

Subsistence — Alaska's contentious history

Territorial days

A special game law allows "any Indian or Eskimo, prospector or traveler" to hunt and fish out-of-season "when he is in need of food."

1960

Statehood

Subsistence is recognized by both state and federal governments, but not as a priority.

1971

ANCSA

In the Alaska Native Claims Settlement Act, Congress extinguishes aboriginal hunting and fishing rights in the course of settling land claims. The accompanying conference report says Native subsistence will be protected by the state and Department of the Interior.

1975

Western Arctic caribou herd crash

When caribou numbers in northwest Alaska crash, the state tries to set up a priority hunting system for the most dependent local residents. A Fairbanks sportsmen's group challenges the system in court and wins. Subsistence advocates turn attention to Congress in search for long-term protection.



Caribou

1978

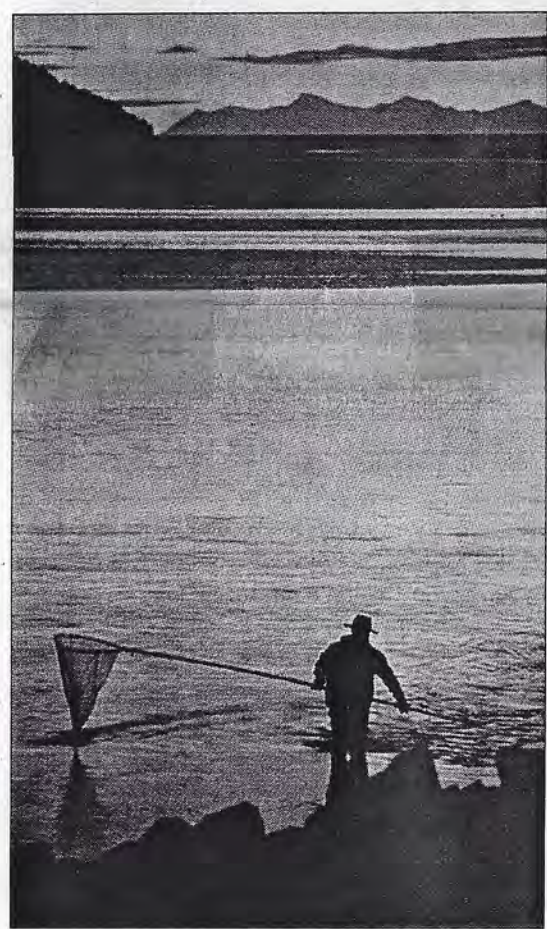
State's first subsistence law

With congressional action imminent, state passes its first subsistence law, making subsistence a priority use for fish and game and allowing a priority for certain residents in times of shortage.

1980

ANILCA

Congress passes the Alaska National Interest Lands Conservation Act, creating 104 million acres of new national parks, preserves and wildlife refuges. Title VIII of the law requires the state to maintain a subsistence hunting and fishing preference for rural residents, or forfeit fish and game management of those uses on public lands.



AL GRILLO/Associated Press

A fisherman dips his net into the waters of Turnagain Arm in hopes of netting hooligan, also known as candfish or smelt.

1982

Repeal of subsistence law fails

A statewide ballot initiative to repeal the state subsistence law fails by a 60-40 margin at the polls.

1985

Madison decision tosses out rural regs

State regulations defined those who qualify for subsistence priority under 1978 state law as "rural" residents. The Alaska Supreme Court throws out those rural regulations in the Madison decision. In response, the U.S. government threatens to take over hunting and fishing on federal lands unless the state comes up with a solid legal footing for a rural priority.

1986

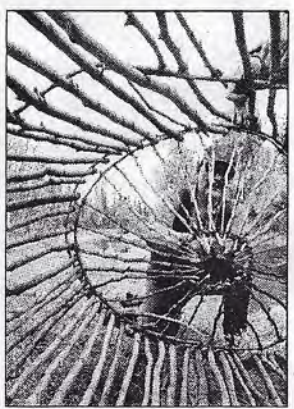
New state subsistence law

A new law limits subsistence to rural residents, defining rural 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."

1988

Kenaitze decision redefines "rural"

The Kenaitze Indian tribe of Kenai had sued in federal court over the state's definition of the Kenai Peninsula as urban. The Ninth U.S. Circuit Court of Appeals decides the state's definition is not consistent with ANILCA and suggests paying more attention to demographic characteristics. The U.S. Supreme Court denies review.



M. SCOTT MOON/Associated Press. Kenaitze fish trap



SAM HARRELL / The Associated Press

Charlie Boulding pulls strips of dried salmon from his smoke house at his fish camp near Manley.

1989

Kenaitze educational fishery

The state allows an "educational" subsistence-type fishing net for the Kenaitze tribe in Cook Inlet until a permanent solution can be found.

1989

McDowell decision

The Alaska Supreme Court, affirming the view of the 1986 state subsistence law, violated Article 8 of the state constitution because it excludes urban residents from subsistence, plaintiff Sam McDowell. Other methods of exclusion might be used, the court said, but not place of residence. The 1986 law remains in effect, stripped of the rural priority.

June 1990

Cowper calls first special session

After concluding ANILCA can't be changed and failing to change the state's constitution during the regular legislative session, Gov. Steve Cowper calls a special session. The final plan would have the state change its constitution, then put the amendment up for a second test at the polls two years later. Challenges to ANILCA could be undertaken in the meantime. The measure passes Senate during 14-day session but fails to get the necessary two-thirds margin in the House.



Steve Cowper

July 1990

Federal management begins

Federal land managers assume control of subsistence hunting on federal public lands. A new subsistence board is made up of federal agency heads.

February 1992

Hickel proposes 'individual' priority

Gov. Wally Hickel takes a new tack, suggesting a state law aimed more at individual qualifications. Residents of small villages would be presumed to qualify, while urban residents would have to prove they practice a subsistence way of life. Critics say if it doesn't change the constitution it won't comply with ANILCA, and Native support is weak. Legislature fails to take action.



Wally Hickel

June 1992

Hickel calls second special session

A bitter eight-day session ignores Hickel's idea as well as Native plea for a rural amendment. Instead, Legislature passes a new state subsistence law, which makes all Alaskans eligible for subsistence, defines steps for Tier II priority during shortages, and allows "non-subsistence areas" around urban centers.

November 1992

Non-subsistence areas

In an attempt to make an open-to-all subsistence priority workable, joint Boards of Fish and Game create four "non-subsistence areas" where the subsistence priority would not apply.

March 1994

Federal court rules in Katie John, Babbitt

U.S. District Court upholds federal authority over fishing on navigable waters in the Katie John case. Court also upholds authority of Interior Secretary Bruce Babbitt to manage subsistence on federal lands under ANILCA. State appeals both decisions.



Katie John

January 1995

Knowles drops Babbitt appeal

Gov. Tony Knowles drops the lawsuit against Interior, saying it had little chance of success and did not provide a fundamental constitutional challenge of ANILCA.

April 1995

Federal appeals court upholds Katie John

State loses Katie John appeal in the Ninth Circuit. Judges say ANILCA gave federal agencies authority to protect subsistence fishing on rivers across federal land, and 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 notes. The U.S. Supreme Court denies a further appeal.

May 1995

Alaska Supreme Court challenges feds

The Alaska Supreme Court, following on the McDowell decision (see 1989 above), overturns the 1992 state subsistence law's use of residency near the resource to determine who qualifies for subsistence in times of shortage.

April 1996

Federal fishing takeover announced

Federal agencies announce plans to assume fishing authority under Katie John decision. Sen. Ted Stevens, R-Alaska, engineers first in a series of implementation delays by Congress.



Ted Stevens

January 1998

Knowles proposes subsistence package

Gov. Tony Knowles proposes a package, drawn up by a task force, that includes technical amendments to ANILCA, a rural priority amendment to the state constitution, and new state laws. Everything would go into effect once the constitutional amendment is approved by voters.

January 1998

Legislative council lawsuit challenges ANILCA

Representing Republican leaders of the Legislature, the council goes to federal court challenging ANILCA Title VIII and federal subsistence regulations. Dismissed in July, the lawsuit dies the following year when the appeals court for the District of Columbia Circuit rules the legislators lack standing to sue.

June 1998

Knowles calls third special session

After legislators fail to act on the Knowles task force package, they are called into a special session that lasts six days. In the background, the Interior Department applies pressure, saying takeover of fisheries is imminent. House comes within three votes of the necessary margin on rural priority amendment, which included a two-year delay as a concession to ongoing court challenges.

July 1998

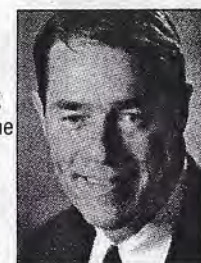
Knowles calls fourth special session

One month later, legislators return — this time only for two days. Again, the House can't muster a two-thirds margin. Senate doesn't vote.

September 1999

Knowles calls fifth special session

After Sen. Stevens comes up with a final year's delay in the federal fishing takeover, the Legislature meets for nine days. The House approves a rural-priority constitutional amendment by the required two-thirds (28-12), but the measure fails 12-8 in the Senate, two votes short of the 14 necessary to put an amendment before the voters.



Tony Knowles

October, 1999

Federal fishing takeover

At 12:01 a.m. on Oct. 1, just after the Legislature adjourns, federal fishery management finally begins.

2000

Dual management settles in

As federal subsistence board expands its responsibilities, state and federal officials develop agreements and begin to plan a coordinated long-term program. Some rural Natives say federal management is an improvement and indicate they're losing interest in a state solution.

August 2001

Final Katie John resolution

After a majority panel of Ninth Circuit judges again upholds federal authority over subsistence fishing, Knowles announces he will drop further appeals to the U.S. Supreme Court.

August, 2001

Subsistence summit proposes rural priority

Knowles convenes a summit of business, religious and Native leaders, along with a few critics of rural priority. A task force proposes a rural-priority amendment with a new twist — a second-tier priority for urban residents who can prove personal ties to subsistence traditions.

May, 2002

Knowles calls sixth special session

After Anchorage voters back a measure calling for action on a constitutional amendment, Knowles calls another special session. In addition to the Knowles package, lawmakers are weighing an alternative plan awarding priority to those who live nearest to any fish or wildlife in short supply.

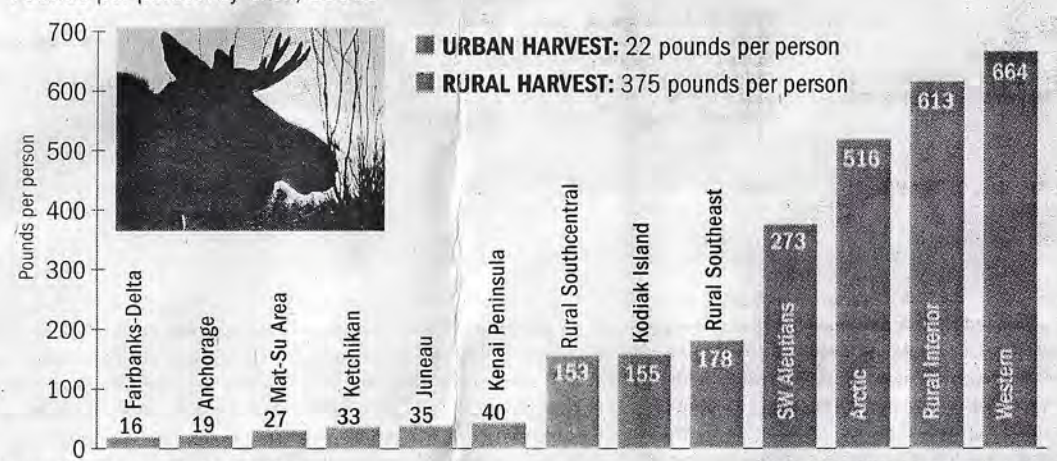


ERIK HILL/Anchorage Daily News

Marchers parade down G Street at the head of the fourth annual We The People march for subsistence rights last year.

Wild food harvest in Alaska

Pounds per person by area, 1990s



Source: Alaska Department of Fish and Game

RON ENGSTROM / Anchorage Daily News