January 7, 2005, Katie John files a lawsuit in Alaska District Court challenging the Secretaries' (of the Interior and Agriculture) final rule implementing the prior Katie John mandate as being too restrictive in scope. The complaint alleges that the Secretaries should have included Alaska Native allotments as public lands and that the federal government's interest in water extends upstream and downstream from the conservation units established under ANILCA. The federal government moves for an extension of time in which to file a response.

January 2005: State expresses concerns about the federal subsistence program. In a letter to Interior Secretary Norton, Governor Murkowski expresses concern about administration of the federal subsistence program and calls for joint creation of a high level policy group to consider and resolve current problems. Specific concerns referenced in the letter include unnecessary duplication of state regulations where the state is already providing subsistence; lack of standards for adopting federal regulations; legal delineation of the application of federal regulations to navigable waters; and insufficiency of federal land in some areas to support federal regulated harvests. These four issues are described in more detail and proposed solutions offered in a March 7, 2005, letter from the Department of Fish and Game to the Assistant to the Secretary, Alaska Affairs.

June 2005: Board of Game rejects changes to Nelchina Caribou Tier II hunt. Longstanding frustrations with the state's Tier II Nelchina caribou hunt lead the Board of Game to seek an alternative way of managing this hunt. A committee consisting of several board members and public representatives meets with numerous fish and game advisory committees prior to the March board meeting to discuss a plan that would create a Copper River/Cantwell Subsistence Community Harvest Area and allow any Alaskan to hunt caribou and moose there by subsistence harvest permit. However, those choosing to participate in this subsistence hunt would not be allowed to hunt or trap anywhere else that year, would have to salvage all of the harvested

animal and haul it out of the hunt area with meat still on the bone, and could not use aircraft, large ATVs, or motor homes in the hunt. After hearing public comment at its March meeting, the board decided to make revisions to the proposal and defer action until June. At that meeting, public testimony from Copper River Basin residents and some urban Alaskans opposed the plan. The Board of Game rejected the proposal by a 3-4 vote.

July 2005: Decennial review of federal rural determinations initiated. The Office of Subsistence Management released a report in June 2005 addressing the decennial review of rural determinations as required by Federal regulation. The report describes the methodology used by staff to develop a list of communities and areas proposed for further analysis. The Federal Subsistence Board reviews this report and accepts the staff recommendations. Regional advisory council and public comments on the list are accepted until October 28, 2005. The board develops a final list of communities for further analysis in December and assigns staff to develop detailed analyses on the communities selected for further analysis in 2006 and final decisions are scheduled for the board to decide on any changes to the rural or non-rural status of those communities in December 2006. Kodiak and Sitka are recommended for further analysis because of population growth experienced between 1990 and 2000, while Adak is included because of its marked population decline during that period. The Fairbanks North Star Borough, Kenai, Wasilla, Homer, and Ketchikan non-rural areas will be re-evaluated to determine if these areas should be redefined to include or exclude certain places. Finally, Delta Junction-Big Delta-Deltana-Fort Greely, all currently rural communities, will be analyzed to determine if they should be grouped and their rural/non-rural status evaluated collectively.

August 2005: District Court rules against Alaska sportsmen. The challenge to the rural priority in ANILCA, better known as “McDowell II,” is rejected by Federal District Court Judge H. Russel Holland, who says “Protecting the physical, economic, traditional, and cultural existence of people in Alaska is a compelling government issue.” Holland adds that urban Alaskans and non-residents are free to hunt and fish on federal lands once subsistence needs are met, and he concludes that “Because the challenged ‘rural preference’ regulations are narrowly tailored to serve a compelling governmental interest, plaintiff’s equal protection challenge to the regulation fails.”

August 2005: State appeals bear handicraft regulations and a C&T finding. The State submits a new Request for Reconsideration to the Federal Subsistence Board, appealing the board’s decision to authorize the sale of handicrafts made with the fur (including claws) of bears taken for subsistence purposes. The State asserts that (1) the practice is inconsistent with sound wildlife management principles and has not been demonstrated to be customary and traditional; (2) the board’s decision was based on incorrect information; (3) the decision potentially allows commercial sales; (4) and to the extent that the board’s action allows purchase of handicrafts by persons who are not rural Alaska residents, it exceeds the jurisdiction of the board.

The State also appeals the Federal board’s decision to add Chistochina to the list of communities having customary and traditional uses of moose in all of Unit 12, using this example to illustrate a broader concern. Based on the best available evidence, the State contends that Chistochina has hunted moose only in a small portion of Unit 12. One of the State’s concerns is that such arbitrary and capricious findings can establish a precedent and have the potential to unnecessarily restrict subsistence and nonsubsistence uses on federal public lands.

September 2005: Legal challenges continue. In response to Judge Holland's decision in August, a group of Alaska sportsmen calling themselves the Alaska Constitutional Legal Defense Conservation Fund files an appeal with the 9th Circuit US Court of Appeals, challenging the rural priority in ANILCA. The lawsuits filed in January by the State and NARF are consolidated into a single case known as *Katie John v. Norton* and transferred to Judge Holland for disposition.

January 2006: Federal board rejects State's appeal of bear handicraft regulation and Chistochina moose C&T finding. The Federal Subsistence Board meets on January 9, 2006, and rejects the two Requests for Reconsideration filed by the State in August 2005. The Federal Board asserts that the RFRs did not provide the Board with new information or relevant information not previously considered, did not demonstrate that the existing information used by the Board was incorrect, nor did it demonstrate that the Board's interpretation of information, applicable law, or regulation were in error or contrary to existing law." Hence, the Federal Board concluded that the RFRs did not meet the threshold for board consideration as set forth in 50 CFR Part 100.20 (d).

February 2006: Board of Game withdraws from the Interim MOA. In a February 8, 2006, letter to the Federal Subsistence Board, the Alaska Board of Game describes its concerns with the *Interim Memorandum of Agreement for Coordinated Fisheries and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska*, and gives the required 60-day advance written notice to terminate its participation in this agreement. The Federal Subsistence Board disputes some of these concerns in a February 28, 2006, letter to the Board of Game but commits to maintaining its current level of coordination with the state even if the Board of Game ends its involvement in the Interim MOA. The US Fish and Wildlife Service representative on the Federal Board attends the Board of Game meeting in March to hear the concerns of board members. In the absence of action to address issues raised in its letter, the Board of Game withdraws from the Interim MOA. This action does not affect the day-to-day coordination and consultation of Department of Fish and Game staff with the Office of Subsistence Management.

May 2006: State appeals several federal subsistence fisheries regulations. The State submits several Requests for Reconsideration in response to actions taken on subsistence fisheries proposals by the Federal Subsistence Board earlier in the year. These appeals challenge (1) several customary and traditional use determinations made for certain fisheries on the Kenai Peninsula and in Cook Inlet, (2) an increase in the sockeye salmon possession limits at Kutlaku Lake in southeast Alaska, (3) the provision for a federal subsistence fishing priority for stocks and streams in the Juneau Non-rural Area, and (4) a regulation authorizing use of bait to catch char, steelhead, and trout in Southeast Alaska. These appeals contend that the federal rulings either are not being supported by substantial evidence or are inconsistent with provisions of ANILCA.

May 2006: State challenges Federal Subsistence Board C&T process in court. The State files a lawsuit in U.S. District Court challenging a Federal Subsistence Board finding that expanded the customary and traditional use determination for residents of Chistochina for moose to include all 10,000 mi.^{2} of Game Management Unit 12. The Federal Board's decision was made despite data showing that Chistochina residents hunted moose only in a very small portion of the unit (ca. 206 mi.^{2}), leading the State to conclude that the "substantial evidence" standard

had not been met and that the finding could result in unnecessary restrictions on nonsubsistence uses.

June 2006: Governor Murkowski communicates concerns to new Secretary of Interior. Among the Alaska issues discussed in a letter to new Interior Secretary Dirk Kempthorne, Governor Murkowski points out that the success of "dual management" requires "a fair and equitable Federal Subsistence Board (FSB) process, based on written policies and sound decision making." Calling the FSB process broken and in need of policy reform, Murkowski says the Federal Board has failed repeatedly to follow its own regulations, to follow existing secretarial directions to develop written policies and procedures, and to make decisions based on data rather than on expressed need or unsupported anecdotal testimony. The costs of administering the federal program are noted and efficiencies recommended. At the same time, Murkowski says it is essential that the state and federal governments continue working together to manage subsistence on federal lands and in designated waters.

June 2006: Federal Subsistence Board proposes changes to rural/nonrural status. [See July 2005 entry] After evaluating information for Alaska communities and pursuant to its decennial review of rural and nonrural determinations, the Federal Board solicits public comments on proposed changes to the status of several communities and areas. Generating substantial public interest are proposals to expand the Ketchikan nonrural area, to retain Saxman as a rural enclave within the Ketchikan nonrural area, and to expand the area around the City of Kodiak and change its designation to nonrural. The Federal Board drafted a final rule at its December 2006 meeting. [In a 1/6/06 letter to the Federal board, the Department of Fish and Game noted its objections to the process used by the board to preempt further consideration of Sitka's status as a rural community.]

June 2006: New federal regional advisory council proposed. The Federal Subsistence Board announces plans to create a new 10-member federal subsistence regional advisory council encompassing the Kenai Peninsula and Anchorage areas (Units 7, 15, and 14C), explaining that this would provide a better forum for addressing the many and varied issues associated with fish and wildlife management in this area. Public input will be taken on this proposal until August 25, 2006, and the new Kenai Peninsula Regional Advisory Council is scheduled to be activated in March 2007. [The Board's final decision was not to implement the Kenai RAC.]

June 2006: US District Court ruling on regional council composition. In *Safari Club International v. Mitch Demientieff et al. and Native Village of Venetie Tribal Government et al. (intervenors)*, the US District Court agreed with the intervenors and voided the final rule imposing a 70/30 membership structure for the regional advisory councils "because defendants have failed to engage in a considered analysis of the relevant factors and to articulate their rationale for the choices they made in adopting the final rule." The court enjoined the Federal Subsistence Board from further implementation of the 70/30 final rule and regional advisory council charter provisions based on this rule and ordered the board to "promptly undertake the initiation of adequate rule-making proceedings for purposes of reconsidering membership qualifications for regional advisory councils" and to adopt and implement a council membership regulation consistent with FACA and ANILCA.

July 2006: Federal board removes closure in the Arctic Village Sheep Management Area. At its May 2006 meeting, the Federal Subsistence Board rejected a proposal from the

Department of Fish and Game requesting that the Arctic Village Sheep Management Area in Unit 25(A) be reopened to hunting by non-federally qualified subsistence users. However, the board agreed to revisit the issue after sheep surveys had been conducted in the area in the summer. The department submitted this proposal because harvest data revealed that federally qualified subsistence users had reported taking very few sheep during the 10 years of the closure, asserting that the closure was an unnecessary restriction on non-federally qualified subsistence users. Staff of the Arctic National Wildlife Refuge surveyed part of the management area in June. The federal board reviewed the survey data and concluded that the sheep population could support hunting by other users and reopened the fall season in a portion of the management area for the current regulatory year. Harvest under state regulations is limited to full-curl rams in this relatively remote area, which is expected to limit participation. In attempt to address concerns from residents of Arctic Village, the Department (with input from the Arctic National Wildlife Refuge and Arctic Village) prepares a brochure and map to provide information about land status in the hunt area to pilots, transporters, and hunters.

October 2006: Joint Boards consider nonsubsistence use areas. The Joint Boards consideration of the proposed nonsubsistence area within Game Management Unit 13 was rejected by a 5-2 vote by the Board of Fisheries.

March 2007: Board of Game modifies regulations for Unit 13 Tier II hunt. The Board adopted regulations for Unit 13 which restricted Tier II permittees to hunting moose or caribou in only that Unit, which measured household income in determining Tier II eligibility, which set stringent salvage and means and methods restrictions, and which "zeroed out" Tier II applicants with household incomes above a certain level. Several Native organizations and rural residents challenged the restrictions and the trial court, just days before the caribou hunt season opened, issued a preliminary injunction prohibiting enforcement of the "zeroing out" and exclusivity provisions, which required rescoring all Unit 13 Tier II applications.

April-May 2007: Federal Subsistence Board authorizes Kenai subsistence fisheries and rejects conservation concerns of State for Southeast Steelhead and Brown Bear sale of claws. In two closely scheduled Federal Board meetings, the Federal Board made customary and traditional findings for use of brown bear and black bear based on infrequent use and no substantial evidence of a pattern of use by the community of Ninilchik. The Federal Board approved subsistence use of fish in the Kenai and Kasilof watersheds despite little evidence of customary and traditional use at locations far removed from these coastal communities. The Federal Board rejected the State's request to restrict subsistence fisheries along the Juneau road system and to protect small steelhead stocks on the ABC Islands despite significant conservation issues. The State indicated the Federal Board's refusal to consider conservation issues would necessitate further restrictions of other users of these closely managed fisheries. The State also advised the Federal Board that many of the proposals before the Federal Board would authorize methods and means not allowed under state law in waterways where there is no federal land, so federal subsistence users would be at risk of citation under state law while fishing from state land. The State encouraged the Board to consider only authorizing those uses necessary for continued customary and traditional subsistence uses, but most proposals were authorized by the Federal Board despite this complication for the subsistence users.

July 2007: Final *State of Alaska v. Manning* decision. The Alaska Supreme Court issues a final decision that concludes the cost of food and gas criteria were constitutional but finds

problems with the way alternative sources of game were measured. While the court endorsed the concept of a criterion based on access to alternative sources of game, it rejected the community based cap formula used as an inaccurate and unconstitutional regardless under equal protection analysis. The Court suggested ways to constitutionally measure alternative sources of game and did not accept the State's invitation to reconsider the *McDowell* and *Kenaitze* decisions. The Court rejected arguments that any regulation that considers place of residence is invalid and held that Part A of *McDowell* "must be read to prohibit only criteria that are explicitly and exclusively based on residence."

November 2007: Board of Game further changes Unit 13 restrictions. The Board rescinds the means and methods restriction for Unit 13 and slightly alters the income measurement.

December 2007: Federal Subsistence Board rejects proposal to regulate State methods and means in Yukon fishery. A proposal by an upper Yukon River commercial fish wheel fisherman fails 3-3 after a significant amount of testimony from residents from the lower Yukon River demonstrated extensive impacts anticipated by those communities. The proposal would have the Federal Board restrict the state's authorized mesh net size for portions of the Yukon River by fishermen participating in state managed subsistence and commercial net fisheries. Those supporting the proposal claimed fishery conservation issues, that were contested by the State fisheries managers, while others opposing the proposal observed this was both a long standing allocation dispute and an untenable attempt for the Board to interfere in the State's regulation of the methods and means used by commercial and subsistence fishermen.

March 2008: Signatories to the 2000 Interim Memorandum of Agreement meet. The Federal Subsistence Board, Chairs of the State Boards of Game and Fisheries, and Commissioner meet to confirm the IMOA for the first time since 2001 and commit to improve cooperative efforts to provide for subsistence uses under state and federal laws while respecting state fish and wildlife management. The signatories direct representatives to modify the IMOA into a permanent agreement.

April-May 2008: Federal Board defers bear handicraft proposal. The Federal Board adopts a number of proposals that further expand customary trade of bear parts over state objections. The Board defers a state proposal that would make such authorizations consistent statewide and provide tracking of bear claws to legal harvests in order to address conservation and CITES concerns. The Board and State agree to establish a workgroup to address those concerns, consult with regional councils, and provide resolution for the Board to consider. The Board defers another proposal to a state and federal staff workgroup to address local user and conservation concerns concerning moose hunting in Unit 9.

June 20, 2008: Secretary rejects Sitka Tribe of Alaska petition for extraterritorial jurisdiction to close marine waters to all users except federally qualified subsistence users. The letter clarifies the extremely high threshold previously described in Secretary Norton's 2004 letters and explains "extending jurisdiction to be an action of last resort, only to be used when there is clearly a failure to provide the subsistence priority" and "under extraordinary circumstances."

September 2008: Ninth Circuit decision in *Alaska v. Fleagle.* Court rejects State challenge to a Unit 12 Chistochina moose C&T determination but accepts a number of the State's procedural

arguments, finding that C&T determinations must be based on substantial evidence of a community or area's taking of specific fish stocks or wildlife populations in specific geographic areas. Court rejects the argument that unnecessary C&T determination constitutes unnecessary restriction on nonsubsistence use in violation of section 815 where actual restriction is due to state rather than federal action.

December 2008: Federal Subsistence Board, Alaska Board of Game, Alaska Board of Fisheries, and Alaska Department of Fish and Game sign a permanent Memorandum of Understanding. The agreement commits to cooperating to provide each other fish and wildlife data, conduct studies, recognize roles of state fish and game advisory committees and federal regional advisory committees, cooperate in conservation of the resources, respect each others regulatory responsibilities under the law, and coordinate in providing subsistence under each others respective laws to benefit the resources and subsistence users.

January 2009. Following extensive public testimony and information provided by the State, the Federal Subsistence Board votes to postpone a decision on two Yukon River subsistence fishing regulations. The Board members explain on the record the value of waiting for results of the third year of current 3-year research studies and for additional information being compiled by Canadian and other parties for the Alaska Board of Fisheries January 2010 meeting. The state board will address gear types, seasons, and other aspects comprehensively for all Yukon River fisheries. The Federal Board requests staff to schedule their follow-up meeting after the Board of Fisheries and respective RAC meetings. The Commissioner urged the federal Board and their staff to attend as much of the January 2010 state board meeting as possible due to the extensive data analyses and study results that will be provided for the state board's deliberations.

January 2009. The Federal Subsistence Board rejects the State's proposal for conservation measures on Southeast steelhead in those systems with insufficient spawning populations to support harvest opportunity provided by federal regulations. The Department advises that the repeated requests for the federal board to respect the state's genuine conservation concerns would result in actions by the Alaska Board of Fisheries to further protect small stocks, inconsistent with ANILCA 815. The federal board and Department agreed to establish a work group to look at the technical issues involved in determining sustainability of steelhead in Southeast Alaska and assigned three each federal and state representatives to identify the charge of the workgroup.

January 2009: AFWCF/Chitina Dipnetters Association Case: Groups representing urban fishermen file declaratory judgment action to overturn the Alaska Board of Fisheries' refusal to designate the salmon dipnet fishery in the Chitina area on the Copper River as a subsistence fishery, claiming that parts of the 8-criteria regulation, 5 AAC 99.010(b), used by both state boards to decide which fish stocks or wildlife populations are "customarily and traditionally" used for subsistence are inconsistent with the subsistence statute and equal access provisions in the State Constitution. Summary judgment briefing and oral argument has been completed, and the case is awaiting decision by the superior court in Fairbanks. If the judge rules that the 8-criteria regulation is invalid, every C&T determination by either board could be legally suspect.

February 2009: The Alaska Board of Fisheries does not adopt major changes in Southeast steelhead regulations to further protect steelhead after staff report the Federal Board agreed to a technical workgroup to address conservation concerns. However, the Board of Fisheries adopts

some changes to protect small stocks due to the conservation issues that the federal regulations cause as an interim measure.

March 2009: The Alaska Board of Game significantly alters the subsistence hunting regulations for Unit 13, establishing a numerical "amount necessary" for caribou, eliminating the Tier II hunts for moose and caribou, and establishing Tier I individual and community-based hunts in both cases. The individual Tier I caribou hunt is designed to provide an opportunity for all applicants at least once every 4 years. All other hunts are annual.

March 2009: Manning and AFWCF v. State. A case is filed in state court challenging the Board of Game's subsistence hunting regulations for the Nelchina Caribou Herd. Among other things, the plaintiffs argue that the adoption of a community harvest permit-based hunt pursuant to AS 16.05.330(c) violates the McDowell prohibition on residency-based criteria for subsistence eligibility.

June 1, 2009: Federal Subsistence Board announces closure June 3-July 30 of waters within claimed federal jurisdiction in Yukon fish districts 1, 2, and 3 to non federally qualified users. As a consequence, elder rural residents could not get assistance from nonrural family members.

July 2009. The Federal Subsistence Board rejects 5 Requests for Reconsideration filed by the state. Each request was filed by the State due to Federal Board decisions in 2007 that created conservation issues for the state's management of fish and wildlife, customary and traditional decisions not based on substantive evidence of use, and authorizations that unnecessarily impact subsistence users (e.g., authorize methods and means or federal harvests in areas where there is no federal land/water, thus putting federal subsistence users at risk of law enforcement actions). The rejection results in continuation of conservation issues for steelhead in Southeast.

August 3, 2009: Federal Subsistence Board again rejects state's Request for Reconsideration of decision regarding customary and traditional use determinations for all fish in waters within the Juneau road system despite no subsistence use of these fish by rural residents.

September 2009: The US District Court enters a ruling in the current Katie John litigation, upholding the federal agencies' method for determining federal reserved water rights (FRWR) and, thus, the extent of federal jurisdiction. The Court ruled against the intervening plaintiffs' arguments that federal jurisdiction should be more expansive than current federal assertions upriver/downriver and in marine waters of the Tongass. The Court also ruled against State arguments that the agencies had improperly asserted federal reserved water rights in many areas.

October 14, 2009: Federal Subsistence Board publishes proposed rule to clarify their process of accepting and addressing special action requests (out-of-cycle harvest regulation changes). The Regional Advisory Councils and state supported most of the clarifying regulations. However, the state objected to the apparent expansion of federal authority to regulate harvests (subsistence, recreational, and commercial) authorized under state regulations.

October 23, 2009: Secretary announces at Alaska Federation of Natives a review of the Federal Subsistence Board program within Department of the Interior, proposing major changes will be pursued by January 2010.

December 2009: State appeals the September FRWR ruling to the Ninth Circuit Appeals Court.

January 2010: January 5, 2010, state comments on federal program review, reminding that ANILCA requires state consultation in federal subsistence program and providing numerous constructive changes to reduce redundancy and improve responsiveness to subsistence issues. January 7, Alaska Federation of Natives submits comments that include a request for tribal consultation.

January 12-14, 2010: Federal Subsistence Board takes final comments on special action regulations and discusses with State on record that regulations were not intended to expand authority. Secretary of the Interior Alaska representative provides progress report on Secretarial Review. Regional Advisory Council chairs meet with Federal Subsistence Board and provide more comments on the Secretarial Review.

March 1, 2010: Governor wrote Secretary reminding of statutory recognition of state in subsistence.

April 13-14, 2010: Federal Subsistence Board takes action on deferred 2009 Yukon Chinook proposals parallel to the January 2010 Alaska Board of Fisheries changes to mesh net size regulations.

May 14, 2010: State wrote Federal Subsistence Board documenting inconsistencies in rendering customary and traditional determinations.

June 23, 2010: Federal subsistence response to state defended inconsistencies in customary and traditional use determinations.

July 13, 2010: Federal subsistence board work session retained Sarkar, Kodiak crab, and Unalakleet fisheries closures despite state concerns about inconsistencies in implementing criteria in Closure Policy.

August 31, 2010: Secretary of the Interior News Release announces proposed changes to federal subsistence program; e.g., add two rural Alaskans as Board members, review of MOU with state, review of C&T regulations, review of rural/nonrural critieria, and administrative changes. Public report available October 5 at http://www.doi.gov/whatwedo/subsistencereview.

October 26, 2010: Alaska Federation of Natives announced that the October 21-22 convention voted to request Congress revise ANILCA to provide a subsistence priority to natives.

January 18-20, 2011: Federal subsistence board deferred action on Yukon fish proposals to define "significant commercial enterprise" and limit customary trade of subsistence caught fish.

January 21, 2011: Federal subsistence board initiates tribal consultation.

To be continued….